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Monday
October 20, 1980

Highlights

Document Drafting Handbook

The Office of the Federal Register has issued a revised editions of the handbook. See the **Reader Aids** section of this issue for details.

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Highlights

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MEETINGS ANNOUNCED IN THIS ISSUE

CONSUMER SUBJECT LISTING

The following items have been identified by the issuing agency as documents of particular consumer interest. This listing highlights the broad subject area of consumer interest followed by the specific subject matter of the document, issuing agency, and document category.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Monday, October 20, 1980

Presidential Documents

Title 3—

The President

Executive Order 12248 of October 16, 1980

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

1–1. *Adjusted Rates of Pay and Allowances.*

1–101. *Statutory Pay Systems.* Pursuant to the provisions of subchapter I of Chapter 53 of Title 5 of the United States Code, the rates of basic pay and salaries are adjusted, as set forth at the schedules attached hereto and made a part hereof, for the following statutory pay systems:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) the schedules for the Foreign Service (22 U.S.C. 867 and 870(a)) at Schedule 2;

(c) the schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3; and

(d) the rates of basic pay for the Senior Executive Service (5 U.S.C. 5382) at Schedule 4.

1–102. *Pay and Allowances for Members of the Uniformed Services.* Pursuant to the provisions of Section 801 of Public Law 96–342 of September 8, 1980, the rates of monthly basic pay (37 U.S.C. 203 (a) and (c)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) are adjusted, as set forth at Schedule 5 attached hereto and made a part hereof, for members of the uniformed services.

1–103. *Executive Salaries.* The Executive Salary Cost-of-Living Adjustment Act (Public Law 94–82, 89 Stat. 419) provides for adjustments in the rates of pay and salaries as set forth at the schedules attached hereto and made a part hereof, for the following:

(a) The Vice President (3 U.S.C. 104) and the Executive Schedule (5 U.S.C. 5312–5316) at Schedule 6; and

(b) Congressional Salaries (2 U.S.C. 31) at Schedule 7.

(c) Judicial Salaries (28 U.S.C. 5, 44(d), 135, 173, 213, 252, 792(b), and 11 U.S.C. 68(a), and Sections 401(a), 404(a), 404(b), and 404(d) of Public Law 95–598) at Schedule 8.

1–2. *General Provisions.*

1–201. *Effective Date.* The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services shall be effective on October 1, 1980. All other adjustments of salary or pay shall be effective on the first day of the first applicable pay period beginning on or after October 1, 1980.

1–202. *Superseded Orders.* Executive Orders No. 12165 of October 12, 1979 and No. 12200 of March 12, 1980 are superseded.

Jimmy Carter

THE WHITE HOUSE,
October 16, 1980.

Billing code 3195–01–M

Schedule 1 - THE GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$7,960	$8,225	$8,490	$8,755	$9,020	$9,175	$9,437	$9,699	$9,712	$9,954
2	8,951	9,163	9,459	9,712	9,820	10,109	10,398	10,687	10,976	11,265
3	9,766	10,092	10,418	10,744	11,070	11,396	11,722	12,048	12,374	12,700
4	10,963	11,328	11,693	12,058	12,423	12,788	13,153	13,518	13,883	14,248
5	12,266	12,675	13,084	13,493	13,902	14,311	14,720	15,129	15,538	15,947
6	13,672	14,128	14,584	15,040	15,496	15,952	16,408	16,864	17,320	17,776
7	15,193	15,699	16,205	16,711	17,217	17,723	18,229	18,735	19,241	19,747
8	16,826	17,387	17,948	18,509	19,070	19,631	20,192	20,753	21,314	21,875
9	18,585	19,205	19,825	20,445	21,065	21,685	22,305	22,925	23,545	24,165
10	20,467	21,149	21,831	22,513	23,195	23,877	24,559	25,241	25,923	26,605
11	22,486	23,236	23,986	24,736	25,486	26,236	26,986	27,736	28,486	29,236
12	26,951	27,849	28,747	29,645	30,543	31,441	32,339	33,237	34,135	35,033
13	32,048	33,116	34,184	35,252	36,320	37,388	38,456	39,524	40,592	41,660
14	37,871	39,133	40,395	41,657	42,919	44,181	45,443	46,705	47,967	49,229
15	44,547	46,032	47,517	49,002	50,487*	51,972*	53,457*	54,942*	56,427*	57,912*
16	52,247*	53,989*	55,731*	57,473*	59,215*	60,957*	62,699*	64,441*	66,183*	
17	61,204*	63,244*	65,284*	67,324*	69,364*					
18	71,734*									

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,500. See also Note 1.

Note 1. Notwithstanding the above rates, the maximum rate payable, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Schedule 2 - FOREIGN SERVICE SCHEDULES

Part I - The Per Annum Salaries of Foreign Service Officers

	1	2	3	4	5	6	7
FSO-01	$67,536*	$69,787*	$71,734*				
02	51,867*	53,596*	55,325*	$57,054*	$58,783*	$60,512*	$62,241*
03	40,440	41,788	43,136	44,484	45,832	47,180	48,528
04	32,048	33,116	34,184	35,252	36,320	37,388	38,456
05	25,842	26,703	27,564	28,425	29,286	30,147	31,008
06	21,221	21,928	22,635	23,342	24,049	24,756	25,463
07	17,770	18,362	18,954	19,546	20,138	20,730	21,322
08	15,193	15,699	16,205	16,711	17,217	17,723	18,229

Part II - The Per Annum Salaries of Foreign Service Staff Officers and Employees

	1	2	3	4	5	6	7	8	9	10
FSS-01	$40,440	$41,788	$43,136	$44,484	$45,832	$47,180	$48,528	$49,876	$51,224*	$52,572*
02	32,048	33,116	34,184	35,252	36,320	37,388	38,456	39,524	40,592	41,660
03	25,842	26,703	27,564	28,425	29,286	30,147	31,008	31,869	32,730	33,591
04	21,221	21,928	22,635	23,342	24,049	24,756	25,463	26,170	26,877	27,584
05	18,987	19,620	20,253	20,886	21,519	22,152	22,785	23,418	24,051	24,684
06	16,998	17,565	18,132	18,699	19,266	19,833	20,400	20,967	21,534	22,101
07	15,224	15,731	16,238	16,745	17,252	17,759	18,266	18,773	19,280	19,787
08	13,641	14,096	14,551	15,006	15,461	15,916	16,371	16,826	17,281	17,736
09	12,226	12,634	13,042	13,450	13,858	14,266	14,674	15,082	15,490	15,898
10	10,963	11,328	11,693	12,058	12,423	12,788	13,153	13,518	13,883	14,248

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,500. See also Note 1.

Note 1. Notwithstanding the above rates, the maximum rate payable, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Schedule 3 - DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES, VETERANS ADMINISTRATION

	Minimum	Maximum
Section 4103 Schedule		
Chief Medical Director	single rate	$80,441***
Deputy Chief Medical Director	single rate	77,167**
Associate Deputy Chief Medical Director	single rate	73,912*
Assistant Chief Medical Director	single rate	71,734*
Medical Director	$61,204*	69,364*
Director of Nursing Service	61,204*	69,364*
Director of Podiatric Service	52,247*	66,183*
Director of Chaplain Service	52,247*	66,183*
Director of Pharmacy Service	52,247*	66,183*
Director of Dietetic Service	52,247*	66,183*
Director of Optometric Service	52,247*	66,183*
Physician and Dentist Schedule		
Director grade	52,247*	66,183*
Executive grade	48,243	62,713*
Chief grade	44,547	57,912*
Senior grade	37,871	49,229
Intermediate grade	32,048	41,660
Full grade	26,951	35,033
Associate grade	22,486	29,236
Nurse Schedule		
Director grade	44,547	57,912*
Assistant Director grade	37,871	49,229
Chief grade	32,048	41,660
Senior grade	26,951	35,033
Intermediate grade	22,486	29,236
Full grade	18,585	24,165
Associate grade	15,993	20,790
Junior grade	13,672	17,776
Clinical Podiatrist and Optometrist Schedule		
Chief grade	44,547	57,912*
Senior grade	37,871	49,229
Intermediate grade	32,048	41,660
Full grade	26,951	35,033
Associate grade	22,486	29,236

* Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,500. See also Note 1.

** Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level IV of the Executive Schedule which is, as of the effective date of this schedule, $61,600. See also Note 2.

*** Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level III of the Executive Schedule which is, as of the effective date of this schedule, $64,700. See also Note 3.

Note 1. Notwithstanding the above rates, the maximum rate payable for this position or grade, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay a salary for this position or grade in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Note 2. Notwithstanding the above rate, the maximum rate payable for this position, as of the effective date of this schedule, is $52,750. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay a salary for this position in excess of the rate payable for level IV of the Executive Schedule on September 30, 1980.)

Note 3. Notwithstanding the above rate the maximum rate payable for this position, as of the effective date of this schedule, is $55,387.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so that they are not available to pay a salary for this position in excess of the rate payable for level III of the Executive Schedule on September 30, 1980.)

Schedule 4 - SENIOR EXECUTIVE SERVICE SCHEDULE

ES-1	$52,247*	ES-4	$57,673*
ES-2	53,996*	ES-5	59,604*
ES-3	55,804*	ES-6	61,600**

* Notwithstanding these rates, the maximum rate payable, as of the effective date of this schedule, at these levels is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in excess of the payable rates for Executive level V in effect on September 30, 1980.)

** Notwithstanding this rate, the maximum rate payable, as of the effective date of this schedule, at this level is $50,112.50 for individuals at this level whose payable salary on September 30, 1980 was $50,112.50 or less, and the maximum rate payable at this level is $52,750 for individuals at this level whose payable salary on September 30, 1980 was $52,750. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the payable rates in effect on September 30, 1980.) See also Note 1.

Note 1. For the purpose of Section 101(c) of Public Law 96-369, Section 306(b) of HR 7593, and only for the purpose of applying these limitations on the use of appropriated funds for paying rates of pay, individuals who are serving in newly created SES positions or who are otherwise in a new position within the meaning of Section 306(b) of HR 7593, shall be deemed to be serving in a position comparable to an Executive level V position if paid at the rate of ES-5 or lower; and, shall be deemed to be serving in a position comparable to an Executive level IV position if paid at the rate of ES-6.

Schedule 5 - PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
Part I - Monthly Basic Pay
(Years of service computed under 37 U.S.C. 205)

Commissioned officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
O-10[1]	$3942.90	$4081.50	$4081.50	$4081.50	$4081.50	$4238.10*	$4238.10*	$4562.70*
O-9	3494.40	3586.20	3662.40	3662.40	3662.40	3662.40	3755.70	3911.70
O-8	3165.00	3259.80	3337.20	3337.20	3337.20	3586.20	3586.20	3755.70
O-7	2629.80	2808.90	2808.90	2808.90	2934.60	2934.60	3105.00	3105.00
O-6	1949.40	2142.00	2281.80	2281.80	2281.80	2281.80	2281.80	2281.80
O-5	1559.10	1830.90	1957.20	1957.20	1957.20	1957.20	2016.90	2124.90
O-4	1314.30	1599.90	1707.00	1707.00	1738.20	1815.60	1939.20	2048.40
O-3[2]	1221.30	1365.30	1459.50	1614.90	1692.00	1753.20	1847.40	1939.20
O-2[2]	1064.70	1163.10	1397.10	1444.20	1474.20	1474.20	1474.20	1474.20
O-1[2]	924.30	962.10	1163.10	1163.10	1163.10	1163.10	1163.10	1163.10

Pay Grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
O-10[1]	$4562.70*	$4889.10*	$4889.10*	$5216.10*	$5216.10*	$5541.60*	$5541.60*
O-9	3911.70	4238.10*	4238.10*	4562.70*	4562.70*	4889.10*	4889.10*
O-8	3755.70	3911.70	4081.50	4238.10*	4407.90*	4407.90*	4407.90*
O-7	3259.80	3586.20	3832.50	3832.50	3832.50	3832.50	3832.50
O-6	2359.20	2732.70	2872.50	2934.60	3105.00	3367.50	3367.50
O-5	2267.10	2436.90	2577.00	2654.70	2747.40	2747.40	2747.40
O-4	2142.00	2335.60	2297.70	2297.70	2297.70	2297.70	2297.70
O-3[2]	1986.90	1986.90	1986.90	1986.90	1986.90	1986.90	1986.90
O-2[2]	1474.20	1474.20	1474.20	1474.20	1474.20	1474.20	1474.20
O-1[2]	1163.10	1163.10	1163.10	1163.10	1163.10	1163.10	1163.10

1. While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is $6114.30* regardless of cumulative years of service computed under section 205 of Title 37 of the United States Code.

2. Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members or warrant officers.

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for Level V of the Executive Schedule which is, as of the effective date of this schedule, $4875.00 per month. See also Note 1.

Note 1. Notwithstanding the above rates the maximum rate payable, as of the effective date of this schedule, is $4,176.00 per month. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay basic pay in this schedule in excess of the rate payable for Level V of the Executive Schedule on September 30, 1980.)

Commissioned officers who have been credited with over 4 years' active service as enlisted members or warrant officers

(Years of service computed under 37 U.S.C. 205)

Pay Grade	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14
O-3	$1614.90	$1692.00	$1753.20	$1847.40	$1939.20	$2016.90
O-2	1444.20	1474.20	1521.00	1599.90	1661.40	1707.00
O-1	1163.10	1242.30	1288.20	1334.70	1381.20	1444.20

Pay Grade	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
O-3	$2016.90	$2016.90	$2016.90	$2016.90	$2016.90	$2016.90
O-2	1707.00	1707.00	1707.00	1707.00	1707.00	1707.00
O-1	1444.20	1444.20	1444.20	1444.20	1444.20	1444.20

Warrant Officers

(Years of service computed under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
W-4	$1244.10	$1334.70	$1344.70	$1365.30	$1427.40	$1490.40	$1552.80	$1661.40
W-3	1131.00	1226.70	1226.70	1242.30	1257.00	1348.80	1427.40	1474.20
W-2	990.60	1071.30	1071.30	1102.50	1163.10	1226.70	1272.90	1319.70
W-1	825.30	946.20	946.20	1025.10	1071.30	1117.50	1163.10	1211.10

Pay Grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
W-4	$1738.20	$1799.70	$1847.40	$1907.70	$1971.60	$2124.90	$2124.90
W-3	1521.00	1566.60	1614.90	1677.30	1738.20	1799.70	1799.70
W-2	1365.30	1413.00	1459.50	1505.70	1566.60	1566.60	1566.60
W-1	1257.00	1303.20	1348.80	1397.10	1397.10	1397.10	1397.10

Enlisted Members

(Years of service computed under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
E-9[1]	$0	$0	$0	$0	$0	$0	$1413.60	$1445.70
E-8	0	0	0	0	0	1185.90	1219.20	1251.60
E-7	828.00	893.70	927.00	959.10	992.10	1023.30	1056.30	1089.00
E-6	715.20	779.70	812.40	846.60	878.10	910.20	943.50	992.10
E-5	627.90	683.40	716.40	747.60	796.50	828.90	862.20	893.70
E-4	603.60	637.50	674.70	727.20	756.00	756.00	756.00	756.00
E-3	580.50	612.30	636.90	662.10	662.10	662.10	662.10	662.10
E-2	558.60	558.60	558.60	558.60	558.60	558.60	558.60	558.60
E-1	501.30	501.30	501.30	501.30	501.30	501.30	501.30	501.30

Pay Grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
E-9[1]	$1478.40	$1513.60	$1546.20	$1576.20	$1659.30	$1820.40	$1820.40
E-8	1284.30	1317.90	1348.50	1381.90	1462.80	1626.00	1626.00
E-7	1138.20	1170.60	1203.60	1219.20	1301.10	1462.80	1462.80
E-6	1023.30	1056.30	1072.20	1072.20	1072.20	1072.20	1072.20
E-5	910.20	910.20	910.20	910.20	910.20	910.20	910.20
E-4	756.00	756.00	756.00	756.00	756.00	756.00	756.00
E-3	662.10	662.10	662.10	662.10	662.10	662.10	662.10
E-2	558.60	558.60	558.60	558.60	558.60	558.60	558.60
E-1	501.30	501.30	501.30	501.30	501.30	501.30	501.30

1. While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2212.80 regardless of cumulative years of service computed under section 205 of Title 37 of the United States Code.

Part II - Basic Allowance for Subsistence Rates

Officers:	$82.58 per month
Enlisted Members:	
When on leave or authorized to mess separately:	$ 3.94 per day
When rations in-kind are not available:	$ 4.45 per day
When assigned to duty under emergency conditions where no messing facilities of the United States are available:	$ 5.89 per day

Part III - Monthly Basic Allowance for Quarters Rates

Pay Grade	Without Dependents		With Dependents
	Full Rate[1]	Partial Rate[2]	
Commissioned officers			
O-10	$427.80	$50.70	$535.20
O-9	427.80	50.70	535.20
O-8	427.80	50.70	535.20
O-7	427.80	50.70	535.20
O-6	364.00	35.60	468.60
O-5	354.00	33.00	426.30
O-4	315.30	26.70	380.40
O-3	277.20	22.20	342.00
O-2	240.60	17.70	304.50
O-1	187.80	13.20	244.50
Warrant Officers			
W-4	$303.60	$25.20	$368.60
W-3	270.90	20.70	333.90
W-2	235.50	15.90	299.70
W-1	212.70	13.80	275.40
Enlisted Members			
E-9	$229.20	$18.60	$322.50
E-8	211.20	15.30	297.90
E-7	179.70	12.00	277.20
E-6	163.20	9.90	255.00
E-5	156.90	8.70	234.30
E-4	138.30	8.10	206.10
E-3	123.60	7.20	179.70
E-2	109.20	7.20	179.70
E-1	103.20	6.90	179.70

1. Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by 37 U.S.C. 403 and Part IV of Executive Order 11157, as amended.

2. Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and Part IV of Executive Order 11157, as amended.

Part IV - Monthly Rate of Cadet or Midshipman Pay

The rate of monthly cadet or midshipman pay authorized by section 203(c) of Title 37 of the United States Code is adjusted from $375.60 to $419.40.

Schedule 6 - VICE PRESIDENT AND THE EXECUTIVE SCHEDULE

Vice President	$92,400	Level III	$64,700
Level I	81,300	Level IV	61,600
Level II	70,900	Level V	58,500

Note. Notwithstanding the above rates, the maximum rates payable, as of the effective date of this schedule, are set forth below. The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rates payable on September 30, 1980.

Vice President	$79,125.00	Level III	$55,387.50
Level I	69,630.00	Level IV	52,750.00
Level II	60,662.50	Level V	50,112.50

Schedule 7 - CONGRESSIONAL SALARIES

Senator	$70,900
Member of the House of Representatives	70,900
Delegate to the House of Representatives	70,900
Resident Commissioner from Puerto Rico	70,900
President pro tempore of the Senate	80,100
Majority leader and minority leader of the Senate	80,100
Majority leader and minority leader of the House of Representatives	80,100
Speaker of the House of Representives	92,400

Note. Notwithstanding the above rates, the maximum rates payable, as of the effective date of this schedule, are set forth below. The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rates payable on September 30, 1980.

Senator	$60,662.50
Member of the House of Representatives	60,662.50
Delegate to the House of Representatives	60,662.50
Resident Commissioner from Puerto Rico	60,662.50
President pro tempore of the Senate	68,575.00
Majority leader and minority leader of the Senate	68,575.00
Majority leader and minority leader of the House of Representatives	68,575.00
Speaker of the House of Representives	79,125.00

Schedule 8 - JUDICIAL SALARIES

Chief Justice of the United States	$92,400
Associate Justices of the Supreme Court	88,700
Circuit Judges	70,900
District Judges	67,100
Judges of the Court of Claims	70,900
Judges of the Court of Customs and Patent Appeals	70,900
Judges of the Customs Court	67,100
Commissioners of the Court of Claims	59,800
Referees in Bankruptcy (full-time) or Bankruptcy Judges	58,400
Referees in Bankruptcy (part-time) (maximum rate)	29,200

Note. Notwithstanding the above rates, the maximum rates payable, as of the effective date of this schedule, are set forth below. The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rates payable on September 30, 1980.

Chief Justice of the United States	$79,125
Associate Justices of the Supreme Court	75,960
Circuit Judges	60,662.50
District Judges	57,497.50
Judges of the Court of Claims	60,662.50
Judges of the Court of Customs and Patent Appeals	60,662.50
Judges of the Customs Court	57,497.50
Commissioners of the Court of Claims	51,167.50
Referees in Bankruptcy (full-time) or Bankruptcy Judges	51,167.50
Referees in Bankruptcy (part-time) (maximum rate)	25,583.75

[FR Doc. 80-32814
Filed 10-17-80; 10:43 am]
Billing code 3195-01-C

Rules and Regulations

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Monday, October 20, 1980

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Anti-Inflationary Pay and Price Standards; Final Second-Year Pay Standard; Questions and Answers on the Extrapolation of the Pay Standard

AGENCY: Council on Wage and Price Stability.

ACTION: Final second-year pay standard; questions and answers on the extrapolation of the pay standard.

SUMMARY: On March 18, 1980, the Council issued the interim final second-year pay standard (45 FR 17125); accompanying questions and answers were published on March 28, 1980 (45 FR 20453), June 3, 1980 (45 FR 42589), June 25, 1980 (45 FR 42589), and October 6, 1980 (45 FR 65995). The Council is now adopting the standard as final and extrapolating it to the period beginning October 1, 1980. The pay standard is a range of 7.5 percent to 9.5 percent; in normal circumstances, annual pay-rate increases should be expected to average about the mid-point of the range (8.5 percent). Finally, the Council is adopting new Questions and Answers to respond to inquiries about the extrapolation of the pay standard.

DATES: The effective date of the pay standard is October 1, 1979; the effective date of the Questions and Answers is October 1, 1980. Written comments should be submitted by November 10, 1980.

ADDRESS: Written comments should be sent to: Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Office of Pay Monitoring, Lucretia Tanner, Richard Mullins, or Homer Jack: (202) 456–7180; Office of General Counsel, Daniel Duff or Jane Campana: (202) 456–6210.

SUPPLEMENTARY INFORMATION: On September 28, 1979, the President announced the creation of a Pay Advisory Committee to advise the Council on policies that encourage anti-inflationary behavior by employers and labor, that decelerate the rate of inflation, and that provide for a fair and equitable distribution of the burden of restraint. The Committee's Charter provides that it will recommend new or revised interpretations of the pay standard.

On March 18, 1980, the Council issued the interim final second-year pay standard, accepting the Committee's January 22, 1980, recommendation that the second-program-year pay standard be a range of 7.5 percent to 9.5 percent. Clarifying or interpretive Questions and Answers were published over the next few weeks. The Council received only eleven comments from the public on the pay standard and accompanying questions and answers: the respondents included nine companies or business organizations, one trade association, and one union.

The issue discussed in most of these comments is the need for equitable treatment between employee groups covered by cost-of-living-adjustment clauses (COLA'S) and employee groups without such clauses. (In addition to the comments received last spring, seventeen comments on the pay standard were submitted in response to the Council's July 11, 1980, report entitled *The Pay/Price Standards Program: Evaluation and Third Program Year.* These commentators also asserted that the disparate treatment of COLA and non-COLA employees under the pay standard was inequitable.) Most respondents suggested that the inequities between COLA and non-COLA covered workers could be minimized by (1) expanding the criteria for exceptions for non-COLA groups beyond situations involving intra-company or inter-firm inequities, or (2) applying the relief granted in non-COLA inequity exceptions approved during the interim period (between October 2, 1979, and March 13, 1980) to the first-year, instead of to the second-year pay range, or both.

The Council recognizes that the COLA assumption in the pay standard can result in inequities between COLA and non-COLA covered workers. For this reason, the Council included in the interim final second-year pay standard a new exception category, "Pay-rate increases to correct COLA-related inequities" (Section 705.21). While the criteria for that exception (Section 707.40) are not as expansive as some commentators would like them to be, the Council also considers COLA-related inequity cases under the more general gross-inequity exception category. After considering the comments, the Council has concluded that ample opportunity is provided for compliance units to present COLA-related inequity cases, which the Council will review promptly on a case-by-case basis. In light of this, we do not believe that any modification of its criteria is warranted.

In other comments, respondents recommended that changes be made in the procedural rules (especially § 706.24, "Notification of pay-rate increases") to reduce the amount of paperwork required for submissions to the Council. The Council has always been responsive to suggestions for minimizing the administrative costs of this program. (See *e.g.* § 706.31(c), 45 FR 65505 (October 3, 1980)). In this instance, however, we believe that the requested information is necessary and we have tailored the requests to produce only what is necessary. Accordingly, we do not believe that any change in the procedural rules is desirable.

On September 16, 1980, the Pay Advisory Committee recommended that "the present program should be extrapolated through the end of 1980." In the same document, the Committee announced that it will complete its review of its position, embodied in the Committee's January 22, 1980, "Statement & Principles", about the future course of the program and the alternatives, if any, that it would propose for encouraging wage restraint.

On September 24, 1980, the Council accepted the Committee's recommendation that the second-year pay standard be extrapolated for the rest of the calendar year. In view of the fact that certain outstanding issues under the interim final pay standard have now been resolved—most recently with the Council's issuance of questions and answers on pensions (45 FR 65995; October 6, 1980)—the Council is now publishing the second-year pay standard

as final. The pay standard remains unchanged from the interim final second-year standard published on March 13, 1980 (45 FR 17125), except for a revision of the front-loading provision at § 705.12(b) (45 FR 42589; June 25, 1980). The final pay standard published today reflects this change.

The Council is also publishing some explanatory Questions and Answers on extrapolation of the pay standard. These questions relate to the amount of increase permitted following a compliance unit's second program year; the amount of carry-over permitted; and the applicability of the low-wage exemption. With respect to the second, compliance units that believe that it would be manifestly unfair to limit carry-over according to the formula set forth in the Q & A may, of course, request an exception. The Council will consider such applications on a case-by-case basis. In all other respects, the Pay Standard (45 FR 17125) and clarifying Questions and Answers (45 FR 20453; 45 FR 42589; 45 FR 37397; and 45 FR 65995) are extrapolated to the period beginning October 1, 1980.

(Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C. October 15, 1980.

R. Robert Russell

Director, Council on Wage and Price Stability.

1. Accordingly, 6 CFR Part 705, Subpart B is adopted final as follows:

PART 705—ANTI-INFLATIONARY PAY AND PRICE STANDARDS

* * * * *

Subpart B—The Pay Standard

Sec.

Subpart B—The Pay Standards

§ 705.10 Pay standard.

(a) For each employee unit, the annual pay-rate increase should be no more than an amount within a range of 7.5 percent to 9.5 percent. In the normal circumstance, annual pay-rate increases should be expected to average about the midpoint of the range (8.5 percent). Compliance units implementing a pay-rate increase above the midpoint should follow the procedures under § 706.24.

(b) Pay adjustments in normal circumstances under paragraph (a) of this section should be based on the following criteria: cost-of-living (and any provisions in the pay arrangements relating to cost-of-living adjustments), ability to pay, profits, competitive conditions, productivity, labor availability, comparable compensation in other establishments, etc.

§ 705.11 Employee units.

For the purpose of establishing compliance with the pay standard, a compliance unit must identify three types of employee units: (a) Each group of the compliance unit's employees subject to a collective bargaining agreement to which the compliance unit (or the company of which it is a part) is a party constitutes a separate employee unit, (b) All management employees not under a collective bargaining agreement constitute an employee unit, and (c) All other employees constitute an employee unit.

A compliance unit need not identify separately collective bargaining units accounting for less than 5 percent of its employees. However, if a collective bargaining unit is not separately identified, the workers must be included in the management or "all other employees" category.

§ 705.12 Application of the pay standard to collective bargaining agreements.

(a) A compliance unit complies with the pay standard if the annual rate of pay-rate change over the life of each collective-bargaining agreement negotiated during the program year is no more than provided for in § 705.10(a).

(b) In addition, the annual pay-rate increase may be no greater than 10.5 percent in any year of a multi-year agreement.

(c) For purposes of determining whether the annual rate of pay-rate change complies with the pay standard, formulas for cost-of-living adjustments should be computed on the assumption of a 7.5 percent annual rate of inflation in the Consumer Price Index over the life of the contract.

(1) This assumption cannot be used if:

(i) A new cost-of-living provision is established that makes payments only after the Consumer Price Index has increased by some minimum amount;

(ii) An existing cost-of-living provision is modified to begin making payments only after the Consumer Price Index has increased by some minimum amount;

(iii) The Consumer Price Index minimum amount in an existing cost-of-living provision of the type described in paragraph (c)(1)(i) of this section is increased; or

(iv) The duration of the contract is one year or less.

(2) Cost-of-living adjustment provisions that are not permitted to be evaluated using the 7.5 percent inflation assumption should be evaluated using the actual rate of inflation. Contracts with such clauses should be in compliance with the pay standard at the end of each year of the contract.

(d) The cost of private fringe benefit programs should be measured by employer contribution rates.

(e) Pay-rate increases dictated by agreements signed prior to October 25, 1978, are exempted from the pay standard.

(f) A contract that includes a provision for a future wage reopening will be assumed to be terminating on that date.

(g) The effects of legitimate promotions and increases under preexisting incremental pay plans and practices are excluded from computations for the purpose of measuring compliance with the pay standard.

§ 705.13 Application of the pay standard to employees not under collective bargaining agreements.

(a) A compliance unit complies with the pay standard if, for each employee unit, the increase in the pay rate from the base quarter to the last quarter of the program year is no more than provided for in § 705.10(a).

(b) Alternatively, compliance may be determined by computing pay-rate changes for the fixed population of continuing employees employed in the beginning and end of the program year. In this case, pay-rate increases may exclude the effects of legitimate promotions and increases under preexisting incremental pay plans and practices.

(c) In determining compliance under paragraph (a) of this section, adjustments may be made for shifts in the composition of the work force among distinct functional employee subgroups within the employee unit.

§ 705.14 Pay standard for future-value incentive plans.

(a) A future-value incentive plan is any long-term plan under which the compensation value of the units (such as shares, stock options, and awards) granted or issued will not be known until some future time.

(b) Any such units granted or issued before October 25, 1978, under such plans are not subject to the pay standard.

(c) The average number of units per recipient granted or issued in the program year under any continuation of, or modification to, existing plans or creation of successor plans may not exceed one plus the percent provided for in § 705.10(a) multiplied by—

(1) The average number granted or issued in the twelve-month period prior to the program year, or

(2) The annual average of the units granted over the last five years, whichever is greater.

(d) With respect to plans covered by paragraph (c) of this section, any spread between an option or purchase price and fair market value at the time of the grant is included as pay.

(e) For any new plans introduced during the program year for which there is no historical precedent, companies should place a value on units granted or issued in the program year consistent with generally accepted accounting practices and include these amounts in pay.

§ 705.15 Maintenance of health plan benefits.

Changes in the costs of maintaining existing health benefits up to and including the rate of pay increase implemented under § 705.10(a) are charged against the pay standard; any additional costs of maintaining existing health benefits are excluded from computations for purposes of measuring compliance with the standard. Any changes in costs due to changes in benefits should be included as pay-rate changes.

§ 705.16 Changes in pension funding costs.

For pension plans that pay specified benefits at retirement (qualified defined-benefit plans), changes in employer costs due to (a) changes in funding methods, (b) changes in amortization periods, (c) changes in actuarial assumptions, and (d) plan experience (other than year-to-year wage or salary changes) are not included as pay-rate changes. Changes in employer costs due to plan amendments, changes in the benefit structure, or changes in benefit levels due to wage or salary changes are included as pay-rate changes.

§ 705.17 Low-wage exemption.

(a) Employee units with an average straight-time hourly wage rate of $5.35 or less during the third quarter of 1979 are exempt from the pay standard in the second program year.

(b) Individual employees in other employee units who were earning $4.00 or less per hour in straight-time wages on October 1, 1978, may be either excluded from or included in all pay-rate computations for the second program year. If such employees are included, any portion of their pay-rate increases that exceeds the pay standard should be excluded in determining compliance. Employers should also be prepared to demonstrate that, if low-wage employees are included, they are being treated equitably.

§ 705.18 Tandem pay-rate changes.

Pay-rate changes in an employee unit that have been linked regularly to pay-rate changes in another employee unit or groups of employee units will be excepted if the leader is in compliance with or exempt from the pay standard and the pay-rate change of the follower unit maintains the historical relationship. This exception also may be applied when pay-rate changes in an employee unit have been linked regularly to a survey of pay-rate changes in an identified labor market. In order to establish such linkage, the parties must be able to demonstrate that the past pay-rate changes in the follower unit have been substantially equivalent over a period of years to pay-rate changes in the leader unit, group of units, or identified labor market. Employee units need not be in the same company, industry, or geographical area to establish a relationship.

§ 705.19 Pay-rate increases traded for productivity improving work-rule changes.

In determining compliance, that part of a pay-rate change that is in return for changes in contractual work-rules and practices that improve productivity may be deducted from the total pay-rate change. In order to comply in this manner, it must be demonstrated that the cost reductions generated by the work-rule changes are equal to or greater than the excess of the pay-rate change over the pay standard.

§ 705.20 Pay-rate increases attributable to acute labor shortages.

Where pay-rate increases in excess of the pay standard are necessary to attract or retain employees in a particular job category because of an acute labor shortage, the amount of such excess may be excepted if all of the following conditions are met:

(a) The proportion of vacancies relative to the work force or the number of vacancies during the preceding quarter has increased abnormally over that experienced during the past two years;

(b) The time required to fill vacancies during the preceding quarter has increased abnormally over that required during the past two years, despite intensive recruiting;

(c) Pay rates for the shortage category in the relevant labor market have increased abnormally over the past two years; and

(d) The requested pay rate for the shortage category is comparable to the pay rate in the relevant labor market.

§ 705.21 Pay-rate increases to correct COLA-related inequities.

The Council may grant an exception for increases in excess of the pay standard that are necessary to restore equity with wages of comparable groups of employees, occasioned by the operation of COLA clauses.

§ 705.22 Undue hardship and gross inequity.

The Council may grant an exception from the application of the pay standard or may make appropriate adjustments in the standard if its application would cause undue hardship or gross inequity.

(a) An undue hardship exists if application of the pay standard would seriously threaten the company's financial viability.

(b) A gross inequity is any situation that, in the Council's judgment is manifestly unfair.

2. The Council adopts the following Questions and Answers:

Questions and Answers

II. The Pay Standard

N. Extrapolation of the Pay Standard

Q1. What pay-rate increases are allowed following a compliance unit's second program year?

A. Pay-rate increases consistent with the second-year pay standard and accompanying Questions and Answers are permitted.

Q2. Is carry-over of unused allowable second-year increases permitted?

A. Carry-over is applicable only if the chargeable pay-rate increase (before any adjustments for carry-over from the first program year) for the second program year is less than 7.5 percent. When applicable, carry-over is computed as follows: 7.5 percent minus the employee unit's second program year chargeable pay-rate increase

(before any adjustment for carry-over from the first program year). This amount may be added to the allowable pay-rate increase for the employee unit.

Q3. Under the second-year pay standard employee units with average straight-time hourly rates of $5.35 or less (including incentive pay) during the third quarter of 1979 were exempt. In addition, individuals in other employee units who were earning $4.00 or less in straight-time hourly wage rates (including incentive pay) October 1, 1978, were exempt from the pay standard. Are the employee units and individuals that were exempt in the second program year still exempt?

A. Yes.

[FR Doc. 80-32544 Filed 10-17-80; 8:45 a.m.]

BILLING CODE 3175-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Expenses of the Raisin Administrative Committee and Rate of Assessment for the 1980-81 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1980-81 crop year, to be collected from handlers to support activities of the Raisin Administrative Committee which locally administers the Federal marketing order covering raisins produced from grapes grown in California.

DATES: Effective August 1, 1980 through July 31, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: Findings: Pursuant to Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Committee, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and 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), as the order requires that the rate of assessment for a particular crop year shall apply to all assessable raisins handled from the beginning of such year which began August 1, 1980. To enable the Committee to meet crop year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Committee. To effectuate the declared purposes of the act, it is necessary to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication, without opportunity for further comments. The regulation has not been classified significant under USDA criteria for implementing the executive order. An Impact Analysis is available from J. S. Miller (202) 447-5053.

§ 989.331 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Committee during the 1980-81 crop year will amount to $236,100.

(b) The rate of assessment for said period payable by each handler in accordance with § 989.80 is fixed at $1.20 per ton for: (1) Free tonnage raisins acquired by the handler during the crop year, exclusive of such quantity thereof as represents the assessable portions of other handlers' raisins under paragraph (b)(3) of this section; (2) reserve tonnage raisins released or sold to the handler for use as free tonnage during that crop year; and (3) standard raisins (which he does not acquire) recovered by the handler by the reconditioning of off-grade raisins, but only to the extent of the aggregate quantity of the free tonnage portions of these standard raisins that are acquired by other handlers during the crop year.

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

Dated: October 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-32617 Filed 10-17-80; 8:45 am]

BILLING CODE 34120-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Air Tungaru Corp.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This amendment to the regulation of the Immigration and Naturalization Service adds a carrier to the list of transportation lines which have entered into agreement with the Commissioner of Immigration and Naturalization to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. This amendment is necessary because transportation lines which have signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: September 22, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat.1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1 Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

The Commissioner of Immigration and Naturalization Service entered into agreement with the following named carrier on the date indicated to guarantee the passage through the United States of aliens in immediate and continuous transit destined to foreign countries under section 238(d) of the Immigration and Nationality Act and 8 CFR Part 238: Air Tungaru Corp. Effective date: September 22, 1980.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit,* the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Air Tungaru Corp."

* * * * *

(Secs. 103 and 238(d), (8 U.S.C. 1103 and 1228(d)))

This amendment is effective September 22, 1980 as to Air Tungaru Corp.

Dated: October 10, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-32560 Filed 10-17-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

10 CFR Ch. II

Clarification of the Definition of Operational Applicable to Transitional Facilities Implementing the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Department of Energy.

ACTION: Ruling.

SUMMARY: The appended Ruling is issued by the Department of Energy (DOE) Office of General Counsel pursuant to 10 CFR 501.140 to clarify the meaning of the definition of "operational" set forth in 10 CFR 515.20(c)(23) applicable to 10 CFR Part 515, Transitional Facilities, implementing the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*, Pub. L. No. 95-620 (November 9, 1978). A written comment of objection to the appended Ruling may be filed at any time with the DOE Office of General Counsel pursuant to the provisions of 10 CFR 501.143.

FOR FURTHER INFORMATION CONTACT: Dennis M. Moore, Office of General Counsel, Department of Energy, 1000 Independence Ave. SW., Room 5E052, Forrestal Building, Washington, D.C. 20585, (202) 252-2931.

Issued in Washington, D.C.

Dated: October 6, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

10 CFR is amended by adding to the Rulings appearing at the end of Chapter II, the following Ruling—1980-4 to read as follows:

[Ruling 1980-4]

Clarification of the Definition of "Operational"

The Department of Energy (DOE) seeks to clarify the definition of "operational" set forth in 10 CFR 515.20(c)(23), applicable to transitional facilities under the Powerplant and Industrial Fuel Use Act of 1978 (FUA), Pub. L. 95-620 (November 9, 1978).[1] A "transitional facility" is defined in § 515.20(c)(30) as "a facility which was not *operational* on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978." (Emphasis added.) *See* § 515.1(a). The regulatory term "operational" is one that aids in distinguishing between "existing" and "new" facilities for the purpose of determining the FUA prohibitions applicable to an electric powerplant or major fuel-burning installation (MFBI).

Under the FUA an electric powerplant or a MFBI is classified as either an "existing" unit subject to the prohibitions of Title III, or a "new" unit subject to the prohibitions of Title II. An existing electric powerplant and an existing MFBI are defined in the FUA [2] and in the implementing regulations [3] as any powerplant or MFBI other than a "new" powerplant or a "new" MFBI. A new electric powerplant and a new MFBI are defined in the FUA [4] and in the implementing regulations [5] as any electric powerplant or MFBI for which construction or acquisition began on or after the date of the FUA's enactment, November 9, 1978. A "new" unit is also one for which construction or acquisition began after April 20, 1977, and before November 9, 1978. The FUA presumes that all transitional units are "new" unless the DOE classifies such a unit as "existing" for the reasons set forth in section 103(a) (8) and (11) of the FUA, as implemented by 10 CFR Part 515, Transitional Facilities.

"New" electric powerplants or MFBIs may be absolutely prohibited under Title II of the FUA from using natural gas or petroleum as a primary energy source unless granted an exemption from the prohibition. However "existing" units are subject to less stringent prohibitions under Title III of the FUA. Part 515 of 10 CFR specifies the criteria by which the DOE will classify electric powerplants or MFBI's as existing units subject to the prohibitions of Title III rather than continuing to subject the units to the prohibitions of Title II of the FUA as "new" units.

One such distinguishing criterion is whether the unit is "operational." For an electric powerplant as well as a MFBI, § 515.20(c)(23) defines "operational" as follows:

> "Operational" means that a unit is used and useful, has completed its testing phase and is capable of producing a product or providing a service on a continuing basis.

The definition of an "operational" unit set forth in § 515.20(c)(23) has two requirements. The first is that the unit is "used and useful." The second is that the unit "has completed its testing phase and is capable of producing a product or providing a service on a continuing bases." This standard was established to distinguish between those "new" MFBI's and electric powerplants that are subject to reclassification as "existing" units pursuant to the regulations governing transitional facilities and those units that will still be classified as "new" units. A unit that was operational on April 20, 1977, is clearly an "existing" unit. However, a unit that "was not operational on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978," is a transitional facility which may be either a new unit or an existing unit depending upon whether the construction or acquisition could be cancelled, rescheduled or modified without substantial financial penalty or significant operational detriment. The two-part definition of "operational" performs a single differentiation between "existing" and "new" facilities. In the performance of this function, the requirement that a unit be "used and useful" has the same meaning as the requirement that a unit "has completed its testing phase and is capable of producing a product or providing a service on a continuing basis." Only when employed in relation to a unit in this unified manner does the definition of "operational" in 10 CFR Part 515 properly and uniformly differentiate between "existing" units and "new" units.

Accordingly, an electric powerplant may be considered "operational" if it is capable of providing the service of producing "electric power for purposes of sale or exchange" [6] and has completed its testing phase. Such a powerplant would be "used and useful."

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[1] 42 U.S.C. 8301 *et seq.* (November 9, 1978).

[2] FUA section 103(a) (9) and (12).

[3] 10 CFR 500.2; *see also* 10 CFR Part 504, Existing Electric Powerplants, and Part 506, Existing Major Fuel-Burning Installations.

[4] FUA section 103(a) (8) and (11).

[5] 10 CFR 500.2; *see also* 10 CFR Part 503, New Electric Powerplants, and Part 505, New Major Fuel-Burning Installations.

[6] *See* the definition of "electric powerplant" in section 103(a)(7) of the FUA.

A MFBI may be considered "operational" when a boiler, gas turbine unit, combined cycle unit, or internal combustion engine [7] is capable of producing a product or providing a service on a continuing basis and has completed its testing phase as performed by the manufacturer and/or supplier of the particular MFBI. Such a MFBI would be "used and useful." In the case of a package boiler purchased for use as a MFBI, for example, the applicable DOE regulations permit a unit to qualify as "operational" as of a specific date for the purposes of implementing 10 CFR Part 515 even if the particular MFBI had not been installed or tested by the purchaser, so long as the purchaser had acquired a unit that the manufacturer had tested.

Issued in Washington, D.C., October 6, 1980.

Lynn R. Coleman,

General Counsel.

[FR Doc. 80-32612 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AAL-11]

Alteration of Transition Area, Kenai, Alaska and Revocation of Transition Area, Soldotna, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a Final Rule published in the **Federal Register** on September 11, 1980, Volume 45, Page 59839, under Adoption of the Amendment on Page 59840, the Kenai Airport coordinates incorrectly stated the longitude as "115°14'44"W." It should have read "151°14'44"W." This correction reflects the correct coordinates in the Adoption of the Amendment.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry M. Wylie, Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Box 14, 701 C Street, Anchorage, Alaska 99513, telephone (907) 271-5903.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 80-27761 was published on September 11, 1980, (45 FR 59839) and altered the Kenai transition area. The longitude of the Kenai Municipal Airport was incorrectly stated as 115°14'44"W. The longitude should have read "151°14'44"W." Action is taken herein to correct this error.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the description of the Kenai transition area contained in the **Federal Register** Document 80-27761, appearing on Page 59839 in the **Federal Register** of September 11, 1980, under the heading "Adoption of the Amendment," second paragraph, sixth line, is corrected by deleting "115°" and substituting "151°" therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Issued in Anchorage, Alaska, on October 2, 1980.

Robert L. Faith,

Alaskan Region Director.

[FR Doc. 80-32340 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-CE-17]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area—Atchison, Kans.

Correction

In FR Doc. 80-30180, appearing at page 65193, in the issue of Thursday, October 2, 1980, on page 65194, in the first column, under the heading **"Atchison, Kans.",** the first paragraph in the fourth line and in the sixth line, correct "Latitude 30°" to read "Latitude 39°".

BILLING CODE 1505-01-M

14 CFR Part 97

[Docket No. 20844; Amdt. No. 1175]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA for documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

[7] *See* the definition of "major fuel-burning installation" in section 103(a)(10) of the FUA.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing the SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective November 27, 1980*

Lancaster, CA—General Wm. J. Fox Airfield, VOR-A, Amdt. 5
Lancaster, CA—General Wm. J. Fox Airfield, VOR-B, Original
Peoria, IL—Mount Hawley Auxiliary, VOR-A, Amdt. 1
Peoria, IL—Greater Peoria, VOR Rwy 12 (TAC), Amdt. 16
Gary, IN—Gary Muni, VOR/DME Rwy 2, Amdt. 3
Frederick, MD—Frederick Muni, VOR Rwy 23, Amdt. 7
Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 6, Amdt. 9
Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 24, Amdt. 8
Allegan, MI—Padgham Field, VOR Rwy 28, Amdt. 8
Woodward, OK—West Woodward, VOR/DME-A, Amdt. 4
Gallatin, TN—Gallatin Muni, VOR/DME-A, Amdt. 3
Chesapeake, VA—Chesapeake Muni, VOR/DME Rwy 4, Amdt. 2
Chesapeake, VA—Chesapeake Muni, VOR/DME Rwy 22, Original

** * * Effective October 30, 1980*

Ames, IA—Ames Muni, VOR Rwy 31, Amdt. 4

** * * Effective October 3, 1980*

Napoleon, OH—Henry County, VOR Rwy 28, Amdt. 2

Note:—The FAA published an amendment in Docket No. 20668, Amdt. No. 1172 to Part 97 of the Federal Aviation Regulations (Vol. 45 FR No. 175 page 59142; dated September 8, 1980) under section 97.23 effective October 30, 1980, which is hereby amended as follows: Naples, FL—Naples Muni, VOR Rwy 4, original is rescinded. Naples, FL—Naples Muni, VOR Rwy 22, original is rescinded.

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective November 27, 1980*

Beverly, MA—Beverly Muni, SDF Rwy 16, Amdt. 1, cancelled
Jackson, MS—Allen C. Thompson Field, LOC BC Rwy 15R, Amdt. 2
Cincinnati, OH—Cincinnati Muni Airport Lunken Field, LOC BC Rwy 2R, Amdt. 4

** * * Effective October 30, 1980*

Ames, IA—Ames Muni, LOC Rwy 31, Original

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective November 27, 1980*

Gary, IN—Gary Muni, NDB Rwy 30, Amdt. 4
Lafayette, IN—Purdue University, NDB Rwy 10, Amdt. 9
Jackson, MS—Allen C. Thompson Field, NDB Rwy 15L, Amdt. 2
Smithfield, NC—Johnston County, NDB Rwy 21, Amdt. 2
Southport, NC—Brunswick County, NDB-A, Amdt. 1
Batavia, OH—Clermont County, NDB-A, Amdt. 2
Cincinnati, OH—Cincinnati Muni Airport Lunken Field, NDB Rwy 20L, Amdt. 8
Cincinnati, OH—Cincinnati Muni Airport Lunken Field, NDB Rwy 24, Amdt. 3
Woodward, OK—West Woodward, NDB Rwy 17, Original
Moncks Corner, SC—Berkeley County, NDB Rwy 5, Original
Newport News, VA—Patrick Henry Intl, NDB Rwy 2, Original
Newport News, VA—Patrick Henry Intl, NDB Rwy 20, Original

** * * Effective October 30, 1980*

Ames, IA—Ames Muni, NDB Rwy 13, Original
Ames, IA—Ames Muni, NDB Rwy 31, Amdt. 6

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

** * * Effective November 27, 1980*

Chicago, IL—Chicago-O'Hare Intl, ILS Rwy 32L, Amdt. 20
Gary, IN—Gary Muni, ILS Rwy 30, Amdt. 1
Lafayette, IN—Purdue University, ILS Rwy 10, Amdt. 7
Jackson, MS—Allen C. Thompson Field, ILS Rwy 15L, Amdt. 2
Jackson, MS—Allen C. Thompson Field, ILS Rwy 33L, Amdt. 2
Cincinnati, OH—Cincinnati Muni Arpt Lunken Field, ILS Rwy 20L, Amdt. 10

** * * Effective October 30, 1980*

Tucson, AZ—Ryan Field, ILS/DME Rwy 6R, Original
New York, NY—LaGuardia, ILS Rwy 4, Amdt. 32

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective November 27, 1980*

Peoria, IL—Greater Peoria, RADAR-1, Amdt. 5

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective November 27, 1980*

Gainesville, GA—Lee Gilmer Memorial, RNAV Rwy 4, Original
Peoria, IL—Greater Peoria, RNAV Rwy 12, Original

** * * Effective October 30, 1980*

Ames, IA—Ames Muni, RNAV Rwy 13, Amdt. 1
Ames, IA—Ames Muni, RNAV Rwy 31, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

Issued in Washington, D.C. on October 10, 1980.

John S. Kern,

Acting Chief, Aircraft Programs Division.

[FR Doc. 80-32337 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 7726]

Manufacturers and Retailers Excise Taxes; Excise Tax on Coal

Correction

In FR Doc. 80-31055 appearing on page 66452 in the issue of Tuesday, October 7, 1980 make the following correction:

In § 48.4121-1, paragraph (b) was adopted from the proposed rule and should have been included as follows:

(b) *Rate of tax.*—(1) *Underground mines; surface mines.* The rate of tax imposed on coal from underground mines located in the United States is the lower of 50 cents per ton (2,000 pounds), or 2 percent of the sale price. The rate of tax imposed on coal from surface mines located in the United States is the lower of 25 cents per ton (2,000 pounds) or 2 percent of the sale price. If a sale or use includes a portion of a ton, the tax is applied proportionately. Thus, if 1,200 pounds of coal from an underground mine are sold for $35.00, the tax is 30 cents.

(2) *Combination.* If a single mine yields coal from both surface and underground mining, the producer must determine the rate (50 cents or 25 cents per ton) for each ton of coal mined: It is presumed that coal is mined from underground mines (50 cents per ton) unless the producer keeps sufficient records to establish to the satisfaction of the Secretary that the coal was mined from a surface mine.

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Order No. 914-80]

Open Judicial Proceedings; Policy

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order, revised on the basis of comments received pursuant to the notice published in the **Federal Register** on August 6, 1980, establishes guidelines for the Government on consenting to, or moving for, closure of judicial proceedings. It adopts, as policy, a strong presumption that judicial proceedings should be open to the public unless closure is plainly essential to the interests of justice. Under the policy, the Government has a general overriding affirmative duty to oppose the closure of judicial proceedings. Experience under these guidelines will be carefully documented and evaluated to ensure that, in practice, they achieve their goal of ensuring maximum openness in judicial proceedings in which the Government appears.

EFFECTIVE DATE: October 14, 1980.

FOR FURTHER INFORMATION CONTACT: T. Alexander Aleinikoff, Office of the Associate Attorney General, Department of Justice, Washington, D.C. 20530. (202) 633-4552.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 516, 519 it is hereby ordered as follows:

1. A new section, § 50.9, to read as follows is added to Part 50 of Chapter I of Title 28, Code of Federal Regulations:

§ 50.9 Policy with regard to open judicial proceedings.

Because of the vital public interest in open judicial proceedings, the Government has a general overriding affirmative duty to oppose their closure. There is, moreover, a strong presumption against closing proceedings or portions thereof, and the Department of Justice foresees very few cases in which closure would be warranted. The Government should take a position on any motion to close a judicial proceeding, and should ordinarily oppose closure; it should move for or consent to closed proceedings only when closure is plainly essential to the interests of justice. In furtherance of the Department's concern for the right of the public to attend judicial proceedings and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all attorneys for the United States.

(a) These guidelines apply to all federal trials, pre- and post-trial evidentiary hearings, plea proceedings, sentencing proceedings, or portions thereof, except as indicated in paragraph (e) of this section.

(b) A Government attorney has a compelling duty to protect the societal interest in open proceedings.

(c) A Government attorney shall not move for or consent to closure of a proceeding covered by these guidelines unless:

(1) No reasonable alternative exists for protecting the interests at stake;

(2) Closure is clearly likely to prevent the harm sought to be avoided;

(3) The degree of closure is minimized to the greatest extent possible

(4) The public is given adequate notice of the proposed closure; and, in addition, the motion for closure is made on the record, except where the disclosure of the details of the motion papers would clearly defeat the reason for closure specified under paragraph (c)(6) of this section;

(5) Transcripts of the closed proceedings will be unsealed as soon as the interests requiring closure no longer obtain; and

(6) Failure to close the proceedings will produce

(i) A substantial likelihood of denial of the right of any person to a fair trial, or

(ii) A substantial likelihood of imminent danger to the safety of parties, witnesses, or other persons, or

(iii) A substantial likelihood that ongoing investigations will be seriously jeopardized.

(d) A Government attorney shall not move for or consent to the closure of:

(1) A civil proceeding except with the express authorization of the Associate Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section; or

(2) A criminal proceeding except with the express authorization of the Deputy Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section.

(e) These guidelines do not apply to:

(1) The closure of part of a judicial proceeding where necessary to protect national security information or classified documents; or

(2) *In camera* inspection, consideration or sealing of documents, including documents provided to the Government under a promise of confidentiality, where permitted by statute, rule of evidence or privilege; or

(3) Grand jury proceedings or proceedings ancillary thereto; or

(4) Conferences traditionally held at the bench or in chambers during the course of an open proceeding.

(f) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

2. A new section heading to read as follows is added, in proper numerical sequence, to the table of contents of Part

50 of Chapter I of Title 28, Code of Federal Regulations:

Sec.
50.9 Policy with regard to open judicial proceedings.

Dated: October 14, 1980.

Benjamin R. Civiletti,
Attorney General.

[FR Doc. 80-32559 Filed 10-17-80; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 650, 651

Environmental Quality; Environmental Effects of Army Actions, (AR 200-2)

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

SUMMARY: This is final action by the Department of the Army to add a new part to Subchapter K of 32 CFR. This new part provides policy and guidance for considering environmental effects in the Army decision-making process both in the United States and abroad. It implements the Council on Environmental Quality (CEQ) Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (43 FR 55990–56007, November 29, 1978, 40 CFR Parts 1500–1508); Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979; and supersedes Army Regulation 200–1, Subpart B—Environmental Considerations in DA Actions, January 20, 1978.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bickley, Army Environmental Office, Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, DC 20310 (202–694–3434).

SUPPLEMENTARY INFORMATION:

General

In accordance with the CEQ regulation, 40 CFR Parts 1500–1508, and Department of Defense Directive 6050.1 and E.O. 12114 and Department of Defense Directive 6050.7, the Department of the Army implementing procedures were provided for public review and comment in the **Federal Register**, 45 FR 1086–1108, January 4, 1980. Comments were received from private citizens, national organizations, State and other Federal agencies. Except as noted below, the comments provided were incorporated into this regulation.

Response to Comments

1. Some commentors inquired concerning the relationship between this regulation and the regulation published for civil works activities of the Corps of Engineers. This regulation applies to the military activities of the Department of the Army and implements directives from the Office of the Secretary of Defense. Separate guidance is provided for Army civil works activities for which the Secretary of the Army has direct statutory authority. This civil works guidance is provided in Engineer Regulation 200–2–2, "Environmental Quality: Policy and Procedures for Implementing NEPA." Refer to § 651.3(d) (§ 651.3(a)(1) of the previously published draft regulation) which excludes civil works activities with this regulation.

2. One comment concerned the published list of types of actions normally requiring an EIS and implied that an environmental assessment should be prepared to preclude doing unnecessary EISs. The CEQ regulation (40 CFR 1507.3(b)) expressly requires that agency implementing procedures include specific critieria and typical classes of actions normally requiring EAs, normally requiring EISs and not normally requiring an EA or EIS. The list of actions is meant to be general guidance and is not to be used as rigid direction to prepare an EIS. Use of this list is expected to be tempered by experience. It is not expected that unnecessary EISs will be generated from the listing.

3. Several comments requested that the regulation place more stress on other environmental legislation such as the Coastal Zone Management Act and the National Historic Preservation Act, as amended. This regulation implements NEPA; attention is called to actions involving the coastal zone and historic places, as well as endangered species, prime and unique farmland and wetlands. However, specific implementing procedures are the subject of other Army regulations. Specifically, AR 420–74 implements the Coastal Zone Management Act and AR 200–1, Chapter 8, the National Historic Preservation Act.

4. One organization requested that the role of newspapers be stressed in the public notification process. The use of the OMB Circular A–95 process and **Federal Register** has been stressed in this regulation. The use of the public affairs officer (PAO) has been further emphasized in this final version of the regulation. It is the role of the public affairs officer, in coordination with the proponent of the action, to determine which news media will be used in each particular circumstance. Certainly newspapers should be used quite extensively for local public notices and news releases.

5. It was requested that the economic interests of small businesses be stressed during the NEPA review process. NEPA is basically concerned with the physical and biological environment rather than socio-economic impacts. The procedures for the preparation of environmental documents direct the inclusion of socio-economic impacts in the overall environmental impact analysis. The level of socio-economic impact analysis (including impacts on small businesses) must be predicated on the expected magnitude of the potential impacts. To require that a detailed small business economic analysis accompany every environmental document, even though the potential for impact is slight, would be unreasonable and contrary to the CEQ regulations to concentrate on significant impacts.

Implementation

This rulemaking will be provided for planning purposes by letter guidance to all Army agencies and takes precedence over AR 200–1, Chapter 2 until final publication and distribution of AR 200–2 is accomplished.

Accordingly, the Department of the Army amends 32 CFR Part 650 by revising and redesignating §§ 650.21 through 650.39 as Part 651 as set forth below:

1. Sections 650.21 through 650.39 deleted and reserved.

2. Addition of a new Part 651 to read as follows:

Dated: October 14, 1980.

For the Chief of Engineers.

Forrest T. Gay III,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

PART 650—ENVIRONMENTAL PROTECTION AND ENHANCEMENT

§§ 650.21–650.39 [Deleted and Reserved]

Sections 650.21 through 650.39 are deleted and reserved.

A new Part 651 is to be added as follows:

PART 651—ENVIRONMENTAL EFFECTS OF ARMY ACTIONS (AR 200–2)

Subpart A—General

Sec.
651.1 Purpose.
651.2 Background.
651.3 Applicability.
651.4 Policies.
651.5 Responsibilities.

Authority: National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., Council on Environmental Quality Regulations, 40 CFR Part 1500, 43 FR 55990–56007, Nov. 29, 1978, and EO 12114.

Subpart A—General

§ 651.1 Purpose.

This regulation states Department of the Army (DA) policy, assigns responsibilities, and establishes procedures for the integration of environmental considerations into Army planning and decisionmaking in accordance with 42 U.S.C. 4321 et. seq., "National Environmental Policy Act of 1969" (NEPA), the Council on Environmental Quality (CEQ) regulations of November 29, 1978 and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions", January 4, 1979.

§ 651.2 Background.

(a) NEPA establishes National policies and goals for the protection of the environment. Section 102 (2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate pre-decisional consideration to the environmental effects of their proposed actions in their planning and decisionmaking, and to prepare detailed statements regarding recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) EO 11991, dated May 24, 1977, directed the CEQ to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final regulations for implementing NEPA's procedural provisions (40 CFR Part 1500–1508) on November 29, 1978, which became binding on all Federal agencies commencing July 30, 1979. These regulations provide that each Federal agency shall, as necessary, adopt procedures to supplement the CEQ regulations. The Department of Defense (DOD) issued its implementing procedures in DOD Directive 6050.1, "Environmental Effects in the United States of DOD Actions," on July 30, 1979.

(c) Executive Order 12114 directs that Federal agencies prepare procedures to implement the EO with respect to areas outside the United States. Accordingly, DOD issued DOD Directive 6050.7, "Environmental Effects Abroad of Major Department of Defense Actions," March 31, 1979.

§ 651.3 Applicability.

(a) Subparts A through G and Appendices A through D in this regulation apply to Headquarters, Department of the Army (HQDA) and to all Army Command, subordinate activity, and agency (hereinafter referred to as DA agencies) actions affecting the environment in the United States,[1] and are effective immediately.

(b) Subpart H and Appendices E and F of this regulation apply to HQDA and DA agencies' actions that would significantly affect the quality of the human environment outside the United States.

(c) This regulation also applies to federally managed National Guard installations and sites and federally funded National Guard activities.

(d) The Civil Works functions of the Corps of Engineers are not subject to this regulation. See Corps of Engineers regulation ER 200–2–2, "Environmental Qualtiy: Policy and Procedures for Implementing NEPA."

§ 651.4 Policies.

(a) It is the continuing policy of DA, as a trustee of the environment, to carry out its mission of national security in a manner consistent with NEPA and other applicable environmental standards, laws, and policies. All practicable means consistent with other essential considerations of national policy should be employed to minimize or avoid adverse environmental consequences and to attain the goals and objectives in Sections 101 and 102 of NEPA.

(b) Recognize the worldwide and long-range character of environmental problems and, where consistent with national security requirements and the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world human environment. In accordance with Executive Order 12114, DOD Directive 6050.7, and this regulation, incorporate the environmental planning and evaluation process into major Army actions which may significantly affect global commons, the environments of certain other nations, or any natural or ecological resources of global importance designated for protection.

(c) Comply with laws other than NEPA which require DA to gain

[1] *United States* means the 50 states, the District of Columbia, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. For the purpose of this regulation, United States also includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Marianas. The territories and possessions of the United States include the Virgin Islands, American Somoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, Kingman Reef, and the Trust Territory of the Pacific Islands, subject however to future changes in their legal status. Certain environmental statutes may specify other definitions of "United States" and overseas installations may not be affected by a particular statute or regulation. Consult applicable statutes and Status of Force Agreements for guidance.

approval of another Federal, state, or local government agency before commencing certain types of actions that may have environmental consequences. Compliance with such laws does not relieve the responsible official from preparing and processing necessary environmental documents. Compliance with NEPA is required unless existing law applicable to a specific action or activity prohibits, exempts or makes compliance impossible.

(d) Insure that all environmental documentation will be subjected to reviews which consider operations and security (OPSEC) principles and procedures described in AR 530–1. These reviews will be documented.

§ 651.5 Responsibilities.

(a) The Assistant Secretary of the Army (Installations, Logistics and Financial Management) serves as the Secretary of the Army's responsible official for NEPA matters.

(b) The Chief of Engineers exercises primary staff responsibility for coordinating and monitoring NEPA activities within the Army. Through the Assistant Chief of Engineers (DAEN-ZCE), the Chief of Engineers is the Army staff point of contact for environmental matters and;

(1) Provides assistance and advice on the preparation/processing of environmental documentation through the identification and quantification of environmental impacts and selection of impact mitigation techniques.

(2) As necessary, designates a single agency or lead office having the responsibility for preparing and processing environmental documentation when more than one DA agency is involved and assigns DA lead agency responsibility when non-DA agencies are involved.

(3) Reviews and comments on environmental impact statements (EISs) submitted by other DOD components and other Federal agencies.

(4) Monitors proposed DA policy and program documents which have environmental implications to determine if EISs or environmental assessments (EAs) are required and to insure that environmental considerations are integrated into the decisionmaking process.

(5) Maintains liaison with the Office of Management and Budget (OMB), CEQ, Environmental Protection Agency (EPA), and other Federal, state and local agencies, with respect to their environmental policies which may affect DA, thereby assisting in the identification and evaluation of applicable regulatory policies for proposed actions.

(6) Maintains a current record of actions for which EISs have been prepared or are under preparation, and those actions of national concern for which a Finding of No Significant Impact (FNSI) has been rendered.

(7) Retains a copy of each draft and final EIS (DEIS and FEIS) prepared by DA. The EIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid at which time it will be deposited in the National Archives.

(8) Directs the preparation of EISs as appropriate to insure adequate consideration of environmental impacts.

(9) Comments on EISs within those areas of assigned staff responsibility and technical capability, and

(10) Fulfills Office, Chief of Engineers (OCE) responsibilities as a DA staff agency for those actions or activities for which OCE is normally responsible as defined in Subparts A and H.

(c) HQDA staff agencies will:

(1) Apply the policies and procedures set forth in this regulation to programs and actions within their staff responsibility.

(2) Assess continuing and proposed programs and actions to determine their environmental consequences and initiate the preparation of necessary environmental documentation. Environmental documents shall be circulated and reviewed at the same time as other planning documents, such as the DD 1391, and the Intergrated Program Summary document in the Systems Development and Acquisition process.

(3) Coordinate appropriate environmental documents with other DA staff agencies as well as with DAEN–ZCE.

(4) Designate, record, and report the identity to DAEN–ZCE of the agency's single point of contact for NEPA considerations.

(5) Maintain a current record of staff agency actions on which EISs have been prepared, or are being prepared and those actions of national concern for which FNSIs have been prepared.

(6) As requested, assist in the review of environmental documents prepared by DOD and other DA or Federal agencies.

(7) Coordinate proposed directives, instructions, regulations and major policy publications that have environmental implications with DAEN–ZCE.

(8) Resolve issues in determining if a public hearing is appropriate for the proposed action and assign, when necessary, the responsibility for the hearing to an appropriate office or agency.

(9) Shall be capable, in terms of personnel and other resources, of complying with the requirements of this regulation (See 40 CFR 1507.2).

(d) The Judge Advocate General (TJAG) will provide legal advice and assistance, as requested, in the interpretation of NEPA and the CEQ regulations, and interface with the Department of Justice on NEPA related litigation.

(e) The Comptroller of the Army (COA) will establish necessary procedures to insure compliance with the requirements for environmental exhibits and data in support of annual authorization request. Additionally, for those actions or activities for which the COA is normally responsible, the COA will fulfill the requirements defined in paragraph (c) of this section.

(f) The Surgeon General (TSG) is responsible for coordinating the environmental review related to health and welfare aspects of proposed EISs submitted to HQDA, and for preparing EAs or EISs for proposed actions and programs for which he/she is the proponent. DA agencies are encouraged to draw upon the special expertise which is available within the medical department to identify and evaluate environmental impacts.

(g) The Adjutant General will institute administrative procedures to preclude the publication of any policy, regulation, circular, or other DA issuance unless the proponent staff agency certifies that necessary environmental documentation (including a Record of Environmental Consideration) has been prepared.

(h) The Chief of Public Affairs (SAPA) will:

(1) Provide guidance on the issuance of public announcements required by this regulation including NOIs, scoping procedures, and FNSI, and public involvement activities.

(2) Review proposed news releases on actions of national interest/impact.

(3) Arrange for the issuance of news releases on actions of national interest/scope to the national news media.

(i) Major field commanders are responsible for monitoring proposed actions and programs for accomplishment within their commands; and for assuring that appropriate environmental documentation is prepared and, as necessary, forwarded to HQDA.

(j) All Army commands and agencies will:

(1) Establish, as necessary, internal procedures for analyzing environmental consequences for continuing and

proposed actions and programs for which they are the proponent or approving agent in accordance with the policies contained herein, and for preparing, coordinating within their technical staffs, and processing environmental documentation required for proposed actions and programs within their agencies.

(2) Establish, as necessary, internal procedures to insure that proposed regulations, directives, instructions, and other major policy publications for which they are the proponent agency, or which implement issuances by higher headquarters, are evaluated for environmental consequences prior to publication.

(3) Maintain the capability (in terms of personnel and other resources) to comply with this regulation (40 CFR 1507.2).

Subpart B—Records and Documents

§ 651.6 Summary of required records and documents.

The following written records and documents are required in order to fully implement this regulation:

(a) Record of Environmental Consideration. See Subpart C for application.

(b) List of Categorical Exclusions (CX). These are described in detail in Subpart D.

(c) Environmental Assessment (EA). See Subpart E for requirements.

(d) Finding of No Significant Impact (FNSI). See §§ 651.12(a)(4) and 651.23 for applicability and processing.

(e) Notice of Intent (NOI). See §§ 651.30 and 651.33(d)(1) for application.

(f) Environmental Impact Statement (EIS). See Subpart F for requirements.

(g) Record of Decision. See Subpart C for application.

§ 651.7 Definitions.

(a) *List of Categorical Exclusions.* A listing of categories of actions which do not individually or cumulatively have a significant effect on the human environment. DAEN–ZCE will maintain a master list of actions for all DA agencies which normally qualify for a categorical exclusion from the requirement to prepare environmental documentation as defined in 40 CFR 1508.10. This list will include those in this regulation, Appendix A, and those nominated by DA agencies and approved by HDQA. Refer to Subpart D for further discussion.

(b) *Record of Environmental Consideration.* A Record of Environmental Consideration is a record which briefly describes the proposed action and its anticipated time frame; identifies the responsible proponent; and explains why further environmental documentation is not required. See Figure 2–1 for suggested format which contains elements of a Record of Environmental Consideration.

(c) *Reports Control Symbol.* Environmental documentation to comply with the National Environmental Policy Act or EO 12114 has been assigned reports control symbol RCS DD–M (AR) 1327.

(d) *Preparer.* The preparers are personnel from a variety of disciplines who write environmental documentation, in clear and analytical prose, who are the primary substantive reviewers of the domumentation and who are responsible for the accuracy of the document.

(e) *HQDA Staff Proponent.* This is the principal review and/or approval authority of all lower level proponents.

(f) *Proponent.* Since proponent identification is dependent on the nature and scope of any given action, a proponent may exist at all levels of the Army structure, e.g., the installation facility engineer becomes proponent of installation-wide MCA or O&M activity, HQ TRADOC becomes a proponent of a change in initial entry training. In general, the proponent is the lowest level decisionmaker. However, in the decisionmaking process, decisions are often subject to review and/or approval by higher level authorities including the HQDA staff proponent. Therefore, the review/approval of the environmental document follows the same channel of review/approval as that of the proposed action.

(g) *Environmental Documents.* Record of Environmental Consideration, Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact, Notice of Intent, and Record of Decision.

Figure 2–1 Format for Record of Environmental Consideration [2]

RECORD OF ENVIRONMENTAL CONSIDERATION

Title:

Description of Proposed Action: (Brief description (if not obvious from title))

Anticipated Date and/or Duration of Proposed Action: (Month/year of expected action)

It has been determined that the action (choose one)

a. Is adequately covered in the existing EA ——— EIA ——— EIS ———
entitled: ———
and dated ———

b. Qualifies for Categorical Exclusion # ——— Appendix A, AR 200–2.

c. Is exempt from NEPA requirements under the provisions of (cite superseding law).

Signed ———
(office responsible for proposed action)
Date: ———
Concurrence: ———
(Installation, office, or agency designated Environmental Officer)
Date: ———

[2] Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Subpart C—NEPA and the Planning Process

§ 651.8 General.

(a) The NEPA process includes the systematic examination of the possible and probable environmental consequences of implementating a proposed action. To be an effective decisionmaking tool, this process will be integrated with other Army project planning at the earliest possible time. This insures that planning and decisionmaking reflect environmental values, avoid delays later in the process, and avoid potential conflicts.

(b) To achieve these ends, NEPA requires that the Army "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's enviornment" (Pub. L. 91–190; 102(a)(A)). This procedure enables the identification of environmental effects and values in sufficient detail so they can be evaluated in conjunction with economic, technical, and mission-related analyses.

(c) The NEPA process also requires that the proponent of an action or project identify and describe appropriate alternatives to the proposed action or project where the proposed action would involve unresolved conflicts concerning alternative uses of available resources or would significantly affect the quality of the human environment. To assist in identifying appropriate alternatives, the proponent is required to consult appropriate Federal, state and local agencies and the general public.

(d) These procedures are designed to allow the decisionmaker to select the proper course of action by providing him/her with the relevant background information and subsequent analyses of positive and negative environmental effects of the proposal. The written report to the decisionmaker which contains the environmental evaluation of an action is either the Record of Environmental Consideration, EA, FNSI, or EIS.

§ 651.9 Applicability.

(a) The types of projects or actions to be evaluated for environmental impact include:

(1) Policies, regulations, and procedures (DA regulations, circulars, or other issuances).

(2) New management and operational concepts and programs (in areas such as logistics, R&D, procurement, personnel assignment).

(3) Projects (e.g., facilities construction, weapons and vehicle research and development).

(4) Activities (e.g., individual and unit training, flight operations, overall operation of an installation or facility.

(5) Requests for a Nuclear Regulatory Commission license (new, renewal, or amendment) or an Army radiation authorization.

(b) In addition to the above, an environmental review is required for certain activities supported by the Army through:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding assistance such as GOCO industrial plants.

(2) Lease, easement, permit, licenses, certificates, or other entitlements for use (e.g., grazing lease, grant of easement for highway right-of-way).

(3) Approval to use or store radiation sources on Army land by non-Army entities.

§ 651.10 Categories of actions and procedures for environmental review.

(a) There are five broad categories into which a proposed action may fall for environmental review purposes. These categories are:

(1) *Exemption by Law.* The law must apply to the Department of Defense and/or DA and must prohibit, exempt or make impossible compliance with NEPA. (40 CFR 1500.6) See § 651.11 below for security exemptions.

(2) *Emergencies.* (i) In the event of an emergency, DA may be required to take immediate actions with significant environmental impact. These include actions that must be taken to promote the national defense or security and cannot be delayed, and actions necessary for the protection of life or property. The DA staff proponent shall notify the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics (ASD(MRA&L)) of an emergency action at the earliest possible time so that ASD (MRA&L) may consult with the CEQ if necessary. In no event shall DA delay an emergency action necessary to the preservation of national defense security or preservation of human life or property for the purpose of complying with this regulation or the CEQ Regulations (40 CFR Part 1500–1508).

(ii) These modifications apply to actions necessary to control the immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) *Categorical Exclusions (CX) (Subpart D and Appendix A).* These actions normally do not require an EA or an EIS because DA has determined that they do not individually or cumulatively have a significant effect on the human environment. If qualifications are met for a CX, as described in Subpart D of this regulation, a Record of Environmental Consideration will be made to that effect. In special cases, further environmental analysis may be necessary (see § 651.16(b)).

(4) *Actions normally requiring an EA (Parts 651.20 and 21).* (i) If the proposed action is covered adequately within an existing EIA (environmental impact assessment prepared under earlier guidelines), EA, or EIS, prepare a Record of Environmental Consideration to that effect.

(ii) If the proposed action is within the general scope of an existing EIA, EA, or EIS, but supplementation is needed, prepare a supplement to the existing document and a FNSI.

(iii) If the proposed action is not covered in any existing adequate EIA, EA, or EIS, Or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

(5) *Actions Normally Requiring an EIS (§§ 651.27 and 651.28).* (i) If it is determined that the action is covered adequately in a previously filed final EIS, the Record of Environmental Consideration must so state, citing the applicable EIS by name and date; the Record of Environmental Consideration is then attached to the proponent's record copy of that final EIS.

(ii) If the proposed action is within the scope of an existing FEIS but was not covered in that document or not covered adequately, then the proponent must prepare supplemental documentation to that EIS.

(iii) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

(b) The flow chart shown in Figure 3–1 summarizes the process for determining documentation requirements.

(c) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain its own recordkeeping for Records of Environmental Consideration and Records of Decision. See 40 CFR 1506.3 for procedures to be followed when adopting other documents.

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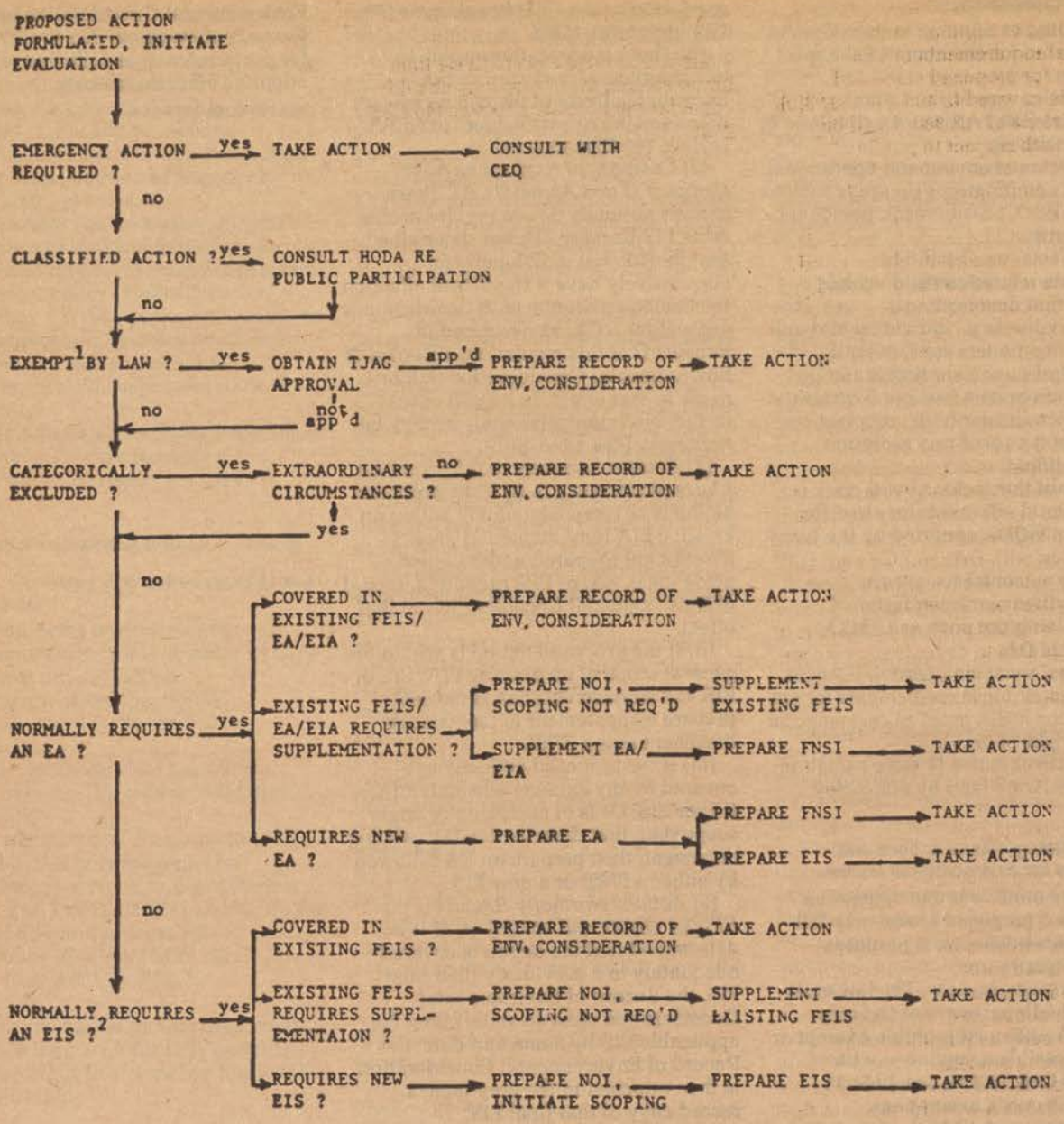

[1] DOD and/or DA exempts, prohibits, or makes impossible compliance. [40 CFR 1500.6]

[2] An EA may be done to help determine adequacy of previousdocuments in covering the specific new proposed action.

Summary of Types of Environmental Analyses and Required Documentation

Figure 3-1

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§ 651.11 Classified actions.

(a) Limited exceptions to the procedural requirements of this regulation for proposed classified actions are covered in 40 CFR 1507.3(c). The provisions of AR 380–5 will be followed with respect to public dissemination of environmental documents containing classified information.

(b) Efforts will be made to separate classified from unclassified facts and conclusions related to the proposed action so that unclassified portions of the action may be processed routinely in accordance with this regulation, and the classified portions kept separate for use by reviewers and decisionmakers with need-to-know as defined in AR 380–5 and paragraph (c) of this section.

(c) Classification does not relieve a proponent of the necessity to assess the environmental effects of the proposed action. The HQDA staff proponent, in coordination with DAEN–ZCE and ACSI, may select a review team from DA agency(ies) or office(s) not connected with the proponent agency, or from outside DA, in order to provide an external review of classified environmental documents.

§ 651.12 Integration with Army planning.

It is the Army's goal that environmental reviews be integrated with and take place during other Army planning to comply with the law and the CEQ regulations and to avoid delays in mission accomplishment.

(a) *Time Limits*—(1) *Environmental Documents.* The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in meeting the above goal, and shall be initiated as early as possible in the decisionmaking process.

(2) *Environmental Impact Statements.* (i) EPA publishes a weekly notice in the **Federal Register** of the EISs filed during the preceding week. The following time periods calculated from the publication date of the EPA notice will be observed:

(A) Not less than 45 days for public comment on draft statements (§ 1506.10(c)).

(B) Not less than 15 days for public availability of draft statements prior to any public hearing on the DEIS (40 CFR 1506.6(c)(2)).

(C) Not less than 90 days total for public availability of the EIS draft and final statements prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10 (b) and (c)).

(D) The time periods prescribed in paragraphs, (a)(2)(i) (A)–(C) of this section may be extended or reduced in specific instances in accordance with 40 CFR 1506.10(b)(2) and 1506.10(d).

(ii) When variations to these time limits are set, the DA agency should consider the following factors (40 CFR 1501.8(b)(1)):

(A) Potential for environmental harm—as based on previous similar or identical actions that demonstrated a high probability of significant impact.

(B) Magnitude of the proposed action—one which affects land, air or water on a regional basis.

(C) Degree of public need for the proposed action, including the consequence of delay, as in the case of pressing national defense requirements of certain Army RDT&E programs.

(D) Number of persons and agencies affected.

(E) Degree to which relevant information is known, and if not known, time required for obtaining it by such methods as ecological inventories, historical surveys, aerial photographs, or soil surveys.

(F) Degree of environmental controversy associated with the action.

(G) Other time limits imposed on DA by law, regulation, or executive order.

(iii) The proponent may also set time limits for other procedures or decisions related to draft and final EISs as listed in 40 CFR 1501.8(b)(2).

(iv) The entire EIS process normally takes ten months. Figure 3–2 indicates the normal and required time limits to be observed for EISs.

(3) *Categorical Exclusions.* When a proposed action is categorically excluded from further environmental review (see Subpart D and Appendix A), the proponent may proceed immediately with the action upon written concurrence of the environmental officer at the site of the proposed action.

(4) *Findings of No Significant Impact.* (i) If the proposed action is one of national concern or is one normally requiring an EIS, the proponent will make the FNSI available for at least 30 days review by the public (including state and areawide clearinghouses and in the **Federal Register**) prior to making a final decision.

(ii) Except for those proposed actions referred to in paragraph (a)(4)(i) of this section, the proponent may allow a 30-day period or other reasonable period for public comment between the time that the FNSI is publicized in accordance with 40 CFR 1506.6(b) and the time the proposed action begins. A deadline and point of contact for receipt of comments should be included in the FNSI.

(b) *Programmatic Environmental Review (Tiering).*

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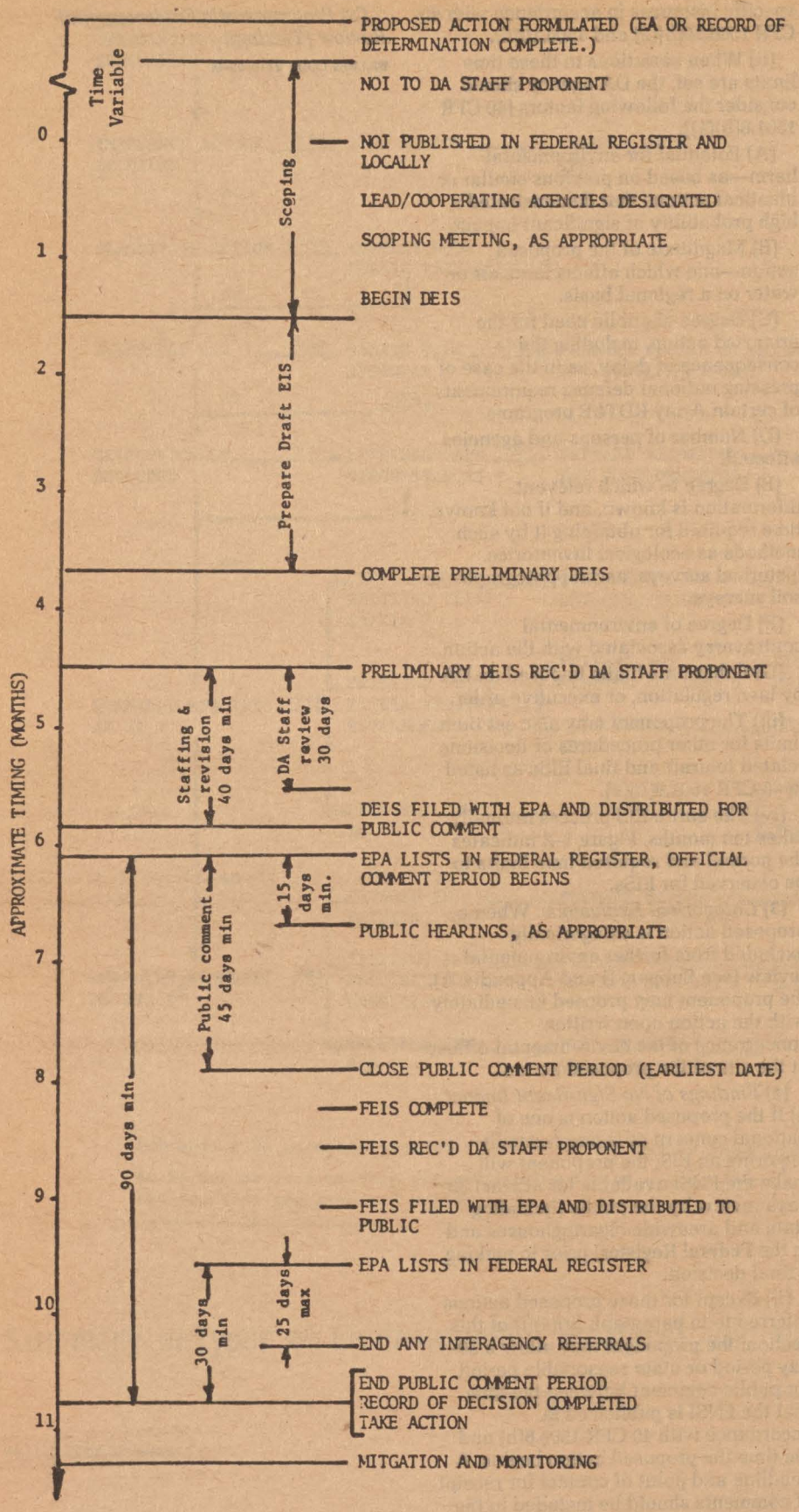

Figure 3-2

Normal Time Relationships for Preparing and Processing an EIS

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(1) DA agencies are encouraged to write programmatic environmental analyses (40 CFR 1502.4(c), 1502.20 and 1508.28) in order to eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad EIS or EA has been prepared and a subsequent EIS or EA is then prepared on an action included within the entire program or policy (particularly a site-specific action), the subsequent EIS or EA need only summarize the issues discussed in the broader statement, reference it, and shall concentrate on the issues specific to the subsequent action. This subsequent document shall state where the earlier document is available.

(2) An example would be the assessment of a proposed major weapon system program. An overall programmatic EIS or EA could be developed for the system; tiered EAs and EISs, as appropriate, would evaluate specific sub-phases such as testing, production, development/use and ultimate disposal.

(c) *Scoping.* (1) When the planning for an Army project or action indicates that an EIS should be prepared, the scoping process (40 CFR 1501.7) will be initiated for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. During the scoping process the participants identify the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other environmental documents.

(2) The extent of the scoping process, including the appropriate degree of public involvement, will depend on such factors as the size and type of proposed action, whether the proposed action is of regional or national importance, the degree of any associated environmental controversy, the size of the affected environmental parameter(s) and the significance of any effect(s) on it (them), the extent of prior environmental review, whether any substantive time limits are involved, and whether environmental review is required by other laws.

(3) If the proponent desires to incorporate scoping in the public involvement or environmental review processes other than those required for an EIS, significant reduction in the extent of scoping may be appropriate in such cases and is allowed at the proponent's discretion.

(4) Section 651.33 of this regulation discusses in detail the procedures and actions to be taken by a proponent during the scoping process for an EIS.

(d) *Documentation and Analyses.* Environmental documentation and analyses required by this regulation shall be integrated as much as practicable with other environmental review laws and executive orders (40 CFR 1502.25) and:

(1) Environmental documentation required by various state laws.

(2) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(3) Permitting and licensing procedures required by Federal and state law (e.g., the Clean Air Act, as amended (42 U.S.C. 57401 et seq.), and the Clean Water Act, as amended (33 U.S.C. 125 et seq.)).

(4) Installation and MACOM Master Planning functions and plans.

(5) Installation management plans, particularly those which deal directly with the environment (e.g., Fish and Wildlife Management Plan, Forest Management Plan, Range Improvement or Maintenance Plan, and Historic Preservation Program).

(6) Stationing and installation planning, force development planning, and major weapon systems and materiel acquisition planning.

(e) *Relations with Local and Regional Agencies.* Installation, agency, or activity environmental officers or planners should establish close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, countries, and states, for cooperation and resolution of mutual land use and enviornment-related problems. A Memorandum of Understanding may be prepared to identify areas of mutual interest, establish points of contact, identify lines of communication between planning bodies, and specify procedures to follow in conflict resolution. Additional coordination may be obtained from state- and area-wide planning and development "clearinghouses." These are agencies which have been established pursuant to the Office of Management and Budget (OMB) Revised Circular A–95, "Federal and Federally-assisted Programs and Projects," 38 FR 32873 (November 28, 1973). Since the A–95 Clearinghouses serve a review and coordination function for Federal activities, the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. They would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 651.13 Mitigation and monitoring.

(a) *Identification in Environmental Documents.* Only those mitigation measures which can reasonably be expected to be accomplished as part of any proposed alternative shall be identified in environmental documentation (EA, FNSI, or EIS) as measures which the proponent will implement as part of the action finally selected. Other mitigation measures which appear practicable but which are not capable of accomplishment within expect resources, or which should be performed by some other agency or agencies (including non-DA agencies), shall also be identified as such in the environmental document(s). ("Practicable" measures include, but are not limited to, actions which appear capable of being accomplished even if the exact means of doing so have not been completely developed or tested.)

(b) *Consideration Throughout NEPA Process.* Mitigation will be considered throughout the NEPA process. When an EIS or EIS Supplement has been prepared, the Record of Decision will state specific mitigation measures which will be taken to reduce or avoid adverse environmental effects of the selected alternative action, as well as those practicable mitigation measures which have not been adopted (40 CFR 1505.2(c)).

(c) *Assistance From Cooperating Non-DA Agencies.* Other agencies will be requested to assist with mitigations when appropriate. Whether it is appropriate to request assistance is determined by whether the agency (1) was a cooperating agency during preparation of an environmental document, or (2) has the technology, expertise, time, funds, or familiarity with project or area necessary to implement the mitigation measure more effectively than the lead agency.

(d) *Implementing the Decision.* (1) Mitigation and other conditions established in the EIS or during its review, and committed as part of the Record of Decision, shall be implemented by the lead agency or other appropriate cooperating agency.

(2) Legal documents implenting the action (contracts, permits, grants, etc.) will specify mitigation measures to be performed. Penalties for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(3) A monitoring and enforcement program shall be adopted and summarized in the Record of Decision where applicable for any mitigation. (See Appendix D for guidelines on

implementing such a program.) Whether adoption of a monitoring and enforcement program is "applicable" (40 CFR 1505.2(c)) and whether the specific adopted action is an "important" case (40 CFR 1505.3) may depend on such factors as the following:

(i) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited).

(ii) Cases in which the outcome of the mitigation measure is uncertain (e.g., new technology).

(iii) Projects in which major environmental controversy remains associated with the selected alternative.

(iv) Cases in which failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal or state listed endangered or threatened species; important historic or archeological sites, either in or eligible for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. The evaluation of serious harm will be made in coordination with the appropriate Federal, state or local agency responsible for each particular program.

(v) The proponent shall respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted by the agency (40 CFR 1505.3(c)).

Subpart D—Categorical Exclusions

§ 651.14 Purpose and definition.

The Categorical Exclusion (CX) is intended to reduce paperwork and delay and eliminate preparation of unnecessary EA/EISs.

§ 651.15 Criteria.

The criteria used to determine those categories of actions that normally do not require either an EIS or EA are:

(a) Minimal or no individual or cumulative effect on environmental quality and

(b) No environmentally controversial change to existing environmental conditions and

(c) Similarity to actions previously examined and found to meet the above criteria.

§ 651.16 Procedures.

(a) Determine whether the proposal in encompassed by one of the categories in Appendix A not normally requiring the preparation of an EA or EIS.

(b) Determine if there are any extraordinary circumstances that may result in the proposed action having impact on the human environment which would require an EA or EIS. These circumstances include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, or already existing poor environmental conditions, or initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(3) Employment of unproven technology.

(4) Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

(5) Use of hazardous or toxic substances which may come in contact with the surrounding environment. However, use of hazardous and toxic substances under adequately controlled conditions in established laboratories is categorically excluded.

(6) Proposed actions affecting areas of critical environmental concern such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

§ 651.17 Categorical exclusions.

Types of actions which normally qualify for categorical exclusion are listed in Appendix A.

§ 651.18 Modification of the list of categorical exclusions.

(a) The DA list of CXs is subject to continual review and modification as changes are identified and experience is gained in the CX process. Proponents of all DA actions are encouraged to investigate and request modifications to the DA list of categorically excluded actions to HQDA (DAEN-ZCE). Subordinate headquarters are not authorized to modify the CX list through supplements to this regulation.

(b) Proposed modifications to the list of CXs will be published in the **Federal Register** by HQDA (DAEN-ZCE) in order to provide an opportunity for public review and comment.

Subpart E—Environmental Assessments (EA)

§ 651.19 Purpose and definition.

The purpose of an EA is to determine whether the proposed action requires an EIS. The EA is the examination of new and continuing activities which do not normally require an EIS, are not categorically excluded from environmental examination or are not excluded from environmental review by law. The EA is defined 40 CFR 1508.9.

§ 651.20 Criteria.

(a) Potential for measurable degradation of environmental quality.

(b) Potential for cumulative impact on environmental quality when effects are combined with those of other actions or when the action is of lengthy duration.

(c) Presence of hazardous/toxic chemicals, or ionizing radiation or other radiation which could be released into the environment.

(d) Potential for violation of pollution abatement standards.

(e) Potential for some harm to culturally or ecologically sensitive areas.

§ 651.21 Actions normally requiring an EA.

(a) Special field training exercise or test activity on DOD land of a level, nature, or magnitude not within the annual installation training cycle.

(b) Military Construction.

(c) Operation of military installations.

(d) An installation herbicide, insecticide, and rodenticide use program.

(e) Preparation of regulations, directives, manuals, or other guidance documents which have a potential for measurable impact on the environment and which are not subject to categorical exclusion.

(f) Changes to established installation land use which may be expected to have some impact on the environment.

(g) Repair or alteration projects which affect historically significant structures or areas which are either in or eligible for nomination to the National Register of Historic Places.

(h) Acquisition of or alteration of or space for a laboratory which will use dangerous or hazardous chemicals, drugs, or radioactive materials.

(i) Actions that could potentially affect prime or unique farm land, wetlands, floodplains, coastal zones, wilderness areas, wild and scenic rivers, and similar areas of critical environmental concern.

(j) New weapon systems development and acquisition.

(k) Development of installation master plans, and land and natural resource management plans.

(l) Environmentally controversial actions which may lead to the excessing of Army property.

(m) Actions which take place in wildlife refuges.

(n) Timber management programs and/or proposals for forest harvest for energy conversion.

(o) Field activities on land not controlled by the military, including firing of weapons or missiles over navigable waters of the U.S.

(p) An action with significant local or regional effects on energy availability.

(q) An activity which affects any species which (1) is on or proposed for the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species in accordance with the Endangered Species Act of 1973, as amended, or which (2) is on an applicable state or territorial list of threatened or endangered species.

(r) Production, storage, transportation or disposal of hazardous or toxic materials.

§ 651.22 Components of the EA.

(a) The EA shall include brief discussions (40 CFR 1508.9) of:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered when the proposed action concerns unresolved conflict concerning alternative uses of available resources.

(4) Environmental impact of the proposed action and any alternatives resulting from unresolved conflicts concerning alternative use of available resources.

(5) Listing of agencies and persons consulted.

(6) Conclusion of whether to prepare an EIS.

(b) The EA will indicate by signature that the appropriate decisionmaker has reviewed the document along with all other appropriate planning documents.

(c) The format for the EIS (Appendix B) may be used to facilitate EA preparation. The format may vary provided the above components are included in the EA.

§ 651.23 Decision process.

Every EA must lead to either a FNSI or the preparation of an EIS.

(a) The FNSI is a document (40 CFR 1508.13) which briefly presents reasons why an action will not have a significant effect on the human environment and, thus, will not be the subject of an EIS. The FNSI shall contain a summary of the EA or have the EA attached, and shall reference any other environmental documents which are being or have been prepared on closely related topics. The FNSI must contain:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The conclusions which have led to the FNSI.

(5) A deadline and point of contact for receipt of public comments.

(b) The FNSI should normally not exceed two typewritten pages in length.

(c) The FNSI will be made available to the affected or the potentially affected or interested public prior to initiation of the proposed action unless excluded on a security basis in accordance with § 651.11 of this regulation (40 CFR 1501.4(e)) and (40 CFR 1506.6). The FNSIs that are proposed to be published in the **Federal Register** will be submitted through command channels to the HQDA staff proponent. FNSIs having national interest/impact will be coordinated wtih SAPA–PP. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(d) For actions of only regional or local interest, the FNSI will be publicized in accordance with 40 CFR 1506.6(b) (Appendix D). Copies of the FNSI may also be distributed to any agencies, organizations, and individuals which the proponent feels are appropriate.

§ 651.24 Public involvement.

When considering the "extent practicable" of public interaction (40 CFR 1501.4(b)) some of the factors to be weighed are:

(a) Magnitude of the proposed project/action.

(b) Extent of anticipated public interest.

(c) Urgency of the proposal.

(d) Any relevant questions of national security classification.

§ 651.25 Existing EAs.

Existing documentation (EIA/EA) will be periodically reviewed as an action continues to insure that the setting, actions, and effects described remain substantially accurate. New environmental documentation must be prepared if substantive changes have occurred.

Subpart F—Environmental Impact Statement (EIS)

§ 651.26 Purpose and definition.

An EIS is a public document whose primary purpose (40 CFR 1502.1) is to serve to insure that the policies and goals defined in NEPA are infused into the programs and actions of Federal agencies. The EIS is required to "provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment" (40 CFR 1502.1).

§ 651.27 Criteria.

The criteria for proposed actions which normally require an EIS are when the proposed action has the potential to:

(a) Significantly degrade environmental quality or public health or safety.

(b) Significantly affect historic or cultural resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, prime and unique farm lands, wetlands, floodplains, coastal zones, or ecologically or culturally important areas or other areas of unique or critical environmental concern.

(c) Result in potentially significant and uncertain environmental effects or unique or unknown environmental risks.

(d) Significantly affect a species listed or proposed to be listed on the Federal list of endangered or threatened species.

(e) Have significant effect on properties listed or eligible to be listed in the National Register of Historic Places, or the National Registry of Natual Landmarks maintained by the Heritage Conservation and Recreation Service, U.S. Department of the Interior.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, and disposal of hazardous or toxic materials which have the potential to cause significant environmental impact.

§ 651.26 Actions normally requiring EISs.

(a) Construction or significant expansion of a military facility, such as a depot, munitions plant, or major training installation.

(b) Construction or operation of facilities or installations which have a significant effect on wetlands, coastal zones, and other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances which have the potential to cause significant environmental impact.

(d) The life cycle development of new weapon systems where the action will cause the construction and operation of new fixed facilities or the significant commitment of natural resources.

(e) Land acquisition, outleasing or other actions which may lead to significant change in land use.

(f) CONUS realignment of a brigade or larger TOE unit during peacetime (except where the only significant impacts are socioeconomic with no significant direct or indirect environmental impact).

(g) Closure of a major military installation (except where the only significant impacts are socioeconomic with no significant direct or indirect environmental impact).

(h) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(i) Major changes in the mission of facilities affecting areas of critical environmental concern.

§ 651.29 Format of the EIS.

(a) The format of the EIS must contain the following:

(1) Cover Sheet.

(2) Summary.

(3) Table of Contents.

(4) Purpose of and Need for the Action.

(5) Alternatives Considered.

(6) Affected Environment.

(7) Environmental and Socio-Economic Consequences.

(8) List of Preparers.

(9) Distribution List.

(10) Index.

(11) Appendices (if any).

(b) The content of each section is discussed in greater detail in Appendix B.

§ 651.30 Steps in preparing and processing an EIS.

(a) *Notice of Intent.* The NOI shall be published in the **Federal Register** and in newspapers with appropriate or general circulation in the area(s) potentially affected by the proposed action. Copies of the notice may also be distributed to agencies, organizations, and individuals as the responsible official feels is appropriate. The NOI will be forwarded to the HQDA staff proponent for **Federal Register** publication. The NOI will be coordinated with HQDA (SAPA–PP). Since the NOI normally initiates the scoping process adequate response time should be provided for those wishing to comment on the NOI or participate in the scoping process. Subpart G discusses public participation requirements and options.

(b) *Lead and Cooperating Agency Determination.* As soon as possible after the decision is made to prepare an EIS, the proponent office, if necessary, will contact appropriate Federal, state and local agencies to identify lead and cooperating agency responsibilities concerning EIS preparation (40 CFR 1501.5).

(c) *Scoping.* If it has been determined that DA is the lead agency, the proponent will begin the scoping process described in § 651.34. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS Preparation and Processing*—(1) *Preliminary DEIS.* Based on information obtained and the decisions made during the scoping process, the proponent will prepare the preliminary DEIS and forward 15 copies to the appropriate HQDA staff proponent for HQDA staff review. The preliminary DEIS will be circulated by the proponent office to OASA (ILFM), DAEN–ZCE, OTJAG, OTSG and other interested offices for review and comment. The preliminary DEIS is then returned to the preparer for revision as required, and printing of the DEIS for filing.

(2) *DEIS.* One hundred copies of the DEIS will be forwarded to the HQDA staff proponent for final HQDA staff review, filing with EPA, and distribution to interested Congressional delegations and committees, governors, national environmental organizations, the DOD and Federal agency headquarters, and other selected entities. When the DEIS is formally approved by HQDA, the HQDA staff proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list that include Federal, regional, state and local agencies, private citizens, local organizations.

(e) *Public Review of DEIS.* (1) The length of the DEIS public comment period will normally be no less than 45 days from publication of the notice of availability in the **Federal Register.** If the statement is unusually long, a summary may be circulated with an attached list of locations where the entire DEIS may be reviewed, e.g., local public libraries, except that the EIS must be distributed to certain entities (40 CFR 1502.19).

(2) Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6 (c) and (d) or for any other reason the proponent deems appropriate.

(f) *Response to Comments.* Responses to comments will be incorporated in the FEIS by modification of the text and/or written explanation. Where possible, comments of a similar nature will be grouped for a common response. Individual response may be made if considered desirable by the preparer or by higher authority (40 CFR 1503.4).

(g) *Prepare FEIS.* If the changes in the DEIS are limited to factual corrections, only an errata sheet containing DEIS comments, responses, and changes must be prepared and circulated. However, the entire document with new cover sheet would be filed with EPA (40 CFR 1503.4(c)). If other more extensive modifications are required, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is the same as outlined for the DEIS transmittal except that the public need not be invited to comment during the 30 day post-filing waiting period (40 CFR 1503.1(b)).

(h) *Decision.* No decision on a proposed action shall be made until 30 days after the FEIS has been filed with EPA.

(i) *Record of Decision.* At the time of decision, or, if appropriate, its recommendation to Congress, the HQDA staff proponent will prepare a Record of Decision in accordance with 40 CFR 1505.2, and 1505.3.

(j) *Predecision Referrals.* Procedures to resolve Federal agency disagreements on the environmental effects of a proposed action are those provided in 40 CFR Part 1504. Predecision/referrals apply to interagency disagreement concerning whether a proposed action might cause unsatisfactory effects.

(k) *Revisions and Supplement.* If at any time during the planning process for a proposed action, there are substantial changes in the proposed action relevant to environmental concerns, or significant new circumstances or information relevant to environmental concerns, the proponent office shall prepare revisions or a supplement to any environmental document and/or in other ways prepare new documentation as necessary.

(l) *Mitigation.* All measures which are planned to minimize or mitigate expected significant environmental impacts shall be identified in the EIS. Implementation of the mitigation plan is the responsibility of the proponent. The proponent will make available to the public, upon request, the status and/or results of mitigation measures associated with the proposed action.

§ 651.31 Existing EISs.

When an existing EIS has been outmoded by extensive changes in the environmental setting, proposed action, environmental effects, or other substantive portions of the document, further supplementation is recommended. A newly proposed action must be the subject of a separate EIS. The proponent may, entirely revise the existing document in such a way as to bring it completely up to date, including the new proposal. Such a revised EIS, however, must be prepared and processed entirely under the provisions of this regulation.

Subpart G—Public Involvement

§ 651.32 General procedures.

(a) The requirement (40 CFR 1506.6) for public involvement (PI) recognizes the principle that all potentially affected parties shall be consulted, whenever practicable, when developing environmental documentation. DA proponents should:

(1) Disseminate factual information about proposed actions which require environmental documentation.

(2) Coordinate proposed actions with official representatives of other government jurisdictions before formulating specific courses of action.

(3) Request constructive input from members of the unorganized and organized general public with respect to the potential scope of the environmental documentation to be prepared for a proposed action.

(4) Coordinate with the installation and MACOM public affairs officer(s) and with SAPA–PP, as appropriate.

(b) When an EIS is being prepared, PI is required (40 CFR 1501.7(a)(1)) during the scoping process.

(c) Preparation of EAs shall incorporate PI processes whenever appropriate.

(d) Persons and/or agencies to be consulted include:

(1) Municipal, township, and county elected and appointed officials.

(2) State, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment which are believed related to the proposed Army action.

(3) Local and/or regional administrators of other Federal agencies or commissions who may either control resources which may be affected by the proposed action (e.g., Fish and Wildlife Service) or who may be aware of other actions by other Federal agencies whose effects must be considered in combination with the proposed Army action (e.g., General Services Administration).

(4) The members of identifiable population segments within the potentially affected environments, whether or not they are organized or have clearly identifiable leaders (e.g., farmers and ranchers, homeowners, small business owners, Indian tribes).

(5) Members and officials of those identifiable interest groups of local or national scope which may be expected to have interest in the environmental effects of the proposed action or activity (e.g., hunters and fishermen, Audubon Society).

(6) State, regional, or local A–95 clearinghouses, as appropriate.

(7) Any person or group which has specifically requested to be involved in the specific action or in actions of this general nature.

(e) The PI processes and procedures by which participation may be solicited include the following:

(1) Direct individual contact—identifies persons expected to express an opinion and participate in later PI meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues to be addressed in the EIS. Such limited contact may suffice for all PI required for actions where the expected environmental effect is of very limited scope.

(2) Small workshops or discussion groups.

(3) Larger public gatherings should normally be held after some formulation of the potential areas of focus and alternatives. The public may then be invited to express its views on the candidate courses of action and provide suggestions or alternative courses of action not already identified. These need not to be formal public hearings.

(4) Other processes and procedures to accomplish PI may be developed and applied as appropriate.

(f) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of PI procedures under the purposes and intent of paragraph (a) of this section.

(g) Any public surveys or polls taken to identify a range of opinion of publics which may be affected by a proposed action will be performed in accordance with AR 335–15, Chapter 10.

§ 651.33 Scoping.

(a) *Purpose.* The "scoping" process, required when an EIS will be prepared (40 CFR 1501.7), is designed to aid the proponent in determining the significant issues related to the proposed action. The process incorporates appropriate public participation as early as possible in the Army's planning for the action. EISs for proposals for legislation are not required to go through the scoping process (40 CFR 1506.8(b)(1)); however, Army policy is that these EISs go through scoping unless extenuating circumstances make it impractical.

(b) *Scoping Procedures.* Scoping procedures can be divided into preliminary, public interaction, and final phases.

(1) *Preliminary Phase.* The proponent agency or office identifies as early as possible, how it will accomplish scoping and who should be involved. Key points of this preliminary phase will be identified or briefly summarized as appropriate in the Notice(s) of Intent. The proponent will:

(i) Develop a draft scope for the EIS.

(ii) Identify the office or person(s) responsible for matters related to the scoping process. If these office(s) or person(s) are not the same as the proponent of the action, that distinction will be made.

(iii) Identify the lead and cooperating agency(ies), if they have been determined (40 CFR 1501.5–6). (See ETL 79–6, coordination with Federal and State Land Use Agencies, February 8, 1979.)

(iv) Identify the method(s) by which the agency will invite participation of affected parties. Also, the proponent may identify a tentative list of the affected parties to be notified.

(v) Identify the proposed method(s) through which the scoping procedure will be accomplished.

(vi) Indicate the relationship between the timing of the preparation of environmental analyses and the proponent's tentative planning and decisionmaking schedule including:

(A) The scoping process itself.

(B) Collecting or analyzing environmental, including studies required of cooperating agencies.

(C) Preparation of draft and final EISs.

(D) Filing of the Record of Decision.

(E) Taking the action.

(F) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions which will involve separate environmental analysis.

(vii) If applicable, identify the extent to which the EIS preparation process for the proposed action is exempt from any of the normal procedural requirements of this regulation, including scoping.

(2) *Public Interaction Phase.* (i) During this portion of the process, the proponent will request all affected parties and respondents to the NOI to assist in development of a series of recommended issues to be addressed in detail in the EIS. Assistance in identifying possible participants may be obtained from HQDA (DAEN–ZCE) or from the appropriate environmental office of MACOM headquarters.

(ii) In addition to the affected parties as identified above, the following should be included among participants:

(A) One or more technical representatives of the proponent(s). Such persons must be able to describe for other participants the technical aspects of the proposed action and alternatives.

(B) One or more representatives of any Army-contracted consulting firm(s), if it has (they have) been retained by the time this phase occurs, and which will either actively participate in writing the EIS, or provide report(s) which the Army will directly use to create substantial portions of the EIS.

(C) Experts in various environmental areas or disciplines, if any area in which impacts may be expected is not already represented among the other scoping participants.

(iii) In all cases, the participants will be provided the information developed during the preliminary phase and with as much of the following information as may be available:

(A) A brief description of the environment(s) at the affected location(s). When (a) specific location(s) cannot be described for the particular EIS, general descriptions of the probable types of affected environment(s) may be used. The extent to which these environment(s) have been modified or affected in the past should also be included.

(B) A description of the proposed alternatives. The description will be in sufficient detail so that participants may reasonably be able to evaluate the range of impacts which may be caused by the proposed action and alternatives. The amount of detail that is "sufficient" will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be expected to be familiar.

(C) A tentative identification of "* * * any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration" (40 CFR 1501.7(a)(5)).

(D) Any preliminary scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(iv) The public involvement may be initiated with the NOI. In general the NOI may indicate when and where a scoping meeting will take place and whom to contact in order to receive information developed during the preliminary phase. The scoping meeting is not intended to be a formal public hearing but rather a working session where information relating to potential environmental impacts can be gathered and evaluated.

(v) Starting with the above information, the person/office conducting the scoping process will use input from the technical representative of the proponent, any cooperating agency(ies), the affected parties, and any other scoping participants to aid in developing the conclusions which become the scope of the EIS. These determinations on scope are reserved for the proponent and are detailed more fully in § 651.33b(3) below. However, when significant issues or factors brought out during this interactive portion of the scoping process are determined by the proponent to *not* require detailed treatment in the EIS, in spite of relevant technical or scientific objections by any participant(s) to the contrary, the proponent will clearly identify (in the Environmental Consequences section of the EIS) the criteria which it used to eliminate such issues/factors from detailed consideration.

(3) *The Final Phase.* (i) The scope used in the preparation of a draft EIS consists of the determinations made by the proponent during and after the public interaction phase of the process, as follows:

(A) The scope and the significant issues to be analyzed in depth in the EIS (40 CFR 1501.7(a)(2)). To determine the scope of EISs, the proponent will consider three types of actions, three types of alternatives, and three types of impacts, as described in 40 CFR 1508.25 (Appendix C).

(B) Identification and elimination from detailed study of the issues which are not significant or which have been covered by prior environmental review, thereby narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment, and/or providing a reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(C) Allocation of assignments for preparation of the EIS among the lead and any cooperating agencies, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)).

(D) Indication of any public EAs and other EISs which are being or will be prepared by the Army or by another Federal agency, and which are related to, but are not part of, the scope of the impact statement under consideration (40 CFR 1501.7(a)(5)).

(E) Identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the EIS (40 CFR 1501.7(a)(6)).

(ii) As part of the scoping process the lead agency may.

(A) Set time limits, as provided in § 651.12, if they were not already indicated in the preliminary phase.

(B) prescribe overall page limits to the EIS in accordance with the CEQ regulations which emphasize conciseness.

(iii) The proponent will provide for modifying the scope during preparation of the document.

(iv) All determinations reached by the proponent during the scoping process will be clearly conveyed to the actual preparers/writers of the EIS document and will be made available to participants in the scoping process and to other interested parties on request. Any conflicts on issues of a scientific or technical nature which arise between the proponent and scoping participants, cooperating agencies, other Federal agencies, or the preparers of the document, will be identified during the scoping process, and will be resolved by the proponent in the draft EIS.

(c) *Aids to Information Gathering.* The proponent may use and/or develop graphic or other innovate methods to aid information gathering, presentation, and transfer during the three scoping phases, including methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and/or organizing its own determinations on scope for use during preparation of the draft EIS.

(d) *Modification of the Scoping Process.* (1) If there is a lengthy period between a decision to prepare an EIS and the time of preparation, the Notice of Intent may be published at a reasonable time in advance of preparation of the draft statement. Any tentative conclusions regarding the scope of the EIS that have been made prior to publication of the NOI must be stated in the NOI and a reasonable amount of time must be allowed for public participation before any final decisions or commitments on the scope of the EIS document are made by the proponent.

(2) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. The above procedures may be used, or the proponent may develop modified procedures at his/her discretion.

Subpart H—Environmental Effects Abroad of Major Army Actions

§ 651.34 General.

Inclosures 1 and 2 of DOD Directive 6050.7 (Appendix E and F) pertaining to environmental effects abroad of major military actions are provided for information, guidance, and compliance.

§ 651.35 Purpose.

This chapter states DA policy, assigns responsibilities, and establishes procedures for review of environmental effects abroad of major Army actions as required by Executive Order 12114, "Enivronmental Effects Abroad of Major Federal Actions," dated January 4, 1979.

§ 651.36 Applicability.

Refer to § 651.3(b).

§ 651.37 Definitions.

(a) Foreign nation means any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fisheries zones of foreign nations. "Foreign government" in this context includes government regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

(b) Global commons are geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons do not include contiguous zones and fisheries zones of foreign nations.

§ 651.38 Policy.

DA agencies shall:

(a) Act with care in the global commons because the stewardship of these areas is shared by all the nations of the world and will take account of environmental considerations acting in the global commons in accordance with procedures set out in Appendix E.

(b) Act with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless Congress has expressly provided otherwise. DA will take account of environmental considerations in accordance with Appendix F when the proposed action could affect the environment of a foreign nation.

(c) Coordinate with the Department of State on formal communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments. Consult with the Department of State in connection with the utilization of additional exemptions from this directive as specified in paragraph C.3.b of inclosure 2. Coordinate and consult with the Department of State through the Assistant Secretary of Defense (International Security Affairs).

§ 651.39 Responsibilities.

(a) DA agencies that control actions abroad (as defined by this regulation) will:

(1) Insure that regulations and other major policy issurances are reviewed for consistency with Executive Order 12114, DOD Directive 6050.7, and this regulation.

(2) Consult with HQDA (DAMO–SSM) on signficant or sensitive actions or decisions affecting relations with other nations.

(b) The ASA (IL&FM):

(1) Serves as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintains liaison with ASD (MRA&L) on matters pertaining to EO 12114 and DOD Directive 6050.7.

(c) The Chief of Engineers:

(1) Serves as DA staff proponent for policy matters under EO 12114, DOD Directive 6050.7, and this regulation.

(2) Applies the provisions of this regulation in the planning and execution of overseas construction activities where appropriate in light of applicable statutes and Status of Forces Agreements (SOFAs).

(d) Deputy Chief of Staff for Operations and Plans:

(1) Serves as the focal point on the Army Staff on integrating environmental considerations required by this chapter into appropriate Army plans and activities which could reasonably be expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consults with Foreign Military Rights Affairs of ASD (ISA) on significant or sensitive actions affecting relations with another nation.

(e) The Judge Advocate General shall provide advice and assistance concerning the requirements of EO 12114 and DOD Directive 6050.7.

(f) DA Staff Agencies shall consult with HQDA (DAMO–SSM) on significant or sensitive actions or decisions affecting relations with another nation.

(g) DA agencies shall:

(1) Prepare and consider environmental documents for proposed actions required by this regulation.

(2) Insure that regulations and other policy issuances are reviewed for consistency with this regulation.

(3) Designate a single point of contact for matters pertaining to this regulation.

(4) Consult with HQDA (DAMO–SSM) on significant or sensitive actions affecting relations with another nation.

§ 651.40 Implementation guidance.

(a) EISs prepared under the provisions of this subpart should use the format for such documents as contained in Subpart F and Appendix B, where appropriate in light the applicable statutes and SOFAs.

(b) Nominations for inclusions in the list of Army Categorical Exclusions—Global Commons are to be submitted to HQDA (through DAMO–SSM to DAEN–ZCE).

(c) Announcements to be published in the **Federal Register** concerning the availability of Draft and Final EISs are to be submitted to HQDA (DAMO–SSM) for transmittal to the **Federal Register.**

Appendix A—List of Categorical Exclusions

1. Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

2. Law and order activities performed by military police and physical plant protection and security personnel, excluding formulation and/or enforcement of hunting and fishing policies or regulations which differ substantively from those in effect on surrounding non-Army lands.

3. Recreation and welfare activities not involving off-road recreational vehicle management; fish and wildlife management plans and activities except those that involve introduction of or effect on exotic, endangered, or threatened species.

4. Commissary and PX operations.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment and other facilities to include the lay away of facilities except in cases requiring disposal of hazardous or contaminated materials.

6. Routine local procurement of goods and services, including routine utility services.

7. Construction conducted in accordance with an approved installation Master Plan and that does not significantly alter land use, and that provided the operation of the project when completed would not of itself have a significant environmental impact; includes out-grants to private lessees for similar construction.

8. Simulated war games and other tactical and logistical excercises without troops.

9. On-the-job training, basic training, and other initial entry training entirely of an administrative or classroom nature.

10. Material storage other than storage of ammunition, explosives, pyrotechnics, nuclear materials, and other hazardous/toxic materials except for storage of such materials in structures designed and maintained for that explicit purpose.

11. Research conducted by established laboratories in enclosed facilities where: (a) All airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid or bulk liquid waste disposal practices are in compliance with existing federal, state, and local laws and regulations; and (b) no animals which must be captured from the wild are used as research subjects (excluding reintroduction projects).

12. Developmental and operational testing on a military installation, where the tests are conducted in conjunction with normal military training or force maintenance activities so that the tests produce only incremental impact, if any; and provided that the training/force maintenance activities have been adequately assessed, where required, in other Army environmental documents.

13. Routine movement of personnel; routine handling and distribution of non-hazardous and hazardous materials, in conformance with DA, EPA and Department of Transportation regulations.

14. Reduction realignment of civilian and/or military personnel which fall below the thresholds for reportable actions as prescribed in AR 5–10. Conversion of commercial and industrial type activities (CITA) to contract performance on contracted services from in-house performance under the provisions of DOD Directive 4100.15. This CITA exclusion does not apply if the net change in employment exceeds the thresholds for reportable actions prescribed in AR 5–10.

15. Preparation of regulations, directives, manuals and other guidance documents related to action that qualify for categorical exclusion.

16. Installation and operation of communications, data processing, and similar electronic equipment using cable systems which use existing rights of way, easements, and distribution systems.

17. Activities which identify the state of the existing environment without altering it (inspections, surveys, investigations), including the granting of any permits necessary for such surveys.

18. Deployment of military units on a TDY basis where existing facilities are used and the activities to be performed have no significant impact on the environment.

19. Preparation of regulations, procedures, manuals, and other guidance documents that implement without substantial change the regulations, procedures, manuals, and other guidance documents of higher headquarters or another Federal agency which have already been environmentally evaluated.

20. Grants of easements for the use of existing rights-of-way for use by vehicles; electrical power, telephone and other transmission and communication lines; transmitter and relay facilities; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for other similar public utility, and transportation uses.

21. Grants of leases, licenses, and permits to utilize existing Army controlled property for: Agriculture and grazing; classroom, office warehouse and administrative space; housing; other use similar to previous or concurrent Army use of the property; and historical or archaeological studies or preservation.

22. Grants of consents to use a Government-owned easement in a manner not inconsistent with existing Army use of the easement.

23. Grants of licenses for the operation of private or publicly-owned telephone, gas, water, electricity, community antenna television, and other distribution systems normally considered as public utilities.

24. Reporting excess real property to the General Services Administration; transfer of real property administrative control within the Army or to another military department or other Federal department or agency, including the return of public domain lands to the Department of the Interior; and reporting of property available for outgranting.

25. Disposal of existing uncontaminated buildings and other improvements for removal off-site.

26. Studies that involve no commitment of resources other than manpower.

27. Study and test activities within the procurement program for Military Adaptation of Commercial Items for items manufactured in the U.S.

Appendix B—Content of the EIS

This appendix is intended to supplement 40 CFR 1502.10 through 1502.18.

1. *Cover Sheet.* The cover sheet shall not exceed one page (40 CFR 1502.11) and shall include:

a. A cover sheet preceded by a protective cover sheet that contains the following statement: The material contained in the attached (Final or Draft) Environmental Impact Statement is for internal coordination use only and may not be released to non-Department of Defense Agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority. This sheet will be removed prior to filing the document with EPA.

b. A list of responsible agencies including the lead agency and any cooperating agency.[1]

c. The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction as applicable) where the action is located.

d. The name, address, and telephone number of the person at the agency who can supply further information, and the name and title of the major approval authority(ies) in the command channel through HQDA staff proponent.

e. A designation of the statement as a draft, final, or draft or final supplement.

f. A one-paragraph abstract of the statement that should describe only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

g. The date by which comments must be received (computed in cooperation with EPA).

See example cover sheet, Figure B–1.

Figure B–1—Example Cover Sheet

Lead Agency: Department of the Army, TRADOC

Cooperating Agency(ies): (if any) Heritage Conservation and Recreation Service, Department of the Interior

Title of Proposed Action: Realignment of Ft Swampy Training Mission

Affected Jurisdiction: State of Maryland, Smith, Taylor and Jones Counties

Preparer/Proponent: Name, Address and Telephone Number of Environmental Coordinator; Approved (or Reviewed by): Name and Title of Proponent (i.e., Installation Commander or Program Manager)

Approved (or Reviewed by): Name and Title of any Intermediate Proponent (i.e., MACOM Commander); Approved by: Name and Title of DA Staff Proponent (i.e., Director of Training, DA)

Documentation Designation: Draft or Final EIS (or Draft or Final Supplemented EIS).

Abstract: One paragraph summary.

Review Comment Deadline: (Computed in cooperation with EPA guidance).

[1] The EIS is an Army document, not a contractor's document. Contractors who assist in the EIS preparation are not listed here but in the list of preparers.

2. *Summary.* The summary shall stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. It should list all Federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other Federal environmental protection laws will be included (40 CFR 1502.25).

In order to simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with narrative. This summary should not exceed 10 pages.

3. *Table of Contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

4. *The Purpose of and Need for the Action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section is designed specifically to call attention to the benefits of the proposed action. If a cost/benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here. This section shall briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives.

5. *Alternatives Considered.* This section presents all reasonable alternatives and their environmental impacts. An examination of each specific proposal in clear terms is required. This section should be written in simple, non-technical language for the lay reader. A "no action" alternative will be included (40 CFR 1502.14(d)). For actions other than construction, the term "no action" is often misleading because a continuation of the status quo is implicit. Required in this section is an examination of the status quo. A preferred alternative need not be identified in the DEIS; however, a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)).

A simple title or a letter or number symbol may be used for each of the discussed alternatives (e.g., "Alternative A"). Reference to the title or designation will be continued uniformly throughout the document in the appropriate sections.

The environmental impacts of the alternatives will be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decisionmaker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of tabular or matrix format(s) is encouraged to provide the reviewer with an at-a-glance review. In some the following points are required:

a. A description of all reasonable alternatives including the preferred action, including all alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the "no action" alternative.

b. A comparative presentation of the environmental consequences of all reasonable alternative actions including the preferred alternative.

c. A description of the mitigation measures nominated for incorporation into the proposed action and alternatives, as well as mitigation measures available but not incorporated.

d. Listing of any alternatives that were eliminated from detailed study. Briefly discuss the reasons for which each alternative was eliminated.

6. *Affected Environment(s).* This section will contain information about existing conditions in the affected area(s) necessary to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Environments created by the implemented proposal will be included as appropriate. Affected elements could include, for example, biophysical characteristics (ecology, water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for all points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form or referenced.

7. *Environmental and Socio-Economic Consequences.* This section of the EIS forms the scientific and analytic basis for the summary comparison of effects in part 5. The following will be discussed (40 CFR 1502.16):

a. Direct Effects and Their Significance. Include in the discussion the direct impacts on human health and welfare and on other forms of life and related ecosystems. Examples of direct effects might include noise from military helicopter operations or the benefits derived from the installation of wet scrubbers to meet air quality control standards.

b. Indirect Effects and Their Significance. Include here socio-economic impacts. Many Federal actions attract people to previously unpopulated areas and indirectly induce pollution, traffic congestion, and haphazard land development. Conversely, other actions may disperse the existing population. Aircraft noise often affects future development patterns, and air pollution abatement operations may result in secondary water pollution problems.

c. Possible conflicts between the proposed actions and Federal, regional, state, and local (including Indian tribe) land use plans, policies, and controls for the area(s) concerned. Compare the land use aspects of the proposed action, and discuss possible conflicts, such as, siting an extremely noisy activity adjacent to a residential area, leasing land for purposes inconsistent with state wildlife management, or creating conflicts with prime and unique farm land policies.

d. The environmental effects of alternatives, including the proposed action.

(1) Impacts of the alternatives, including a worst case analysis where there are gaps in relevant information or scientific uncertainty.

(2) Adverse environmental effects which cannot be avoided should the proposal be implemented. Include the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity. The section should discuss the extent to which the proposed action and its alternatives involve short-term vs. long-term environmental gains and losses. In this context, short-term and long-term do not refer to any rigid time period and should be viewed in terms of the environmentally significant consequences of the proposed action. Thus, "short-term" can range from a very short period of time during which an action takes place to the expected life of a facility.

e. Energy Requirements and Conservation Potential of Various Alternatives and Mitigation Measures. Consult the Energy Resource Impact Statement (AR 11–27), when applicable, to satisfy this requirement. Account for the energy consumption of each proposed alternative and associated economics. Discuss, where appropriate, the uses of renewable and nonrenewable energy resources. A discussion of conservation techniques which could attenuate energy consumption should also be discussed within this section—for example, the use of insulation for newly constructed

family housing which would reduce the long-term consumption of fuel oil or natural gas.

f. Natural or Depletable Resource Requirements and Conservation Potential of Various Mitigation Measures. Include discussion of any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The term "resources" should include:

(1) Materials. Discuss materials in short supply (metals, wood, etc.), but do not include materials which are plentiful or have competitive alternatives (for example, aggregate or fill material).

(2) Natural. Discuss the use of natural resources resulting in irrevocable effects such as ecosystem imbalance, destruction of wildlife, loss of prime and unique farm lands. Specifically include consumption of natural energy resources in short supply, such as oil or natural gas.

(3) Cultural. Discuss destruction of human interest sites, archaeological/historical sites, scenic views or vistas, or valued open space. Reiterate lasting socio-economic effects the proposed action might have on the surrounding community.

g. Urban Quality, Historic and Cultural Resources, and the Design of the Built Environment (including reuse and conservation potential of various alternatives and mitigation measures). Discuss the effects of adjacent neighborhoods and the city at large. Examine the effects on physical design features (also known as built environment) and resultant impacts on social interaction areas such as privacy, public opinion, personnel perceptions, and other aspects of the social environment. Review the reuse potential of existing building space and its time use allocation (usually referred to as time and spatial management). (Time and spatial management allows for conservation of energy and other resources by discouraging new construction and operation until all existing building and time allocations have been fully scrutinized for alternate reuse).

h. Means to Mitigate Adverse Environmental Effects. Include mitigations not already included as part of the various alternatives. Also, specify mitigations that require action by other agencies or outside parties.

8. *List of Preparers.* The EIS shall list the names of its preparers, together with their qualifications (expertise, experience, professional disciplines) (40 CFR 1502.17). Include those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, including basic components of the statement. Where possible, the persons who are responsible for a particular analysis, including analysis of background papers, shall be identified. If some or all of the preparers are contractors' employees, they may be identified as such. Identification of the firm which prepared the EIS Is not, by itself, adequate to meet the requirements of this point. Normally, the list will not exceed two pages.

9. *Distribution List.* For the DEIS a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or organizations. The FEIS will normally only list those who have commented or shown an interest in the proposed action.

10. *Index.* The index shall be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

11. *Appendices.* If an agency prepares an appendix to an EIS, the appendix shall:

a. Consist of material prepared in connection with an EIS (as distinct from material which is not so prepared and which is incorporated by reference).

b. Consist only of material which substantiates any analysis fundamental to an impact statement.

c. Be analytic and relevant to the decision to be made.

d. Be circulated with the EIS or be readily available upon request.

Appendix C—Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

(40 CFR Parts 1500–1508, 43 FR 55978–56007, November 29, 1978)

Appendix D—Implementing a Monitoring Program

The following steps are provided as guidance for setting up a mitigation monitoring and enforcement program where applicable in accordance with 40 CFR 1505.2(c). More detail is available in U.S. Geological Survey Circular 782, *A Method for Post-EIS Monitoring*, 1979.

1. Identify the key impacts or mitigation methods to be monitored.

2. Determine data needs for each impact or mitigation to be monitored, including:

a. Quantitive indicators suitable for measuring impacts or mitigation.

b. Alternative indicators.

c. Recommended data collection frequency (including minimum data collection frequency necessary to obtain meaningful information).

d. Recommended format (maps, tables, text, etc.)

e. Level of detail or accuracy possible with the specified method.

f. Locations or geographic areas where data should be collected.

g. Potential methods of collection, including installation of data-gathering devices.

3. Determine data availability and feasibility of data gathering.

4. Delegate or assign responsibility to the appropriate agency or office.

5. Collect and analyze data.

6. Provide status and results of the program to the office which is the public Point of Contact for the project being monitored (40 CFR 1505.3(c) and (d)).

Appendix E—Requirements for Environmental Considerations—Global Commons

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), inclosure 1.)

Inclosure 1—Requirements for Environmental Considerations—Global Commons

A. *General.* This enclosure implements the requirements of Executive Order 12114 with respect to major Department of Defense actions that do significant harm to the environment of the global commons. The focus is not the place of the action, but the location of the environment with respect to which there is significant harm. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to Department of Defense activities that affect the global commons.

B. *Actions Included.* The requirements of this enclosure apply only to major federal actions that do significant harm to the environment of the global commons.

C. *Environmental Document Requirements.*

1. *General.* When an action is determined to be a major federal action that significantly harms the environment of the global commons, an environmental impact statement, as described below, will be prepared to enable the responsible decision-making official to be informed of pertinent environmental considerations. The statement may be a specific statement for the particular action, a generic statement covering the entire class of similar actions, or a program statement.

2. *Limitations on Actions.* Until the requirements of this enclosure have

been met with respect to actions involving the global commons, no action concerning the proposal may be taken that does significant harm to the environment or limits the choice of reasonable alternatives.

3. *Emergencies.* Where emergency circumstances make it necessary to take an action that does significant harm to the environment without meeting the requirements of this enclosure, the DoD component concerned shall consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property.

4. *Combining Documents.* Environmental documents may be combined with other agency documents to reduce duplication. If an environmental impact statement for a particular action already exists, regardless of what federal agency prepared it, no new statement is required by this directive.

5. *Collective Statements.* Consideration should be given to the use of generic and program statements. Generic statements may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

6. *Tiering.* Consideration should be given to tiering of environmental impact statements to eliminate repetitive discussions of the same issue and to focus the issues. Tiering refers to the coverage of general matters in broader environmental impact statements, with succeeding narrower statements or environmental analyses that incorporate by reference the general discussion and concentrate only on the issues specific to the statement subsequently prepared.

7. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of the environmental impact statement. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

8. *Categorical Exclusions.* The Department of Defense may provide categorical exclusions for actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion no environmental assessment or environmental impact statement is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) and will be identified in Attachment 1 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit recommendations for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

9. *Environmental Assessments.* The purpose of an environmental assessment is to assist DoD components in determining whether an environmental impact statement is required for a particular action. The assessment should be brief and concise but should include sufficient information on which a determination can be made whether the proposed action is major and federal, and whether it significantly harms the environment of the global commons. As a minimum, the assessment should include consideration of the need for the proposed action and the environmental effect of the proposed action. The environmental assessment will be made available to the public in the United States upon request, but there is no requirement that it be distributed for public comment.

D. *Environmental Impact Statements.*

1. *General.* Environmental impact statements will be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed action on the global commons and the reasonable alternatives. If an action requiring an environmental impact statement also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the statement need not consider or be prepared with respect to these effects. The procedures for considering these effects are set out in enclosure 2.

2. *Draft Statement.* Environmental impact statements will be prepared in two stages and may by supplemented. The first, or draft statement, should be sufficiently complete to permit meaningful analysis and comment. The draft statement will be made available to the public, in the United States, for comment. The Department of State, the Council on Environmental Quality, and other interested federal agencies will be informed of the availability of the draft statement and will be afforded an opportunity to comment. Contacts with foreign governments are discussed in subsection D.4. of the directive and subsection D.11. of this enclosure.

3. *Final Statement.* Final statements will consider, either individually or collectively, substantive comments received on the draft statement. The final statement will be made available to the public in the United States.

4. *Supplemental Statement.* Supplements to the draft or final statement should be used when substantial changes to the proposed action are made relative to the environment of the global commons or when significant new information or circumstances, relevant to environmental concerns, bears on the proposed action or its environmental effects on the global commons. Supplemental statements will be circulated for comment as in subsection 2. above unless alternative procedures are approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

5. *Statement Content.* The statement will include: A section on consideration of the purpose of and need for the proposed action; a section on the environmental consequences of the proposed action and reasonable alternatives; a section that provides a succinct description of the environment of the global commons affected by the proposed action and reasonable alternatives; and a section that analyzes, in comparative form, the environmental effects on the global commons of the proposed action and reasonable alternatives.

6. *Incomplete Information.* The statement should indicate when relevant information is missing due to unavailability or scientific uncertainty.

7. *Hearings.* Public hearings are not required. Consideration should be given in appropriate cases to holding or sponsoring public hearings. Factors in this consideration include: foreign relations sensitivities; whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government; requirements of domestic and foreign governmental confidentiality; requirements of national security; whether meaningful information could be obtained through hearings; time considerations; and requirements for commercial

confidentiality. There is no requirement that all factors listed in this section be considered when one or more factors indicate that public hearings would not produce a substantial net benefit to those responsible for authorizing or approving the proposed action.

8. *Decision.* Relevant environmental documents developed in accordance with this enclosure will accompany the proposal for action through the review process to enable officials responsible for authorizing or approving the proposed action to be informed and to take account of environmental considerations. One means of making an appropriate record with respect to this requirement is for the decision-maker to sign and date a copy of the environmental impact statement indicating that it has been considered in the decision-making process. Other means of making an appropriate record are also acceptable.

9. *Timing.* No decision on the proposed action may be made until the later of 90 days after the draft statement has been made available and notice thereof published in the **Federal Register**, or 30 days after the final statement has been made available and notice thereof published in the **Federal Register**. The 90-day period and the 30-day period may run concurrently. Not less than 45 days may be allowed for public comment. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) may, upon a showing of probable important adverse effect on national security or foreign policy, reduce the 30-day, 45-day, and 90-day periods.

10. *Classified Information.* Environmental assessments and impact statements that address classified proposals will be safeguarded and classified information will be restricted from public dissemination in accordance with Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive. Only unclassified portions of environmental documents may be disseminated to the public.

11. *Foreign Governments.* Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

Appendix F—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), inclosure 2.)

Inclosure 2—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

A. *General.* This enclosure implements the requirements of Executive Order 12114 to provide for procedural and other actions to be taken to enable officials to be informed of pertinent environmental considerations when authorizing or approving certain major Department of Defense actions that do significant harm to the environment of a foreign nation or to a protected global resource.

B. *Actions Included.*

1. The requirements of this enclosure apply only to the following actions:

a. Major federal actions that significantly harm the environment of a foreign nation that is not involved in the action. The involvement of the foreign nation may be directly by participation with the United States in the action, or it may be in conjunction with another participating nation. The focus of this category is on the geographical location of the environmental harm and not on the location of the action.

b. Major federal actions that are determined to do significant harm to the environment of a foreign nation because they provide to that nation: (1) A product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by federal law in the United States because its toxic effects on the environment create a serious public health risk; or (2) a physical project that is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances. Included in the category of "prohibited or strictly regulated" are the following: asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene.

c. Major federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State. Such determinations by the President or the Secretary of State are listed in Attachment 1 to this enclosure.

2. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to federal actions that do significant harm to the environment of foreign nations and protected global resources as described in subsection B.1., above. No action is required under this enclosure with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated by federal law in the United States, or resources of global importance that have been designated for protection.

C. *Environmental Document Requirements.*

1. *General.* a. There are two types of environmental documents officials shall use in taking account of environmental considerations for actions covered by this enclosure:

(1) Environmental studies—bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant; and

(2) Environmental reviews—concise reviews of the environmental issues involved that are prepared unilaterally by the United States.

b. This section identifies the procedures for the preparation of environmental studies or reviews when required by this enclosure and the exceptions from the requirement to prepare environmental studies or reviews. If an environmental document already exists for a particular action, regardless of what federal agency prepared it, no new document is required by this enclosure.

2. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of environmental documentation. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

3. *Exemptions.* There are general exemptions from the requirements of this enclosure provided by Executive Order 12114, and the Secretary of Defense has the authority to approve additional exemptions.

a. *General Exemptions.* The following actions are exempt from the procedural and other requirements of this enclosure under general exemptions established for all agencies by Executive Order 12114:

(1) Actions that the DoD component concerned determines do not do significant harm to the environment outside the United States or to a designated resource of global importance.

(2) Actions taken by the President. These include: signing bills into law; signing treaties and other international agreements; the promulgation of Executive Orders; Presidential proclamations; and the issuance of Presidential decisions, instructions, and memoranda. This includes actions taken within the Department of Defense to prepare or assist in preparing recommendations, advice, or information for the President in connection with one of these actions by the President. It does not include actions taken within the Department of Defense to implement or carry out these instruments and issuances after they are promulgated by the President.

(3) Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

(4) Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved. The determination that the national security or national interest is involved in actions by the Department of Defense must be made in writing by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036, 43 FR 3674 (1978). These components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence through reconnaissance programs, the Army Office of the Assistant Chief of Staff for Intelligence, the Office of Naval Intelligence, and the Air Force Office of the Assistant Chief of Staff for Intelligence.

(6) The decisions and actions of the Office of the Assistant Secretary of Defense (International Security Affairs), the Defense Security Assistance Agency, and the other responsible offices within DoD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or international organizations, and the extension or guarantee of credit in connection with these transactions.

(7) Votes and other actions in international conferences and organizations. This includes all decisions and actions of the United States with respect to representation of its interests at international organizations, and at multilateral conferences, negotiations, and meetings.

(8) Disaster and emergency relief actions.

(9) Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. This includes: advice provided by DoD components to the Department of State with respect to the issuance of munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976); advice provided by DoD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, 50 U.S.C. App. 2401–2413 (1970 & Supp. V 1975); and direct exports by the Department of Defense of defense articles and services to foreign governments and international organizations that are exempt from munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976). The term "export approvals" does not mean or include direct loans to finance exports.

(10) Actions relating to nuclear activities and nuclear material, except actions providing to a foreign nation a nuclear production or utilization facility, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

b. *Additional Exemptions.* The Department of Defense is authorized under Executive Order 12114 to establish additional exemptions that apply only to the Department's operations. There are two types of additional exemptions: Case-by-case and class.

(1) *Case-by-Case Exemptions.* Exemptions other than those specified above may be required because emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances preclude or are inconsistent with the preparation of environmental documentation and the taking of other actions prescribed by this enclosure. The following procedures apply for approving these exemptions:

(a) *Emergencies.* This category includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. The heads of the DoD components are authorized to approve emergency exemptions on a case-by-case basis. The Department of Defense is required to consult as soon as feasible with the Department of State and the Council on Environmental Quality with respect to emergency exemptions. The requirement to consult as soon as feasible is not a requirement of prior consultation. A report of the emergency action will be made by the DoD component head to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall undertake the necessary consultations.

(b) *Other Circumstances.* National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph C.3.a. above, may preclude or be inconsistent with the preparation of environmental documentation. In these circumstances, the head of the DoD component concerned is authorized to exempt a particular action from the environmental documentation requirements of this enclosure after obtaining the prior approval of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval.

(2) *Class Exemptions.* Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval. Requests for class exemptions will be submitted by the head of the DoD component concerned to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) after coordination with other interested DoD components. Notice of the establishment of a class exemption will be issued as Attachment 2 to this enclosure.

4. *Categorical Exclusions.* The Department of Defense is authorized by Executive Order 12114 to provide for categorical exclusions. A categorical exclusion is a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and will be identified in Attachment 3 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit requests for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

D. *Environmental Studies.*

1. *General.* Environmental studies are one of two alternative types of documents to be used for actions described by paragraph B. of this enclosure.

a. An environmental study is an analysis of the likely environmental consequences of the action that is to be considered by DoD components in the decision-making process. It includes a review of the affected environment, significant actions taken to avoid environmental harm or otherwise to better the environment, and significant environmental considerations and actions by the other participating nations, bodies, or organizations.

b. An environmental study is a cooperative action and not a unilateral action undertaken by the United States. It may be bilateral or multilateral, and it is prepared by the United States in conjunction with one or more foreign nations, or by an international body or organization in which the United States is a member or participant. The environmental study, because it is prepared as a cooperative undertaking, may be best suited for use with respect to actions that provide strictly regulated or prohibited products or projects to a foreign nation (B.1.b.) and actions that affect a protected global resource (B.1.c.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental studies and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Study.* The judgment whether the action is one that would do significant harm to one of the environments covered by this enclosure normally will be made in consultation with concerned foreign governments or organizations. If a negative decision is made, the file will be documented with a record of that decision and the decision-makers who participated. If a decision is made to prepare a study then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant harm to the environment until the study has been completed and the results considered.

4. *Content of the Study.* The document is a study of the environmental aspects of the proposed action to be considered in the decision-making process. The precise content of each study must be flexible because of such considerations as the sensitivity of obtaining information from foreign governments, the availability of useful and understandable information, and other factors identified under "Limitations," (subsection D.6., below). The study should, however, include consideration of the following:

a. A general review of the affected environment;

b. The predicted effect of the action on the environment;

c. Significant known actions taken by governmental entities with respect to the proposed action to protect or improve the environment; and

d. If no actions are being taken to protect or enhance the environment, whether the decision not to do so was made by the affected foreign government or international organization.

5. *Distribution of the Study.* Except as provided under "Limitations," (subsection D.6., below), and except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the studies, subject to the "Limitations" (subsection D.6., below) and controls on classified information, and furnished copies of the documents. No distribution is required prior to the preparation of the final version of the study or prior to taking the action that caused the study to be prepared.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental studies in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment;

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified

information and other national security interests;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as DoD's role and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

E. *Environmental Reviews.*

1. *General.* Environmental reviews are the second of the two alternative types of documents to be used for actions covered by paragraph B of this enclosure.

a. An environmental review is a survey of the important environmental issues involved. It includes identification of these issues, and a review of what if any consideration has been or can be given to the environmental aspects by the United States and by any foreign government involved in taking the action.

b. An environmental review is prepared by the DoD component concerned either unilaterally or in conjunction with another federal agency. While an environmental review may be used for any of the actions identified by section B., it may be uniquely suitable, because it is prepared unilaterally by the United States, to actions that affect the environment of a nation not involved in the undertaking (B.1.a.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this enclosure will be coordinated with the Department of State. Informal working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether To Prepare an Environmental Review.* Sufficient information will be gathered, to the extent it is reasonably available, to permit an informed judgment as to whether the proposed action would do significant harm to the environments covered by this enclosure. If a negative decision is made, a record will be made of that decision and its basis. If a decision is made to prepare a review, then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant environmental harm until the review has been completed.

4. *Content of the Review.* An environmental review is a survey of the important environmental issues associated with the proposed action that is to be considered by the DoD component concerned in the decision-making process. It does not include all possible environmental issues and it does not include the detailed evaluation required in an environmental impact statement under enclosure 1 of this directive. There is no foreign government or international organization participation in its preparation, and the content therefore may be circumscribed because of the availability of information and because of foreign relations sensitivities. Other factors affecting the content are identified under "Limitations," (subsection E.6., below). To the extent reasonably practical the review should include consideration of the following:

a. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad-gauge descriptive factors;

b. Identification of the important environmental issues involved;

c. The aspects of the actions taken or to be taken by the DoD component that ameliorate or minimize the impact on the environment; and

d. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.

5. *Distribution.* Except as provided under "Limitations," (subsection E.6., below), and except where classified information is involved, environmental reviews will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the "Limitations" (subsection E.6., below) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change

substantially the normal content of the environmental review;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the DoD procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 157

[CGD 80-131]

Licensing and Certification of Seamen

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment sets out the procedures to be followed by seamen to obtain temporary licenses as master, mate, or engineer, or temporary certificates or service as able seamen or qualified member of the engine department, for employment upon certain U.S. vessels engaged in the offshore mineral or energy industry. This amendment also sets out manning requirements for this group of vessels. The licensing or certification of seamen on all vessels in this category has not been previously required. Recent legislative action (Pub. L 96-378), mandates the carriage of licensed officers upon all offshore supply vessels, as defined by the Act, and carriage of certificated seamen upon those vessels of one hundred gross tons or over. This action will allow the integration of previously unlicensed or uncertificated personnel employed in closely related positions on this type of vessel into the professional categories outlined by the Act for vessel operation.

EFFECTIVE DATE: October 20, 1980.

APPLICATION DEADLINE: Application for temporary licenses must be submitted to the Coast Guard by January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Commander Scott D. McCowen, Office of Merchant Marine Safety, Vessel Manning Branch (G-MVP-5/14), Room 1400G, Department of Transportation, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., 20593 (202-426-2240).

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication. Since the manning requirements became effective with the passage of the Act and the Act requires registration for temporary licenses or certificates of service within 90 days of its passage, delay in publication of the rule could lead to disruption in the mineral and energy industry. Therefore, notice and public procedure hereon are unnecessary and impracticable and good cause exists for making the rule effective in fewer than 30 days after publication.

This amendment has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" published on February 26, 1979 (44 FR 11034), and is considered to be an emergency regulation that would otherwise be nonsignificant. As such, neither a regulatory analysis nor a final evaluation are required.

Drafting information: The principal persons involved in drafting this proposal are:

Commander Scott D. McCowen, Project Manager, Office of Merchant Marine Safety, and

Lieutenant George J. Jordan, Project Counsel, Office of the Chief Counsel.

Discussion of the regulations: The passage of Pub. L. 96-378 on October 6, 1980 (an Act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes) necessitates the revision of certain Coast Guard regulations pertaining to the inspection and manning of vessels subject to the Act and licensing and certification of certain crew members.

The provisions of the Act subject a heretofore statutorily undefined group of vessels commonly referred to as "offshore supply vessels" to U.S. vessel inspection and manning requirements. This group, made up vessels of more than fifteen but less than 500 gross tons, has, over the past thirty years, grown to over 3,000 in number, directly employing approximately 30,000 persons in support of the offshore mineral and energy industry.

For many years the offshore support industry has employed the use of bareboat charter arrangements that allowed its vessels to avoid Coast Guard manning and inspection requirements. In recent years, however, the Coast Guard has questioned these arrangements concluding that many of these vessels are, in fact, subject to inspection. Although effective enforcement has been difficult, these Coast Guard efforts, along with congressional concern, culminated in the passage of Pub. L. 96-378 on October 6, 1980. Current Coast Guard regulations in 46 CFR Parts 10, 12 and 157 do not speak directly to the manning requirements for offshore supply vessels to to the licensing or certification of their crewmembers.

These rules provide revisions and additions to current regulations found in Subchapter B of Title 46, Code of Federal Regulations. They provide for the temporary licensing of officers in Subpart 10.03, and temporary certification of able seamen and qualified members of the engine department in Subparts 12.07 and 12.17 respectively, for offshore supply vessel crewmembers who can show evidence of service in a like capacity on offshore supply vessels prior to January 2, 1979. The service requirements for the temporary licenses and certificates of service spoken to in the above subparts were determined as a result of a series of consultations with operators of the vessels involved. It is felt that these requirements are the minimum that can be allowed without imparing the safety of these vessels.

Section 12.05-3 is revised to reflect a lowering of the age qualifications for certificates of service as Able Seamen, from ninteen to eighteen years of age. In addition, § 12.05-7 is revised to reducing the number of currently existing categories of able seamen from five to three and creating a new category of able seamen, Able Seamen-Special (OSV), who will be limited to service upon offshore supply vessels, in order to comply with the requirements of the Act. Paragraphs (c) and (d) of this section have been added to show how the existing categories of able seamen endorsements mesh with the categories of able seamen specified by the Act. Existing certificates of service as able seaman will be endorsed to reflect the wording of the revised caegories upon the request of the certificate holder.

This document also revises portions of the regulations in Part 157 of Subchapter P of Title 46, Code of Federal Regulations pertaining to the manning of inspected vessels. These revisions implement the requirements of the Act by: (1) Plaing a definition of "offshore supply vessel" in § 157.10–87; (2) adding offshore supply vessels to the list of those types of vessels previously exempted from certain watch system requirements when on voyages of less than 600 miles, found in § 157.20–5(b); (3) establishing four specific categories of able seaman, and amending the percentage requirements of able seamen required to be carried in the deck crews of certain vessels, in § 157.20–15; and (4) amending § 157.20–25, § 157.20–35 and adding a new § 157.20–37 to reflect the number of licensed officers to be carried upon vessels subject to the Act.

These regulations conform existing regulations to the requirements of the Act. The major substantive change to existing regulations is the creation of offshore supply vessel manning and personnel licensing requirements as mandated by the Act.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations is amended as follows:

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION

§ 10.01–5 [Amended]

1. By revising paragraph (b) of 46 CFR 10.01–5 to read as follows:

* * * * *

(b) Deck and engineer officers' licenses. The regulations regarding requirements for deck and engineer officers' licenses interpret or apply Title 46, U.S. Code, sections 214, 224, 224a, 225, 226, 228, 229, 230, 231, 233, 237, 367, 391a, 404, 401–1, 405, 672a, and 1132, and Title 50, U.S. Code, section 198.

2. By adding a new Subpart 10.03 to read as follows:

Subpart 10.03—General Requirements for Issuance of Temporary Deck and Engineer Licenses for the Officers of Offshore Supply Vessels

Sec.

Authority: Pub. L. 96–378; (46 U.S.C. 223, 224, 390–390g, 404, 404–1, 672, 673; 49 U.S.C. 1655(b)); 49 CFR 1.46(b))

Subpart 10.03—General Requirements for Issuance of Temporary Deck and Engineer Licenses for the Officers of Offshore Supply Vessels

§ 10.03–1 Eligibility.

A person is eligible for a temporary license as master, mate or engineer for offshore supply vessels if:

(a) Application is made on or before January 6, 1981; and,

(b) The applicant was serving in an equivalent capacity on board an offshore supply vessel as defined by 46 U.S.C. 404–1, on or before January 1, 1979.

§ 10.03–5 Application procedure.

(a) A person may apply for a temporary license at any Coast Guard Marine Inspection or Marine Safety Office.

(b) Application shall be made upon Coast Guard Form "Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels".

§ 10.03–7 Service under an acknowledgment of application.

(a) Upon receipt of the completed application, the Officer in Charge, Marine Inspection, issues an "acknowledgment of application" to the applicant. Upon receipt of this acknowledgment, the applicant is deemed to be in compliance with the statutes dealing with licensing of merchant marine personnel pending issuance of a temporary license, or expiration of the acknowledgment of application.

(b) An acknowledgment of application is subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) An acknowledgment of application remains valid until October 7, 1982.

§ 10.03–10 Issuance of temporary licenses.

(a) An Officer In Charge, Marine Inspection, may issue temporary licenses on or before October 6, 1982 to persons who have applied under § 10.03–5 and meet the requirements of § 10.03–15.

(b) Temporary licenses issued under the provisions of this part:

(1) Authorize service only upon offshore supply vessels;

(2) Remain valid for a period of three years from the date of issuance;

(3) May not be raised in grade;

(4) Are not renewable except for replacement occasioned by loss; and,

(5) Are subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) Authority to issue temporary licenses as master, mate or engineer of offshore supply vessels expires on October 7, 1982.

§ 10.03–15 Requirements for temporary licenses.

(a) An applicant for a temporary license subject to the provisions of this subpart must meet the age, physical, character and citizenship requirements of § 10.02–5 of this part before such license will be issued.

(b) An applicant for temporary license shall present to the Officer in Charge, Marine Inspection, letters, discharges, or other official documents certifying the amount and character of sea service, and the names of the vessels on which acquired. The Officer in Charge, Marine Inspection, must be satisfied as to the bona fides of all evidence of sea service or training presented and may reject any evidence not considered to be authentic or which does not sufficiently outline the amount, type and character of service.

(c) The minimum service required to obtain a temporary license is:

(1) For master—175 days service as master of an offshore supply vessel.

(2) For mate—135 days service as master or mate of an offshore supply vessel.

(3) For chief engineer—175 days service as chief engineer of an offshore supply vessel.

(4) For assistant engineer—135 days service as chief engineer or assistant engineer of an offshore supply vessel.

Note.—A twelve hour work day is equivalent to one day of the above service requirements. An eight hour work day is equivalent to two thirds of a service day.

(d) Service in the appropriate licensed capacity upon offshore supply vessels while holding the acknowledgment of application issued in accordance with § 10.03–7 may be utilized to meet the sea service requirements of paragraph (c) ofthis section.

(e) An applicant for a temporary license as master or mate, who does not hold a valid deck license issued by the Coast Guard, shall be required to demonstrate competency in the International and Inland Rules of the Road prior to issuance of the temporary license.

§ 10.03–20 Exhibition of temporary license or acknowledgment of application.

All individuals serving in a licensed capacity upon an offshore supply vessel shall have their temporary licenses or acknowledgments of application conspicuously displayed as required by 46 U.S.C. 232.

PART 12—CERTIFICATION OF SEAMEN

3. By revising 46 CFR 12.05–1 to read as follows:

§ 12.05–1 Certification required.

(a) Every person employed in a rating as able seaman on any United States vessel requiring certificated able seamen, before signing articles of agreement, shall present to the master, his or her certificate as able seaman (issued in the form of a merchant mariner's document).

(b) No certificate as able seaman is required of any person employed on any tug or towboat on the bays and sounds connected directly with the seas, or on any unrigged vessel except seagoing barges or tank barges.

(c) The following categories of able seaman are established:

(1) Able Seaman—Any Waters, Unlimited.

(2) Able Seaman—Limited.

(3) Able Seaman—Special.

(4) Able Seaman—Special (OSV).

4. By revising 46 CFR 12.05–3 to read as follows:

§ 12.05–3 General requirements.

To qualify for certification as able seaman an applicant must:

(a) Be at least 18 years of age;

(b) Pass the prescribed physical examination;

(c) Meet the sea service or training requirements set forth in this part;

(d) Pass an examination demonstrating ability as an able seaman and lifeboatman; and,

(e) Speak and understand the English language as would be required in performing the general duties of able seaman and during an emergency aboard ship.

5. By revising 46 CFR 12.05–7 to read as follows:

§ 12.05–7 Service or training requirements.

(a) The minimum service required to qualify an applicant for the various categories of able seaman is as listed in this paragraph.

(1) Able Seaman—Any Waters, Unlimited. Three years service on deck on vessels operating on the oceans or the Great Lakes.

(2) Able Seaman—Limited. Eighteen months service on deck in vessels of 100 gross tons or over which operate in a service not exclusively confined to the rivers and smaller inland lakes of the United States.

(3) Able Seaman—Special. Twelve months service on deck on vessels operating on the oceans, or the navigable waters of the United States including the Great Lakes.

(4) Able Seaman—Special (OSV). Six months service on deck on vessels operating on the oceans, or the navigable waters of the United States including the Great Lakes.

Note.—Employment considerations for the various categories of able seaman are contained in § 157.20–15 of this chapter.

(b) Training programs approved by the Commandant may be substituted for the required periods of service on deck as follows:

(1) A graduate of a school ship may be rated as able seaman upon satisfactory completion of the course of instruction. For this purpose, "school ship" is interpreted to mean an institution which offers a complete course of instruction, including a period of at sea training, in the skills appropriate to the rating of able seaman.

(2) Training programs, other than those classified as a school ship, may be substituted for up to one third of the required service on deck. The service/training ratio for each program is determined by the Commandant, who may allow a maximum of three days on deck service credit for each day of instruction.

(c) A certificate of service as "Able Seaman, Great Lakes—18 months' service," is considered equivalent to a certificate of service as "Able Seaman—Limited."

(d) A certificate of service as Able Seaman with the following route, vessel, or time restrictions is considered equivalent to a certificate of service as "Able Seaman—Special":

(1) "Any waters—12 months."

(2) "Tugs and towboats—any waters."

(3) "Bays and sounds—12 months, vessels 500 gross tons or under not carrying passengers."

(4) "Seagoing barges—12 months."

(e) An individual holding a certificate of service endorsed as noted in paragraphs (c) or (d) of this section may have his or her merchant mariner's document endorsed with the equivalent category, upon request.

6. By adding a new Subpart § 12.07 to read as follows:

Subpart 12.07—General Requirements for Issuance of Temporary Certificates of Service, for Able Seamen on Offshore Supply Vessels

Sec.

Authority: Pub. L. 96–378; (46 U.S.C. 223, 224, 390–390g, 404, 404–1, 672, 673; 49 U.S.C. 1655(b)); 49 CFR 1.46(b))

Subpart 12.07—General Requirements for Issuance of Temporary Certificates of Service for Able Seamen on Offshore Supply Vessels

§ 12.07–1 Eligibility.

A person is eligible for a temporary certificate of service as Able Seaman—Special (OSV), for offshore supply vessels if:

(a) Application is made on or before January 6, 1981; and,

(b) The applicant was serving in an equivalent capacity on board an offshore supply vessesl as defined by 46 U.S.C. 404–1, on or before January 1, 1979.

§ 12.07–5 Application procedure.

(a) A person may apply for a temporary certificate of service as Able Seaman—Special (OSV), at any Coast Guard Marine Inspection or Marine Safety Office.

(b) Application shall be made upon Coast Guard Form "Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels."

§ 12.07–7 Service under an acknowledgment of application.

(a) Upon receipt of the completed application, the Officer in Charge, Marine Inspection, issues an "acknowledgment of application" to the applicant. Upon receipt of this acknowledgment, the applicant is deemed to be in compliance with the statutes dealing with certification of merchant marine personnel pending issuance of a temporary certificate or expiration of the acknowledgment of application.

(b) An acknowledgment of application is subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) An acknowledgment of application shall remain valid until October 7, 1982.

§ 12.07–10 Issuance of temporary certificates of service.

(a) An Officer In Charge, Marine Inspection, may issue temporary certificates of service on or before October 6, 1982 to persons who have applied under § 12.07–5 and meet the requirements of § 12.07–15.

(b) Temporary certificates of service issued under the provisions of this part:

(1) Authorize service only upon offshore supply vessels;

(2) Remain valid for a period of three years from the date of issuance;

(3) May not be raised in grade;

(4) Are not renewable except for replacement occasioned by loss; and,

(5) Are subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) Authority to issue temporary certificates of service of Able Seaman—Special (OSV), expires on October 7, 1982.

§ 12.07-15 Requirements for temporary certificates of service.

(a) An applicant for a temporary certificate of service as Able Seaman—Special (OSV), must meet the:

(1) Age requirements of § 12.05-3;

(2) Physical requirements of § 12.05-5; and,

(3) The citizenship requirements of § 12.02-13 and § 12.02-14 before such certificate of service shall be issued.

(b) An applicant for a temporary certificate of service shall present to the Officer in Charge, Marine Inspection, letters, discharges, or other official documents certifying the amount and character of sea service, and the names of the vessels on which acquired. The Officer in Charge, Marine Inspection, must be satisfied as to the bona fides of all evidence of sea service or training presented and may reject any evidence not considered to be authentic or which does not sufficiently outline the amount, type and character of service.

(c) The minimum service required to obtain a temporary certificate of service as Able Seaman—Special (OSV) is 95 days service as master, mate or able seaman on board offshore supply vessels.

Note.—A twelve hour work day is equivalent to one day of the above service requirements. An eight hour work day is equivalent to two thirds of a service day.

(d) Service as master, mate or able seaman on board offshore supply vessels while holding the acknowledgment of application issued in accordance with § 12.07-7 may be utilized to meet the sea service requirements of paragraph (c) of this section.

§ 12.07-20 Possession of temporary certificate of service or acknowledgment of application.

An individual employed in a certificated capacity upon an offshore supply vessel under a valid temporary certificate or acknowledgment of application must have the document in his or her possession and available for examination at all times.

7. By revising 46 CFR 12.15-7 to read as follows:

§ 12.15-7 Service or training requirements.

(a) An applicant for a certificate of service as qualified member of the engine department shall furnish the Coast Guard proof of qualification based on six months' service in a rating at least equal to that of wiper or coal passer.

(b) Training programs approved by the Commandant may be substituted for the required service at sea in accordance with the following:

(1) A graduate of a school ship may be rated as qualified member of the engine department upon satisfactory completion of the course of instruction. For this purpose, "school ship" is interpreted to mean an institution which offers a complete course of instruction, including a period of sea training, in the skills appropriate to the rating of qualified member of the engine department.

(2) Training programs other than those classified as a school ship may be substituted for up to one-half of the required service at sea.

8. By adding a new Subpart § 12.17 to read as follows:

Subpart 12.17—General Requirements for Issuance of Temporary Certificates of Service for Qualified Member of the Engine Department on Offshore Supply Vessels

Sec.

Authority: Pub. L. 96-378; 46 U.S.C. 223, 224, 390-390g, 404, 404-1, 672, 673, 49 U.S.C. 1655(b); 49 CFR 1.46(b)

Subpart 12.17—General Requirements for Issuance of Temporary Certificates of Service for Qualified Member of the Engine Department on Offshore Supply Vessels

§ 12.17-1 Eligibility.

A person is eligible for a temporary certificate of service as Qualified Member of the Engine Department for offshore supply vessels if:

(a) Application is made on or before January 6, 1981; and,

(b) The applicant was serving in an equivalent capacity on board an offshore supply vessel as defined by 46 U.S.C. 404-1, on or before January 1, 1979.

§ 12.17-5 Application procedure.

(a) A person may apply for a temporary certificate of service as Qualified Member of the Engine Department at any Coast Guard Marine Inspection or Marine Safety Office.

(b) Application shall be made upon Coast Guard Form "Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels."

§ 12.17-7 Service under an acknowledgment of application.

(a) Upon receipt of the completed application, the Officer in Charge, Marine Inspection, issues an "acknowledgment of application" to the applicant. Upon receipt of this acknowlegment, the applicant is deemed to be in compliance with the statutes dealing with certification of merchant marine personnel pending issuance of a temporary certificate or expiration of the acknowledgment of application.

(b) An acknowledgment of application is subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) An acknowledgment of application shall remain valid until October 7, 1982.

§ 12.17-10 Issuance of temporary certificates of service.

(a) An Officer in Charge, Marine Inspection, may issue temporary certificates of service on or before October 6, 1982 to persons who have applied under § 12.17-5 and meet the requirements of § 12.17-15.

(b) Temporary certificates of service issued under the provisions of this part:

(1) Authorize service only upon offshore supply vessels;

(2) Remain valid for a period of three years from the date of issuance;

(3) May not be raised in grade;

(4) Are not renewable except for replacement occasioned by loss; and,

(5) Are subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) Authority to issue temporary certificates of service of Qualified Member of the Engine Department expires on October 7, 1982.

§ 12.17-15 Requirements for temporary certificates of service.

(a) An applicant for a temporary certificate of service as Qualified Member of the Engine Department must meet the:

(1) Physical requirements of § 12.15-5; and

(2) The citizenship requirements of § 12.02-13 and § 12.02-14 before such certificate of service shall be issued.

(b) An applicant for a temporary certificate of service shall present to the

Officer in Charge, Marine Inspection, letters, discharges, or other official documents certifying the amount and character of sea service, and the names of the vessels on which acquired. The Officer in Charge, Marine Inspection, must be satisfied as to the bona fides of all evidence of sea service or training presented and may reject any evidence not considered to be authentic or which does not sufficiently outline the amount, type and character of service.

(c) The minimum service required to obtain a temporary certificate of service as Qualified Member of the Engine Department is 95 days service as chief engineer, assistant engineer or qualified member of the engine department on board offshore supply vessels.

Note.—A twelve hour work day is equivalent to one day of the above service requirements. An eight hour work day is equivalent to two thirds of a service day.

(d) Service as chief engineer, assistant engineer or qualified member of the engine department on board offshore supply vessels while holding the acknowledgment of application issued in accordance with § 12.17–7 may be utilized to meet the sea service requirements of paragraph (c) of this section.

§ 12.17–20 Possession of temporary certificate of service or acknowledgment of application.

An individual employed in a certificated capacity upon an offshore supply vessel under a valid temporary certificate or acknowledgment of application must have the document in his or her possession and available for examination at all times.

PART 157—MANNING REQUIREMENTS

§ 157.01–101 [Amended]

9. By amending 46 CFR 157.01–10(b) to read as follows:

* * * * *

(b) *Manning of inspected vessels.* (1) The requirements regarding the manning of inspected vessels are set forth in various statutes with many qualifications as to their applications. The regulations interpret or apply, subject to various limitations contained in the laws, R.S. 4400, as amended, 4401, as amended, 4417a, as amended, 4421, as amended, 4426, as amended, 4426a, 4427, as amended, 4438, as amended, 4438a, as amended 4453, as amended, 4463, as amended, 4477, as amended, 4488, as amended, 4551(j), as amended sec. 2, 38 Stat. 1164 as amended, sec. 13, 38 Stat. 1169, as amended, sec. 1, 52 Stat. 753, as amended, sec. 2, 40 Stat. 549, as amended, 41 Stat. 305, as amended, secs. 1 and 2, 49 Stat. 1544, 1545, as amended, sec. 7, 49 Stat. 1936, as amended, sec. 7, 53 Stat. 1147, as amended, secs. 7 and 17, 54 Stat. 165,166, as amended, sec. 3, 54 Stat. 347, as amended, secs. 1 to 8, 62 Stat. 232–234, as amended, sec. 3, 70 Stat. 152, and sec. 3, 68 Stat. 675 (46 U.S.C. 362, 364, 391a, 399, 404, 404–1, 405, 224, 224a, 435, 222, 470, 481, 643(j), 673, 672, 672b, 223, 363, 367, 689, 247, 526f, 526p, 1333, 229a–229h, 390b, and 50 U.S.C. 198).

10. By adding a new 46 CFR 157.10–87 to read as follows:

§ 157.10–87 Offshore supply vessel.

"Offshore supply vessel" means a vessel that

(a) Is propelled by machinery other than steam,

(b) Is not a passenger carrying vessel as defined by 46 U.S.C. 390,

(c) Is of more than fifteen and less than five hundred gross tons, and

(d) Regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

§ 157.20–5 [Amended]

11. By revising 46 CFR 157.20–5(b) to read as follows:

* * * * *

(b) Officers in Charge, Marine Inspection, will note that the 3-watch system extends to all licensed officers and to the sailors, coal passers, firemen, oilers, and water tenders, and will be governed accordingly in fixing the complement of licensed officers and crew, as authorized by 46 U.S.C. 222: *Provided,* That in the case of radio telegraph operators this requirement shall be applicable only when 3 or more radio officers are employed. 46 U.S.C. 673 does not apply to the licensed officers and crew of tugs, barges, and offshore supply vessels when engaged in voyages of less than 600 miles except with regard to coal passers, firemen, oilers, and water tenders. A voyage of less than 600 miles is construed as meaning the entire distance traversed in proceeding from the initial port of departure to the final port of destination, stops at intermediate ports while enroute not being considered as breaking the continuity of the voyage.

(R.S. 4421, as amended, 4463, as amended, sec. 2, 38 Stat. 1164, as amended, sec. 7, 49 Stat. 1936, as amended; 46 U.S.C. 399, 222, 673, 689)

12. By revising 46 CFR 157.20–15 to read as follows:

§ 157.20–15 Able seamen.

(a) *Vessels affected.* The provisions of U.S.C. 672, relating to able seamen, apply to all merchant vessels of the United States of 100 gross tons and upward except:

(1) Vessels navigating exclusively on rivers or the smaller inland lakes;

(2) Non-self-propelled vessels other than seagoing barges of one hundred gross tons or over, or barges which carry oil or any other hazardous material in bulk as cargo or residue; and,

(3) Tugs and towboats operating on bays and sounds connected directly with the ocean.

(b) *Number required.* (1) Except as indicated in paragraph (b)(2) of this section at least 65 percent of the deck crew, exclusive of licensed officers, shall be rated as able seamen.

(2) Tugs, barges and offshore supply vessels subject to the provisions of 46 U.S.C. 673 and engaged on a voyage of less than 600 miles shall have at least 50 percent of the deck crew, exclusive of licensed officers, rated as able seamen.

(c) *Type required.* (1) The total number of able seamen required on:

(i) Any vessel, may be made up of Able Seaman—Any Waters, Unlimited, ratings.

(ii) Any vessel of less than 1600 gross tons, or any vessel operating on the Great Lakes and the Saint Lawrence River as far east as Sept Iles, may be made up of Able Seaman—Limited, ratings.

(iii) Any vessel of five hundred gross tons or less, or a seagoing barge, tug, or towboat, may be made up of Able Seaman—Special, ratings.

(iv) Any offshore supply vessel, may be made up of Able Seaman—Special (OSV), ratings.

(2) Fifty percent of the total number of able seamen required on:

(i) Vessels other than those listed in paragraph (c)(1)(ii) of this section may be made up of Able Seaman—Limited, ratings.

(ii) Vessels other than those listed in paragraphs (c)(1)(iii) and (iv) of this section may be made up of Able Seaman—Special, ratings.

(3) In any case where Able Seamen—Limited, or Able Seaman—Special, ratings may constitute only a portion of the total number of able seamen required on board a vessel, at least 50 percent of the total number of able seamen required shall hold Able Seaman—Any Waters, Unlimited, ratings.

13. By revising 46 CFR 157.20–25 to read as follows:

§ 157.20–25 Mates.

The minimum number of licensed mates required to be carried on every inspected ocean or coastwise seagoing merchant vessel propelled by machinery, and every inspected

oceangoing vessel carrying passengers shall be as follows:

(a) Vessels of one thousand gross tons or more—three licensed mates.

(b) Vessels of one hundred gross tons or more, but less than one thousand gross tons—two licensed mates.

(c) Vessels of one thousand gross tons or more engaged in a run of less than four hundred miles from the port of departure to the port of final destination—two licensed mates.

(d) Offshore supply vessels engaged on a voyage of less than six hundred miles—one licensed mate.

14. By revising 46 CFR 157.20–35 to read as follows:

§ 157.20–35 Engineers.

The Officer in Charge, Marine Inspection, shall determine the minimum number of licensed engineers required for the safe navigation of inspected vessels. Each determination must take into account:

(a) The statutory requirements of 46 U.S.C. 404, 404–1, 405, and 673;

(b) The regulatory requirements of § 157.20–37; and

(c) The type, horsepower, and degree of automation of the vessel's propulsion equipment.

15. By adding a new 46 CFR 157.20–37 to read as follows:

§ 157.20–37 Chief Engineer.

A licensed chief engineer shall be carried upon every:

(a) Steam propelled vessel;

(b) Seagoing mechanically propelled vessel of 200 gross tons and above documented under the Laws of the United States; and

(c) Inspected, mechanically propelled, vessel of 300 gross tons or over.

(Pub. L. 96–378; 46 U.S.C. 223, 224, 390–390g, 404, 404–1, 672, 673; 49 U.S.C. 1655(b); 49 CFR 1.46(b))

Dated: October 16, 1980.

Clyde T. Lusk, Jr.,

Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 80–32766 Filed 10–17–80; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Parts 90 and 175

[CGD 80—133]

General Provisions; Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment sets out the procedures for registering with the Coast Guard each offshore supply vessel which does not possess a valid certificate of inspection as mandated by Pub. L. 96–378, Small Vessel Inspection and Manning. This action also defines the applicability of the inspection regulations to offshore supply vessels.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: L T Michael P. Rolman, Office of Merchant Marine Safety, Merchant Vessel Inspection Division, Room 2415, Department of Transportation, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593, (202–426–1464).

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication. Since the inspection requirements became effective with the passage of the Act and the Act requires registration of existing offshore supply vessels within 90 days of its passage, delay in publication of the rule could lead to disruption in the mineral and energy industry. Therefore, notice and public procedure hereon are unnecessary and impracticable and good cause exists for making the rule effective in fewer than 30 days after publication.

This amendment has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" published on February 26, 1979 (44 FR 11034), and is considered to be an emergency regulation that would otherwise be nonsignificant. As such, neither a regulatory analysis nor a draft evaluation are required.

Drafting Information: The principal persons involved in drafting this proposal are: LT Michael P. Rolman, Project Manager, Office of Merchant Marine Safety, and LT George J. Jordan, Project Cdounsel, Office of the Chief Counsel.

Discussion of the regulation: The passage of Pub. L. 96–378, October 6, 1980 (an Act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes) necessitates the revision of certain Coast Guard regulations pertaining to the inspection and manning of vessels subject to the Act and licensing and certification of certain crewmembers.

The licensing and manning aspects of the Act are the subject of a separate regulatory action and will not be addressed here.

The provisions of the Act subject a heretofore statutorily undefined group of vessels commonly referred to as "offshore supply vessels" to U.S. vessel inspection and manning requirements.

Made up of vessels of more than 15 but less than 500 gross tons, over the past 30 years this group of vessels has grown to over 3,000 in number, directly employing approximately 30,000 persons in support of the offshore mineral and energy industry.

For many years the offshore support industry has employed the use of bareboat charter arrangements that allowed its vessels to avoid Coast Guard manning and inspection requirements. In recent years, however, the Coast Guard has questioned these arrangements concluding that many of these vessels are, in fact, subject to inspection. Although effective enforcement has been difficult, the Coast Guard's efforts, along with congressional pressure culminated in the passage of Pub. L. 96–378 on October 6, 1980. Current Coast Guard regulations in 46 CFR Parts 90 and 175 do not speak directly to the inspection requirements for offshore supply vessels.

The Act requires that offshore supply vessels be inspected. Vessels of above 15 and less than 100 gross tons are inspected under 46 USC 390–390g and those 100 gross tons and less than 500 gross tons are inspected under 46 USC 404. The Act also divides offshore supply vessels into existing and new vessels. An existing vessel is one which was in service as an offshore supply vessel on or before January 1, 1979. In addition if a vessel was contracted for and not in service of any kind on or before January 1, 1979, it is classified as an existing vessel if it entered service as an offshore supply vessel between January 1, 1979 and October 6, 1980. These vessels must be registered with the Coast Guard on or before January 6, 1981. The owner of such a vessel must register the vessel with an officer in charge, marine inspection. Registration will allow the vessel to be used as an offshore supply vessel until inspected, but no longer than two years from the date of registration. The Coast Guard will develop regulations concerning the inspection of these vessels.

New vessels are any vessels that do not meet the statutory definition of existing vessel. Included is any vessel contracted for after January 1, 1979. Also included is any vessel that was in service of any kind prior to January 1, 1979 which entered service as an offshore supply vessel after that date. New vessels must be inspected in accordance with regulations currently in effect. The Coast Guard intends to allow owners of vessels that are currently in service, but are defined as "new vessels" to make application for inspection with the cognizant officer in

charge, marine inspection until January 6, 1981. These vessels will be inspected as soon as possible taking into account the workload of the marine inspection office and the reasonable needs of the owner.

Owners of vessels not yet in service should contact the officer in charge, marine inspection of the inspection zone (see 33 CFR Part 3 for the boundaries of the inspection zones) in which the vessel is located to arrange for an inspection.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations is amended as follows:

PART 90—GENERAL PROVISIONS

1. By adding a new 46 CFR 90.05–20:

§ 90.05–20 Applicability to offshore supply vessels.

Offshore supply vessels of 100 gross tons and less than 500 gross tons are subject to inspection under the provisions of this subchapter

2. By adding a new 46 CFR 90.10–40:

§ 90.10–40 Offshore supply vessels.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of 15 gross tons and less than 500 gross tons, and that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one that was operating as such on or before January 1, 1979, or that, if not in service of any kind on or before that date, was contracted for on or before that date and entered service as such before October 6, 1980.

(c) A new offshore supply vessel is one that is not an existing offshore supply vessel.

3. By adding a new 46 CFR 90.30–10:

§ 90.30–10 Existing offshore supply vessels.

(a) Existing offshore supply vessels of 100 gross tons and less than 500 gross tons that do not possess a valid certificate of inspection must be registered with an officer in charge, marine inspection on or before January 6, 1981. The initial inspection for certification for each registered offshore supply vessel shall be made within two years of the date the vessel is registered.

(b) The registration must be on board the vessel and available for inspection.

PART 175—GENERAL PROVISIONS

4. By adding a new 46 CFR 175.05–2:

§ 175.05–2 Applicability to offshore supply vessels.

Offshore supply vessels of above 15 gross tons and less than 100 gross tons are subject to inspection under the provisions of this subchapter.

5. By adding a new 46 CFR 175.10–40:

§ 175.10–40 Offshore supply vessel.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of above 15 gross tons and less than 500 gross tons, and that regularly carriers goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one that was operating as such on or before January 1, 1979, or that, if not in service of any kind on or before that date, was contracted for on or before that date and entered service as such before the effective date of this section.

(c) A new offshore supply vessel is one that is not an existing offshore supply vessel.

6. By adding a new 46 CFR 175.35:

Subpart 175.35—Special Provisions

§ 175.35–1 Existing offshore supply vessels.

(a) Existing offshore supply vessels of above 15 and less than 100 gross tons that do not possess a valid certificate of inspection must be registered with an officer in charge, marine inspection on or before January 6, 1981. The initial inspection for certification for each registered offshore supply vessel shall be made within two years of the date the vessel is registered.

(b) The registration must be on board the vessel and available for inspection.

(Pub. L. 96–378, 94 Stat. 1513 (46 U.S.C. 404–1); 49 CFR 1.46(b))

Dated: October 16, 1980.

Clyde T. Lusk, Jr.,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 80–32767 Filed 10–17–80; 8:45 am]

BILLING CODE 4910–14–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Parts 1067, 1068, and 1069

Cost Principles; Grantee Financial Management; Correction

AGENCY: Community Services Administration.

ACTION: Correction to final rule.

SUMMARY: The Community Services Administration is publishing correction to final rules, on Cost Principles and Index and Applicability published in the Federal Register on October 1, 1980 and October 2, 1980.

The action corrects typographical errors in the original documents.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Maryann J. Fair, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506, Telephone (202) 254–5047, Teletypewriter (202) 254–6218.

(Sec. 602, 78 Stat. 530; (42 U.S.C. 2942))

Thomas Mack,

General Counsel.

PART 1068—GRANTEE FINANCIAL MANAGEMENT

1. Pages 64940, column 2, paragraph three (October 1, 1980) and page 65233, column 2, paragraph four (October 2, 1980) are corrected to read as follows:

Part 1068 is amended by deleting Subpart 1068.4, Allowability of Cost Incurred to Borrow Funds; and Subpart 1068.8 Use of Federal Funds for Union Activities. Part 1068 is also amended by revising Subpart 1068.30, Membership Dues and Related Expenses Paid to Professional Organizations as noted in the amendatory language to this document.

2. At the bottom of page 64940, column 2, (October 1, 1980) and at the bottom of page 65233, column 2, (October 2, 1980), the amendatory language which appears just after the Part 1068 heading should read:

"In Part 1068, Subparts 1068.4 and 1068.8 are revoked".

PART 1069—GRANTEE PERSONNEL MANAGEMENT

Part 1069 is amended by deleting Subpart 1069.3, Travel Regulations for CSA Grantees and Delegate Agencies; and Subpart 1069.4, Per Diem Rates for CSA Grantees and Delegate Agencies.

PART 1067—FUNDING OF CSA GRANTEES

Subpart 1067.17 and 1067.5 Appendix A, are revised as noted in amendatory language to this document.

3. In FR Doc. 80–30444, October 1, 1980, make the following changes:

a. The tables on page 64932 and 65225 (October 1, and 2, respectively) are corrected to add "1068.30—Membership Dues and Related Expenses Paid to Professional Organization is applicable to Titles II, IV, and VII", between the entries for "1068.20" and "1068.40".

b. Pages 64935 and 65228 are corrected are corrected in "Appendix B" to add "I–6803–6, Membership Dues and Related Expenses Paid to Professional Organizations 1068.30", between the entries for "I–6800–03 and I–6900–04".

[FR Doc. 80–32794 Filed 10–17–80; 9:32 am]

BILLING CODE 6315–01–M

Proposed Rules

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Amdt. 1]

Tomatoes Grown in Florida; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would extend through June 13, 1981, the minimum grade, size, pack, container, marking and inspection requirements effective from October 12 through November 30, 1980, for tomatoes grown in certain counties in Florida. It would promote orderly marketing of such tomatoes and keep less desirable sizes and qualities from being shipped to consumers.

DATE: Comments due: November 19, 1980.

ADDRESSES: Comments should be sent to Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter (202) 447–2615.

SUPPLEMENTARY INFORMATION: This action is consistent with the marketing policy for 1980–81 which was designated "significant" under the procedures of Executive Order 12044.

The marketing policy and regulation were recommended by the Florida Tomato Committee following discussion at a public meeting in Sarasota on September 5, 1980. A Final Impact Analysis on the marketing policy is available from Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615.

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

The recommendations of the committee reflect its appraisal of the composition of the 1980–81 crop of Florida tomatoes and the marketing prospects for this season. The proposed regulation is similar to those issued during past seasons and to the temporary regulation in effect during October 12 through November 30, 1980. The proposed grade and size requirements are necessary to prevent tomatoes of lower quality and undesirable size from being distributed in fresh market channels. Such tomatoes are usually of negligible economic value to producers. This would provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop. During past seasons, some problems were encountered in properly sizing varieties that have a tendency towards an oblong shape when grown under unfavorable weather conditions. Last season a $\frac{9}{32}$ inch overlap of sizes was permitted to help alleviate the problem, and it is proposed that this overlap be permitted again this season in an effort to ensure more accurate sizing. The proposed requirements, including those for containers, container net weights, and size classifications, are intended to standardize shipments in the interest of orderly marketing and to improve returns to growers.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments would be allowed to certain special purpose outlets without regard to minimum grade, size, container or inspection requirements provided that safeguards were used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Tomatoes for experimental purposes would be exempt since such tomatoes would not usually enter fresh market channels of trade. Since no purpose would be served by regulating tomatoes used for relief or charity purposes such shipments would also be exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments would also be exempt.

The following types of tomatoes would be exempt from these regulations: elongated types commonly referred to as pear shaped or paste tomatoes, cerasiform type tomatoes commonly referred to as cherry tomatoes, hydroponic tomatoes and greenhouse tomatoes. Such types are generally of good quality, readily identifiable either by their distinctive shapes or container markings and usually comprise a very small part of the total crop. Only tomatoes shipped outside the regulated areas would be regulated because of an increase in the U-pick type of harvest in Florida production areas close to urban areas and resulting difficulty in obtaining compliance with regulations. The minimum quantity exemption would permit persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This would reduce the problem of enforcement on small shipments of essentially noncommercial nature. The proposals concerning special pack shipments are intended to help handlers in the production areas compete on an equal basis with those outside the area by not requiring reinspection of previously inspected and certified tomatoes when repacked in consumer size packages.

Occasionally individual fruit of several new varieties, including Flora-Dade, may be elongated in shape. This characteristic may be exaggerated by adverse growing conditions. It is anticipated that handlers packing these varieties usually will be able to comply with all provisions of the regulation. However, if situations arise in which the incidence of tomatoes not of the normal globular shape makes sizing in accordance with present grade standards infeasible, the affected varieties could be exempted from the size requirements of the regulation.

This proposal is being published with less than a 60-day comment period because (1) shipments of the 1980–81 crop tomatoes grown in the production area are expected by, and the regulation should become effective on, the effective date herein to maximize benefits to producers; (2) information regarding the provisions of the recommendation by

the committee has been disseminated among growers and handlers of tomatoes in the production area; (3) a temporary regulation with identical requirements is effective for the period October 12 through November 30, 1980; and (4) compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

It is proposed that 7 CFR 966.319 be amended to read as follows:

§ 966.319 Handling regulation.

During the period December 1, 1980, through June 13, 1981, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) or are exempted by paragraphs (b) or (d).

(a) *Grade, size, container and inspection requirements.* (1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) Tomatoes shall be at least 2 3/32 inches in diameter and be sized in one or more of the following ranges of diameters. Measurement of diameters shall be in accordance with the methods prescribed in Paragraph 2851.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size classification	Inches	
	Minimum diameter	Maximum diameter
7x7	2 3/32	2 9/32
6x7	2 3/32	2 17/32
6x6	2 15/32	2 25/32
5x6 and larger	2 25/32	

(ii) Tomatoes of designated sizes may not be commingled unless they are over 2 15/32 inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are commingled the containers can be marked 6x6 & Lgr. or 5x6 & Lgr.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4½ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assessments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, experimental purposes, relief, charity or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, experimental purposes, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption.* (1) *For types.* The following types of tomatoes are exempt from this regulation: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) which are resorted, regraded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1), (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least 2 3/32 inches in diameter, and (iii) the container weight requirements of paragraph (a)(3).

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855–2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

(f) *Applicability to imports.* Under Section 8e of the act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least 2$^{3}/_{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

Dated: October 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-32634 Filed 10-17-80; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Issuance of Quarterly Report on Proposed Rules

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of quarterly report.

SUMMARY: The Nuclear Regulatory Commission has issued the July 31, 1980, Quarterly Report on Proposed Rules. The report, which is a quarterly summary of proposed rules that are pending final action, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESSES: A copy of this report, designated NRC Status of Proposed Rules—July 31, 1980, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Requests for single copies of the report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Office of Administration, Telephone 301-492-7086.

Dated at Bethesda, Maryland this 7th day of October 1980.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 80-32782 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-SO-63]

Proposed Designation of Transition Area, Lanett, Ala.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will designate the Lanett, Alabama, Transition Area, and will lower the base of controlled airspace in the vicinity of the Lanett Municipal Airport from 1200 to 700 feet AGL. A standard instrument approach procedure has been developed to the airport, and additional controlled airspace is required to protect Instrument Flight Rule (IFR) operations.

DATES: Comments must be received on or before: December 2, 1980.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before December 2, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with its rulemaking will be filed in the public, regulatory docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA—430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) to designate the Lanett, Alabama, 700-foot transition area. This action will provide controlled airspace protection for IFR operations at the Lanett Municipal Airport. A standard instrument approach procedure, VOR/DME-A, to the airport, utilizing the Columbus VORTAC, is proposed in conjunction with the designation of the transition area. If the proposed designation is acceptable, the airport operating status will be changed from VFR to IFR.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposed to amend subpart G, § 71.181 (45 FR 445), of Part 71 of the Federal Aviation Regulations (14 CFR 71) by adding the following:

Lanett, Ala.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lanett Municipal Airport (Lat. 32°48'43"N., Long. 85°13'47"W.); excluding that portion within the Columbus, Georgia, Transition Area.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operational current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on October 6, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-32338 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operator and Commodity Trading Advisor Regulations; Extension of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 4, 1980, the **Federal Register** published the Commission's proposed amendments to Part 4 of its regulations, which relates to the operations and activities of commodity pool operators and commodity trading advisors (45 FR 51600). The comment period thereon was to have expired on September 30, 1980.

In response to requests, on September 26, 1980 the Commission approved a fifteen-day extension of the comment period. See 45 FR 65257 (October 2, 1980). The comment period will now expire on October 15, 1980.

The Commission has received requests to further extend the comment period. Because the Commission wishes to be certain that all parties have an opportunity to finalize and submit their comments, it is allowing an additional thirty days for comment.

DATES: Accordingly, notice is hereby given that all comments on the Commission's proposed amendments to Part 4 of its regulations (45 FR 51600, August, 4, 1980) must be submitted by November 14, 1980.

FOR FURTHER INFORMATION CONTACT: Barbara R. Stern, Special Counsel, Front Office Audit Unit, Division of Trading and Markets (202) 254–8955.

Issued in Washington, D.C. on October 15, 1980.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80–32623 Filed 10–17–80; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–17213; File No. S7–851]

FOCUS Reporting System; Requirements for Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: On September 9, 1980, the Commission published for comment proposed amendments to Form X–17A–5, the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a–5 under the Securities Exchange Act of 1934. The Commission is extending the period for submitting comments until October 21, 1980.

DATE: Comments must be received on or before October 31, 1980.

ADDRESSES: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7–851 and will be available for inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272–2370; or William J. Atkinson, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, Washington, D.C. 20549 (202) 523–5493.

SUPPLEMENTARY INFORMATION: On September 9, 1980, the Commission published for comment Proposed Amendments to Part I, Part II, and Part IIA of Form X–17A–5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a–5 (17 CFR 240.17a–5) under the Securities Exchange Act of 1934. The proposed amendments would revise the Form so as to clarify certain financial and operational reporting requirements of securities brokers and dealers, to require more detailed reporting of some items, and to eliminate or consolidate other items. Rule 17a–5 would be amended to require the filing of two copies of the annual audited report at the Commission's headquarters' office instead of the single copy now required.

Notice of the request for comments was given by Securities Exchange Act Release No. 34–17138 (September 9, 1980) and by publication in the **Federal Register** (45 FR 62092 (September 18, 1980)). Interested persons were invited to submit written comments prior to October 15, 1980. It appears that the comment period may be inadequate for some interested members of the public to submit responsible comments on the proposed changes.

Accordingly, the Commission today has extended the period for the submission of written comments concerning the foregoing proposed amendments until October 31, 1980.

Dated: October 14, 1980.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–32610 Filed 10–17–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 416

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decision To Develop Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration (SSA) plans to publish proposed regulations to implement section 501 of Pub. L. 96–265 which will be effective with determinations of entitlement to social security benefits that SSA makes after June 30, 1981. This provision directs SSA to reduce a person's retroactive (as of the time of first payment) old-age, survivors or disability insurance (OASDI) benefits payable under title II of the Social Security Act if the person received supplemental security income (SSI) payments or State supplementary payments made by SSA under title XVI of the Act or under section 212 of Pub. L. 93–66 for the same period. The amount of the reduction will equal the amount of SSI or State supplementary payments that would not have been paid had the OASDI benefits been paid when they were regularly due rather than retroactively. The amounts of OASDI withheld will be used first to reimburse the States for any supplementary payments that would not have been made, and the balance of the OASDI benefits withheld will be used to reimburse the general fund in the U.S. Treasury for any SSI payments that would not have been made.

In the regulations, we will explain which social security benefits will be subject to the reduction, when the reduction will apply and what the amount of the reduction will be.

HHS has classified the proposed regulations as policy significant.

FOR FURTHER INFORMATION CONTACT: Mr. William Beil, 1108 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–Telephone (301) 594–2227.

Dated: September 26, 1980.

Appoved:

William J. Driver,

Commissioner of Social Security Administration.

[FR Doc. 80–32563 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–07–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251 and 252

[Notice No. 349; Ref: Notice No. 329, TD–ATF–62; Notice No. 347]

Implementing the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96–39)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice further extends the comment period for Notice No. 329, Implementing the Distilled Spirits Tax Revision Act of 1979 (Public Law 96–39), until December 1, 1980. Notice No. 329 was published in the **Federal Register** on December 11, 1979 (44 FR 71612).

DATE: The comment period for Notice No. 329 is extended until December 1, 1980.

ADDRESS: Comments should be submitted to the Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044 (Notice No. 329).

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan or E. J. Ference, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7626.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1979, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking cross-reference to temporary regulations (Notice No. 329) to obtain comments on the temporary regulations for implementation of the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96–39). The temporary regulations were published as Treasury Decision TD–ATF–62 in the **Federal Register** of December 11, 1979 (44 FR 71613). Those temporary regulations will remain in effect until superceded by final regulations. In the development of the final rule, ATF intends to—

(1) Eliminate unnecessary regulatory sections;

(2) Incorporate ATF rulings and industry circulars into the final regulations; and

(3) Rewrite the regulations into language that is more understantable.

Further comment from consumers and industry members will aid ATF in attaining these goals. ATF Notice No. 347 extended the comment period closing date for the notice and temporary regulations from September 11, 1980, to October 15, 1980 (45 FR 54087). Due to comments received, ATF is further extending the comment period closing date for the notice and temporary regulations from October 15, 1980, to December 1, 1980.

Disclosure of Comments

Copies of written comments or data are available for public inspection in the ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

ATF will not recognize any material in comments designated as confidential or as not to be disclosed; and any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Drafting Information

The principal author of this document is E. J. Ference of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

This notice is issued under the authority contained in 26 U.S.C. 7805 (68a Stat. 917).

Signed October 16, 1980.

G. R. Dickerson,

Director.

[FR Doc. 80–32651 Filed 10–17–80; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Partial Approval/Partial Disapproval of the Permanent Program Submission From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Proposed rule.

SUMMARY: On March 3, 1980, the State of West Virginia submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the state's intent and capability to administer and enforce the provisions of SMCRA and the permanent program regulations, 30 CFR Chapter VII. After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the West Virginia program only partially meets the requirements of SMCRA and the permanent program regulations. Accordingly, the Secretary of the Interior has approved in part and disapproved in part the West Virginia program. The State of West Virginia has sixty days within which to correct the deficiencies in its proposed permanent regulatory program. Until the state's permanent program or a Federal program is implemented in the state, the interim program will remain in effect in West Virginia.

DATE: West Virginia has until December 19, 1980 to submit for the Secretary's consideration revisions of the portions of the program which are not approved.

ADDRESSES: Copies of the West Virginia program and the administrative record on the West Virginia program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region I, 950 Kanawha Boulevard East, Charleston, West Virginia 25301, Telephone: (304) 342–8125.

West Virginia Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone (304) 348–2752.

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343–4728.

FOR FURTHER INFORMATION CONTACT:
Carl C. Close, Assistant Director, State and Federal Programs Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343–4225.

SUPPLEMENTARY INFORMATION:

Introduction

To assist understanding of the findings underlying the Secretary's decision, this notice is organized into nine major parts.

A. General Background on the Permanent Program,

B. General Background on the State Program Approval Process,

C. Elements Upon Which the West Virginia Program Is Being Evaluated for This Decision,

D. Background on the West Virginia Program Submission,

E. Secretary's Findings and Explanation,

F. Disposition of Comments,

G. Portions Approved/Portions Disapproved,

H. Effect of This Action,

I. Additional Findings.

Part A sets forth the statutory and regulatory framework under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the permanent program requirements of 30 CFR Chapter VII.

Part B sets forth the general statutory and regulatory requirements applicable to all states which wish to obtain primary jurisdiction to implement the permanent program on non-Indian and non-Federal lands within their borders.

Part C describes the elements upon which the Secretary's findings are based.

Part D summarizes the steps undertaken by West Virginia and officials of the Department of the Interior to arrive at the decision being announced today.

Part E contains the findings the Secretary has made and the reasons for each finding.

Part F summarizes the substantive public comments received during the review of the West Virginia program, and discusses the Secretary's disposition of them.

Part G describes the portions of the West Virginia program which are being approved and the portions which are being disapproved.

Part H summarizes the effect of the Secretary's findings on the current regulatory program in West Virginia.

Part I summarizes the Secretary's findings with regard to regulatory analysis and environmental impact of the decision.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated interim program rules 30 CFR Parts 710–724 and 795, 42 FR 6239 *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a Federal progam within the state. If a state program is approved, the state, rather than the Federal government, will be the primary regulator of activities subject to SMCRA.

The Federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 6, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302–75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25998–26001), May 20, 1980 (45 FR 33926–33927), June 10, 1980 (45 FR 39446–39447), and August 6, 1980 (45 FR 52306–52324). Portions of these regulations have been suspended pending further rulemaking [see 44 FR 67942 (November 27, 1979), 44 FR 77447–77455 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547–51550 (August 4, 1980)].

B. General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The Federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may approve the program, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable set by the Secretary, or disapprove the program in whole or in part. If the program is disapproved, the state may submit a revision of the program to correct the items that need to be changed to meet the requirements of SMCRA and the applicable Federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that state. The state may again request approval to assume primary jurisdiction after the Federal program has been implemented.

The procedures and timetable for the Secretary's review of state programs were initially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732. Section 732.11(d), as published on March 13, 1979, required that states make any modifications and additions by November 15, 1979. As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. 30 CFR 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in § 732.13 (45 FR 33927, May 20, 1980). The West Virginia program was submitted on March 3, 1980, and the 104th day following submission was June 15, 1980. Since June 15 was not a normal business day, the deadline was extended to June 16, 1980.

The Secretary's rules for the review of state programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a state should be afforded the maximum opportunity possible to

change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives the Secretary determined that the laws and rules upon which the state bases its program must be finalized at the beginning of the public comment period. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements which should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing up until the day before the Secretary's decision.

The 104 day rule afforded the state 3½ months following submission within which it could modify its laws and rules. In addition, after the Secretary's initial program decision, the states have additional opportunities to revise their laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the state at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

The Secretary, in reviewing state programs, is applying the criteria of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the West Virginia program the Secretary has followed the Federal rules as cited above under "General Background on the Permanent Program," and as affected by three recent decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

Because of the complex litigation, the court issued its initial decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some forty additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 [of SMCRA], those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary, when requested by a state, to allow the inclusion in the state program of provisions equivalent to remanded or suspended Federal provisions. Therefore, the Secretary is applying the following standards in the review of permanent program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those Federal regulations which have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded Federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove, to the extent required by the court's decision, all provisions of a state program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the Federal courts, and no Federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation. Nonetheless, state programs must have the authority to implement all permanent program provisions of SMCRA upon which the Secretary bases the suspended or remanded regulations.

4. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

5. Programs will be evaluated only as to those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be unconditionally approved, conditionally approved or disapproved, in whole or in part, in accordance with 30 CFR 732.13.

6. Upon promulgation of new Federal regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

The regulations suspended or remanded as the result of the Round I and Round II litigation were published in the **Federal Register** on July 7, 1980 (45 FR 45605).

To codify decisions on state programs, Federal programs, and other matters affecting individual states, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to West Virginia will be found at 30 CFR 948 once West Virginia's resubmission has been approved or finally disapproved after opportunity for resubmission, or if West Virginia does not resubmit its program within sixty days.

C. Elements Upon Which the West Virginia Program Is Being Evaluated for This Decision

In consideration of the matters discussed above under "General Background on State Program Approval Process," the Secretary hereby sets forth the elements of the proposed West Virginia program upon which the findings and decisions below are being made.

1. In accordance with the 104 day rule promulgated May 20, 1980 (30 CFR 732.11(d), 45 FR 33927), only those statutory provisions and rules that were fully enacted on or before June 16, 1980, are being considered as a basis for this decision.

The draft regulations submitted by West Virginia on June 16, 1980, do not meet the 104 day rule and, therefore, are not being considered in this Secretarial decision and are not part of the partially approved/partially disapproved program. The Director of OSM is informing West Virginia by separate letter of his preliminary review and analysis of these draft regulations to assist the State in its resubmission effort. Copies of the letter will be available for public review in the administrative record.

2. When these draft regulations are enacted and resubmitted, they may remedy certain aspects of the program

which are not approved by this decision. At that time the Secretary will reopen the public comment period in accordance with 30 CFR 732.13(f).

3. The balance of the program submittal received on March 3, 1980, as amended through June 16, 1980, has been evaluated.

D. Background on the West Virginia Program Submission

On March 3, 1980, the Secretary of Interior received a proposed regulatory program from the State of West Virginia. The program was submitted by the Director of the Department of Natural Resources (DNR) of the State of West Virginia; the agency which will be the primary regulatory authority under the West Virginia permanent program. Notice of receipt of the submission initiating the program review was published in the **Federal Register** on March 10, 1980 (45 FR 15190–15192) and in newspapers of general circulation within the State. The announcement contained information concerning public participation in the initial phase of the review process relating to the regional director's determination of whether the submission was complete.

On April 9, 1980, the regional director held a public meeting on the completeness of the program in Charleston, West Virginia. Written comments on completeness were accepted until April 11, 1980.

On April 28, 1980, the regional director published a notice in the **Federal Register** (45 FR 28164–28165) announcing that he had determined the program to be incomplete for the reasons contained in the notice.

A detailed listing of issues which appeared to represent deficiencies in the state program submittal was forwarded to the state by the Office of Surface Mining on May 23, 1980 (hereafter referred to as "the May 23 letter"). See Administrative Record No. WV 84.

On June 9–12, 1980, representatives of the West Virginia Department of Natural Resources met with representatives of OSM to discuss comments forwarded to the state in the May 23 letter.

On June 16, 1980, the state submitted various amendments and modifications to the program. A summary of these was published in the **Federal Register** on June 20, 1980 (45 FR 41654–41656). Notices placed in newspapers of general circulation within the state also set forth procedures for the hearings and announced the public comment period on the adequacy of the West Virginia program.

On July 11, 1980, public comment was invited on a tentative list of those parts of the West Virginia program which might have to be disapproved under the District Court's May 16 order mentioned above because they appeared to be based on suspended or remanded Federal regulations (45 FR 46820–46826).

On July 14 and 15, 1980, public hearings on the adequacy of the West Virginia submission were held by the regional director in Morgantown and Charleston, West Virginia, respectively. The public comment period closed on July 21, 1980.

On August 4, 1980, the regional director submitted to the Director of OSM his recommendation that the West Virginia program be approved in part and disapproved in part, together with copies of the transcript of the public hearings, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record.

On August 11, 1980, OSM published in the **Federal Register** (45 FR 53181) a notice of the availability of the views on the West Virginia program submitted by the Appalachian Regional Commission; the U.S. Department of Agriculture through the Soil Conservation Service and the Forest Service; the Department of Energy; the Bureau of Land Management, the Bureau of Mines, the Fish and Wildlife Service and the National Park Service of the U.S. Department of the Interior; the U.S. Department of Labor through the Mine Safety and Health Administration; the U.S. Environmental Protection Agency; and the U.S. Army Corps of Engineers.

The U.S. Fish and Wildlife Service stated on July 11, 1980, that they were withholding a Biological Opinion under Section 7 of the Endangered Species Act of 1973 (Administrative Record No. WV 158). Their Opinion will be issued when West Virginia submits additional required documentation.

On August 22, 1980, the Director of OSM asked West Virginia if there were any provisions in its program, based on suspended or remanded Federal rules, which it did not want the Secretary to affirmatively disapprove under the District Court Order. West Virginia responded that it did not want the Secretary to disapprove any of its provisions based on suspended or remanded Federal regulations. A discussion of these provisions will be included in the letter to West Virginia analyzing its draft regulations.

On September 9, 1980, the Director recommended to the Secretary that the West Virginia program be partially approved and partially disapproved. On September 8, 1980, the Secretary approved in part and disapproved in part the West Virginia program. The Secretary's decision was conveyed to West Virginia in a letter to Governor John D. Rockefeller IV on October 3, 1980. A copy of the letter to Governor Rockefeller is available for review in the West Virginia Administrative Record.

The West Virginia program consists of the formal submission of March 3, 1980 (Administrative Record No. WV 1) as amended on March 21, April 1, and June 16, 1980 (Administrative Record Nos. WV 37, 50 and 101).

Throughout the period beginning with the submission of the program, OSM has had frequent contact with the staff of the DNR. Discussions of the state program submission were held with various officials. Minutes or notes of the discussions were placed in the Administrative Record and made available for public review.

All contacts between officials or staffs of the Department of the Interior and the State of West Virginia were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

E. Secretary's Findings and Explanation

The findings in this section, and the explanation which accompanies the findings, are based on the West Virginia program submitted March 3, 1980 (and amended on March 21, April 1, and June 16, 1980), and public comments submitted in response thereto. The disposition of each public comment considered in the Secretary's decision is contained at Part F of this document.

A detailed list of the elements contained in West Virginia's complete program submittal is contained in Finding 29. The submittal contained among other things, an enacted law (West Virginia Surface Coal Mining and Reclamation Act), an incomplete set of draft regulations, a legal opinion of the West Virginia Attorney General (Attorney General's opinion), and a program narrative. As required by 30 CFR Part 731, the state submission also contained many other documents including a copy of regulations currently in effect (existing Chapter 20–6, Series VII (1978) Rules and Regulations). However, since the state indicated that the draft regulations would, when promulgated, constitute the regulatory basis of the West Virginia program, the existing regulations were not reviewed.

30 CFR 732.11(d), as clarified at 45 FR 33927 (May 20, 1980), provides that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day must be disapproved. The 104th day for West Virginia was June 16, 1980.

After review, it was determined that the draft regulations were incomplete.

Draft regulations covering significant portions of 30 CFR Chapter VII had not been written, rendering a meaningful review impracticable. In addition, since the regulations had not been enacted, the Secretary is unable to consider them for purposes of these findings.

During the public comment period, numerous public comments were received on the draft regulations. The Secretary has not addressed these comments in his findings or in Section F, Disposition of Comments. A response to these comments is being prepared by OSM for transmittal to the state for consideration during the resubmission process. The information will be placed in the Administrative Record and will be available for review or can be requested from the Region I OSM office at the address above.

The Secretary will review the state's disposition of OSM's response to these comments together with the enacted regulations, and will discuss these comments in the **Federal Register** announcement of the Secretary's decision on West Virginia's resubmission. The draft regulations are discussed further in Finding 7, below.

Since West Virginia's regulations were not fully enacted on June 16, 1980, they cannot form the basis for approval of any portion of the state's program. The findings and accompanying explanations are based only on enacted state law, the program narrative, and comments submitted by the public which do not deal with the draft regulations. *The primary focus of the explanation of these findings is significant differences between Federal law and state law as identified by the Department of the Interior and public commenters.*

No reference is made in the findings to aspects of the West Virginia program which are equivalent to the Federal requirements, or to deficiencies in state law where the deficiencies are expected to be corrected via the adoption and promulgation of regulations. Problems in existing law which are capable of correction by regulations have been discussed with the state on many occasions (See Part C of this document and the May 23 letter). In the event that appropriate corrections are not made in the enacted regulations when they are resubmitted, the Secretary will be unable to find these provisions consistent with Federal requirements. Throughout the review process the Secretary will continue to provide advice and assistance to the state.

Although the resolution of public comments which pertain to state statutes and program narrative is contained in Part F of this document, the disposition of these comments must also be considered part of the Secretary's findings. To the extent possible, public comments with which the Secretary agrees have been incorporated directly into the findings.

In accordance with Section 503(a) of SMCRA, the Secretary finds that West Virginia has, in part, the capability of carrying out the provisions of the SMCRA and meeting its purpose to the extent set forth in Findings 1 through 30, below.

Finding 1

The Secretary finds that Chapter 20, Article 6 of the Code of West Virginia, known as the West Virginia Surface Coal Mining and Reclamation Act (West Virginia SCMRA), and the West Virginia Administrative Procedures Act provide, in part, for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in West Virginia in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This finding is based on the requirements of Section 503(a)(1) of SMCRA [30 U.S.C. 1253(a)(1)]. Analysis of the issues underlying this finding is found in the discussion of Findings 12 through 30, below.

Finding 2

The Secretary finds that the West Virginia SMCRA provides, in part, sanctions for violations of West Virginia laws, regulations or conditions of permits concerning surface coal mining and reclamation operations and that these sanctions meet, in part, the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, revocation of permits, withholding of permits, and the issuance of cessation orders by the Department of Natural Resources or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA [30 U.S.C. 1253(a)(2)]. Analysis of the issues underlying this finding is found in the detailed discussion of Findings 18, 19, and 20, below.

Finding 3

The Secretary finds that the Department of Natural Resources has not demonstrated either that it has sufficient administrative and technical personnel or that it has sufficient funds to enable West Virginia to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding is based on the requirements of Section 503(a)(3) of SMCRA [30 U.S.C. 1253(a)(3)]. An analysis of the issues underlying this finding is found in the discussion of Finding 30, below.

Finding 4

The Secretary finds that West Virginia law provides, in part, for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within West Virginia.

This finding is based on the requirements of Section 503(a)(4) of SMCRA [30 U.S.C. 1253(a)(4)]. An analysis of the issues underlying this finding is found in the discussion of Finding 14, below.

Finding 5

The Secretary finds that West Virginia has established, in part, a process of the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA.

This finding is based on the requirements of Section 503(a)(5) of SMCRA [30 U.S.C. 1253(a)(5)]. An analysis of the issues underlying this finding is found in the discussion of Finding 21, below.

Finding 6

The Secretary finds that West Virginia has, in part, established for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to the proposed operations.

This finding is based on the requirements of Section 503(a)(6) of SMCRA [30 U.S.C. 1253(a)(c)]. An analysis of the issues underlying this finding is found in the discussions of Findings 13 and 14 below.

Finding 7

The Secretary finds that West Virginia does not have enacted regulations consistent with regulations issued pursuant to SMCRA.

This finding is based on the requirements of Sections 503(a)(7) of SMCRA [30 U.S.C. 1253(a)(7)].

As discussed previously, West Virginia proposes to develop new regulations to implement the West Virginia SCMRA. Portions of the regulations were drafted and submitted as part of the State's program on June 16, 1980. Review of the draft regulations indicates that additional changes will be needed to meet the requirements of Section 503(a)(7) of SMCRA. In addition, because of the 104 day rule, the

Secretary cannot approve any part of these rules until they have been enacted.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed program.

This finding is based on the requirements of Section 503(b)(1) of SMCRA [30 U.S.C. 1253(b)(1)] and is based on the information contained in a **Federal Register** notice published August 11, 1980 (45 FR 52181). This notice identified the Federal agencies from which comments were solicited, the agencies which responded and the offices of OSM and the West Virginia Department of Natural Resources at which copies of the comments were made available.

Finding 9

The Secretary has obtained the written concurrence of the Adminstrator of the Environmental Protection Agency with respect to those aspects of the West Virginia program being approved in part today which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175) and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq*).

This finding is based on the requirements of Section 503(b)(2) of SMCRA [30 U.S.C. 1253(b)(2)] and on the letter transmitted by the Administrator of EPA to the Secretary on September 5, 1980. A copy of this letter has been placed in the Administrative Record.

Finding 10

The Secretary, through the OSM Regional Director for Region I, held a public meeting in Charleston, West Virginia, on April 9, 1980, to discuss the completeness of the West Virginia program submission, and held public hearings in Morgantown and Charleston, West Virginia on July 14 and 15, 1980, respectively, to solicit public comments on the substance of the West Virginia program submission.

This finding is based on the requirements of Section 503(b)(3) of SMCRA [30 U.S.C. 1253(b)(3)].

Finding 11

The Secretary finds that the State of West Virginia has, in part, the legal authority, but has not demonstrated that it has sufficient qualified personnel necessity for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

This finding is based on the requirements of Section 503(b)(4) of SMCRA [30 U.S.C. 1253(b)(4)]. Analysis of the issues underlying this funding is found in the discussions of Findings 12 through 30, below.

Finding 12

The Secretary finds that the West Virginia program provides, in part, for West Virginia to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII.

This finding is made under the requirements of the first half of 30 CFR 732.15(a). Analysis of the issues underlying those findings is found throughout Part E of this **Federal Register** notice. Additional issues which arose during review of the program are as follows:

12.1 Section 20–6–3 of the West Virginia SCMRA, which contains definitions for the terms used in the law, is introduced by the phrase "As used in this article, unless used in a context that clearly requires a different meaning." The Secretary finds this acceptable based on the assumption that the definitions in the state law will be interpreted as having meanings consistent with SMCRA. The Federal oversight responsibilities will determine if the definitions in the state law are being subjected to conflicting interpretations which make them inconsistent with the definitions contained in SMCRA and 30 CFR Chapter VII.

12.2 Section 20–6–3(t) of the state law defines the term "surface mining." It includes a provision which exempts certain permanent facilities from the requirements of the law. The Secretary finds that this provision is inconsistent with the definition of "surface coal mining operations" contained in Section 701(28) of SMCRA.

Finding 13

The Secretary finds that the DNR has, in part, the authority under West Virginia laws to implement, administer, and enforce applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and the West Virginia program includes, in part, provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(1).

West Virginia incorporates provisions corresponding to Sections 515 and 516 of SMCRA and certain provisions of Subchapter K of 30 CFR Chapter VII in Sections 13 and 14 of Chapter 20, Article 6 of the Code of West Virginia. Section (g)(8) of the program narrative contains a discussion of West Virginia's administrative and enforcement procedures for performance standards. As stated previously, the draft regulations submitted by the state have not been enacted and have not been considered in these findings.

A discussion of significant issues raised during the review of the West Virginia statute and narrative for environmental performance standards follows.

13.1 West Virginia has failed to include the requirement to eliminate existing highwalls in premined areas when augering operations are conducted. During the initial review of the state's law, OSM expressed concern that the state's definition of approximate original contour [Section 20–6–3(e) of the West Virginia SCMRA] provided variances from AOC and highwall elimination. Upon further review and clarification by the Attorney General's opinion (page 36), the Secretary determined that the highwall elimination provision would be inconsistent with Federal law only as it related to auger mining on preexisting highwalls.

13.2 Section 515(b)(20) of SMCRA requires responsibility for successful revegetation for a period of five full years after the last year of augmented seeding. The state law [Section 20–6–13(b)(20)] requires this responsibility for five growing seasons. This provision of state law is approved. However, regulations enacted by the state must define the term "growing season" in such a manner as to provide revegetation responsibility consistent with the provisions of Section 515(b)(20).

13.3 Section 20–6–13(b)(21) of the state law allows the Director to approve the placement of spoil outside the permit area if environmental benefits will result. The Attorney General's opinion (page 40) states that regulations will limit this provision to situations where spoil will be placed on a project conducted under the state's Abandoned Mine Land program, used on another permitted operation, or on a project which would qualify as a Title IV project but for which insufficient funds are available.

This provision of state law, as presently written, is not consistent with Section 515(b)(22) of SMCRA because it would allow spoil placement without appropriate environmental protection standards. However, this provision will be acceptable if regulations are enacted which specify that the spoil is excess spoil not needed to restore the approximate original contour of the land and reclaim the permit area, and that (1) the spoil disposal area is under a permit and bond, or (2) spoil is placed on

abandoned mine lands under a contract for reclamation conducted under the state's Abandoned Mine Land program in accordance with Title IV of SMCRA.

13.4 Section 515(b)(25) of SMCRA provides for retention of an undisturbed natural barrier to prevent slides and erosion. The corresponding section of the West Virginia SCMRA, 20–6–13(b)(25), provides for the use of a constructed barrier in certain situations. OSM has previously advised the state that such an exception may be found acceptable only if technical and regulatory data, including material strength characteristics and engineering design principles, submitted with the state program proposal support a finding that the requirement is more stringent. Sufficient data were not contained in the program submission. Thus, the Secretary cannot find that the West Virginia provision is in accordance with SMCRA at this time. The Secretary will continue to work with West Virginia to develop additional support for this provision.

13.5 Section 20–6–13(d) of the West Virginia SCMRA allows a permittee to place spoil from a new mining operation on a limited specified area of the downslope. Section 515(d)(1) of SMCRA prohibits the placement of spoil on the downslope and requires placement of all excess spoil in accordance with Section 515(b)(22)(A)–(f). The Secretary finds that the West Virginia provision is not in accordance with these provisions of SMCRA.

13.6 In the May 23 letter, OSM expressed concern that the state had failed to provide for jurisdiction over acid mine drainage treatment sludge by deleting the phrase "or other liquid" from the requirement of Section 516(b)(5) of SMCRA which provides that operations must meet certain standards in relation to waste piles consisting of "mine wastes, tailings, coal processing wastes, or other liquid and solid wastes . . ." [See Section 20–6–14(b)(5) of the West Virginia SCMRA.] The Attorney General's opinion (page 43) states that their regulations would prohibit the placement or disposition of liquid non-coal processing wastes on coal processing waste piles. The provisions of Section 20–6–14(b)(5) of the West Virginia SCMRA are approved to the extent that enacted state regulations will provide jurisdiction over liquid wastes consistent with Section 516(b)(5) of SMCRA.

13.7 West Virginia Sections 20–6–13(b)(10)(B) and 20–6–14(b)(9)(B) both provide that additional contributions of suspended solids would only be controlled by "applicable state law." Both of these provisions are found inconsistent with Section 515(b)(10)(B)(i) of SMCRA which requires that such contributions cannot be in excess of requirements set by "applicable state or Federal law."

13.8 West Virginia has added "woodland" to the list of alternative postmining land uses (Section 20–6–13(c)(3) of the West Virginia SCMRA) for mountaintop removal operations authorized by SMCRA. Section 515(c)(3) of SMCRA provides five alternative postmining land uses as acceptable bases for variance to the general requirement to return to approximate original contour (AOC). The preamble to the Permanent Regulatory Program for 30 CFR 824.11 states that forestry and silviculture would not be acceptable under the criteria of SMCRA because flat or gently rolling terrain is not necessary for such postmining land uses. If West Virginia desires to pursue the woodlands postmining land use, it must submit information demonstrating the need for flat or rolling terrain for woodlands and the basis for including the woodland use within one of the five statutory uses. The Secretary cannot approve this provision at this time.

13.9 Sections 515(b)(10) and (c)(3) of SMCRA require that various structures be designed and/or certified by a registered professional engineer. The West Virginia law allows these designs and/or certifications to be submitted by a person approved by the Director. The Attorney General's opinion (page 17) states that any person seeking the Director's approval must pass an examination which tests the person's competence to prepare permit applications. The state contends that this provision is more stringent than Federal law in that even registered professional engineers must pass the examination. OSM has evaluated sample copies of the examination used by the state and found that the examination tests only the applicant's knowledge of West Virginia regulatory requirements and standards. The requirements for a registered professional engineer included in SMCRA were intended to assure a high level of professional knowledge and skills with regard to engineering principles and practices. The application of such knowledge and skills to the unique characteristics of each mining site is essential to assure that the degree of protection of the environment and the public intended by the Congress is achieved. The Secretary finds the state's requirement is less stringent than the Federal requirement.

13.10 Section 516(b)(12) of SMCRA prohibits up-dip mining in acid or iron-producing coal seams. Section 20–6–14(b)(12) of the West Virginia law grants the Director discretion ". . . in consideration of the relevant safety and environmental factors" to approve up-dip mining. The Secretary finds this authorization of discretion to the Director is inconsistent with SMCRA which requires all underground mines to be developed to prevent gravity discharge.

13.11 Section 20–6–3(e) of the state law defines the term "approximate original contour" consistent with the definition found in Section 701(2) of SMCRA except that the state definition allows for "minor deviations." The state program does not define or describe the limits of "minor deviations" which might be allowed under this exception. West Virginia should establish in its resubmission that the definition will not result in approximate original contour or highwall elimination requirements less stringent than SMCRA. Without such information, the Secretary cannot find that the state provision is consistent with SMCRA.

13.12 The state definition of "adequate treatment" [Section 20–6–3(a) of the West Virginia SCMRA] states that treated water shall not lower the water quality standards established for the river, stream or drainway. Since lowering of water quality standards is an administrative process and not a function of a mining operation, the meaning of this provision is uncertain. The state program must require, at a minimum, compliance with applicable effluent standards and water quality standards for receiving streams established under the Clean Water Act, as amended, in accordance with Section 515(b)(10) of SMCRA. Until the definition is clarified to indicate that the quality of the water will not be degraded below applicable water quality standards the Secretary is not able to approve it.

13.13 In the May 23 letter, OSM expressed concern that the definition of "affected area" contained in the state law at Section 20–6–3(b) may preclude jurisdiction over ground water as provided by 30 CFR 701.5. The Secretary cannot approve this portion of the program until the definition is clarified jurisdiction over ground water.

13.14 The definition of "disturbed area" contained in Section 20–6–3(j) of the state law is inconsistent with 30 CFR 701.5 in that the state's definition does not include the areas upon which topsoil, spoil, coal processing waste, underground development waste or non-coal waste are placed. In addition the states definition does not specify that the area is classified as disturbed until reclamation is complete and the bond is

released. The Attorney General's opinion (page 12) states that regulations will clarify the state definition to include those areas noted above. However, since these regulations have not been adopted, the Secretary cannot find the section of the state law consistent with SMCRA at this time.

13.15 Section 711 of SMCRA provides for the use of experimental practices to allow a post-mining land use for industrial, commercial, residential or public use. The experimental practice must be authorized by the regulatory authority and approved by the Secretary. Section 20–6–33 of the West Virginia SCMRA includes agriculture as an experimental post-mining land use but fails to require prior approval of the Secretary for the experimental practices. The Secretary finds that the failure to provide for approval is inconsistent with SMCRA. The state may correct this deficiency by requiring, preferably through a regulation, that all proposed experimental practices will receive approval of the Secretary, as mandated by SMCRA, prior to their initiation. Experimental practices involving agriculture as a post-mining land use will be considered by the Secretary in the event such use is proposed.

13.16 The discussion contained in Section (g)(6) of the state's program narrative fails to demonstrate that the state has the capability for administering and enforcing the permanent program peformance standards. This failure is based primarily on the lack of an adequate discussion on the number, qualifications, and distribution of the pemanent program staff and the failure to demonstrate adequately that the state's permitting system will be sufficient. Further discussion concerning these issues can be found in Findings 14 and 30 below.

Finding 14

The Secretary finds that the Department of Natural Resources has the authority under West Virginia laws and regulations and the West Virginia program includes, in part, provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits). This finding is made under the requirements of 30 CFR 732.15(b)(2).

West Virginia incorporates provisions corresponding to Sections 506, 507, 508, 510, 511, and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Chapter 20, Article 6, Sections 8, 9, 10, 11, and 18 of the Code of West Virginia. Section (g)(1) of the state's program narrative contains discussions of the systems for (1) issuing permits, (2) incidental mining permits, (3) surface mining, underground mining and other operations permits, (4) pemit revisions, (5) permit renewals and (6) transfer, assignment, and/or sale of permit rights.

Discussion of significant issues raised during the review of the West Virginia permit provisions follows.

14.1 Section 507(b)(3) of SMCRA requires that a permit applicant submit a statement of any current or previous surface coal mining permits held by the applicant in the United States with the permit identification and each pending application. Section 20–6–10(a)(3) of the West Virginia law does not require the identification of previous permits held in West Virginia and current and previous permits held outside the State of West Virginia. The lack of these requirements inhibits the state's ability to gather adequate background data on the permit applicant and deprives the public of information necessary for effective participation in the permitting process. The Secretary finds that this omission is inconsistent with Section 507(b)(3) of SMCRA.

14.2 Section 507(b)(5) of SMCRA requires that a permit applicant submit a statement of suspended or revoked mining permits for the previous five year period. State law [Section 20–6–10(a)(5)] has limited this requirement to "permanently" suspended permits which are, in effect, revoked permits. The Secretary finds that omission of suspended mining permits results in a requirement that is less stringent than SMCRA.

14.3 Section 510(c) of SMCRA requires that the applicant shall file with his permit application a schedule listing any and all notices of violations pertaining to air or water environmental protection incurred by the applicant on any surface coal mining operation within the three-year period prior to the date of application. Section 20–6–10(f) of the state law requires this schedule only for bond forfeitures, permit revocations, cessation orders or permanent suspension orders. It does not require that other types of violations be reported. In addition, state Section 20–6–18(c) allows the Director to consider only violations of West Virginia laws during the decision making process on permit applications, a limitation not contained in Section 510 of SMCRA. The Attorney General's opinion (page 14) provides a discussion as to why the information required by Section 510(c) of SMCRA is not necessary. This explanation does not override the Congressional mandate that the information required by Section 510(c) be submitted. For this reason, the Secretary finds that the West Virginia requirements are less stringent than those of SMCRA.

14.4 Section 20–6–31 of the state law provides for issuance of special permits for removal of coal incidental to the development of land. This provision allows the Director to authorize mining associated with land development on areas up to five acres. Reduced permitting and performance standard requirements apply to those operations. The Federal law contains no comparable provision.

The Attorney General's opinion (page 57) contends that the state process is more stringent than Federal law since it applies to all mining operations while the Federal law applies only to operations of more than two acres. The Secretary has determined that at this time the West Virginia provision is less stringent than SMCRA to the extent it does not subject operations over two acres to all requirements. Less stringent requirements may be applied by the state to operations of two acres or less since Section 528 of SMCRA exempts areas of two acres or less from all of the Federal requirements. Any operation of more than two acres must be subject to all applicable Federal requirements. The Secretary, however, specifically requests public comment on West Virginia's proposal, particularly in light of the possiblity that the state may exempt operations of less than two acres as the trade-off from more intensive regulation of sites of two to five acres.

14.5 The May 23, 1980, letter from OSM to the Department of Natural Resources detailed numerous deficiencies in the state's permitting system described in Section (g)(1) of the program narrative. Since the state has indicated that this portion of the narrative will be revised, the Secretary will not attempt to discuss the individual elements of the May 23 letter. The resubmisssion of the program to be made following publication of this notice will be reviewed to determine if these deficiencies have been corrected. In addition, much of the information to be required of permit applicants by the State will be contained on the various permit application forms which are currently being developed. These forms, which are considered by the state to be part of their regulations as required by Section 20–6–7(b)(1) of the West Virginia SMCRA, may address many of the issues raised in the May 23 letter.

Finding 15

The Secretary finds that the Department of Natural Resources has, in part, the authority to regulate coal

exploration consistent with 30 CFR Parts 776 and 815 (coal exploration) and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the West Virginia program includes, in part, provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(3).

The West Virginia program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Chapter 20, Article 6, Section 8 of the Code of West Virginia. Section (g)(1) of the program narrative includes discussion of the systems for exploration, review, and approval. In the West Virginia law and program, exploration is referred to as prospecting.

Section (g)(1) of the state's program narrative discusses state procedures for approval or denial of prospecting permits. The procedures contained in the program submission, however, were prepared prior to the passage of the state's enacted legislation. The procedures described within the program narrative do not agree with the requirements Section 20–6–8 of state law. The state's description should be revised to reflect the requirements of state law.

Finding 16

The Secretary finds that the Department of Natural Resources has the authority under West Virginia law but that the West Virginia program does not include provisions to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under the requirements of 30 CFR 732.15(b)(4).

Provisions corresponding to 30 CFR Part 707 (exemption for coal extraction incidental to government-financed highway and other construction) are found in Chapter 30, Article 6, Section 29(3) of the West Virginia Code. However, no state regulations or program narrative implementing this provision were contained in the state program submission. Until these regulations are included, no decision can be made on the ability of the state to implement this requirement.

Finding 17

The Secretary finds that the Department of Natural Resources has the authority and the West Virginia program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within West Virginia consistent, in part, with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement). This finding is made under the requirements of 30 CFR 731.15(b)(5). Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring are found in Chapter 20, Article 6, Section 15 of the Code of West Virginia. No state regulations or program narrative specifying inspection and monitoring procedures were included with the state program submission.

Section 20–6–15(g) of the state statute provides that the permittee, his authorized agents, employees and the inspector shall not be liable for any injury sustained by a citizen accompanying the inspector except for willful and deliberate acts. Section 521(a)(1) of SMCRA grants authority to citizens to accompany an inspector during an inspection resulting from the citizen's complaint. The state provision could operate as a constraint on citizens exercising this right. The Secretary finds the liability provisions of Section 20–6–15(g) of the West Virginia SCMRA inconsistent with SMCRA.

Finding 18

The Secretary finds that the Department of Natural Resources has the authority under West Virginia law and the West Virginia program includes provisions to implement, administer, and enforce a system of liability insurance or other equivalent guarantees consistent with the requirements of Sections 509 and 519 of SMCRA and 30 CFR Chapter VI, Subchapter J (performance bonds). The Secretary cannot find at this time that the Department of Natural Resources has the authority to implement administer, and enforce a system of performance bonds consistent with these sections. This finding is made under the requirements of 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA and to Subchapter J of 30 CFR Chapter VII are incorporated in Chapter 20, Article 6, Sections 12 and 26 of the Code of West Virginia. Section (g)(3) of the state program narrative contains descriptions of the state's process for implementing, administering, and enforcing a system of performance bonds and liability insurance or other equivalent guarantees.

Discussion of significant issues raised in the review of West Virginia's bonding and insurance provisions follows.

18.1 West Virginia has proposed a bonding system which is an alternative to the Federal requirement that each operator provide a reclamation bond sufficient to cover the full cost of reclamation by the state regulatory authority if the operator fails to complete reclamation. The state proposes, in Section 20–6–12(a) of the West Virginia SCMRA, to bond each operation at the rate of $1,000 per acre, with a minimum bond of $10,000. In order to supplement the amount of the bond provided by individual operators, the state proposes to establish a special reclamation fund provided by taxes levied on the amount of coal produced by each operator. The amount of money in the fund could fluctuate between one and two million dollars. The taxes would be levied at any time the fund dropped below the minimum amount established (one million dollars) and would continue until the end of the quarter in which the fund was replenished to the two million dollar level. Monies contained in the fund would be used for reclamation of areas where the bonds provided by individual operators were not sufficient to cover the actual cost of reclamation.

The Attorney General's opinion (page 30–34) contends that the statutory bond amount of $1,000 per acre, together with the special reclamation fund and various other state requirements such as stringent enforcement of contemporaneous reclamation requirements, the prohibition of future mining by any person who has a permit revoked or a bond forfeited, and the requirement that the entire bond be forfeited notwithstanding the cost of reclamation, if more stringent than the Section 509 of SMCRA.

The Secretary finds that the alternative bonding approach as proposed seems on its face to be an innovative approach to the requirements of SMCRA. Section 509(c) allows the Secretary to approve an alternative system that will achieve the objectives and purpose of the bonding program. This provision requires financial assurances equivalent to other bonding methods allowed by SMCRA (i.e., surety bonds, cash, collateral, letters of credit). SMCRA specifically requires the value of securities to be equal to or greater than the amount of bond required for the bonded area. Therefore, each system considered for approval must demonstrate bond equivalence of sufficient coverage of each permit area to allow a regulatory authority to complete all the reclamation plans. Such a demonstration should also relate to an operator's economic incentive to perform and avoid default. The Secretary cannot find on the basis of the

program narrative explanation and other data provided by the state thus far that the alternative system will make sufficient funds available to the state to cover, in all cases where individual operators fail to complete reclamation, the total cost to the state of such reclamation. Upon resubmission, the state should, at a minimum, include regulatory provisions, additional explanation, statistics and other data which will support its contention that funds available to the state will in all cases be sufficient to cover the cost if individual operators fail to complete reclamation.

18.2 Section 20–6–12(f) of the state law prohibits the Director from releasing that portion of the bond designated to assure compliance with the backfilling and grading requirements until all acid bearing or acid producing spoil has been treated so that any untreated drainage or discharge is not lower than the water quality of the receiving stream. Section 509(a) of the SMCRA requires that the discharge not violate applicable state or Federal law. The state's requirement relating to the water quality of the receiving stream could, in some cases, violate state or Federal law. Therefore, the Secretary finds that the state requirement is less stringent than the Federal requirement.

18.3 Section 20–6–12(c)(2) of the state law contains a provision allowing the Reclamation Commission to approve alternative bonding systems. This provision is consistent with SMCRA Section 509(c) to the extent that it would allow an alternative system to be implemented if approved by the Secretary. The Secretary finds this provision acceptable because he interprets this provision to require the state to obtain Secretarial approval of alternative systems before they are implemented.

18.4 Section (g)(3) of the state's program narrative discussed only bond release and forfeiture. This discussion is adequate. However, no information is provided on the state procedures for filing bonds or insurance policies. This information is needed in order for the Secretary to make a determination of acceptability of the West Virginia bonding and insurance procedures.

Finding 19

The Secretary finds that the Department of Natural Resources has, in part, the authority and the West Virginia program provides, in part, for civil and criminal sanctions for violations of West Virginia law, regulations and conditions of permits and exploration approvals including civil and criminal penalties consistent with Section 518 of SMCRA (penalties) including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(7). Provisions corresponding to Section 518 of SMCRA and to 30 CFR 845 are incorporated, in part, in Chapter 20, Article 6, Section 17 of the Code of West Virginia.

On February 26, 1980, the U.S. District Court for the District of Columbia issued its first round decision in the litigation over the permanent program regulations. *In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144. In that decision, the court held that the Secretary could not require a point system for assessing civil penalties. On May 16, 1980, in its second round decision in this litigation, the court answered the Secretary's request for clarification regarding the round one decision remanding the penalty point system. The court stated that the Secretary may not require the states to develop a system to assess penalties at least as stringent as those imposed under the civil penalty system set forth in the Federal regulations. The Secretary has interpreted the court's decision concerning penalty systems in such a way that the states need only develop a penalty system incorporating: (1) the four criteria in Section 518(a) of SMCRA, (2) the procedural requirements of 30 CFR 845.17 through 845.20, (3) the requirement of 30 CFR 845.12 that all cessation orders must be assessed, and (4) the requirement of 30 CFR 845.15(b) that a minimum of $750 per day be assessed for all cessation orders issued for failure to abate a violation. Based on Section 518 of the Act and 30 CFR 845, as interpreted by the District Court's rulings, and the specific findings below, the Secretary finds West Virginia's system for assessing and collecting civil penalties unacceptable as presently structured and explained.

19.1 Section 518(a) of the Federal law provides for a maximum civil penalty of $5,000 for each violation. In the May 23 letter, OSM expressed concern that state law, Section 20–6–17(c), did not indicate the maximum panalty which could be assessed for each violation. West Virginia clarified in its Attorney General's opinion (page 23) that Section 20–6–17(c) of the state law authorizes a maximum penalty of $5,000 for *each* violation. This clarification resolved the concern raised by OSM.

Section 518(a) requires that a mandatory civil penalty of seven hundred fifty dollars per day be assessed if a cessation order is issued. Section 20–6–17(a) of the West Virginia law provides, "If a violation is not abated within the time specified or any expension (sic) thereof, or any cessation order is issued, a mandatory civil penalty of not less than one thousand dollars per day per violation shall be assessed . . ." This is more stringent than the Federal law. The state section also contains a proviso that, "if a cessation order is released or expires within twenty-four hours after issuance no mandatory civil penalty shall be assessed." The Attorney General's opinion (page 25) states that this provision, "is a carrot for prompt effective efforts to deal with a problem and is a necessary adjunct to due process since if the hearing called for within twenty-four hours does not occur it is inappropriate to mandatorily fine someone." While the Secretary does not agree that due process requires a hearing in 24 hours, since both the West Virginia law and SMCRA contain similar provisions promoting the early abatement of a violation, Section 20–6–17(a) of the West Virginia SCMRA is acceptable.

19.2 Section 518 provides for prompt administrative assessment of civil penalties after issuance of notices of violations and cessation orders. The Secretary finds that (1) the proposed West Virginia program does not adequately describe the procedures for proposing assessments of civil penalties and informing operators of the amount of those proposed assessments prior to an assessment hearing; (2) the proposed West Virginia program does not include regulations in accordance with Section 518(c) and consistent with 43 CFR Part 4 and 30 CFR 845.17–845.20, regarding administrative assessment of civil penalties; (3) the proposed use of magistrate court proceedings by West Virginia to impose civil penalties in inconsistent with Section 518 of SMCRA and (4) the West Virginia program does not provide for prepayment of civil penalties into an escrow account, as required by Section 518(c) of SMCRA.

Section 518(c) of SMCRA requires the Secretary to propose an assessment and to inform the operator of that amount within thirty days of the issuance of a notice or order. Furthermore, under Section 518(c), the operator may challenge the amount of that proposed assessment before the Secretary in a formal administrative hearing. These procedures provide notification to the operator of the proposed amount of the penalty, and provide an opportunity for the operator to pay the penalty without the necessity of a formal hearing. To the extent that the West Virginia program fails to incorporate similar procedures for an assessment proposal, it is inconsistent with SMCRA.

Second, the preamble to the permanent regulatory program, at 44 FR 15296 (March 13, 1979), discusses five considerations in determining whether a judicial system for the proposal and assessment of civil penalties is the same or similar as the administrative system under Section 518 of SMCRA. The Secretary has reviewed the information in the administrative record, and has determined that the procedure proposed by West Virginia for judicial assessment of civil penalties does not adequately address these considerations; and hence, as it stands and is presently explained, will not satisfy the requirements of the Act and regulations pursuant to 30 CFR 732.15 (b)(7) and (c). Additionally, the West Virginia magistrate court system does not appear to include citizen participation requirements consistent with 43 CFR Part 4.

Third, SMCRA provides that, after a public hearing of record, findings of fact and a written decision shall be entered. Since West Virginia does not provide for administrative review of proposed penalties it has no such provisions. Even if West Virginia's use of the magistrates to handle civil penalties for the Director was otherwise deemed acceptable, this requirement would not appear to be satisfied. The state law contains no provisions requiring magistrate proceedings to be of record and preparation of findings of fact or written decisions. In addition, W. Va. Code Ann. 50–5–8 provides that any party in magistrate court may demand a trial by jury. Utilization of juries to determine civil penalties appears, on its face, to interfere with the efficient processing of civil penalties, and is not a procedure that is the same or similar to the procedures set forth in Section 518 of SMCRA.

Fourth, West Virginia law does not contain an escrow provision as required by Section 518(c) of Federal law. Under 518(c), Congress stated explicitly that failure to contest the violation, or failure to prepay the penalty, results in a waiver of all legal rights to contest the penalty. Under state law, there is no requirement that an operator challenging a civil penalty assessment prepay the proposed amount at any point during the process of administrative or judicial review.

19.3 Under the proposed West Virginia system the first hearing on a civil penalty would be before the Magistrate Court and would be a full fact hearing. The Attorney General's opinion (page 27) states that W. Va. Code Ann. Section 50–5–12 provides that, after judgment in the magistrate court, any party may appeal to the circuit court of the county and such appeal shall be *de novo*. The Secretary cannot find these provisions consistent with Section 525 of SMCRA. For further discussion of this issue, see Finding 27.

19.4 Federal Section 518(h) provides that, "any operator who fails to correct a violation . . . within the period permitted for its correction . . . shall be assessed a civil penalty of not less than $750 for each day during which such failure or violation continues." Section 20–6–17(a) of the state law provides that, "assessment of civil penalties under this subsection shall continue until corrective steps have been initiated by the operator to the satisfaction of the surface mining reclamation inspector." The state law is less strigent than the Federal law because it mandates an assessment only until corrective steps have begun rather than until the violation is corrected.

19.5 Section 20–6–17(d) of the West Virginia SMCRA provides that civil penalties may be assessed and collected by the magistrate courts. Rule 14.1(b) of the Rules of Civil Procedure for the Magistrate Court of West Virginia provides for a hearing if the defendant alleges that the allegations are not true or that the relief requested in not appropriate. This would be consistent with the hearing requirement of Section 518(b) of SMCRA. However, Section 20–6–24(a) of the state law provides that an operator may also appeal a notice or order to the Reclamation Board of Review. This procedure seems to provide the operator with two independent avenues for taking an appeal which could result in unequal enforcement and two separate appeals being taken with differing results. Possible inconsistencies between these two appeal processes might be worked out by procedural rules of the Reclamation Board of Review or application of various legal principles such as "election of remedies" or collateral estoppel. The state should address these questions in the resubmission.

Finding 20

The Secretary finds that the Department of Natural Resources has, in part, the authority under West Virginia law to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders consistent with Section 521 of SMCRA (enforcement) and with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in Chapter 20, Article 6, Sections 16 and 17 of the Code of West Virginia. Discussion of significant issues raised in the review of West Virginia's provisions for violation notices and orders follows.

20.1 Section 20–6–16(a) of the West Virginia law grants discretionary authority for an inspector to issue a cessation order in situations of imminent danger. Section 521(a)(2) of SMCRA mandates that such orders be issued. The Secretary finds that the state law is inconsistent with the requirements of Section 521(a)(2) to the extent that such authority is discretionary.

20.2 Section 20–6–17(a) of the state law requires the issuance of a cessation order for operations or portions thereof which are in violation following the opportunity for abatement. This provision is consistent with Section 521(a)(3) of the Federal law. However, the state provides that if the operator affirmatively demonstrates compliance is unattainable due to conditions totally beyond the control of the operator, cessation is not mandatory. This is inconsistent with Section 521(a)(3) which provides for *immediate* cessation and a maximum time limit of 90 days for abatement of the violation.

The Attorney General's opinion (page 48) states that, in certain instances, the Federal law imposes consequences on operators who are unable to meet mandated abatement times for reasons totally beyond their control. However, the Secretary must abide by the Congressionally mandated time limit of 90 days established in Section 521(a)(3). For this reason, the Secretary cannot approve the state provision to the extent that cessation is not mandatory.

20.3 Section 20–6–17(a) of the West Virginia SCMRA provides that if any of the requirements of the law and regulations or permit conditions have not been complied with, the Director "may" cause a notice of violation to be served upon the operator. The Secretary finds that this provision is less stringent than the corresponding requirement of Federal Section 521(a)(3) which requires mandatory issuance of a notice of violation when "the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act; but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. . . ."

The Attorney General's opinion (page 22) attempts to justify the state provision by comparing it to the language contained in Section 517(e) of SCMRA. While the state provision may be consistent with the general language of 517(e), the Secretary finds that it does not comply with the more specific requirements of Section 521(a)(3). As required by Section 521(d), the Secretary cannot approve any state program which contains sanctions less stringent than those of Section 521.

20.4 Section 521(a)(3) of the Federal law provides that a cessation order shall remain in effect until the Secretary determines that the violation has been abated. Section 20–6–17(a) of the state law has no comparable provision. In addition, this section of the state law provides for a mandatory daily civil penalty only until corrective steps have been initiated. The Secretary finds these provisions inconsistent with the Federal requirements. Refer also to Finding 19.4.

20.5 Section 20–6–16(a) of the West Virginia law mandates that a cessation order shall expire 24 hours after the order becomes effective unless an informal conference by a reclamation supervisor is held at or near the mine site. Section 521(a)(5) of SMCRA states that a cessation order shall expire within 30 days unless a public hearing is held at or near the mine site. The Secretary has found (See Finding 30) that the state has not adequately demonstrated that it can conduct the required hearings in a timely manner. To the extent additional information concerning staffing adequacy does not clearly establish that the state will be able to conduct the hearings within 24 hours, the provisions cannot be approved.

20.6 Section (g)(4) of the state program narrative fails to address the procedures for issuance of orders and notices in accordance with 30 CFR 731.14(g)(4). The state must develop a narrative describing its procedures so that the Secretary can determine the adequacy of the State system.

20.7 State Section 20–6–16(e) states that an inspector shall be readily available to vacate a cessation order upon abatement of the violation. The Secretary is concerned that this section would allow and possibly require, the vacation rather than termination of such orders. The Secretary, therefore, requires further explanation of this section to show that properly issued cessation orders will not be improperly vacated.

20.8 State Section 20–6–17(a) omits the language in Section 521(a)(3) of SMCRA which states that in the issued cessation order, "the Secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order." The Secretary finds the state provision inconsistent with SMCRA to the extent that the Federal requirement is omitted.

Finding 21

The Secretary finds that the Department of Natural Resources has the authority and the West Virginia program contains provisions to designate areas unsuitable for surface coal mining consistent, in part, with 30 CFR Chapter VII, Subchapter F (designations of areas unsuitable for mining). This finding is made under the requirements of 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in Chapter 20, Article 6, Section 22, of the Code of West Virginia. Section (g)(11) of the West Virginia program narrative describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system. A discussion of significant issues raised in the review of West Virginia's provisions for unsuitability designations follows.

21.1 Section 20–6–22(d)(1) of the state law authorizes the Director to grant variances to the prohibitions contained in Section 522(e)(1) of SMCRA. Since the Federal law provides no variances to these prohibitions, the Secretary finds this provision is inconsistent with Section 522(e)(1) of SMCRA.

21.2 The state has proposed to use the West Virginia Heritage Trust Program to satisfy the requirements of a data base and inventory system under Section 522(a)(4)(B) of SMCRA. Since the Heritage Trust Program does not contain all the information necessary for a data base and inventory system, the state should include a general work plan which sets forth a methodology for developing the Trust Program to provide the required information. The discussion should also indicate that the state will identify local, state, and federal sources of information that will be necessary for the process.

Finding 22

The Secretary finds that the Department of Natural Resources has the authority under West Virginia laws and the West Virginia program contains, in part, provisions to provide for public participation in the development, revision and enforcement of West Virginia's laws and regulations and the West Virginia program consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements in SCMRA and in 30 CFR Chapter VII are included throughout West Virginia statutes and rules submitted as part of the program. Section (g)(14) of the program narrative describes the procedures for insuring that adequate public participation is provided throughout the development and functioning of the state program.

Discussion of significant issues raised in the review of West Virginia's public participation provisions follows:

22.1 The Secretary finds that Section 20–6–24(b) of the State law is inconsistent with 43 CFR Part 4 to the extent that it provides for a determination of timeliness of intervention on a case-by-case basis. 43 CFR 4.1110(a) allows for intervention at any stage in an enforcement proceeding.

22.2 Section (g)(14) of the state program narrative provides a listing of the areas of public participation. The Secretary finds that this listing is not adequate to determine that the state has the capability of providing for public participation throughout the program because it mentions the subject areas but does not actually describe what is authorized. The listing should provide specific descriptions of the avenues of public participation in each area listed.

While preparing this part of the program narrative, the state may refer to the preamble of the OSM permanent regulations (44 FR 14965, March 13, 1979), which summarizes ten areas in which public participation provisions are required. The state program should address these ten areas at a minimum.

22.3 Section 20–6–24(f) of the state law provides that, with respect to appeals to the Reclamation Board of Review, all fees and mileage expenses incurred and the expense of preparing the record at the request of the appellant shall be paid by the appellant. In the May 23, letter, OSM expressed concern that this provision could result in an appellant bearing all costs of an appeal. The Attorney General's opinion (page 54) states that this provision means only that each party is responsible for its own expenses. However, this section and Section 20–6–25(c) of the state law require the appellant to bear the cost of preparing and transcribing the record. Section 29A–5–1(f) of the Code of West Virginia appears to place the cost of preparing the transcript upon the agency.

The Secretary finds the West Virginia procedures consistent with SMCRA only to the extent that appellants would not

be required to bear the cost of preparing the record of proceeding.

Finding 23

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the West Virginia program includes, in part, provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the West Virginia Department of Natural Resources consistent with 30 CFR Part 705 (restrictions on financial interests of state employees). This finding is made under the requirements of 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA are incorporated in Chapter 20, Article 6, Section 40 of the Code of West Virginia.

Only one significant issue was raised in the review of West Virginia's conflict of interest provisions. A discussion of the issue follows.

Section 517(g) of SMCRA requires that no employee of the state regulatory authority shall have a direct or indirect financial interest in any coal mining operation. The West Virginia Reclamation Commission, which consists of four members, three from the DNR and the fourth from the West Virginia Department of Mines, would be subject to this federal requirement.

However, Section 20–6–40(a) of the West Virginia law fails to subject the Reclamation Commission to the conflict of interest requirements. Three members of the Commission are subject to the conflict provisions, through their employment with the Department of Natural Resources. The only member not subject to the requirements is the Director of the Department of Mines, who is subject to a similar provision contained in Section 22–1–5 of the Code of West Virginia. Although this provision is similar, it does not subject the Director of the Department of Mines to the penalties provided by Federal law or Section 20–6–40.

The Secretary finds that the failure of the West Virginia law to include the Director of the Department of Mines under the conflict provisions is inconsistent with Section 517(g) of SMCRA.

Finding 24

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the West Virginia program includes provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA to the extent required for approval of its program. The finding is made under the requirements of 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in Chapter 20, Article 6, Section 34 of the Code of West Virginia. There are no regulations required at this time.

Section (g)(13) of the West Virginia program narrative contains a description of the cooperative effort between the state Department of Mines and the Department of Natural Resources as it relates to blaster training and certification. West Virginia has no regulations on training, examination, and certification of persons engaged in blasting. However, 30 CFR 732.15(b)(12) does not require a state to implement regulations governing such training, examination and certification until six months after Federal regulations on those provisions have been promulgated. The Federal regulations have not been promulgated at this time.

Finding 25

The Secretary finds that the West Virginia Department of Natural Resources has, in part, the authority under West Virginia laws and the West Virginia program contains, in part, provisions to provide small operator assistance consistent with 30 CFR Part 795 (small operator assistance). This finding is made under the requirements of 30 CFR 732.15(b)(13).

Provisions corresponding to Section 507(c) of SMCRA are incorporated in Chapter 20, Article 6, Section 10(19)(b) of the Code of West Virginia.

Section (g)(16) of the state program submission contains a description of the small operator assistance program within the state. Only one significant issue was raised in the review of the West Virginia small operator assistance program. Discussion of this issue follows.

Section 20–6–10(b) of the state law provides for the payment of costs associated with the determination of probable hydrologic consequences and the statement of the result of test borings and core sampling for operators producing less than one hundred thousand tons of coal annually. The cost "shall be assumed by the Department from funds provided by the United States Department of the Interior pursuant to Public Law 95–87." This has the effect of limiting funding for the small operator assistance program to Federal funds. Such a limitation is not consistent with section 507 of the SMCRA. The Federal funds currently available to West Virginia for small operator assistance are sufficient to meet the present needs of West Virginia. However, this may not be the case in the future and thus it is determined that the West Virginia law concerning small operator assistance does not fully comply with Section 507(c) of SMCRA. The Secretary finds the West Virginia provision inconsistent with SMCRA.

Finding 26

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia law and the West Virginia program contains provisions to provide protection of employees of the Department of Natural Resources corresponding with the protection afforded federal employees under Section 704 of SMCRA (protection of employees). This finding is made under the requirements of 30 CFR 732.15(b)(14).

Provisions corresponding to Section 704 of SMCRA are incorporated in Chapter 20, Article 6, Section 17(i) of the West Virginia Code. While there is no specific reference to protection of state employees in the presentation of systems in the state program submission, the Secretary finds that incorporation of the appropriate authority is sufficient.

Finding 27

The Secretary finds that West Virginia has, in part, the authority under its laws and the West Virginia program contains, in part, provisions to provide for administrative and judicial review of state program actions in accordance with Section 525 and 526 of SMCRA (review of decisions). This finding is made under the requirements of 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA are incorporated in Chapter 6, Article 9A; Chapter 20, Article 6, Sections 24 and 25; and Chapter 29A of the Code of West Virginia. Section (g)(15) of the program narrative contains a description of the administrative and judicial procedure which are available for the review of administrative decision, action, and refusals to act.

Discussion of significant issues raised in the review of West Virginia administrative and judicial review provisions follows.

27.1 Section (g)(15) of the West Virginia program narrative states that the administrative hearing before the Reclamation Board of Review will be held within sixty days of the notice of filing. Section 20–6–24(c) of the state law states that the hearing will be held

within 30 days. It appears that Section (g)(15) was prepared prior to passage of the new state law, and the State should eliminate this inconsistency.

27.2 Chapter 6, Article 9A, Section 3 of the West Virginia Code (Open Government Proceedings) requires public notification of all meetings of any governing body. This is consistent with the requirement of Section 525(a)(2) of SMCRA. However, the Open Government Proceedings Law also requires promulgation of rules by each governing body to implement the public notification requirement. These rules were not submitted by the state as part of its program submittal. The Secretary requests that these rules be submitted.

27.3 Section 526(a)(2) of SMCRA states that the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. The West Virginia program submission does not contain any state law that would indicate such authority exists. Before this aspect of the state law can be found consistent with the Federal law, the state must provide the necessary information to establish the court's jurisdication.

27.4 It is unclear from the West Virginia submission exactly how an operator may contest the fact of violation and/or the amount of the proposed assessment. The Secretary believes that an operator has his choice of either or both of two routes which may be pursued simultaneously. First, the fact of the violation may be contested administratively before the Reclamation Board of Review. West Virginia law provides in Section 20–6–25 that appeals for decisions of the Board of Reclamation Review shall be to the Circuit Court of Kanawha County, and that the court shall hear such appeal solely on the record made before the board. This procedure is similar to that provide in SMCRA.

Second, Section 20–6–17(d) of the state law provides that the amount of the proposed penalty must be contested before the magistrate courts. In addition, the Attorney General's opinion (page 26) indicates that in a magistrate proceeding both the fact of a violation and the amount of the penalty could be determined by a jury upon appropriate instructions. Rule 17 of the Rules of Civil Procedure for the Magistrate Court of West Virginia provides that any party may demand a jury trial where the amount in controversy exceeds $20.00. Thus, West Virginia allows an appeal procedure that provides for *de novo* review. The Secretary finds this procedure not to be the same or similar to Section 525 of SMCRA.

The Secretary's position that *de novo* review of administrative decisions was acceptable was challenged in the first round of the permanent program litigation. *In Re: Permanent Surface Mining Regulation Litigation,* Civil Action No. 79–1144, in the District Court for the District of Columbia. As a result of that litigation the Office of Surface Mining modified its position on *de novo* review and stated that such reviews would be acceptable if the *de novo* review procedures: (1) insure preservation of the administrative record, including all exhibits and transcripts of all testimony taken at the proceedings: (2) guarantee that any party to a *de novo* review proceeding has the right to use any evidence contained in the administrative record whenever such evidence cannot otherwise be practicably obtained; (3) insure that any money paid into escrow is held until there is a final, binding resolution of the controversy; (4) demonstrate that the provision for trial *de novo* will not result in undue delay so as to undermine the effectiveness of the enforcement program; (5) make trial *de novo* review available to any party to the administrative proceeding, including the regulatory authority and any intervening party; (6) insure that review by trial *de novo* is not available to a person who has failed to appear at or waived his right to an administrative hearing; and (7) provide for representation of the regulatory authority by a licensed attorney at every stage of the judicial review proceedings.

The Attorney General's opinion states that W. Va. Code Ann. Section 50–5–12 provides that, after judgment in the magistrate court, any party may appeal to the circuit court of the county and such appeal shall be *de novo.* Although Section 50–5–12 was not contained in the state's submission the Secretary relies on the Attorney General's opinion in this regard. The section should, however, be part of the state's resubmission.

The Secretary finds the West Virginia review procedure is not the same or similar to the procedures in Section 525 and 526 of SMCRA in that it provides for two separte opportunities for a trial *de novo,* and the state has not demonstrated that its procedures meet any of the seven conditions enumerated above.

Finding 28

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This finding is made under the requirement of 30 CFR 732.15(b)(16).

Chapter 20, Article 6, Section 20(a) of the Code of West Virginia provides for public notice of applications for permits, applicatons for permit revisions and actions to revoke permits. In addition, the West Virginia Administrative Procedures Act assures that information is publicly available.

Finding 29

The Secretary finds that the West Virginia laws and regulations and the West Virginia program do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

In West Virginia's permanent program submission, the following laws other than the West Virginia Surface coal mining Reclamation Act were referenced as legal authority for various sections of West Virginia's program.

Open Government Proceedings Law (Chapter 6, Article 9A)
Conflict of Interest Law (Chapter 6B, Article 1)
Administrative Procedures Law (Chapter 29A)
Civil Jurisdiction and Authority Law (Chapter 50, Article 2)

Other state laws and regulations directly affecting the regulation of surface coal mining and reclamation operations include:

Existing Chapter 20, Article 6 of the Code of West Virginia, Surface Mining and Reclamation
Enrolled H.B. 1404, Surface Mining and Reclamation
Existing Chapter 20–6, Series VII (1978) Rules and Regulations Draft Chapter 20–6, Series VII Rules and Regulations
Chapter 20, Article 5 of the Code of West Virginia, Water Resources
Administrative Regulations of the State of West Virginia for Water Quality Criteria on Inter- and Intrastate Streams, 1977
Proposed Administrative Regulations of the State of West Virginia for Water Quality Criteria on Inter- and Intrastate Streams, 1980
Chapter 22 of the Code of West Virginia, Underground Coal Mine Safety Laws

In the substantive review of the program submission, these laws and regulations were reviewed as part of the adequacy analysis or reviewed for their potential for conflicting with the statutory and regulatory elements of the state program. No conflicts were found which might weaken those state laws and state regulations which form the

basis for implementation of a program equal to or more stringent than SMCRA or 30 CFR Chapter VII. Although the existing laws do not conflict with an adequate program, they do not contain sufficient provisions to constitute one.

Finding 30

The Secretary finds that the West Virginia Department of Natural Resources has not demonstrated that it will have sufficient legal, technical, and administrative personnel, and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable state and Federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

Sections (i) and (j) of the State program narrative describe the existing and proposed staff. They do not demonstrate how such staff will be adequate to carry out the functions for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations comply with the requirements of SMCRA and the federal regulations. Section (1) contains a description of the actual capital and operating budget to administer the state program for the prior and current fiscal years, and the projected annual budget for the next two fiscal years. The description does not, however, provide the information in such a way as to allow the Secretary to determine that adequate funds are available.

The state's budget description included several categories of funds which are not part of the permanent regulatory program. These include descriptions of funds for "Reclamation Federal Funds," "AML Reclamation Fund," and "Coal Refuse and Dam Control." These should be removed from the budget description or their relationship to the regulatory program budget should be explained. In addition, Federal SOAP operational funds should be identified separately from other regulatory funds.

Also, since the Division of Water Resources and the magistrate court system are included in the permanent program, capital and operating budgets for the portions of these organizations which will be utilized during the permanent program should be included. The magistrate court information should be included only if the state can adequately address the concerns expressed in Finding 19.

The West Virginia Department of Natural Resources has proposed a fulltime staff of 188 persons. This includes an inspection staff of 94 and a supervisory staff of 10.

The state has indicated that 716 deep mines and 464 surface mines will require inspection (based on 1979 figures). No estimate has been given on other types of inspectable units such as coal preparation plants, loading facilities, etc. Until these figures are presented, no determination on the adequacy of the inspection force can be made. Work load analysis for other staff of the DNR must also be included.

The remaining program staff will be utilized for permit review, SOAP, Abandoned Mine Lands and administrative and clerical support. No personnel have been included for implementation of a civil penalty system.

Since the state has not provided functional job statements with a description of expertise required for each position, no determination of adequacy can be made.

F. Disposition of Comments

The Secretary received a number of public comments on the West Virginia program. The disposition of these comments has been organized into categories to assist the reader. Comments from Federal agencies are addressed first; all other comments are arranged into groups corresponding to the topic areas of Findings 13–30 of Section E of this notice (Secretary's Findings and Explanation).

Many comments pertained to state regulations. As discussed more fully in the introduction to Part E of this document, West Virginia has not promulgated or enacted permanent program regulations at this time. Consequently, public comments dealing with the draft regulations contained in the state program have not be considered for purposes of this section. However, a response to these comments is being prepared by OSM for transmittal to the state for consideration during the resubmission process. This information will be placed in the Administrative Record and will be available for review or can be requested from the Region I OSM office at the address above.

OSM will review the state's disposition of its response to these comments during the review of the state's resubmission. OSM does not, however, anticipate further response to the comments themselves. Commenters should review the enacted regulations and if their concerns have not been addressed, resubmit their comments during the public comment period for the program resubmission. The draft regulations are discussed further in Finding 7, above.

The disposition of public comments is a part of the Secretary's Findings. Where possible, comments with which the Secretary agrees have been incorporated directly into specific findings contained in Part E, above.

1. The Forest Service (FS) suggested that the permit procedures for prospecting, surface mining, and underground mining permits, and designation of lands unsuitable should include notification of the surface owner. The West Virginia SMCRA contains adequate authority to promulgate regulations consistent with 30 CFR 776.12(b) and 786.11. If these regulations are promugated, the West Virginia program will be acceptable in this regard.

2. The FS suggested that coordination with the FS be required when lands administered by it are involved. The Secretary agrees with this comment. Procedures for coordination included in the West Virginia program at Subsection (g)(1) do not fulfill the intent of 30 CFR 732.14(g)(9) and (10) to provide coordination and consulation with Federal and state agencies in permitting and other actions. See the May 23, letter, (Part II, pages 5 and 6) for specific deficiencies in the state procedures.

3. The Soil Conservation Service was concerned that reclamation research and demonstration work be adequately addressed in the state program. SMCRA places no requirements on the states dealing with research and demonstration. West Virginia cannot be required to include these provisions. However, this comment has been forwarded to West Virginia for its consideration.

4. The Department of Energy (DOE) commented that West Virginia does not address the anticipated costs of reviewing permit applications. Section 20–6–9(f) of the West Virginia law requires a specific fee of five hundred dollars at the time of submission of the permit application. This is consistent with Section 507(a) of SMCRA which requires only that the regulatory authority establish a fee which may be less than but shall not exceed the cost of reviewing, administering and enforcing the permit. OSM research indicates that a five hundred dollar fee clearly will not exceed this amount.

5. DOE suggests that the lands unsuitable section of the program narrative, [Section (g)(11)] should include more detail on the necessary components of the data base, and how the data base will be used in conjunction with the criteria for designating lands unsuitable for surface mining. 30 CFR 731.14(g)(11) does not require a data base narrative. Section

522 of SMCRA requires the state to develop a data base and explain how the criteria for unsuitability are to be used in conjunction with the data base. The state must promulgate regulations to meet these requirements of Section 522.

6. DOE recommended that the state should specify the civil and criminal penalties on which the prosecuting attorney can proceed in the event of a willful conflict of interest. Section 20–6–4 of the state law provides for criminal penalties for employees who knowingly violate the conflict of interest provisions of the state law. This is consistent with Section 517(g) of SMCRA.

7. DOE stated that the narrative section on administrative and judical review was unclear. The Secretary agrees. The state has failed to submit and explain other state laws and procedural regulations having an affect on administrative and judical review, and public participation in this process. See Finding 27.

8. DOE suggested that the state should incorporate estimates for coal production for surface and underground mining at either regional or state levels. 30 CFR 731.14(h)(8) requires projections of coal production, if available from existing studies, for the three to five years after the date of submission of the proposed program. This regulatory requirement is imposed to allow the Secretary to make judgment informed by the history and size of each State's coal industry. West Virginia has said that no suitable studies or projections dealing with West Virginia coal production were available in the course of preparing this submission (Section (h)(8) of the program narrative). The Secretary has not identified specific studies as part of this review, but will assist the state in locating those studies as part of the resubmission process.

9. DOE suggested that a wildlife management professional be added to the staff of the Department of Natural Resources. The Secretary agrees that Section (i) through (k) of the state program narrative is insufficient to cover this subject. The state should not only show that staffing is sufficient, but provide flowcharts, agreements, or other appropriate documents indicating the coordination system, lines of authority, and the staffing functions within each agency and between agencies.

10. The Mine Safety and Health Administration commented that the West Virginia program failed to contain a proposed system for training, examining, and certifying blasters. Within the state program, the West Virginia Department of Mines will be responsible for the training of blasters in accordance with 30 CFR Chapter VII. West Virginia's system for training blasters will be drafted and submitted at a later date. See Finding 24.

11. The Environmental Protection Agency (EPA) recommended language changes in Section 20–6–13(b)(25)(c) to reflect a requirement to select barrier construction materials so as to maintain water quality to a maximum degree at all sites. This same comment applies to Section 20–6–13(C)(4)(a) (iii). The constructed outcrop barrier provision has not been approved as presented (See Finding 13.4).

12. EPA suggested that Section 20–6–13(b)(10)(A) should detail methods or specifically refer to state regulations describing means by which acid or othewise toxic mine drainage shall be avoided. Regulations will be necessary to implement this section of the state law. In addition, certain deficiencies do exist in state Section 20–6–13(b)(10), as discussed in Finding 13.7.

13. EPA recommended language changes in Section 20–6–14(b)(9)(B) to clarify the difference between surface and deep mining as they relate to water monitoring. The Federal Act requires consideration in rulemaking of the differences between surface and underground mining and the Secretary has taken the differences into account in 30 CFR 817.52. The State should also clarify its treatment of the differences. Under Section 20–6–14(b)(9)(B) of the state law, discharges from deep mine openings have to be monitored in accordance with the Clean Water Act of 1977.

14. EPA expressed concern that without provisions for review coordination the unsuitable lands designation process under Section 20–6–22 of the West Virginia SMCRA could result in an interagency permitting conflict. The Secretary shares this concern. To help avoid it, the state must develop regulations requiring notification of interested governmental agencies within three weeks of determining the petition complete.

15. EPA expressed concern that coordination of issuance of permits with other agencies does not mention EPA coordination. The Federal Act by requiring permittees to comply with other laws in effect requires permitting agencies to coordinate their work. The state must promulgate regulations providing for such coordination.

16. EPA noted that if recommended stream criteria for iron are not adopted to West Virginia, the minimum performance standards for waste treatment required by SMCRA may not be sufficient to meet the iron limits in certain stream segments. Under the Clean Water Act of 1977, states are to adopt water quality standards approved by EPA. Under SMCRA, surface mining operations cannot violate these water quality standards. The absence of approved water quality standards in West Virginia may jeopardize EPA concurrence of the state's program.

17. The Corps of Engineers stated that the state program as revised on June 16, 1980, did not address the geotechnical aspects of spoil embankment design and construction, specifically safety factors. In order to meet the requirement of SMCRA to ensure spoil embankment stability, the state must promulgate regulations which address embankment stability.

18. The Bureau of Mines suggested that the following sections of the West Virginia law exceed the requirements of Title V of SMCRA; 20–6–10, 20–6–12(e), 20–6–18(e), 20–6–19, and 20–6–22)(e). The Secretary has made no determination that these sections are in fact more stringent. However, any provision of state law which is more stringent than SMCRA "shall not be construed to be inconsistent with the Act" (Section 505(b) of SMCRA). Therefore, the previously mentioned sections are acceptable even if they are more stringent.

19. The Bureau of Mines suggested that Section 20–6–18(c) of the West Virginia SMCRA is less stringent than Section 510(c) of SMCRA. The West Virginia statute limits consideration of past history of violations to violations of West Virginia law only. The Secretary agrees that this is less stringent than SMCRA Section 510(c). See Finding 14.3.

20. The Bureau of Mines suggested that West Virginia Section 20–6–26(c)(2) which specifies a two year period for revegetation bond release conflicts with Section 515(b)(20) of SMCRA which specifies that successful revegetation must be assured before bond release. The West Virginia SMCRA contains adequate authority to promulgate regulations consistent with the criteria for revegetation success contained in Section 519(c)(2) of SMCRA. If these regulations are promulgated, the West Virginia program will be acceptable in this regard.

21. The Fish and Wildlife Service (FWS) recommended that Section (f) of the program narrative contain appropriate cooperative agreements with other state and Federal agencies or, at a minimum, a list of those agencies the state intends to solicit for technical assistance or services. With the exception of the Department of Mines, all state agencies with a direct responsibility in the state's regulatory process are within the Department of

Natural Resources, and therefore are responsible to the Director. Section 20–6–2 of the West Virginia SMCRA addresses the Director's authority. However, the state must provide for cooperation with other interested Federal, state and local agencies. The state program does not presently contain the needed information to determine that this coorperation will occur.

22. The FWS commented that except for the discussion of lands unsuitable for mining, Section (g)(10) of the program narrative is insufficient regarding consultation with state and Federal agencies having responsibilities for the protection or management of fish and wildlife and related environmental values. It also suggested listing the state and local agencies required to be notified to satisfy the coordination requirement. The Secretary agrees with this comment. As pointed out above in response to comment 14, coordination with other regulatory and permitting agencies is a requirement of SMCRA to promote efficiency and insure compliance with other state and Federal laws. Procedures for coordination included in Section (g)(1) of the program narrative do not fill the requirements of the Act as described in 30 CFR 731.14(g)(9) and (10) to provide coordination and consultation with state and Federal agencies. See the May 23 letter (Part II, pages 5 and 6) for specific deficiencies in the state procedures.

23. The FWS stated that § 731.14(f) of the permanent regulatory program regulations requires a copy of supporting agreements between agencies which have duties in the state program. It went on to state that there are currently no supporting agreements for consultation with the state or federal fish and wildlife agencies. It felt that these agreements were necessary to demonstrate that adequate protection and consideration will be given to fish and wildlife resources. 30 CFR 731.14(f) does not require the state to enter into cooperative agreements. It simply requires the state to submit such agreements if they exist. Section 20–6–20(a) of the state law does require that at the time of submission of a permit application, the Director shall notify various appropriate Federal and state agencies of the operator's intention to mine on a particularly described tract of land. However, the state has not provided any information on how this requirement will be implemented. This information must be included in Sections (g)(9) or (10) of the program.

24. The FWS stated that state fish and wildlife divisions should be consulted in the initial data gathering phases of developing the Heritage Trust Program to satisfy the requirement of the data base and inventory system required by Section 522 of SMCRA. It went on to indicate that the regulatory authority is required to include information received from the FWS, the State Hisoric Preservation Officer and the agency administering Section 127 of the Clean Air Act. The Secretary agrees with this comment. The state should include these provisions in their regulations or the program narrative.

25. The FWS stated that the program elements in the narrative portion of the West Virginia program were in some cases largely incomplete and in other cases lacked the detail necessary to ensure the protection of proposed or listed endangered and threatened species and their critical habitat. State law is also in some cases incomplete. For this reason the FWS was unable to assess the West Virginia program for compliance with Section 7 of the 1973 Endangered Species Act.

26. The FWS stated that Section 20–6–22 of the West Virginia SMCRA does not include endangered species critical habitat as a criteria for designating areas unsuitable. The state also did not include coordination or notification of other state and Federal agencies. Section 20–6–22 of the West Virginia SMCRA requires consideration of fragile land; however, no definition for fragile land has been included. The definition may be included in the state's regulations.

27. FWS commented that the West Virginia program narrative [Section (g)(4)], for monitoring and inspecting coal exploration, mining and reclamation is incomplete. The Secretary agrees that West Virginia has supplied insufficient information as required in 30 CFR 731.14(g)(4) to allow determination of how the State's regulation of coal exploration would actually work.

28. FWS commented that West Virginia Section (g)(5) lacks discussion of enforcement provisions. The Secretary agrees with this comment. Although the Attorney General's opinion (page 21–29) discusses several areas of the state's enforcement procedures, no discussion of the complete enforcement process, including the entire civil penalty program, was provided. See Finding 19.

29. FWS stated that the West Virginia program narrative in section (g)(6) is incomplete. State Section (g)(6) must contain a system for administering and enforcing the performance standards. An outline to a complete program narrative is contained in 30 CFR Part 731, see especially subsections (g)(6) and (i).

30. The National Park Service (NPS) stated that it should be notified during the first step of the permitting process which is the execution of the unsuitable lands inquiry procedure in most West Virginia permit processes. The unsuitable lands inquiry is not a formal process and there is no requirement for notification of other state and Federal agencies. However, as stated in Section (g)(1) of the West Virginai program narrative, potential conflicts are assessed and state and Federal agencies are given the opportunity to constructively participate in the permit process at a stage where their input can be most beneficial.

31. The NPS requested that it be notified before any decision is made to approve or deny exploration or mining permits in areas which may have the potential to affect the resources of park units. SMCRA does not require actual notification of other agencies of proposed coal exploration activities of less than 250 tons; however, approval from NPS is required for coal removal exceeding 250 tons which adversely affects lands over which it has jurisdiction. See Section 522 of the Act. West Virginia has the necessary statutory authority and must include this provision in their promulgated regulations.

32. The NPS commented that if the permitting agency continues the permitting process in spite of severe objections by other agencies, a copy of the objections should accompany the permit application throughout the remainder of the permitting process. Section 20–6–20 of the West Virginia SMCRA requires that all comments and objections to the proposed permit shall be made available to the public. This would insure that the comments and objections are available throughout the permit process.

33. The NPS commented that it should be involved in the development and review of mining and reclamation plans for surface mining which might have impacts on the resources of any NPS jurisdictional unit. Agencies, including NPS, can review mining and reclamation plans when the operation affects areas under their jurisdiction as specified in the state program narrative, Section (g)(1).

34. The NPS stated that it should be consulted regarding the adequacy of the bond amount when issuance of a permit may affect any NPS jurisdictional unit. Section 20–6–20(a) of the West Virginia SMCRA does require notification of "various agencies" but is not specific. The state regulations should provide the

agencies to be notified. However, since West Virginia is proposing a statutory bond rather than a bond based on the cost of reclamation, agencies would not be able to address the bond amount.

35. The NPS commented that it should be allowed to participate in inspections in cases where NPS units may be affected. Neither SMCRA nor the permanent program regulations contain provisions for cooperative inspections with Federal agencies. If the NPS desires to be involvd, a cooperative agreement could be proposed to the state. However, the Secretary has no authority to require such an agreement.

36. The NPS requested that it be given the opportunity to directly participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units. The criteria for designating lands unsuitable for surface coal mining are contained in Section 20–6–22 of the state law and are consistent with Section 522(e) of SMCRA. During the promulgation process for the state regulations, the NPS can participate in the development of regulations to implement these criteria and to add additional criteria if proposed by the State.

37. The NPS commented that Section 20–6–22 of the West Virginia SCMRA should include the definitions of "fragile lands" and "historic lands" which appear in 30 CFR 762.5. The definition of these terms need not appear in the state law but may be contained in state regulations.

38. The NPS stated that Section 20–6–22(d)(1) of the state law contains a provision for the regulatory authority to grant variances to the prohibition aagainst mining in certain park and wildlife areas after a finding that positive environmental benefits will result. It feels that this provision for variances is contrary to Section 522(e)(1) of SMCRA and should not be approved. The Secretary agrees with this comment. The variance in Section 20–6–22(d)(1) is inconsistent with Section 522(e)(1) of SMCRA. See Finding 21.1.

Performance Standards

A. Hydrologic Balance

1. Several commenters were concerned that significant groundwater zones could exist and not be protected under Section 20–6–10(a)(13)(H) of the state law which requires protection and monitoring of "significant aquifers." The West Virginia SCMRA contains adequate authority to promulgate regulations consistent with the Federal requirements. These regulations must be included in the state's resubmission.

2. Several commenters were concerned that Section 20–6–14(c)(12) of the state law allows gravity discharges from mines in acid or toxic-producing coal seams. Section 516(b)(12) of SMCRA is quite specific in disallowing these types of discharges. See Finding 13.10.

3. One commenter presented a new technical approach to sediment control structure design based on length of use. 30 CFR 816.46, to which this comment applies, is suspended and in rulemaking at this time. The commenter should present this comment during rulemaking.

B. Fills

1. Several commenters objected to provisions in Section 20–6–13(d) of the West Virginia SCMRA which allow the operator to place first cut spoil and debris on the downslope. SMCRA Section 515(d)(1) specifically prohibits the placement of spoil and debris on the downslope in step slope areas. Excess spoil must be placd in accordance with SMCRA Section 515(b)(22) in order to be consistent with the prohibition in Section 515(d)(1) of SMCRA. See Finding 13.5.

2. Several commenters objected to the provision in West Virginia law at Section 20–6–13(b)(21), which allows for disposal of excess spoil outside of the permit area if such disposal would benefit the environment. Section 515(b)(21) of SMCRA requires that all surface coal mining operations be permitted, including excess spoil disposal areas. While disposal of excess spoil in areas off the actual mining permit can benefit the environment, these areas must be permitted and bonded to insure compliance with the performance and reclamation standards. See Finding 13.3.

C. Topsoil

One commenter noted that the West Viginia law contained no comparable provision to SMCRA Section 515(b)(5) which requires that topsoil be stockpiled so that it is ". . . in a usable condition for sustaining vegetation when restored during reclamation . . ." The Secretary agrees with the comment; however, notes that adequate authority does exist for West Virginia to promulgate regulations consistent with the Federal requirements. If promulgated, such regulations will be sufficient.

D. Blasting

One commenter pointed out that the requirement in Section 515(b)(15)(a) of SMCRA which requires that a daily notice be given to resident/occupiers in the area which might be affected by the use of explosives had been omitted from the state law. The state law contains adequate authority to require the necessary provisions in the state regulations. These enacted regulations must be included in the state's resubmission.

E. Outcrop Barriers

Several commenters stated that Sections 20–6–13(b)(25) and (c)(4) of state law will allow removal of the natural outcrop barrier and leave a constructed barrier. The state has requested approval of this proposal as being more stringent than Section 515(b)(25) of the Act. The Secretary has requested additional supporting information. See Finding 13.4.

F. Revegetation

Several commenters objected to Section 20–6–13(b)(20) of the West Virginia law which requires operator responsibility for five growing seasons for successful revegetation. Section 515(b)(20) of SMCRA requires responsibility for successful revegetation for a period of five full years after the last year of augmented seeding. If West Virginia fails to define "growing season" to be equal to one year, the use of the term would make Section 20–6–13(b)(20) less stringent than SMCRA.

G. Post-Mining Land Use

Many commenters found unacceptable Section 20–6–13(c)(3) of the West Virginia law which allows variances from AOC for woodland following mountaintop removal mining. This comment is valid since Section 515(c) of SMCRA does not list woodland as an allowable post-mining land use. Agriculture, which is allowed under 515(c) is defined in 30 CFR 701.5 and does not include forestry. Although it could be argued that "commercial" land use, which is permitted by the Act, includes commercial forest land use, such an interpretation was not accepted by OSM at 44 FR 15288–9 (March 13, 1979), for the following reasons:

1. It could lead to indiscriminate granting of variances from AOC restoration on mountaintop mining areas.

2. Level or gently rolling land is not essential for conducting commercial forestry. Thus, no variance to AOC would normally be necessary.

The Secretary has requested the State to provide further information on this alternative land use. See Finding 13.8.

H. Auger Mining

1. A commenter recommended that the state program require maximization of coal recovery when augering is

involved. This point is covered in Section 20–6–13(9) of the state law. The DNR is given authority to prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resource. This provision is the same as the provision in Section 515(b)(9) of SMCRA.

2. A commenter suggested that the state proposal with regard to auger mining should assure that future mines will not be endangered; that exemptions from auger hole sealing will be granted only if pollution will not occur and that access to drilled holes should follow Federal regulations. State law provides the necessary authority to promulgate acceptable regulations in this area. The regulations should be included in the state's resubmission.

I. Deep Mines

A commenter recommended that surface mining not be allowed near deep mines unless the DNR approves. The state provision 20–6–14 repeats exactly the provision of SMCRA Section 516, with the addition of a requirement that inadverent openings to underground mines be sealed. Both requirements imply approval by the regulatory authority as well as that of the state agency reponsible for health and safety of underground mines.

Permitting

1. The West Virginia Division of Water Resources pointed out discrepancies between the program narrative and the Division's role and responsibility in the permitting process under West Virginia law. It has been found that the state has not demonstrated the authority to administer a permit system consistent with SMCRA and, further, that the state has not demonstrated that it has sufficient personnel to implement the proposed program. See Findings 14 and 30, respectively. The errors noted by the commenter should be corrected by the state's resubmission.

2. Comments were made relating to the provision of the West Virginia law [20–6–10(a)(13)] which allows a person approved by the Director to prepare and certify maps and plans as part of a permit application. The commenters stated that only properly trained and experienced professional engineers and/or professional geologists should be allowed to perform these functions as required by Section 507(b)(14) of SMCRA. See Finding 13.9.

3. One commenter stated that the state law [Section 20–6–10(f)] requires submission by an applicant of a brief explanation of permanent permit suspensions, revocations, and bond forfeitures, while 30 CFR 778.14(b) requires a detailed listing of the facts and the current status of the proceedings involving the above actions. The state statutory language corresponds to SMCRA [Section 507(b)(5)], except for the inclusion of the word "permanent" preceding "permit suspensions." This additional term makes the state provision less stringent. See Finding 14.2.

4. A commenter also stated that 30 CFR 778.14(c) requires a listing of each violation received by the applicant pertaining to air or water environmental protection. The requirement of 30 CFR 778.14(c) is mandated by Section 510(c) of SMCRA. The state law [Section 20–6–10(f)] requires a listing of only the violations resulting in bond forfeitures, permit revocations, cessation orders of permanent suspension orders and is not consistent with SMCRA.

5. A commenter stated that the West Virginia law Section 20–6–11(a)(2) does not require a description of the land use other than the most immediate use at the time of the application. Section 20–6–11(a)(2) is consistent with Section 508(a)(2) of SMCRA.

6. One commenter was concerned that the requirements in 30 CFR 779.24(g) to locate surface water bodies such as streams, lakes, ponds, and springs is not included in the state program. Section 20–6–10(a)(12) of the state law, which is consistent with Section 507(b)(13) of SMCRA, requires the same information as would be shown on a USGS topo map. Such maps show surface water bodies.

7. A commenter stated that the detailed blasting plan required by 30 CFR 780.13 is not included in Section 20–6–10(e) of the West Virginia law. However, this provision of West Virginia law requires a blasting plan and is consistent with 507(g) of SMCRA. The state has the necessary authority to promulgate regulations consistent with 30 CFR 780.13.

Coal Exploration

One commenter enumerated a number of shortcomings in the state regulations for exploration and requested that differences be explained. To remove greater than 250 tons during exploration, the state law requires the operator to obtain a surface mining permit for the area to be disturbed. In effect, the State program primarily provides for only one category of coal removal while conducting exploration—those that remove less than 250 tons. To remove more than 250 tons, specific approval of the DNR is required. A surface mine permit is required if specific approval in not obtained to remove more than 250 tons, in which case, the requirements of Section 20–6–13 of the West Virginia SMCRA are applicable. The state program is silent on the applicable standards for exploration reclamation in the case of the Director's approval to remove more than 250 tons. These should be included on resubmission.

Inspecting and Monitoring

1. Two commenters stated that state inspections, as required by Section 20–6–15(c), are required once every thirty days. The commenters felt that this provision was less stringent than the Federal requirement. Section 517(c) of SMCRA requires the regulatory authority to conduct monthly inspections at a rate of two partial inspections and one complete inspection per calendar quarter. The state law contains the necessary authority to promulgate regulations consistent with the federal requirements.

2. Commenters addressed a concern that the number of inspectors being proposed by the state in Section (i) of the program narrative may not be sufficient to adequately perform the necessary permanent program functions. Finding 30 does not approve the state's proposed staffing since no justification was provided to demonstrate the state's capability to administer the permanent program. The state should include this information with their program resubmission.

Bonding

1. One commenter stated that the State does not require bonds to be held until successful revegetation has been established for five successive years as required by Section 515(b)(20) of SMCRA. As discussed in Finding 13.2, Section 20–6–13(b)(20) of the West Virginia SMCRA requires the operator to assume responsibility for successful revegetation for a period of not less than five growing seasons. The State regulations must define "growing season" in a manner consistent with the revegetation provisions of Section 515(b)(20) of SMCRA. See Finding 13.2.

2. One commenter indicated that West Virginia's $1000/acre bond rate, as required by 20–6–12 of the State law, was clearly inadequate even when supplemented by a special reclamation fund. Finding 18 discusses the State's alternative bonding system and concludes that the State has not adequately demonstrated that it can achieve the objectives and purposes of the Federal system in accordance with Section 509(c) of SMCRA.

Civil Penalties

The Tug Valley Recovery Center (TVRC) and other commenters submitted a number of comments concerning West Virginia's civil penalty procedure as stated in Section 20–6–17 of the West Virginia SMCRA. Disposition of these comments relates to the Secretary's Finding 19.

1. TVRC objected to the language in State Section 20–6–17(d) which provides that, "such civil penalty may be imposed and collected by the magistrate courts which shall have jurisdiction over all civil penalty actions brought by the Director", on the grounds that the word "may" would permit magistrates to exercise discretion to not impose certain penalties that are mandatory.

The sentence referred to by TVRC read as follows: "Notwithstanding the jurisdictional limitations contained in Article 2 of Chapter 50 of this Code, any such civil penalty may be imposed and collected by the magistrate courts . . ." In the context of the entire sentence it appears that the legislature was merely clarifying that certain jurisdictional limitations on the authority of the magistrates contained in Article 2 Chapter 50 would not be applicable where the magistrates were reviewing cases brought under the West Virginia Surface Coal Mining and Reclamation Act. Although the Secretary has not approved the magistrate system on other grounds, use of the word "may" in Section 20–6–17(d) would not give the magistrates discretion to waive mandatory penalty assessments provided for in 20–6–17(a) in the State law.

2. Several commenters stated that the use of the magistrates, an independent judicial body, to impose civil penalties is not similar to the Federal law which requires administrative assessment and review of penalties. Civil penalty assessments must be made by the regulatory authority. Discussion of this conclusion is contained in Finding 19.2.

3. Several commenters objected to the use of the magistrate court because the magistrates do not have the requisite technical training or knowledge to understand or judge the seriousness of violations. The Secretary does not agree with this comment because Federal law does not require that persons involved in assessing or adjudicating civil penalty assessments have any special technical training. Although such technical training might be beneficial, it cannot be required by the Secretary.

4. Several commenters stated that use of the magistrate system would require inspectors to prepare for long hearings on technical evidence, would tie up enforcement efforts, and keep inspectors busy in magistrate court waiting rooms. Due process demands that any person challenging a civil penalty assessment be given a right to a hearing. This necessarily involves presenting evidence concerning the violation and may well require inspectors to take time out from enforcement duties to testify. Although any adjudicatory system would result in enforcement personnel being taken away from their assigned duties, this should be addressed under the State's staffing requirements to ensure that an adequate enforcement staff is available at all times.

5. Several commenters stated that the magistrate court in West Virginia was subject to political pressure and, therefore, would result in penalty decisions favorable to industry and discourage inspectors from assessing penalties. Information in the Administrative Record (Administrative Record No. WV 165 Exhibit A, submitted by Benjamin C. Green, President of the West Virginia Surface Mining Reclamation Association) showed 784 successful prosecutions before magistrates by DNR in 1979. This would tend to refute this contention. In addition, provided West Virginia develops an approvable system for assessing civil penalties that involves the magistrates, their decisions would be subject to both judicial review and the Secretary's oversight function.

6. Several commenters noted that the magistrate system was subject to crowded dockets and that this fact would result in delays and ultimately in few penalties being issued or collected. The Secretary agrees with this comment. In order for West Virginia to receive an approval of this civil penalty system, it will be necessary for the state to submit information demonstrating that the court docket dealing with cases other than those involving surface mining civil penalties will not interfere with the state's meeting certain criteria, including: a demonstration that the alleged violator is required to place the proposed penalty in escrow within a time period consistent with Section 518 of SMCRA and the Secretary's regulations; that adequate staff exists to handle all phases of the civil penalty system; and that cases would be processed in a timely manner.

7. Several commenters, including the TVRC, stated that West Virginia's civil penalty system did not provide for a uniform method of assessment. The Secretary agrees that one of the drawbacks to the state's system is that it fails to provide for any mechanisms which might lead to uniform assessment of civil penalties. The state should propose a system that will lead to uniform assessment of penalties and demonstrate how the penalty criteria in 20–6–17(c) relate to the amounts assessed.

8. Several commenters noted that the West Virginia law did not require that mandatory penalties continue until the violation was abated, contrary to the requirement of Section 518(h) of SMCRA. This comment is discussed under Finding 19.4.

9. Several commenters observed that the West Virginia civil penalty system did not address itself to how continuing violations would be assessed. Although West Virginia law states at 20–6–17(a) that, "if a violation is not abated within the time specified . . . a mandatory civil penalty of not less than one thousand dollars per day per violation shall be assessed . . ." the West Virginia program narrative does not set forth procedures for assessing and collecting fines for continuing violations. This should be addressed in West Virginia's resubmittal of their program narrative.

10. TVRC commented that the availability of a jury trial *de novo* in magistrate court was inconsistent with the Federal Act. The West Virginia Surface Mining and Reclamation Association commented that *de novo* review provided more due process for all parties and should be allowed. The Secretary has decided previously that *de novo* review is acceptable only if certain procedures are met. A discussion of *de novo* review is contained in Finding 27.

11. TVRC commented that the number of opportunities for operators to delay and defeat the civil penalty process in magistrates court was unacceptable because the operator could swamp the court with motions to dismiss, discovery motions, legal briefs and technical evidentiary objections. It is not objectionable that a review or adjudicator process can be made cumbersome by the use of traditional legal devices as long as the operator has placed the amount of proposed penalty in escrow within 150 days from the date he receives a notice of violation or cessation order. In addition, the state should demonstrate that given this possibility the procedures, staffing and funds are available to process appeals without curtailing field enforcement.

12. TVRC objects to using the magistrates to administer the civil penalty system because Congress intended courts to be involved only in the collection of civil penalties and in reviewing appeals from final assessments made by an administrative agency. In support of this view, the commenter notes that Section 518(d) of

the Federal law provides that civil penalties owed under the Act may be recovered in a civil action brought by the Attorney General in any appropriate district court of the United States. Section 518 of the SMCRA requires the administrative agency to make the penalty assessments. A more detailed discussion of this is contained in Finding 19.

13. TVRC comments that under the Federal Act it is intended that an administrative officer (in the form of an administrative law judge) would hear the operator's challenge to the fact of violation. TVRC objects to the West Virginia system because it would permit the operator to challenge the fact of violation as well as the proposed penalty in magistrate court. Section 20–6–24(a) of state law provides that an operator may also appeal a notice or order to the Reclamation Board of Review. This means the operator may have two independent avenues for taking an appeal which could result in unequal enforcement and "forum shopping." This dual procedure also would present the possibility of two separate appeals being taken with differing results. This comment is discussed under Finding 19.5.

14. TVRC states that the West Virginia civil penalty procedure should be disapproved because officials of the Department of Natural Resources have stated publicly that they do not intend to take seriously the civil penalty sanction and do not really intend to use it as an enforcement tool. The Secretary does not have authority to reject a procedure on the basis of general, non-binding statements made by officials that the procedure would not be used. Whether or not the provisions of state law, including the civil penalty assessment procedures, are in fact carried out by the state is a matter that must be left to oversight.

15. TVRC notes that Section 503(a)(3) of the SMCRA mandates that the state regulatory authority have "sufficient administrative and technical personnel and sufficient funding to enable the state to regulate coal mining operations in accordance with the requirements of this Act." The commenter states that West Virginia has not fulfilled that requirement with respect to the magistrate system because there is no demonstration that (1) the magistrates have appropriate support personnel or funding for court reporters, (2) inspectors have adequate training necessary to successfully prosecute civil penalty actions, (3) the state has sufficient attorney staff to back up the inspectors, and (4) the magistrate court or the circuit courts can process civil penalty actions efficiently and promptly given their current caseload. The Secretary agrees with this comment. The state should submit information sufficient to enable the Secretary to make a decision on these matters.

16. Several commenters noted that West Virginia does not provide for pre-payment of a civil penalty assessment as a prerequisite to a hearing, as required by Section 518(c) of SMCRA. This omission makes the West Virginia program less stringent than SMCRA.

17. TVRC states that the venue rules contained in the "Rules of Civil Procedure for Magistrates Court of West Virginia" would allow the operator to go to any magistrate in the county (1) where his operation is located, (2) where the company office is located, or (3) where the defendant owns property, in order to seek review of a civil penalty proposed by a DNR inspector. The commenter states that this would lead to "forum shopping" because the operator would seek out the magistrate most likely to assess the lowest penalty. Although the state's civil penalty system has not been approved on other grounds, the Secretary notes that the process envisioned by West Virginia (Attorney General's Opinion, page 26) would require the DNR inspector to file a complaint in magistrate court for collection of the penalty. If this is the case, the possibility of "forum shopping" by operators seeking review of notices or orders would not be a problem.

18. The West Virginia Surface Mining and Reclamation Association commented that actual data regarding the magistrate system's ability to handle the anticipated civil penalty caseload was available from the State's Supreme Court of Appeals, and that the system seemed more than capable of handling the present caseload. This material is not in the administrative record, nor is it contained in West Virginia's program submission; therefore, the Secretary cannot respond to this comment.

Notice of Violation and Cessation Orders

1. Several commenters objected to the state provision which allows discretion in citing violations detected during an inspection [Section 20–6–17 of the West Virginia SCMRA]. These comments are accepted in that Section 521(a)(3) of the Federal law clearly requires that the "Authorized representative *shall* issue a notice of violation upon detection of a violation of the Act, regulations, or permit conditions." Section 20–16–17 of the state statute says "The Director *may cause* a notice of violation to be served. . . ." The state must provide for issuance of violation notices in accordance with Section 521(a)(3).

2. One commenter stated that the state did not define the circumstances under which a cessation order will not be issued following failure to abate a violation. Section 20–6–17(a) of the state law deals with this subject. Section 521(a)(3) of SMCRA is very specific on the issuance of cessation orders for failure to abate a violation. Federal law requires immediate cessation if the violation has not been abated. The state provision does not contain this requirement and is not approved. See Finding 20.2.

Designating Areas Unsuitable

1. One commenter stated that Section 20–6–22(d)(i) of the state law provides for variances from the prohibition to mining in National Parks. This provision is inconsistent with Section 522(c) of SMCRA and must be deleted from the state law.

2. One commenter stated that the Director may petition to designate an area unsuitable for mining [Section 20–6–22(b) of the West Virginia SCMRA]. The commenter felt that this was not in compliance with Federal law. Although the final decision on a petition is made by the Reclamation Commission, which is chaired by the Director, the decision is a matter of record and subject to appeal. This would prevent the Director from issuing unfounded decisions.

3. One commenter stated that the state program does not indicate that there are some areas of the state that probably should never be mined. The state law, Section 20–6–22, includes the prohibitions and limitations on mining contained in Section 522(e) of SMCRA. In addition, the state has included a partial process for designation of lands unsuitable for mining in Section (g)(11) of the program narrative. Use of the designation process will identify other areas where mining is inappropriate and should be prohibited. See Finding 21.

4. One commenter felt that the state's proposed system for designating lands unsuitable for mining did not meet the Federal procedural requirements. A proposed flow-chart and narrative were submitted by the commenter to correct the deficiencies contained in the state process as described in Section (g)(11) of the program narrative is deficient (see Finding 21), the Secretary cannot require the state to adopt the submitted process.

All that can be required is that the state provide a process consistent with the Federal requirements.

Public Participation

1. Several commenters objected to Section 20–6–15(g) of the state law, which places limitations on a citizen's right to inspect mine sites which are suspended to be in violation. The comment is accepted. See Finding 17.

2. Many commenters expressed only a general dissatisfaction for past and current state regulatory agency practices concerning citizen/public participation. Past practice of a state agency cannot be considered for purposes of program approval, unless it is continued as a formal policy statement, statute, or regulation.

3. Several commenters focused on opportunities for citizen participation in the procedures for permit renewals, prospecting applications, permit approval decisions and blasting. The concerns of the commenters are valid. See Finding 22.

4. Some commenters were concerned with public participation in the permit transfer procedures. West Virginia law Section [20–6–199(d)] prohibits transfer of permits, providing only for reassignment upon approval of the Director of DNR. In such cases, the party to whom the permit was reassigned must apply for a new permit; thus, the public participation opportunities required for permit applications would be triggered.

5. One commenter submitted a document entitled "Citizens Group Proposal for Public Participation in the West Virginia Permanent Regulatory Program." The proposal outlined a public participation plan for the Department of Natural Resources and established citizen advisory groups. The Secretary has no authority to require the state to enter into this type of agreement with citizen groups.

Administrative and Judicial Review

The Center for Law and Social Policy objected to West Virginia's provision for a Reclamation Board of Review comprised of five members appointed by the Governor [West Virginia SCMRA 20–6–23]. The Center states that the "mixed" board would not result in-review by impartial decision makers and is, therefore, in violation of Section 517(g) of the Act, and the Administrative Procedure Act, 5 U.S.C. 551 et seq.

30 CFR 705.5 states explicitly that, ". . . members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees." Therefore, 517(g) of the Act which requires in relevant part that, "no employee of the state regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation," is not applicable to the West Virginia Reclamation Board of Review. In response to a petition filed on December 15, 1978 (44 FR 11795, March 2, 1979) the Secretary proposed certain amendments to the regulations (44 FR 52098, September 6, 1979). Since no final regulations have been promulgated at this time, West Virginia's proposal for a "mixed" board is not inconsistent with Federal law or regulations.

Staffing

One commenter stated that the Division of Reclamation, which is the responsible agency within the DNR, was planning to increase their staffing to include expertise in water resources, wildlife, etc. The commenter stated that since DNR already had this expertise in other Divisions, the addition of staff in the Division of Reclamation was wasteful of expertise and person-power. The commenter went on to state that the arrangement being proposed eliminated the necessary checks and balances. Under the Federal requirements the regulatory authority must provide certain types of expertise in order to meet the minimum standards for program approval. The manner in which this expertise is supplied is entirely up to the regulatory authority. If the expertise is provided within the regulatory authority, sufficient coordination must be provided with other interested agencies. The manner in which the Department of Natural Resources intends to provide the necessary expertise is acceptable provided adequate coordination with other agencies is provided. Please refer to Findings 14 and 30 for additional comments concerning coordination and staffing.

G. Portions Approved / Portions Disapproved

The West Virginia program is approved in part and disapproved in part. As indicated above under the Secretary's findings, certain program parts meet the criteria for state program approval in 30 CFR 732.15 and certain program parts do not meet the criteria. Partial approval means that West Virginia may revise and resubmit the disapproved portions of the program within 60 days of the effective date of the decision. The resubmission will then be reviewed and approved or disapproved under procedures in 30 CFR, Part 732. Until the entire program is approved, however, the state will not assume primary jurisdiction to implement and enforce the permanent program under SMCRA.

The following program parts are approved:

1. The West Virginia Surface Coal Mining and Reclamation Act as amended with the following exceptions:

1. Section 20–6–3(a) as it relates to water quality standards. See Finding 13.12.

2. Section 20–6–3(b) as it relates to jurisdiction over ground water. See Finding 13.13.

3. Section 20–6–3(c) as it relates to highwall elimination and minor deviations. See Findings 13.1 and 13.11.

4. Section 20–6–3(j) as it relates to the actual areas included and the length of time they are considered disturbed. See Finding 13.14.

5. Section 20–6–3(t) as it relates to the proviso for permanent facilities. See Finding 12.2.

6. Section 20–6–10(a)(3) as it relates to identification of previous permits. See Finding 14.1.

7. Section 20–6–10(a)(5) as it relates to identification of suspended permits. See Finding 14.2.

8. Section 20–6–10(b) as it relates to funding under the small operator assistance program. See Finding 25.

9. Section 20–6–10(f) as it relates to identification of violations of air and water quality laws. See Finding 14.3.

10. Section 20–6–12(a) as it relates to the proposed alternative bonding system. See Finding 18.1.

11. Section 20–6–12(f) as it relates to water quality of the receiving stream. See Finding 18.2.

12. Section 20–6–13(b)(10)(B) and Section 20–6–14(b)(9)(B) as they relate to applicable state and Federal water quality laws. See Finding 13.7.

13. Section 20–6–13(b)(21) as it relates to placement of spoil outside the permit area. See Finding 13.3.

14. Section 20–6–13(b)(25) as it relates to the use of a constructed outcrop barrier. See Finding 13.4.

15. Section 20–6–13(c)(3) as it relates to the postmining land use of woodland. See Finding 13.8.

16. Section 20–6–13(d) as it relates to placement of spoil on the downslope. See Finding 13.5.

17. Section 20–6–14(b)(5) as it relates to jurisdiction over liquid wastes. See Finding 13.6.

18. Section 20–6–14(b)(12) as it relates to approval of up-dip mining. See Finding 13.10.

19. Section 20–6–15(g) as it relates to operator liability during citizen initiated inspections. See Finding 17.

20. Section 20–6–16(a) as it relates to discretionary issuance of cessation orders and expiration of cessation

orders within 24 hours. See Findings 20.1 and 20.5.

21. Section 20–6–16(c) as it relates to vacation of cessation orders following abatement of the violation. See Findings 20.7.

22. Section 20–6–17(a) as it relates to non-assessment of daily civil penalty for violations abated within 24 hours; the assessment of penalties until action to abate the violation is initiated; the unattainable abatement provision; the discretionary issuance of a notice of violation; and inclusion in a cessation order of steps necessary to abate a violation. See Findings 19.2, 19.4, 20.2, 20.3, 20.4, and 20.8.

23. Section 20–6–17(d) as it relates to the use of magistrate courts for assessment of civil penalties. See Findings 19.2 and 19.3.

24. Section 20–6–17(d) and 20–6–24(a) as they relate to dual procedures for appeals from civil penalty actions. See Findings 19.5 and 27.4.

25. Section 20–6–18(c) as it relates to the Director's authority to consider of West Virginia laws only. See Finding 14.3.

26. Section 20–6–22(d)(1) as it relates to granting variances to the requirements of Section 522(e)(1) of SMCRA. See Finding 21.1.

27. Sections 20–6–24(f) and 20–6–25(c) as they relate to appellant expenses. See Finding 22.3

28. Section 20–6–31 as it relates to issuance of incidental permits to operations of more than two acres. See Finding 14.4.

29. Section 20–6–133 as it relates to the experimental post-mining land use of agriculture. See Finding 13.15.

30. Section 20–6–40(a) as it relates to exemption of the Director of the Department of Mines from the conflict of interest provisions. See Finding 23.

31. All Sections containing the provision for use of an "approved person" rather than a registered Professional Engineer. See Finding 13.9.

32. Those sections of the law which should contain provisions comparable to the following omitted Federal requirements of SMCRA:

a. Section 518(b)(2) as it relates to the assessment and collection of civil penalties. See Finding 19.2; and

b. Section 518(c) as it relates to an escrow provision. See Finding 19.2.

II. Proposed systems and processes described in the West Virginia program narrative with the following exceptions:

1. Section (g)(1)—See Findings 14.5 and 15.1.

2. Section (g)(3)—See Finding 18.4.

3. Section (g)(4)—See Finding 20.6.

4. Section (g)(6)—See Finding 13.16.

5. Section (g)(7)—See Finding 19.2.

6. Section (g)(11)—See Finding 21.1.

7. Section (g)(14)—See Finding 22.2.

8. Section (g)(15)—See Finding 27.1.

9. Section (h)(8)—See Federal agency comment 8.

10. Sections (i), (j), and (l)—See Finding 30.

H. Effect of this Action

West Virginia is not now eligible to assume primary jurisdiction to implement the permanent program. West Virginia may submit additions or revisions to its proposed program within sixty days of this decision to correct those parts of the program which are not approved. The State must submit approvable regulations and additional information as identified in the Secretary's Findings and the Disposition of Comments.

If no revised submission is made within sixty days, the Secretary will take appropriate steps to promulgate and implement a Federal program in the State of West Virginia. If the disapproved portions of the State regulatory program are revised and resubmitted within the sixty day time limit, the Secretary will have an additional sixty days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies and to approve, disapprove, or conditionally approve the final West Virginia program submission.

This approval in part and disapproval in part relates at this time only to the permanent regulatory program under Title V of SMCRA. This partial approval does not constitute approval or disapproval of any provisions related to the implementation of Title IV of SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884 (State Reclamation Plans), West Virginia may submit a State AML reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the State has an approved permanent regulatory program.

There are no coal bearing Indian lands in West Virginia. At present there is no coal mining on Federal lands in West Virginia. In the event that surface mining and reclamation operations on Federal lands are proposed, however, the initial Federal lands program will be governed by regulations in 30 CFR Part 211. When the State regulatory program is approved, the Federal lands program, if one is necessary, will be governed by 30 CFR Part 740.

The Secretary does not intend to promulgate rules in 30 CFR Part 948 until the West Virginia program has been either finally approved or disapproved following opportunity for resubmission.

I. Additional Findings

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval in part.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval in part.

Dated: October 14, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-32618 Filed 10-17-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[A-9-FRL 1637-8]

Approval and Promulgation of Implementation Plans and Attainment Status Designations; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; extension of comment periods.

SUMMARY: On August 19, 1980 (45 FR 55231) a notice of proposed rulemaking was published concerning the sulfur dioxide nonattainment area boundaries in Kern County. Notices of proposed rulemaking were published regarding the South Central Coast Air Basin nonattainment area plan (NAP) (45 FR 58912) and the San Joaquin Valley Air Basin NAP for Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties (45 FR 58897) on September 5, 1980. A notice of proposed rulemaking was also published on September 15, 1980 (45 FR 60931) for the Kern County portion of the San Joaquin Valley Air Basin NAP. The notices provided 30 day public comment periods. During the comment periods the EPA Regional Office received several requests to extend the comment periods. This notice officially revises the public comment periods.

DATES: The comment period deadlines are extended as follows:

October 20, 1980: South Central Coast NAP.

October 20, 1980: San Joaquin Valley NAP for Fresno, Kings, etc.

October 29, 1980: San Joaquin Valley NAP for Kern County.
December 1, 1980: Nonattainment Area Boundaries in Kern County.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont St., San Francisco, Calif. 94105 (415) 556-2938.

Dated: October 8, 1980.

Sheila M. Prindiville,

Acting Regional Administrator.

[FR Doc. 80-32768 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 80

Nondiscrimination on the Basis of Race, Color or National Origin Under Programs Receiving Federal Assistance Through the Department of Health and Human Services

AGENCY: Office for Civil Rights, Department of Health and Human Services.

ACTION: Notice of decision to develop regulations.

SUMMARY: These proposed regulations will revise the Department of Health and Human Services' existing regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* Title VI prohibits discrimination on the basis of race, color or national origin in programs receiving Federal financial assistance from the Department of Health and Human Services. These proposed regulations (1) will delete references to programs which were transferred to the Department of Education by the Department of Education Organization Act, Public Law Number 96-88, Oct. 17, 1979, (2) add examples and provisions specific to programs funded by the Department of Health and Human Services, (3) incorporate suggestions from the Department of Justice under its Title VI coordination responsibilities, and (4) improve the clarity and readability of the existing regulations.

FOR FURTHER INFORMATION CONTACT: Brenda Kohn, Staff Attorney, Office of the General Counsel, Civil Rights Division, Department of Health and Human Services, 5627-E North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-7420.

Dated: September 28, 1980.

Sylvia Drew Ivie,

Director Office for Civil Rights.

[FR Doc. 80-32562 Filed 10-17-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 177, and 178

[Docket No. HM163-E; Notice No. 8]

Withdrawal of Certain Bureau of Explosives Delegations of Authority and Proposed Miscellaneous Amendments

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to issue an amendment to the Department's Hazardous Materials Regulations to (1) withdraw the two remaining delegations of authority to the Bureau of Explosives (B of E) in Part 173 and one in Part 177; (2) amend § 171.7(d) to include Compressed Gas Association (CGA) Pamphlets S-1.1, C-12 and C-14; and (3) revise § 173.86(b) and § 173.114a(d)(3) to include the Bureau of Mines, U.S. Department of the Interior, as an authorized testing agency. Also, § 178.59-16 (a) and (b) and § 178.60-20 (a) and (b) would be revised to coincide with the proposed change in § 173.303(a).

DATE: Comments must be received on or before December 5, 1980.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that the docket number be identified and that five copies be submitted. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th St., SW., Washington, D.C. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. Telephone (202) 426-3148.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, Washington, D.C. 20590, (202-472-2726).

SUPPLEMENTARY INFORMATION: On November 26, 1979 the MTB published Notice 79-15 (Docket HM-163D, 44 FR 67476) which proposed the withdrawal of certain delegations of authority to the B of E, including those in §§ 173.34(d) and 173.303(a). In proposing these withdrawals of authority, the MTB stated its intention to continue to recognize the B of E as a source for testing and evaluation, but to place in the Associate Director for Operations and Enforcement the authority for final approval. However, in the final rule (published in the **Federal Register** on May 19, 1980; 45 FR 32692) to Notice 79-15, the MTB stated that the proposed changes to §§ 173.34(d) and 173.303(a) were being deleted from that rulemaking, but would be included, with a proposed change to § 177.821(e), in a separate notice of proposed rulemaking.

The MTB is proposing the deletion of § 177.821(e) because we do not believe that condemned or leaking dynamite should be repacked and offered for shipment.

In keeping with our past practice to eliminate or reduce as many approval type functions as possible, the MTB is proposing to adopt a proposal submitted by the Compressed Gas Association which would eliminate the need for B of E examination and approval by the Associate Director for OE for pressure relief devices on compressed gas cylinders. This would be accomplished by incorporating by reference in § 171.7 CGA Pamphlet S-1.1, CGA Pamphlet C-12, and CGA Pamphlet C-14.

IN addition, the MTB is proposing to amend § 173.86(a)(2) and (c) by changing the Office of Hazardous Materials Regulation (OHMR) to read Associate Director for OE; paragrah (b) of § 173.86 and § 173.114a(d)(3) would be amended to include, as indicated in Notice 79-15, the Bureau of Mines, U.S. Department of Interior, as an authorized testing agency.

In consideration of the foregoing, 49 CFR 171, 173, 177 and 178 would be amended as follows.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7 paragraph (d)(3) would be amended by adding paragraphs (vi), (vii) and (viii) to read:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(3) * * *

(vi) CGA Pamphlet S-1.1 is titled, "Pressure Relief Device Standards Part 1—Cylinders for Compressed Gases," 1979 edition.

(vii) CGA Pamphlet C-12 is titled, "Qualification Procedure for Acetylene Cylinder Design," 1979 edition.

(viii) CGA Pamphlet C-14 is titled, "Procedures for Fire Testing of DOT

Cylinder Pressure Relief Device Systems," 1979 edition.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. In § 173.34 the heading and the first sentence of paragraph (d) would be revised to read:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(d) *Pressure relief device systems.* No person may offer a cylinder charged with compressed gas for transportation unless the cylinder is equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S–1.1. The pressure relief device(s) must be capable of preventing rupture of the cylinder when subjected to a fire tested conducted in accordance with CGA Pamphlet C–14, or in the case of an acetylene cylinder, CGA Pamphlet C–12. * * *.

3. In § 173.86 paragraph (a)(2), the introductory text of paragraph (b), and paragraph (c) would be revised to read:

§ 173.86 New explosives definitions; approval and notification.

(a) * * *

(2) Has previously produced the explosive compound, mixture or device, but has made a change in the formulation, design, process or production equipment. An explosive compound, mixture or device is not considered a "new explosive" is an agency listed in paragraph (b) of this section has determined and confirmed in writing to the Associate Director for OE that there is no significant difference in its hazard characteristics from when it was previously approved.

(b) No person may offer a new explosive for transportation unless it has been examined and assigned a recommended shipping description and hazard class by the Bureau of Explosives or the Bureau of Mines and classed and approved by the Associate Director for OE; or examined, classed, and approved by one of the following agencies:

* * * * *

(c) Except for approvals issued by the Associate Director for OE and the exception in paragraphs (d) and (e) of this section, each person who offers a new explosive for transportation, other than a new DOD explosive covered by a security classification, must file a copy of the approval for the new explosive accompanied by a supporting laboratory report or equivalent data with the Associate Director for OE before offering the new explosive for transportation.

* * * * *

4. In § 173.114a paragraph (d)(3) would be revised to read:

§ 173.114a Blasting agents.

(d) * * *

(3) No person may offer a blasting agent for transportation unless it has been examined by the Bureau of Explosives or Bureau of Mines and classed and approved by the Associate Director for OE; or examined, classed, and approved by one of the following agencies:

(i) U.S. Department of Energy (DOE) for blasting agents made by, or under the direction or supervision of DOE; or

(ii) U.S. Army Materiel Development and Readiness Command (DRCSF), Naval Sea Systems Command (NAVSEA 04H) or HQUSAF (IGD/SEV) for blasting agents made by, or under the direction or supervision of the DOD.

* * * * *

5. In § 173.303 the introductory text of paragraph (a) would be revised to read:

§ 173.303 Charging of cylinders with compressed gas in solution (acetylene)

(a) *Cylinder, filler and solvent requirements.* (Refer to applicable parts of Specification 8 and 8AL). Acetylene gas must be shipped in Specification 8 or 8AL (§ 178.59 or § 178.60 of this subchapter) cylinders. The cylinders shall consist of metal shells filled with a porous material, and this material must be charged with a suitable solvent. The cylinders containing the porous material and solvent, shall be tested with satisfactory results in accordance with CGA Pamphlet C–12. Representative samples of cylinders charged with acetylene shall be tested with satisfactory results in accordance with CGA Pamphlet C–12.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

6. § 177.821 paragraph (e) would be deleted as follows:

§ 177.821 Hazardous materials forbidden or limited for transportation.

* * * * *

(e) (Reserved)

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

7. In § 178.59–16 paragraphs (a) and (b) would be amended to read:

§ 178.59–16 Porous filling.

(a) Cylinders must be filled with a porous material of such structure that it will not disintegrate or sag when wet with solvent or when subjected to normal service. The porous filling material shall be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired. Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but in no case to exceed ⅛ inch measured diametrically and longitudinally and that such clearances do not impair the functions of the filling material. In all cases, the filling material as installed in the cylinder must meet the requirements of CGA Pamphlet C–12.

(b) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphelt C–12. A cylinder taken at random from a lot of 200 or less must be tested for porosity providing the porosity of each cylinder is not known. If the test cylinder fails, each cylinder may be tested individually and those cylinder that pass the test are acceptable.

* * * * *

8. In § 178.60–20 paragraphs (a) and (b) would be amended to read:

§ 178.60–20 Porous filling.

(a) Cylinders must be filled with a porous material of such structure that it will not disintegrate or sag when wet with solvent or when subjected to normal service. The porous filling material shall be *uniform in quality and free of voids, except that a well drilled into the* filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired. Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but in no case to exceed ⅛ inch measured diametrically and longitudinally and that such clearances do not impair the functions of the filling material. In all cases, the filling material as installed in the cylinder must meet

the requirements of CGA Pamphlet C–12.

(b) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphelt C–12. A cylinder taken at random from a lot of 200 or less must be tested for porosity providing the porosity of each cylinder is not known. If the test cylinder fails, each cylinder may be tested individually and those cylinders that pass the test are acceptable.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not have a major impact under Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and Environmental Assessment are available for review in the docket.

Issued at Washington, D.C., on October 13, 1980.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32418 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Routt National Forest Grazing Advisory Board; Meeting

The Routt National Forest Grazing Advisory Board will meet November 18, 1980, at 10:00 a.m. at the Yampa Valley Electric Association building, Steamboat Springs, Colorado.

The Agenda for the meeting will include: 1) review of the bylaws; 2) a discussion of the projects planned for FY 1981 utilizing range betterment funds; 3) discuss and receive advice and recommendations for the utilization of range betterment funds and development of allotment management plans for FY's 1982 and 1983.

The meeting will be open to the public. Persons who wish to attend and participate should notify Les Clark or Jim Webb, Routt National Forest (303–879–1722) prior to the meeting. Public members may participate in discussions during the meeting at any time or may file a written statement following the meeting.

Jack Weissling,
Forest Supervisor.
October 8, 1980.
[FR Doc. 80-31463 Filed 10-16-80; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 10, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart O Applications

Date filed	Docket No.	Description
Oct. 6, 1980	38803	Sun Pacific Airlines, c/o Ballard & Beasley, 505 Commerce Building 1700 K Street, N.W., Washington, D.C. 20006. application of Sun Pacific Airlines pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to operate scheduled air Transportation of persons, property and mail as follows: Between the terminal point San Francisco, CA, the intermediate points, Fresno, CA, Bakersfield, CA, Las Vegas, NV, Los Angeles, CA, and the terminal point, Ontario, CA, provided, however, that Sun Pacific may begin or terminate, or begin and terminate, trips at points short of terminal points. Conforming applications and Answers are due November 3, 1980.
Oct. 6, 1980	38808	Empire Airlines Inc., c/o Michael Goldman, Verner, Liipfert, Bernhard and McPherson, Suite 1100—1660 L Street, NW., Washington, D.C. 20036. Application of Empire Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity for Route 200 authorizing it to engage in interstate air transportation with respect to persons, property, and mail as follows: Between and among New York/Newark, Boston, Washington, Albany, Rochester, Syracuse, Buffalo, Cleveland, Pittsburg, Detroit, Columbus, Dayton, Cincinnati and Indianapolis. Answers are due October 20, 1980.
Oct. 9, 1980	38821	TACA International Airlines, S.A., c/o Harry A. Bowen, Bowen & Atkin, Suite 300, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Application of TACA International Airlines, S.A. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its Foreign Air Carrier Permit authorizing service to Houston, Texas as a coterminal to New Orleans, Louisiana. Answers may be filed by November 6, 1980.
Oct. 9, 1980	38826	Arrow Airways, Inc., P.O. Box 480233, Miami, Florida 33148. Application of Arrow Airways, Inc. Pursuant to Section 418 of the Act and Parts 201 and 291 of the Board's Regulations for a certificate of public convenience and necessity to conduct domestic air cargo transportation in the following markets: Domestic air transportation of property between any point in any state of the United States or the District of Columbia or any territory or possession of the United States. Conforming Applications and Answers are due November 6, 1980.
October 9, 1980	38827	Arrow Airways, Inc., P.O. Box 480233, Miami, Florida 33148. Application of Arrow Airways, Inc. pursuant to Section 401 of the Act and Parts 201 and 302 of the Board's Regulations requests an amendment of its certificate of public convenience and necessity authorizing it to engage in: Foreign charter air transportation of property between any point in any state of the United States or the District of Columbia or any territory or possession of the United States, and any point in Greenland, Iceland, the Azores, Europe, Africa and Asia as fara east as, and including, India. Conforming Applications and Answers are due November 6, 1980.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 80-32582 Filed 10-17-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 30352]

British Airways; Part 213 Violation; Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to Judge Rodriguez.

Dated at Washington, D.C., October 10, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-32583 Filed 10-17-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 38495]

Universal Airlines, Inc., Fitness Investigation; Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to Judge Pope.

Dated at Washington, D.C., October 10, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-32584 Filed 10-17-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs

AGENCY: Office of Coastal Zone Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Alabama, Alaska, Maine, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Oregon, Puerto Rico, Rhode Island, Virgin Islands, Washington, and Wisconsin Coastal Zone Management Programs.

Section 312 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) requires the conduct of a continuing review of the performance of each coastal state under its federally approved coastal zone management program. All 14 states evaluated were found to be adhering to their management programs as a result of which accomplishments are occurring with respect to resource protection, management of coastal development, increased recreational access, and improved government decisionmaking.

A copy of the findings made by the Assistant Administrator for Coastal Zone Management for each of these states may be obtained on request from: Rosella Sussman, Evaluation Officer, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, telephone (202) 634–4245.

Dated: October 7, 1980.

Michael Glazer,

Assistant Administrator for Coastal Zone Management.

[FR Doc. 80-32502 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-08-M

Gulf of Mexico Fishery Management Council and Its Scientific and Statistical Committee; Cancellation and Amended Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Meeting cancellation/change in meeting location.

SUMMARY: The scheduled meeting of the Gulf of Mexico Fishery Management Council, published in the **Federal Register**, October 7, 1980 (45 FR 66489–66490), has been cancelled. However, the Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee scheduled meeting, published in the **Federal Register**, October 7, 1980 (45 FR 66489–66490), has been relocated as follows:

From: Broadwater Beach Hotel, West Beach Boulevard, Biloxi, Mississippi

To: Tampa Room, Barclay Best Western Inn, 5303 West Kennedy Boulevard, Tampa, Florida

All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT:

Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609. Telephone: (813) 338–2815.

October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-32572 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), will meet to discuss amendments to the Squid, Mackerel and Butterfish Fishery Management Plans (FMP's), Surf Clam/Ocean Quahog FMP; status of other FMP's; foreign fishing applications, and other fishery management and administrative matters.

DATES: The meetings, which are open to the public, will convene on Wednesday, November 12, 1980, at approximately noon, and will adjourn on Friday, November 14, 1980, at approximately noon. The meetings may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Gurney's Inn, Old Montauk Highway, Montauk, Long Island, New York.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901. Telephone: (302) 674–2331.

Dated: October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80–32571 Filed 10–17–80; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), has established a Scientific and Statistical Committee which will meet to discuss the Surf Clam and Ocean Quahog Fishery Management Plan Amendment No. 3, and other fishery matters.

DATES: The meeting, which is open to the public, will convene on Wednesday, November 5, 1980, at approximately 10:30 a.m., and will adjourn at approximately 3:30 p.m.

ADDRESS: The meeting will be held at the Best Western Airport Motel, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania 19153. Telephone: (215) 365–7000.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901. Telephone: (302) 674–2331.

Dated: October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80–32570 Filed 10–17–80; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Scoping Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting and intent to prepare an environmental impact statement.

SUMMARY: The Pacific Fishery Management Council announces a Scoping Meeting to discuss the preparation of the 1981 amendment to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon and California. The Scoping Meeting is part of the Council's process for determining the scope of issues to be addressed in its supplemental environmental impact statement and for identifying the significant issues related to the development and implementation of the 1981 amendment to the salmon plan. The purposes of the scoping process are discussed in 40 CFR 1501.7 of the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (43 FR 55978). This notice is also intended to satisfy the requirement for a Notice of Intent to Prepare an Environmental Impact Statement.

DATE: November 13, 1980, beginning at 10 a.m. and continuing until those present wishing to speak have had an opportunity to do so.

ADDRESS: Marriott Hotel, 1402 SW., Front Street, Portland, Oregon 97201; phone (503) 226–7600.

FOR FURTHER INFORMATION CONTACT: Mr. Lorry Nakatsu, Executive Director, Pacific Fishery Management Council, 526 SW., Mill Street, Second Floor, Portland, Oregon 97201. Telephone: (503) 221–6352.

SUPPLEMENTARY INFORMATION: Federal regulation of the ocean salmon fishery in the Fishery Conservation Zone (FCZ) off Washington, Oregon and California will be necessary for the 1981 fishing season. The basis for the regulations will be an amendment to the fishery management plan (FMP) for the ocean salmon fishery which will review the coastwide status of the stocks of salmon, the effectiveness of the 1980 ocean salmon fishery regulations, the major issues expected to be encountered in 1981 and alternative management regimes. The FMP was prepared in 1978 and amended in 1979 and 1980. The 1981 amendment will be accompanied by a supplemental environmental impact statement, a regulatory analysis and draft proposed regulations. The availability of the draft amendment package and dates and addresses of public hearing on 1981 ocean salmon management will be announced in the **Federal Register.**

The Council invites the participation of all interested Federal, State and local government agencies, fishing industry organizations, treaty Indian tribes, recreational and commercial fishermen, fish processors, consumers of fishery products, environmental organizations and any other interested persons in the development of the 1981 amendment. Public participation in the development of the 1981 amendment will begin with the Scoping Meeting on November 13, 1980.

Dated: October 14, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 80-32558 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-22-M

COMMUNITY SERVICES ADMINISTRATION

Privacy Act of 1974; Annual Notice of Systems of Records

AGENCY: Community Services Administration.

ACTION: Annual notice of systems of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The full text of CSA's systems of records last appeared at 42 FR 53430, September 30, 1977. (Also see Privacy Act Issuances, 1979 Compilation, Volume III, p. 2591). The full text was amended by subsequent annual publications at 43 FR 42116, September 19, 1978, and 44 FR 54536, September 20, 1979. The purpose of this document is to publish in full the systems that this agency has amended since the September 20, 1979, publication. This document fulfills the annual notice requirements of the Privacy Act for 1980.

FOR FURTHER INFORMATION CONTACT: Alan O. Mann, Privacy Act Officer, Community Services Administration, 1200 19th Street NW., Room 406, Washington, D.C. 20506. Telephone (202) 254–5300.

Published below is the full text of "Geographical Guidance for Accessing Systems of Records" to reflect changes in the Regional Office addresses and telephone numbers. (This was last revised at 43 FR 42116, September 19, 1978 and 44 FR 54536, September 20, 1979). Other than these changes none of this agency's systems of records have been amended since the September 30, 1977 publication.

Geographical Guidance for Accessing Systems of Records

Many CSA systems of records are maintained wholly or partially in the CSA Regional Offices. To facilitate access to such records, a listing of the CSA Regional Offices, the States served thereby, their addresses and telephone numbers are provided:

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont: John F. Kennedy Federal Building, Room E400, Boston, Massachusetts 02203, (617) 223–4080.

Region II

New Jersey, New York, Puerto Rico, Virgin Islands: 26 Federal Plaza, 32nd Floor, New York, New York 10007, (212) 264–1900.

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia: 9th & Market Streets, P.O. Box 160, Philadelphia, Pennsylvania 19105, (215) 597–1139.

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: 101 Marietta Street NW., Atlanta, Georgia 30323, (404) 221–2717.

Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, (312) 353–5987.

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, Texas: 1114 Commerce Street, 5th Floor, Dallas Texas 75242, (214) 767–6125.

Region VII

Iowa, Kansas, Missouri, Nebraska: 911 Walnut Street, Room 1720, Kansas City, Missouri 64106, (816) 374–3361.

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming: Tremont Center Building, 333 W. Colfax Avenue, Denver, Colorado 80204, (303) 837–4767.

Region IX

Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories: 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102, (415) 556–5400.

Region X

Alaska, Idaho, Oregon, Washington: Arcade Plaza Building, Mail Stop 105A, 1321 Second Avenue, Seattle, Washington 98101, (206) 422–4910.

Location of Notices in Privacy Act Issuances, 1978 Compilation.

The complete text of this agency's systems of records also appears in Volume III of the 1979 Compilation at page 2591. The price of this volume is $9.50. It may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Alan O. Mann,

Privacy Act Officer.

[FR Doc. 80-32464 Filed 10-17-80; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Application Technologies, Inc.; Intent To Grant Limited Exclusive Patent License

Pursuant to the provisions of Part 746 of title 32, *Code of Federal Regulations* (41 FR 55711–55714, December 22, 1976) the Department of the Navy announces its intention to grant to Application Technologies, Inc., a corporation of the State of Maryland, a revocable, nonassignable, limited exclusive license which will expire on August 31, 1983 under Government-owned United States Patent Number 3,273,376, issued September 20, 1966, entitled "Static and Dynamic Calibration Vessel for Pressure Gages", inventors: Philip M. Aronson and Robert H. Waser.

This license will be granted unless on or before December 19, 1980 an application for a nonexclusive license from a responsible applicant is received by the Office of Naval Research (Code 302), Arlington, VA 22217, and the Chief of Naval Research or his designee determines that such applicant has established that he has already brought or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or the Chief of Naval Research or his designee determines that a third party has presented to the Office of Naval Research (Code 302) evidence and argument which has established that it would not be in the public interest to grant the limited exclusive license.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed to the Office of Naval Research (Code 302), Arlington, VA 22217 within 60 days from the publication of this notice. Also, copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, contact: Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. (202) 696–4005.

Dated: October 10, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 80-32533 Filed 10-17-80; 8:45 am]

BILLING CODE 3810-71-M

Marine Corps, Navy Department

Amendments to Systems of Records

AGENCY: Department of Navy (U.S. Marine Corps).

ACTION: Notice of change of titles and addresses.

SUMMARY: The Marine Corps proposes to correct four systems which have changes in the activities' title and/or address. The new title and address for the Marine Corps Automated Services Center is the Marine Corps Central Design and Programming Activity (MCCDPA), 1500 East 95th Street, Kansas City, Missouri 64131. The new address for the Finance Center is the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197. The Allotment Division, which is a part of the Marine Corps Finance Center, is now called the Centralized Pay Division. Additionally, the office codes for the systems managers and the current title of the Department of Health and Human Services (DHHS) is provided where formerly identified as the Department of Health, Education and Welfare. The proposed corrections are to four systems maintained by the Marine Corps that are subject to the Privacy Act of 1974. The specific title and address changes are set forth below.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, D.C. 20380, telephone: 202–694–4115.

SUPPLEMENTARY INFORMATION: The Marine Corps' systems of records notices as prescribed by the Privacy Act of 1974, Public Law 93–579 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc 79–36297 (44 FR 68946) November 30, 1979
FR Doc (44 FR 74495) December 17, 1979
FR Doc 80–4470 (45 FR 9316) February 12, 1980
FR Doc 80–5182 (45 FR 10840) February 19, 1980
FR Doc 80–5420 (45 FR 11523) February 21, 1980
FR Doc 80–6233 (45 FR 13182) February 28, 1980
FR Doc 80–15426 (45 FR 33677) May 20, 1980
FR Doc 80–16549 (45 FR 37254) June 2, 1980
FR Doc 80–26959 (45 FR 58646) September 4, 1980

The proposed corrections are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of a new or altered system report.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.
October 10, 1980.

Amendments

MFD00003

SYSTEM NAME:

MFD00003, Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS)

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Headquarters, U.S. Marine Corps and Marine Corps commands, activities and organizations—By officials and employees of the Marine Corps in the performance of their assigned duties in matters relating to a Marine's automated personnel and/or pay record.

Department of Defense and its components—By officials and employees of the Department in the performance of their official duties.

The attorney General of the U.S.—By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement of other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts—By officials of duly established local, state, and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S.—By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to the Marine Corps.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Federal, state and local government agencies—By officials and employees of federal, state and local government through official request for information with respect to law enforcement

investigatory procedures, criminal prosecution, civil court action and regulatory order.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency initiate criminal or civil action against an individual on behalf of the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U.S. Marine Corps, by the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

Department of Health and Human Services (DHHS)—Disclosure of the name, rank or grade, and Social Security Account Number of each Marine Corps active duty military member to the Inspector General of DHHS for the specific purpose of comparison with appropriate rolls reflecting recipients of Aid to Families with Dependent Children (AFDC).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps, Codes FD/MP, Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

* * * * *

RECORD ACCESS PROCEDURES:

Information on JUMPS may be obtained from the member's local disbursing officer. Information on MMS may be obtained from the member's immediate commanding officer. Requests for information from persons no longer in service should be signed by the person requesting the information. Dates of service, Social Security Number, and full name of requester should be printed or typed on the request. It should be sent to the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

* * * * *

MFD00004

SYSTEM NAME:

MFD00004, Bond and Allotment (B&A) System

* * * * *

SAFEGUARDS:

The Centralized Pay Division is locked during nonduty hours, as well as the building being under security guard protection. Files within the Division are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Magnetic records are maintained by MCCDPA on all active allotments during the life of the allotment and for a period of 12 months after the allotment has been stopped. Paper and microform files of the Centralized Pay Division are maintained indefinitely.

* * * * *

NOTIFICATION PROCEDURE:

Individual requests for information should be addressed to the Marine Corps Finance Center, Centralized Pay Division (Code CPA), Kansas City, Missouri 64917.

A person may visit any Marine Corps disbursing office to find out if the system contains records pertaining to him or her.

For personal visits, the requester must present a military identification card or copy of an Armed Forces of the United States Report of Separation from Active Duty (DD Form 214 (MC)) for separated personnel.

* * * * *

MFD00005

SYSTEM NAME:

MFD00005, Retired Pay/Personnel System (RPPS)

* * * * *

NOTIFICATION PROCEDURE:

Requests from individuals for information should be referred to the SYSMANAGER.

Requesting individual must supply full name and SSN.

The requester may visit the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197, to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

* * * * *

MFD00006

SYSTEM NAME:

MFD00006, Centralized Automated Reserve Pay System (CAREPAY)

* * * * *

NOTIFICATION PROCEDURE:

Requests from individuals for information should be referred to the SYSMANAGER.

Requesting individual must supply full name and SSN.

The requester may visit the Marine Corps Finance Center, 1500 East 95th

Street, Kansas City, Missouri 64197, to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

* * * * *

[FR Doc. 80-32461 Filed 10-17-80; 8:45 am]
BILLING CODE 3810-71-M

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of new system of records.

SUMMARY: The Office of the Secretary of Defense publishes a notice of a new system of records, DOCHA 09, entitled: "Civilian Health and Medical Program of the uniformed Services (OCHAMPUS) Grievance Records", which incorporates information contained in OPM's system of records OPM/GOVT-2, "Grievance Records", which is being deleted from OPM's annual republication of systems of records (September 1980).

DATE: This system shall be effective November 19, 1980.

ADDRESS: Mr. James D. Netterfield, Personnel Officer, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Department of Defense, Aurora, Colorado 80045.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, telephone: 202-695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act have been published in the **Federal Register** as follows:

FR Doc. 79-370542 (44 FR 74088) December 17, 1979
FR Doc. 80-7517 (45 FR 15064) March 11, 1980
FR Doc. 80-8135 (45 FR 17056) March 17, 1980
FR Doc. 80-13709 (45 FR 29390) May 2, 1980
FR Doc. 80-13707 (45 FR 29590) May 5, 1980
FR Doc. 80-25479 (45 FR 34034) May 21, 1980
FR Doc. 80-19461 (45 FR 43409) June 27, 1980
FR Doc. 80-23575 (45 FR 51880) August 5, 1980
FR Doc. 80-25326 (45 FR 55516) August 20, 1980
FR Doc. 80-25947 (45 FR 56861) August 16, 1980
FR Doc. 80-26399 (45 FR 57515) August 28, 1980
FR Doc. 80-29169 (45 FR 62881) September 22, 1980

This system not fall within the purview of Office of Management and Budget (OMB) Circular A-108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and may 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of records under the Privacy Act of 1974. This OMB guidance was set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

M. S. Healy,
OSD Federal Register Liaison Officer
Washington Headquarters Services
Department of Defense.
October 10, 1980.

DOCHA 09

SYSTEM NAME:

Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) Grievance Records.

SYSTEM LOCATION:

Personnel Office, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Department of Defense, Fitzsimons Army Medical Center, Aurora, Colorado 80045.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances in accordance with 5 U.S.C. 2302, and 5 U.S.C. 7121, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Office of CHAMPUS employees under 5 U.S.C. 2302, and 5 U.S.C. 7121. These case files contain all documents related to the grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that OCHAMPUS may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2302, and 5 U.S.C. 7121.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

INTERNAL USERS, USES, AND PURPOSES:

This information is used by the Office of CHAMPUS in the creation and maintenance of records of summary descriptive statistics and analytical

studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

EXTERNAL USERS, USES, AND PURPOSES:

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual, in response to an inquiry from that congressional office, made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service conducted under authority of 44 U.S.C. 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom the records are maintained.

SAFEGUARDS:

These records are maintained in locked metal file cabinets, with access only to authorized OCHAMPUS Personnel Office employees.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Mr. James D. Netterfield, Personnel Office, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, Colorado 80045, telephone: 303–341–8800.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Request for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By Agency officials.

d. From related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-32462 Filed 10-17-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Arkla Chemical Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and an potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: September 25, 1980.

Comments by: November 19, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235 (phone) 214/767–7745.

SUPPLEMENTARY INFORMATION: On September 25, 1980, the Office of Enforcement of the ERA executed a Consent Order with Arkla Chemical Corporation, of Shreveport, Louisiana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, may be made effective upon its execution.

Because the DOE and Arkla Chemical wish to expeditiously resolve this matter as agreed to and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Arkla Chemical effective as of the date of its execution by the DOE and Arkla Chemical.

I. The Consent Order

Arkla Chemical Corporation, with its home office in Shreveport, Louisiana, is a firm engaged in the resale of premium and regular gasoline, No. 2 diesel fuel, naphtha, and kerosene, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of these products, the Office of Enforcement, ERA, and Arkla Chemical entered into a Consent Order,

the significant terms of which are as follows:

1. The period covered by the Consent Order was November 1, 1973 through January 31, 1974, and it included all sales of the above mentioned products which were made during that period.

2. Arkla Chemical Corporation improperly applied the provisions of 10 CFR 212.93(a) when determining the prices to be charged for its gasoline, diesel fuel, naphtha, and kerosene and as a consequence overcharged certain of its customers on some of their purchases.

3. Because the sales were not made to ultimate consumers, and they are not readily identifiable, Arkla Chemical Corporation will repay $67,500 through the DOE. Additionally Arkla Chemical Corporation has agreed to pay a penalty of $2,500.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Arkla Chemical Corporation, agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. 1. above, the sum of $67,500 in the manner specified in I. 3. above. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order received appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. The adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199J(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Arkla Chemical Corporation Consent Order". The ERA will consider all comments received by 4:40 p.m. local time, on November 19, 1980.

You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 6th day of October 1980.

Wayne I. Tucker,

District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-32800 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

L. P. Rech Distributing Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and an opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: September 15, 1980.
Comments by: November 19, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226; (303) 234-3195.

SUPPLEMENTARY INFORMATION: On September 15, 1980, the Office of Enforcement of the ERA executed a Consent Order with Loren P. Rech, d/b/a L. P. Rech Distributing Co. (Rech) of Roundup, Montana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Rech, with its home office located in Roundup, Montana, is a firm engaged in the marketing of gasoline, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Rech, the Office of Enforcement of the ERA, and Rech have entered into a Consent Order, the significant terms of which are as follows:

1. Total alleged overcharge during the audit period (September 1, 1979 through November 30, 1979) on all sales of gasoline was: $14,117.76.

a. Wholesale Reseller Overcharge: $7,093.97.

b. Retail End-User Overcharge: $7,017.68.

2. The Office of Enforcement alleged that Rech violated the gasoline price regulations contained in 10 CFR 212.93(a)(1) of the Mandatory Petroleum Price Regulations by exceeding its "maximum legal selling price" for gasoline sold to Rech's wholesale and retail customers.

3. Rech agreed to refund the total alleged overcharge, plus interest, on or before September 30, 1980.

4. Rech agreed to pay a civil penalty of $1,500.00

5. The provisions of 10 CFR 205.199J, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Rech agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of

Enforcement, ERA, arising out of the transactions between Rech and its wholesale customers during the audit period the sum of $7,093.97, plus cumulative interest through June 30, 1980, of $759.11, on or before September 30, 1980. This refund will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges have been passed through as higher prices to subsequent purchasers.

In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

In addition, Rech agrees to refund, in full settlement of any and all civil liability within the jurisdiction of the DOE in regard to actions that might be brought by the DOE arising out of sales by Rech to its retail customers during the audit period, the sum of $7,017.68, plus cumulative interest through June 30, 1980, of $750.96, on or before September 30, 1980. Each individual refund payment shall be made by check or by credit against the purchases of gasoline by the customer concerned in the month of refund. The total refund to each customer shall consist of the overcharge to that customer, plus applicable prorated interest.

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount held by DOE should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send you comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling (303) 234–3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on L. P. Rech Distributing Co. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 19, 1980.

You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colo., on the 15th day of September 1980.

Kenneth E. Merica,

District Manager, Office of Enforcement, Rocky Mountain District, Economic Regulatory Administration.

Concurrence:

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80-32802 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Plaquemines Oil Sales Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Plaquemines Oil Sales Corporation, Belle Chasse, Louisiana 70037. This Proposed Remedial Order charges Plaquemines with pricing violations in the amount of $331,572.44, connected with the resale of No. 2 diesel fuel during the time period November 1, 1973, through August 31, 1975, in the State of Texas.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager of Enforcement, 2626 West Mockingbird, Dallas, Texas 75235, phone 214/767–7745. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 7th day of October 1980.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 80-32601 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Northeastern Oil Co., Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Effective date: September 29, 1980. Comments by: November 17, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood Colorado, 80226.

PHONE: (303) 234–3195.

SUPPLEMENTARY INFORMATION: On September 29, 1980, the Office of Enforcement of the ERA executed a Consent Order with Northeastern Oil Co., Inc. (NOCI) of Gillette, Wyoming. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

NOCI, with its home office located in Gillette, Wyoming, is a firm engaged in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, without substantially changing their form, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts

210, 211 and 212. To resove certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of NOCI, the Office of Enforcement, ERA, and NOCI entered into a Consent Order, the significant terms of which are as follows:

1. NOCI has agreed to refund a total of $30,000 in six equal monthly installments beginning in October 1980 in full settlement of overcharges (including interest) alleged by the DOE for the period December 18, 1978, through April 30, 1980.

2. NOCI has agreed to pay a civil penalty of $3,000.

3. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, NOCI agrees to refund, in full settlement of any civil liability (except civil penalties) with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $30,000 which includes interest. Refund of those overcharges will be in the form of certified check(s) made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforecement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges has been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount specified in I.1, above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of the Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling (303) 234–3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Northeastern Oil Co., Inc. Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on November 19, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colorado on the 29th day of September 1980.

Kenneth E. Merica,

District Manager of Enforcement, Rocky Mountain District.

Concurrence by:

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80-32599 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board.

Date and time: November 6, 1980—9:00 a.m.–3:00 p.m.; November 7, 1980—9:00 a.m.–4:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Forrestal Building—Room 4A104, Washington, D.C. 20585

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Forrestal Building—Room 8G087, 1000 Independence Avenue SW., Washington, D.C. 20585. Telephone: 202–252–5187.

Purpose of the Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda:

- Discussion of Energy R&D Priorities in DOE
- Consideration of Geothermal Panel Reports
- Consideration of Advanced Isotope Separation Technology Study Group Report
- Progress Report on Conservation and Biomass Panels
- Progress Report on Solar Photovoltaic Energy Advisory Committee
- Status of DOE Technology Base Assessment
- Discussion of New Assignments Mandated by Congress:
  Ocean Technology Energy Conversion Panel
  Fusion Review Panel
- Administrative Matters
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independance Avenue SW., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-32806 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given fo the following advisory committee meeting:

Name: High Energy Physics Advisory Panel.

Date and Time: Sunday, November 9, 1980—9:00 a.m.–6:00 p.m.; Monday, November 10,

1980—9:00 a.m.–6:00 p.m.; Tuesday, November 11, 1980—9:00 a.m.–4:00 p.m.

Place: National Science Foundation, National Science Board Room (Room 540), 1800 G Street NW., Washington, D.C.

Contact: Dr. P. K. Williams, Secretary, High Energy Physics Advisory Panel, Department of Energy, Mail Stop J–309, Washington, D.C. 20545, Telephone: 301–353–3367.

Purpose of Committee: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

- •Discussions of the status of the FY 1981 and FY 1982 DOE and NSF budgets for High Energy Physics
- •Discussion of the GAO final report on High Energy Physics
- •Discussion on international cooperation in High Energy Physics
- •Status reports on ISABELLE (BNL) and the Energy Saver (Fermilab)
- •Discussion with representatives of the Division of Particles and Fields on problems in the field
- •Discussion on long range planning and needs for the program
- •Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202–252–5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 32608 Filed 10–17–80; 8:45 am]

BILLING CODE 6450–01–M

Conservation and Solar Applications; National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and time: Wednesday, November 12, 1980—1:00 p.m.–5:00 p.m., Thursday, November 13, 1980—8:30 a.m.–3:00 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., Forrestal Building—Room 5A104, Washington, D.C. 20585

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, 1000 Independence Avenue SW., Forrestal Building—Room 8G087, Washington, D.C. 20585. Telephone: 202–252–5187

Purpose of Committee: The Board was established to carry on a continuing review of the comprehensive Energy Extension Service program and approved plans of the Governors of each State for implementing Energy Extension Service activities.

Tentative Agenda:

November 12, 1980.

1:00 p.m.—Update on DOE energy conservation programs, emphasizing EES

3:00 p.m.—Consideration of Reports to the Board:

- EES services to low and moderate income clients
- The Comprehensive Program and Plan for Federal Energy Education, Extension, and Information Activities
- International Energy Conservation Outreach Programs

4:45 p.m.—Public Comment (10 minute rule)

November 13, 1980

8:30 a.m.—Board evaluation of the EES transition from a pilot to a national program for preparation of the Second Board Report to Congress, the Secretary of Energy, and the EES Director

12:00 noon—Recess

1:30 p.m.—Future Directions for the Board

2:45 p.m.—Public Comment (10 minute rule)

Public participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80–32607 Filed 10–17–80; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that the Coordinating Subcommittee and the Tight Gas Reservoirs Task Group of the Committee on Unconventional Gas Sources will meet in October 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the meeting follows:

The joint meeting of the Coordinating Subcommittee and the Tight Gas Reservoirs Task Group will be held on Monday, October 27, 1980, and Tuesday, October 28, 1980, starting at 9:00 a.m. on both days, in the Pan American Room of the Capital Hilton Hotel, 16th and K Streets NW, Washington, D.C.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review draft work of the Coordinating Subcommittee Tight Gas Reservoirs Task Group.
3. Discuss the completion of the NPC Unconventional Gas Sources study.
4. Discussion of any other matters pertinent to the overall assignment of the Subcommittee and Task Group.

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 9, 1980.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Resources Development and Operations Resource Applications.

October 9, 1980.

[FR Doc. 80–32604 Filed 10–17–80; 8:45 am]

BILLING CODE 6450–01–M

Resource Applications; National Petroleum Council Subcommittee on Refinery Flexibility; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Subcommittee on Refinery Flexibility of the National Petroleum Council

Date and time: Wednesday, November 5, 1980—10:00 a.m.

Place: Plaza Hotel, Savoy Room, Fifth Avenue at 59th Street, New York, New York

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, 1000 Independence Avenue, S.W., Forrestal Building—Room 8G087, Washington, D.C. 20585. Telephone: 202–252–5187

Purpose of parent committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative agenda:

- Opening remarks
- Review and discuss proposed final report on Refinery Flexibility
- Discuss any other matters pertinent to the overall assignment of the Committee
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80–32605 Filed 10–17–80; 8:45 am]

BILLING CODE 6450–01–M

Office of Intergovernmental Affairs

Local Government Energy Policy Advisory Committee and Subcommittees; Open Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meetings:

Name: Local Government Energy Policy Advisory Committee

Date and Time: Thursday, November 13, 1980. Full Committee—9:00 a.m. to 12:00; Subcommittees—2:00 p.m. to 3:00 p.m. Friday, November 14, 1980. Subcommittees Reconvene—9:00 a.m. to 10:00 a.m.; Full Committee—10:00 a.m. to 1:30 p.m.

Place: Department of Energy, Forrestal Building (see agenda for room numbers), 1000 Independence Avenue SW, Washington, D.C. 20585.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Room 8G087, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: 202–252–5187.

Purpose of Committee: To advise and make recommendations to the Secretary of Energy on matters relating to Federal energy policies, programs, and legislation so that the Secretary may reach a judgment as to whether national energy policies are reflective of and responsible to the needs of local governments, that components of the Department are coordinating their activities with local governments, where appropriate, and that intergovernmental communication exists with local governments.

TENTATIVE AGENDA:

Thursday, November 13, 1980. Full Committee Meeting—Room 2E–069 Forrestal Bldg. 9:00 a.m.–12:00.

- Welcoming Remarks
- General Business

—Status Report

—Focus/Mission/Objectives of LGEPAC for FY 81

—NEP III: Status and Local Government Concerns

—LGEPAC Annual Assessment

—Role of Local Governments in Energy

—Federal Assistance for Local Governments

—Report on Departmental Actions on LGEPAC Resolutions

Subcommittee Meetings—Room 6E–069, 2:00 p.m.–3:00 p.m.

Subcommittee on Procedural Mechanisms

Subcommittee on Legislation

Subcommittee on Local Energy Planning

Subcommittee on Local Energy Emergency Contingency Planning

Friday, November 14, 1980. Subcommittees Reconvene—Room 6E–069, 9:00 a.m.–10:00 a.m.

Full Committee Meeting—Room 2E–069, 10:00 a.m.–1:30 p.m.

1:30—Public Comment (10 minute rule)

Public Participation: The meetings are open to the public. The Chairpersons of the Committee and Subcommittees are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee or Subcommittees will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting concerned and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 10, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80–32609 Filed 10–17–80; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Public Hearing; Compliance With Title I of the Public Utility Regulatory Policies Act

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Announcement of public hearing, compliance with Title I of the Public Utility Regulatory Policies Act.

SUMMARY: To comply with sections 111 and 113 under Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA), the Western Area Power Administration (Western) will hold a public hearing to consider each of the standards established by those sections. Both sections 111 and 113 will be discussed at the same public hearing. A brochure entitled "Preconsideration of Public Utility Regulatory Policies Act Title I Standards" has been prepared and is currently available from Western upon request and will be available at the public hearing. Each standard is

listed and discussed in the brochure. The brochure will be the basis for comments during the hearing.

DATE: A public hearing will be held on November 6, 1980, beginning at 9 a.m. at the Sheraton Inn, Denver Airport, Mt. Evans Room, 3535 Quebec Street, Denver, Colorado. Written comments should be received by December 1, 1980, in order to be assured of consideration.

ADDRESS: For further information concerning the public hearing or to request a copy of the brochure, please contact: Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 2402, Golden, CO 80401, (303) 231–1535.

Written comments should be also submitted to the above address.

SUPPLEMENTARY INFORMATION: Western was established on December 21, 1977, under the Department of Energy Organization Act of 1977 (DOE Act). The DOE Act transferred to the Secretary of Energy all the functions of the Secretary of the Interior with respect to, among other things, the power marketing functions of the Bureau of Reclamation (now the Water and Power Resources Service and hereinafter called the Service), including the construction, operation, and maintenance of tranmission lines and attendant facilities. Western was established to administer those functions transferred from the Service.

Western sells power for 10 individual power projects, each with its own rates, to almost 400 customers consisting of cooperatives, municipalities, public utility districts, private utilities, Federal and State agencies, irrigation districts. Electric power marketed by Western is generated by hydroelectric resources of the Service, the Corps of Engineers, and the International Boundary and Water Commission. Additionally, Western markets the United States' entitlement from the large Navajo coal-fired plant near Page, Arizona, and, in northern California, markets power purchased from the most economic resources available to meet obligations of the Central Valley Project in excess of the Federal hydroelectric resouces available.

Western's obligations to its customers are contractually established and limited. Western neither claims nor accepts any utility responsibility. In all cases, customer requirements in excess of the power and energy available to that customer from Western must be obtained by the customer from other sources.

Section 111 of PURPA requires that utilities with annual sales that are not for resale in excess of 500 million kilowatt hours " * * * consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title." The section goes on to say that "The consideration referred to in subsection (a) shall be made after public notice and hearing." Section 113 requires that such utilities " * * * provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing * * * " either adopt, pursuant to subsection (a), each of the standards, or expain why the standard will not be adopted.

Two of the projects for which Western markets power, the Boulder Canyon Project and the Central Valley Project, have annual sales that are not for resale in excess of the 500 million kilowatthour threshold. A third project, the Pick-Sloan Missouri Basin Program, has such sales so close to the threshold amount that it too will be considered in the category of being above the threshold. For those sales that are not for resale for each of these three projects, Western is considering each of the standards set forth in section 111 and 113 of the PURPA. At the public hearing, Western will receive comments concerning whether or not it is appropriate for Western to implement each standard for such sales for these projects for the purposes of Title I of PURPA.

Although not statutorily required to do so, Western is willing to receive comments concerning the appropriateness of implementing each standard for its sales that are for resale for each of these three projects, and for both sales that are for resale for other projects for which it markets power. The other projects are the Collbran Project, Colorado River Basin Project, Colorado River Storage Project, Falcon-Amistad Project, Parker-Davis Project, Provo River Project, and the Rio Grande Project.

After analyzing any comment received, Western will complete its consideration and will make a determination concerning whether or not it is appropriate to implement each standard. The final determinations will be in writing and will be available to the public.

Issued at Golden, Colorado, October 10, 1980.

Robert L. McPhail,

Administrator.

[FR Doc. 80-32803 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1638-5]

Availability of Environmental Impact Statement

AGENCY: Office of Environmental Review (A–104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the Environmental Impact Statements (EIS's) which have been officially filed with the EPA and distributed to federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of October 6, 1980 to October 10, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from October 17, 1980 and will end on December 1, 1980. The 30-day review period for final EIS's as calculated from October 17, 1980 will end on November 17, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the federal agency which prepared the EIS. This notice will give a contact person for each federal agency which has filed an EIS during the period covered by the notice. If a federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558–8270 (for hard copy reproduction or microfiche.)

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of October 6, 1980 to October 10, 1980. The federal agency filing the EIS, the name, address, and telephone number of the federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the state(s) and county(ies) of the proposed action and a brief summary of the proposed federal action and the federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental

reports is also notice under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245–3006.

Dated: October 15, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A–104).

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality Office, of the Secretary, U.S. Department of Agriculture, Room 412–A Admin. Building, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Draft

Maine Spruce Budworm Management (1981–1985), Several Programmatic Counties, Maine, October 10: This programmatic EIS addresses the awarding of funding on an annual basis for a 5 year spruce budworm intergrated pest management program in the counties of Aroostock, Piscataquis, Somerset, Penobscot, Washington, Franklin and Hancock, Maine. The preferred alternative would involve an increase in the use of silviculture and utilization-marketing, while the use of chemicals is reduced and the use of biologicals is increased. All of the atlernatives consider, except no action, an increase in the use of silviculture and utilization-marketing. The alternatives vary in the use of chemicals and biologicals. The cooperating agency is the state of Maine. (USDA–FS–NA–81–01). (EIS order No. 800780.)

Correction: Flathead Wild and Scenic River Designation (FS–1), MT, published FR October 14, 1980—EIS Order Number should be 800766.

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272–0121.

Draft

Valdez Hydroelectric Powerplant, Allison Lake, Alaska, October 6: Proposed is the construction of a hydroelectric power plant at Allison Lake, Alaska, to provide power to the Valdez/Copper River basin area. The preferred plan would involve the generation of 8 MW with 32,000 MWH of firm annual energy from the hydroelectric project and 7.4 MW with 52,000 MWH of annual energy from the pressure reducing turbine. Other plans included combinations of diesel, pressure reducing turbines, and hydroelectric. (Alaska district.) (EIS order No. 800770.)

Extension: The review period for the above EIS has been extended until December 5, 1980. (No. 800770)

Oceanside Vicinity Beach Erosion Control, San Diego, Calif. October 10: Proposed is a beach erosion control plan for the oceanside vicinity of San Diego County, California. The preferred alternative involves: 1) A continuous breakwater 10,800 feet long, 2) an 800 foot groin, 3) A 500 foot groin, 4) A 400 foot groin, 5) A 200 foot groin, 6) creation of a beach by sandfill, and 7) A 30 foot wide channel between Loma Alta Creek and Buena Vista Lagoon. The other alternatives considered are: 1) sandfill with periodic nourishment, 2) A sand bypassing system and sandfill, and 3) placement of groins and sandfill. The cooperating agencies are the state of California, EPA, FWS and NMFS. (Los Angeles District.) (EIS order No. 800785.)

Final

Prudhoe Bay Oil Field Waterflood Project, Alaska, October 10: Proposed is the issuance of permits for the construction and operation of a project to recover an additional billion barrels of oil from the currently producing Prudhoe Bay oil field in the North Slope Borough of Alaska. The project would include: (1) Widening, raising and extending an existing gravel causeway in the Beaufort Sea; (2) construction and operation of a seawater intake and treatment plant; (3) construction of six new gravel pads and related facilities for pressurizing and distributing seawater; (4) construction and maintenance of about 196 km of pipeline; and (5) widening 27 existing gravel pads and construction of one new gravel pad to accommodate water injection wells. The cooperating agencies are NMFS, EPA and FWS. (Alaska district). Comments made by: EPA, DOI, DOC, DOT, HUD, AHP, State and local agencies, groups, individuals, and businesses. (EIS order No. 800788.)

Nehalem Bay North and South Jetties Rehabilitation; Tillamook County, Oreg., October 9: Proposed is the rehabilitation of the north and south jetties of Nehalem Bay in Tillamook County, Oregon. The rubblemound jetties would be constructed to original dimensions using present construction specifications. The alternatives consider: Bar dredging, and rehabilitation of both jetties. The purposes of the project include: Improvement of navigational safety, maintenance of the usability of the navigation channel, and the reduction of wave erosion damage to a nearby residential area. (Portland district). Comments made by: DOI, USDA, FERC, EPA, DOC, State and local agencies, groups, and businesses. (EIS order No. 800775.)

Withdrawal: Dickey-Lincoln School Lakes Project, ME, published FR October 3, 1980, No. 800729 Final Supplement—has been officially withdrawn.

Department of Commerce

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230, 202–377–2482.

Economic Development Administration

Draft

Gatlinburg Intercity Water Supply; Sevier County, Tenn., October 10: Proposed is a intercity water supply plan for the city of Gatlinburg, Sevier County, Tennessee. This contains four phases consisting of: (1) The water supply systems of Gatlinburg, Pigeon Forge and Pittman Center would be interconnected, (2) construction of distribution lines in Pittman Center, (3) construction of a new pipeline from Sevierville to Pigeon Forge, and (4) searching and planning of development of new water sources. The cooperating agencies are FHA and Applaichian Regional Commission. (EIS order No. 800777.)

Environmental Protection Agency

Contact: Mr. Bill Geise, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, 303–837–4831.

Draft

Spearfish WWT Facilities, Grant, Lawrence County, S. Dak., October 6: Proposed is the awarding of a grant for the construction of wastewater treatment facilities for the Spearfish areas of Lawrence County, South Dakota. The facilities to be constructed will include: (1) A 3,800 foot, 8 inch gravity sewer line up Christensen Drive, and (2) a 4,000 foot, 8 inch sewer line with a 2,050 foot force main to the west subdivision in the lower Spearfish Valley. (EPA–908/5–80–002A). (EIS order No. 800769.)

Department of Defense, Army

Contact: Col. Kenneth Halleran, Chief of the Environmental Office, Headquarters Daen–zce, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694–4269.

Draft

Aleutian Is./Alaskan Peninsula, Debris Removal, Alaska, October 10: Proposed is the clean-up of World War II debris remaining on the Aleutian Islands and the lower Alaska Peninsula, Alaska. Clean-up operations would involve removal and disposal of derelict buildings, machinery, other obsolete and abandoned material and scattered debris remaining from military operations and construction. The Alternatives consider: (1) total clean-up, (2) partial clean-up, and (3) minimal clean-up. (EIS Order No. 800786.)

Fort Carson continued operation, Fort Carson; El Paso, Pueblo, and Fremont Counties, Colorado; October 10: Proposed is the continued operation of Fort Carson military installation located in Fort Carson and the counties of El Paso, Pueblo and Fremont, Colorado. Continued operation would involve the following land uses: (1) Cantonment area, (2) Butts Army Airfield, (3) ammunition storage point, (4) recreation areas, (5) training encampment areas, (6) tank firing tables, (7) training and maneuver areas, and (8) impact areas. Activities of the installation currently include support of the fourth infantry division and education/training of combat ready ground troops. The alternatives considered are: (1) no action/maintenance of the status quo, and (2) decrease of mission through elimination of one bridge. (EIS Order No. 800779.)

Extension: The review period for the above EIS has been extended until December 8, 1980. (No. 800779)

Federal Energy Regulatory Commission

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Room 3000, S–22, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 357–8228.

Special notation.—Anyone desiring to protest or file a petition to intervene with the FERC on the basis of a draft EIS listed below should do so in accordance with the requirements of FERC's rules of practice and procedure, 18 CFR 1.8, 1.10 (1979), within the time period set forth in this notice, unless otherwise stated.

Draft

South Fork American River Development, License, El Dorado County, California, October 10: Proposed is the issuance of a license for the construction of a conventional hydroelectric and water supply project with an installed generating capacity of 110.4 Mw on the South Fork American River and tributaries in El Dorado County, California. The facilities required involve: (1) diversion dams, (2) diversion structures, (3) water conveyance structures, (4) powerhouses, (5) transmission lines, (6) access roads, (7) recreational facilities, and (8) appurtenant facilities. The cooperating agency is the FS. (FERC/EIS–0020/D.) (EIS Order No. 800783.)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of HUD, 451 7th Street, SW., Washington, D.C. 20410, (202) 755–6300.

Draft

Midvale Park Development, Mortgage Insurance, Pima County, Arizona, October 10: Proposed is the issuance of various types of HUD Home Mortgage Insurance for the Midvale Park, a major housing, commercial and industrial development, to be located in Pima County, Arizona. The development would consist of 8,752 single-family, townhouse, condominium, apartment and mobile home units. Commercial facilities will include: (1) 116 acres of local and district shopping facilities, and (2) 74 acres for a regional shopping center. A site for a 127-acre industrial park is also planned. In addition, school and park sites would be reserved. (EIS Order No. 800778.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

BUREAU OF LAND MANAGEMENT

Draft

Southern Appalachian Regional Coal Leasing, several counties in Alabama, October 6: Proposed is the initiation of an active coal leasing program in the counties of Fayette, Jefferson, Tuscaloosa and Walker, Alabama. The low or preferred alternative would offer for lease in mid-1981, six underground tracts and seven surface-mineable tracts, which would result in an average annual production of approximately 8 million tons. The alternatives consider: (1) no action, (2) underground mining, (3) low production, (4) medium production, and (5) high production. (EIS Order No. 800768.)

Extension: The review period for the above EIS has been extended until December 10, 1980. (No. 800768.)

Uinta-Southwestern Utah Coal Development, several counties in Utah, October 9: Proposed is the development of the Uinta-Southwestern Utah coal region in Carbon, Emery, Sevier and Sanpete Counties, Utah. The alternatives consider: (1) leasing of 11 tracts and mining of 572.6 million tons, (2) leasing of 7 tracts and mining of 446.6 million tons, (3) leasing of specified exchange tracts and mining of 335.8 million tons, (4) leasing of 3 tracts and mining of 171.3 million tons, and (5) no action. The cooperating agencies are AFS, FWS and GS. (DES–80–68.) (EIS Order No. 800773.)

Extension: The review period for the above EIS has been extended until December 9, 1980. (No. 800773.)

Extension: California Desert Conservation Area, CA, published FR October 14, 1980, No. 800743—review period extended until November 21, 1980. Ute Mountain Strip Coal Mine Lease, NM, published FR September 26, 1980, No. 800717—review period extended until November 20, 1980.

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Aviation Administration

Draft

Washington National Airport Safety Modification, Washington, D.C., October 10: Proposed is approval of a safety overrun area modification at Washington National Airport in Washington, D.,C. the modifications will involve constructing a 550 foot grass overrun on the north end in roaches run. The total overrun would be 750 feet. On the south end the existing 1,000 foot overrun would be rehabilitated. In addition to no build, four design alternatives are considered. The cooperating agency is the COE. (EIS Order No. 800776.)

Extension: The review period for the above EIS has been extended until December 9, 1980. No. 800776.

Federal Highway Administration

Final

IA–100 Construction and U.S. 30 Reconstruction Linn County, Iowa, October 8: proposed is the construction of IA–100 and the reconstruction of US 30 in Linn County, Iowa. Plans for IA–100 involve constructing a two lane rural facility from US 30 to IA–94. From IA–94 to usher's ferry road, IA–100 would be an urban four lane divided facility. The reconstruction and relocation of US 30 would begin two miles west of Stoney Point Road to one mile south of the existing US 30. The alternatives consider no build and four alignments. (FHWA–IOWA–EIS–78–4–F.) Comments made by: USDA HUD, DOI, EPA, DOT, COE, state and local agencies. (EIS Order No. 800772.)

Final

Alton Beltline extension, IL–140 to Broadway Avenue, Madison County, Illinois, October 6: Proposed is the Construction, on a new alignment, of the Alton Beltline extension (FAP route 785 S) located in Madison County, Illinois. The project will extend for two miles from the Alton Beltline highway's present terminus at college avenue (IL–140) in northeast Alton to Broadway in southeast Alton, near the city's common corporate boundary with east Alton. Project features include the reconstruction of the thousand island intersection, replacement of the present two-lane Milton road bridge over Wood River Creek, and relocation of Milton Road over come-in place. (FHWA-IL-EIS-79–02–F) Comments made by: EPA, DOT, USDA, DOI, FERC, State and local agencies, groups, and businesses. (EIS order No. 800771.)

Mid-County Expressway /I–476, I–95 to I–76, Delaware and Montgomery Counties, October 10: Proposed is the construction of a segment of the Mid-County Expressway /I–476 from I–95 to I–76 in the counties of Delaware and Montgomery, Pennsylvania. The total length of this segment would be 16.9 miles. The facility would be a six land, divided, limited access highway. The alternatives consider: 1) build with all planned interchanges, 2) delete West Chester Pike Interchange, 3) delete Lancaster Avenue Interchange, and 4) delete both interchanges. (FHWA–PA–EIS–76–03–F) Comments made by: USDA, DOC, DOI, DLAB, EPA, GSA, State and local agencies, groups, individuals, and businesses. (EIS Order No. 800787.)

Report: I–40, Extension, I–40/I–95 to Wilmington, NC, has been made available. (No. 800776.)

Federal Railroad Administration

Draft

Shaw's Cove Bridge and Approaches, New London, New London County, Connecticut, October 9: Proposed is the replacement of the movable-span bridge carrying the northeast corridor mainline across Shaw's Cove in the city and county of New London, Connecticut, with a new bridge and approaches. The preferred alternative is a swing-span bridge on a new alignment approximately 106 feet east of the existing structure, with two 70 foot wide channels and a vertical clearance of 6.8 feet above mean high water (MHW) in the closed position. Other alternatives include: 1) no action, 2) rehabilitation of existing bridge, and 3) construction of a new bridge. The cooperating agency is COE. (FRA–RNC–EIS–80–02–D.) (EIS Order No. 800774.)

Urban Mass Transportation Administration

Draft

Washington Metrorail System, West Hyattsville, Prince Georges County, Maryland, October 10: Proposed is the construction of the West Hyattsville segment of Washington Metrorail System (green/yellow line, E route) in Prince George's County, Maryland. This segment extends from the DC boundary to approximately 2000 feet west of the Prince George's Plaza station. The preferred alignment is an S–curve facility and would involve the elimination of the Chillum Road Station and the construction of

a West Hyattsville station. The cooperative agency is the Washington Metropolitan area transit authority. (EIS Order No. 800784.)

Tennessee Valley Authority

Extension: Alternative Electric Power Rate Structures, published FR August 1, 1980, No. 800547—has been extended until October 20 1980.

Nuclear Regulatory Commission

Report: Joseph M. Farley Nuclear Plant, Unites 1 & 2, AL, has been made available. (No. 800782.)

[FR Doc. 80-32616 Filed 10-17-080; 8:45 am]

BILLING CODE 6560-37-M

[TSH-FRL1638-3; OPTS—59036]

Aminoalkanol Salt, as a 25-Percent Aqueous Solution; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under Section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the **Federal Register.** This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATE: The Agency must either approve or deny this application by November 6, 1980. Persons should submit written comments on the applications no later than November 4, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, DC 20460, (202–755–5080).

FOR FURTHER INFORMATION CONTACT: Mary Cushmac, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–221, Washington, DC 20460 (202–426–398).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558) and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substance that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorized EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register.**

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (45 FR 2268) would implement section 5(h)(1) concerning exemptions for tests marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice form.

Interested persons may, on or before November 4, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–59036]". Comments received may be seen in the above office between 8 a.m. and 4 p.m., Monday through Friday excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 9, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

TM–80–41

The following summary is taken from data submitted by the manufacturer in the test marketing exemption application.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. International Minerals & Chemical Corp., Mundelein, IL 60060.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Aminoalkanol salt, as a 25% aqueous solution.

Use. Pigment dispersant for latex paint and polyelectrolyte for industrial cooling water.

Production Estimates. The manufacturer states that 25,000 pounds of the new substance will be manufactured for test marketing purposes.

Physical/Chemical Properties

Flash point (TCC)—>194°F.

Specific gravity—1.07.
Viscosity (Brookfield)—4.3 cps.
pH—8.9–9.3.
Color (APHA)—<5.

Toxicity Data

Acute oral toxicity, LD_{50} (rat)—>6 g/kg.
Primary eye irritation (rabbit)—Non-irritating.
Primary skin irritation (rabbit)—Non-irritating.
Primary skin corrosion (rabbit)—Non-corrosive.

Exposure. During manufacture, the submitter states that work exposure will be limited to two or three persons who will employ safe housekeeping procedures and wear protective clothing. During use, exposure potential is limited to incorporation of the material into the paint. One to two workers could be exposed for a period of one-half to one hour during the process.

Environmental Release/Disposal. The submitter states that disposal will not be necessary. However, should a spill occur, the substance could be absorbed with sawdust or bentonite and disposed of in a landfill.

[FR Doc. 80-32530 Filed 10-17-80; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-50021A; TSH-FRL 1638]

Premanufacture Information, Access by Contractor and Subcontractor; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the commencement of access by a contractor and a subcontractor to confidential business information submitted by manufacturers in premanufacture notices.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–429, 401 M St. SW., Washington, D.C. 20406, Toll free: (800–424–9065), In Washington, D.C.: (202–554–1404).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of October 2, 1980 (45 FR 65299) announcing a contract between EPA and the American Management Systems, Inc. (AMS) and its subcontractor, Management Design, Inc. (MDI), to conduct an internal study of the review processes involved in implementing the Toxic Substances Control Act (TSCA).

In the FR Doc. 80–30641, appearing at page 65299, the entry following the heading "date:", first column, line 24, corrected to read: "Access to information submitted and claimed to be confidential will occur no sooner than October 17, 1980."

Dated: October 14, 1980

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-32528 Filed 10-17-80; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51152; TSH-FRL 1638-2]

Premanufacture Notices; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture Notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by: PMN 80–251—November 11, 1980; PMN 80–260—November 18, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Robert Jones, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202–426–8816).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause,

extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51152]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 14, 1980

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-251

Close of Review Period. December 11, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided: Standard Industrial Identification Code—28.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Carbomonocyclic, carbopolycyclic polyester.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. Generic information provided: The submitter states that the substance will be used in an open use that will release more than 50,000 kilograms of the substance into the environment per year.

Production Estimates. No data were submitted.

Physical/Chemical Properties

Vapor pressure—Solid at room temperature.
Density—>1.1 gm/cc.
Solubility in penta fluoro phenol at 60° C—1-10 gm/1.
Melting point—>100° C.

Toxicity Data

Animal Toxicological Evaluations:
Dermal toxicity screen—Negative.
Oral toxicity screen—Negative.
Skin sensitization—Negative.
Human patch test—Negative.
Mutagenicity Evaluations:
Ames test of the polymer resin—Negative.
Ames test of an artificial sweat extract—Negative.
Environmental testing:
Acid leachate of polymer resin—Non-hazardous.

Exposure. The manufacturer states that the use of the PMN substance will involve potential skin contact and potential inhalation exposure at a frequency of five or more times per week to chemical industry employees; a very low potential for contact by commercial employees in maintenance, services, and retail sales at frequency of more than once per week; and a very low potential for contact by consumers at a frequency of once per year or less.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Day/year	Average	Peak
Manufacture	Skin, Eye, Inhalation.	18	4	10	0-1	0-1
Use	Skin, Eye, Inhalation.	15	3	250	0-1	0-1

Environmental Release/Disposal.

Manufacture:
Media—Amount/Duration of Chemical Release (kg/yr).
Air—10-100. 4 hr/da; 5-20 da/yr.
Land—10-100.
Water—Less than 20.

Use:
Air—Less than 10.
Land—Less than 10.
Water—100-1,000 (intermittent).

The manufacturer states that reaction byproduct is disposed by incineration.

Environmental Release/Disposal. The submitter states that environmental release as an industrial or commercial loss will be to a landfill and final consumer disposal will be as solid waste.

PMN 80-260

Close of Review Period. December 18, 1980.

Manufacturer's Identity. Claimed confidential business information. Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Neutralizer polymer of styrene, alkyl acrylate and substituted alkyl methacrylates.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. The submitter states that the substance will be used in an open use that will release more than 50 but less than 500 kilograms (kg) of the substance to the environment per year.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

[FR Doc. 80-32529 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-31-M

[SA-1-RL 1637-6]

Task Group on Marine Ecosystem Monitoring of the Ecology Committee, Science Advisory Board; Open Meeting

Under Pub. L. 92-463, Notice is hereby given that a meeting of the Task Group on Marine Ecosystem Monitoring of the Ecology Committee, Science Advisory Board, will be held on November 6 and 7, 1980, beginning at 9:00 a.m., Hall of States A Conference Room, Skyline Inn, South Capitol and I streets, SW, Washington, D.C.

This is the second meeting of the Task Group on Marine Ecosystem Monitoring. The Task Group was established to examine marine ecosystem monitoring and the utility of data gathered to the mandates of the Environmental Protection Agency (EPA). The Agenda

includes such issues as regulatory aspects of ocean monitoring, parameters and factors that should be monitored, use of masses of data in decision-making, and planning of future meetings. It is anticipated that considerable time will be devoted to discussion of the preparation of the report and report writing.

The meeting is open to the public. Because of limited seating capacity of the meeting room, all members of the public must register no later than November 3, 1980, and receive a confirmed reservation from Dr. J Frances Allen, Staff Officer, Science Advisory Board, or Ms. Anita Najera, 202–472–9444.

Dated: October 14, 1980.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80–32526 Filed 10–17–80; 8:45 am]

BILLING CODE 6560–34–M

FEDERAL RESERVE SYSTEM

Northstar Bancorporation, Inc.; Acquisition of Bank

Northstar Bancorporation, Inc., Wayzata, Minnesota, has applied for the Board's approval and under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98.9 percent or more of the voting shares of Minnetonka State Bank, Excelsior, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80–32499 Filed 10–17–80; 8:45 am]

BILLING CODE 6210–01–M

S & H Holdings, Inc.; Formation of a Bank Holding Company

S & H Holdings, Inc., Iroquois, Illinois, has applied for the Board's approval under section 3(a)(1)) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 88.25 per cent or more of the voting shares of Iroquois Farmers State Bank, Iroquois, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80–32498 Filed 10–17–80; 8:45 am]

BILLING CODE 6210–01–M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 14, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 7, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

Nuclear Regulatory Commission

The NRC is requesting an extension-without-change clearance of the application, recordkeeping and reporting requirements contained in 10 CFR Part 33, Specific Domestic Licenses of Broad Scope for Byproduct Material; specifically §§ 33.13, 33.14 and 33.15. The NRC states that applications are made by letter containing the information required by §§ 33.13, 33.14 and 33.15. The NRC estimates that applicants will number approximately 60 and that applications for Type A licenses (§ 33.13) will require 40 hours to complete, for Type B licenses (§ 33.14) 25 hours per application; and for Type C (§ 33.15) 15 hours per application. NRC also states that recordkeeping burden is incorporated in burden as reported.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80–32573 Filed 10–17–80; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Committee on Vital and Health Statistics, Cooperative Health Statistics System; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the Subcommittee on Cooperative Health Statistics System of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k), Paragraph (4) of the Public Health Service Act (42 U.S.C. 242(k)), will convene on Monday, October 27, 1980, at 9:00 a.m., in Room 337A–339A of the Hubert H. Humprhrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Principal consideration and discussion will be devoted to the NCHS Task Force review of the panel report on CHSS; budget report and long-term funding issues; FY 1981 State Agency development projects; and Federal Agency cooperation. Agenda items are subject to change as priorities dictate.

Futher information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting Samuel P. Korper, Ph.D., M.P.H., Executive Secretary, National Committee on Vital and Health

Statistics, Room 17A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301–443–2660.

Date: October 14, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support Office of Health Research, Statistics, and Technology.

[FR Doc. 80–32148 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–85–M

Office of the Secretary

Consumer Affairs Council; Meeting

SUMMARY: This notice sets forth the scheduled date for the first meeting of the HHS Consumer Affairs Council. This meeting is being held under the Department of Health and Human Service's consumer affairs guidelines to comply with E. O. 12160 established by President Carter in the **Federal Register,** Vol. 45 No. 112, Monday, June 9, 1980, page 38981.

DATE: Friday, October 31, 1980, 2:00–4:00 p.m.

ADDRESS: 200 Independence Ave. SW., Room 800, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Susan L. Randolph, Assistant for Consumer Affairs, 200 Independence Ave. SW., Washington, D.C. 20201, (202) 245–0409.

Dated: October 14, 1980.

Glenn Kamber,

Deputy Executive Secretary (Regulations).

[FR Doc. 80–32564 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–12–M

Senior Executive Service Performance Review Board Amendment

In accordance with Section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, a notice announcing the appointment of Performance Review Board members for the Department of Health and Human Services was published in the **Federal Register** on July 16, 1980, Volume 45, Number 138, 45 FR 47729. This notice amends the composition of the Board as follows:

Federal Performance Review Board Members

Deletions

Peter J. Bersano
J. Richard Crout
Irvin Cushner
David Kefauver
Robert McClernan
Edward Nicholas
Gregory O'Conor
Gerald Rosenthal
Helen L. Smits
John C. Villforth
Jack Wicklein

Additions

Richard Adamson
Leonard Bachman
Calvin Baldwin
Ralph DeAngelus
Louis D. Enoff
Charlotte Frank
Gene Handelsman
Richard Heim
J. Paul Hile
Margaret H. Jordan
Martin Kappert
Jesse McCorry
Harry Meyer
Nick Onorato
Saul A. Schepartz
Kevin Sexton
Thomas Staples

Dated: October 10, 1980.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 80–32561 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–12–M

Public Health Service; Center for Disease Control; Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 80–31888 appearing on page 67772 in the issue of Tuesday, October 14, 1980, make the following correction:

On page 67774, center column, item (6) under *Center for Prevention Services (HCM)* should have read "(6) conducts operational research to improve the assistance programs;".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Casper District Advisory Council; Meeting

October 10, 1980.

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Casper District Advisory Council will be held on November 20, 1980.

The meeting will begin at 9:00 a.m. in the conference room of the Casper District Office, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming.

The agenda will include: (1) Review of the council's purpose, responsibilities and operating procedures; (2) review of district programs, activities, and land management issues; (3) election of officers; and (4) arrangements for the next meeting.

The meeting will be open to the public. Interested persons may make oral statements or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601 by November 17, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the district manager.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection within 30 days following the meeting.

Robert E. Wilber,

District Manager.

[FR Doc. 80–32450 Filed 10–17–80; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Wilderness Reevaluation Study; Carlsbad Caverns National Park, New Mexico; Public Hearing

Notice is hereby given in accordance with Section 401 of the Act of November 10, 1978, 92 Stat. 3489, 16 U.S.C. 1132(n) (1978 Supp. 2), and in accordance with Departmental procedures as identified in 43 CFR 19.5 that a public hearing will be held at the following location and time for the purpose of receiving comments and suggestions as to the reevaluation of lands within Carlsbad Caverns National Park for additional wilderness designation.

November 18, 1980 at 7:00 p.m., Carlsbad Municipal Library Auditorium, downtown Carlsbad, New Mexico.

A copy of the wilderness reevaluation study report may be obtained from the Superintendent, Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, New Mexico 88220, telephone (505) 885–8884, or from the Regional Director, Southwest Region, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, telephone (505) 988–6388.

The wilderness reevaluation study report including a map of the areas studied for their suitability or nonsuitability as wilderness is available for review at the locations noted above and in Room 1210 of the Department of the Interior Building at 18th and C Streets, NW., Washington, D.C. 20240.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearing, provided they notify the Hearing Officer by November 14, 1980, of their desire to appear. Those not wishing to appear in

person may submit written statements on the wilderness reevaluation study report to the Hearing Officer for inclusion in the official record which will be held open until December 19, 1980. The Hearing Officer may be reached by writing or telephoning the Superintendent, Carlsbad Caverns National Park.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made in behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement that may be submitted to the Hearing Officer at the time of presentation of the oral statement. Written statements presented in person at the hearing will be considered for inclusion in the transcribed hearing record. However, all materials presented at the hearing shall be subject to a determination by the Hearing Officer that they are appropriate for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advance notice, the Hearing Officer will give others present an opportunity to be heard.

After and explanation of the wilderness reevaluation study report by a representative of the National Park Service, the Hearing Officer insofar as possible, will adhere to the following order in calling for the presentations of oral statements:

1. Governor of the State or his representative.
2. Members of Congress.
3. Members of the State Legislature.
4. Official representatives of the counties in which the national park is located.
5. Officials of other Federal agencies or public bodies.
6. Organizations in alphabetical order.
7. Individuals in alphabetical order.
8. Others not giving advance notice, to the extent there is remaining time.

Dated: October 14, 1980.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 80-32580 Filed 10-17-80; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Redwood National Park, Calif.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a final environmental impact statement for the proposed General Management Plan for Redwood National Park. The proposal involves concepts for visitor use and facility development, cultural resources management and goals for natural resources management and watershed rehabilitation. Existing use would be continued, provision made for additional use and facilities, accessibility improved and overall use dispersed while cultural and natural measures are protected. The four alternatives considered are: (1) No action, continuing existing use without provision of any increase or new facilities; (2) Extended visit, emphasizing development of new facilities and services to permit longer visits and more opportunities for visitor enjoyment of park resources; (3) Restructured visitor use, emphasizing closer interaction with adjacent communities and providing shuttle services for visitors to visit park facilities and (4) The preferred alternative which is a mix of the other three and the actual proposal.

A limited number of copies are available upon request from:

Superintendent, Redwood National Park, 111 Second Street, Drawer N, Crescent City, California 95531, (Telephone) (707) 464–6101.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, (Telephone) (202) 343–6843;

Western Regional Office, National Park Service 450 Golden Gate Avenue, San Francisco, California 94102, (Telephone) (415) 556–4122;

Headquarters, Redwood National Park, 1111 Second Street, Crescent City, California 95531, (Telephone) (707) 464–6101.

Dated: October 8, 1980.

John H. Davis,

Acting Regional Director.

[FR Doc. 80-32496 Filed 10-17-80; 8:45 am]

BILLING CODE 4310-70-M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given in accrodance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. I, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at 1:30 p.m. (EST), November 21, 1980, at Crystal Mountain in Thompsonville, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1075, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Sleeping Bear Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. Samuel F. Eberly (Chairman)
Mr. Charles H. Yeates
Mr. John B. Daugherty
Mr. Walter B. Hart
Mr. George T. Schilling
Mr. William B. Bolton
Dr. Michael Chubb
Ms. Evageline J. Stanchik
Ms. Sylvia B. Kruger

The agenda for the meeting will include an updating of activities in the Sleeping Bear Dunes National Lakeshore since the last Advisory Commission meeting in August of 1979.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Richard R. Peterson, Superintendent, Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan 49635, telephone 616–352–9611.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan.

Dated: October 6, 1980.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 80-32495 Filed 10-17-80; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

[Order No. 3057]

Transfer of Administrative Jurisdiction Over Land Partitioned to the Navajo and Hopi Tribes

Section 1. *Purpose.* This order transfers jurisdiction and operational responsibilities now held by the Flagstaff Administrative Office, Bureau of Indian Affairs.

a. Land partitioned to the Hopi Tribe by Pub. L. 93–531 (88 Stat. 1712) amended by Pub. L. 96–305 (94 Stat. 929) will be placed under the administrative jurisdiction of the Phoenix Area Office, Bureau of Indian Affairs, for operations and programs undertaken in regard to all conservation practices, including grazing control and range restoration activities.

b. Land partitioned to the Navajo Tribe by Pub. L. 93–531 (88 Stat. 1712) amended by Pub. L. 96–305 (94 Stat. 929) will be placed under the administrative jurisdiction of the Navajo Area Office, Bureau of Indian Affairs, for operations and programs undertaken in regard to all conservation practices, including grazing control and range restoration activities.

Sec. 2. *Authority.* The transfer of functions directed by this order is made under the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262) as amended and by Section 10 of Pub. L. 93–531 (88 Stat. 1712) as amended by Pub. L. 96–305 (94 Stat. 929).

Sec. 3. *Procedures.* Actions taken by the Bureau of Indian Affairs affecting conservation practices on lands partitioned to the Hopi Tribe and the Navajo Tribe shall be coordinated and executed with the concurrence of the tribe to which the lands in question have been partitioned. All grazing and range restoration matters shall be administered in accordance with 25 CFR Parts 12 and 153 and with any applicable statutes.

Sec. 4. *Effective Date.* The transfer of functions directed by this order will be effective October 6, 1980, and will remain in effect until April 18, 1981, by which time the changes will have been published in Chapter 130 of the Departmental Manual. At that time this order will terminate and be considered obsolete.

Cecil D. Andrus,

Secretary of the Interior.

October 9, 1980.

[FR Doc. 80–32532 Filed 10–17–80; 8:45 am]

BILLING CODE 4310–02–M

INTERSTATE COMMERCE COMMISSION

[No. 37488]

American Trucking Association—Petition for Declaratory Order—Electronic Transmission of Freight Bills by Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of declaratory order proceeding.

SUMMARY: In this proceeding, the Commission will determine whether the electronic transmission of freight bills by motor carriers to shippers in lieu of paper documents is lawful and whether any existing rules prevent this procedure.

DATES: Comments are due by December 4, 1980.

ADDRESS: An original and 15 copies of comments should be sent to: Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane Mackall, (202) 275–7693 or (202) 275–7656.

SUPPLEMENTARY INFORMATION: The American Trucking Association (ATA) seeks a declaratory order as to the lawfulness of substituting, when the carrier and shipper agree, electronic freight bill data for the standard paper document.[1]

ATA does not contemplate any change from the use of paper documentation traveling with the freight or in the information to be contained in the bill. It only seeks approval of use of magnetic tapes, discs or other electonic data processing techniques as the record of the freight bill as an alternative to issuing a "paper" bill when collecting transportation charges. ATA notes that the electronic data capabilities of carriers and shippers are increasing, and both may use computers in their internal processing of freight bills. Approval of the proposal would eliminate the extra costs of the current practice of carrier conversion of internally-generated electronic data into a paper bill and shipper conversion of the paper bill back to electonic form. ATA stresses the savings to all carriers and shippers who can take advantage of this technology. Before encouraging carriers to initiate electronic billing, the ATA wants to be sure the procedure complies with all applicable Commission rules and regulations.

ATA recognizes that not all shippers have the necessary facilities to use this proposal. The proposal contemplates that shippers unable or unwilling to participate would continue to receive their billing in paper form. Apparently, some carriers fear being accused of discrimmination in offering this service only to those shippers having the necessary equipment.

ATA believes the proposal does not violate any Commission rules. It points out that, as carriers will continue current procedures for shippers not equipped to receive the data in electronic form, paper bills will also be available to comply with 49 CFR 1057.12(h) (requiring that owner-operators receive copies of bills) and 49 CFR 1220 (record retention).

We believe this petition raises issues appropriate for resolution under 5 U.S.C. 554(e) and we will grant it. We also believe the proposal has great merit. We encourage efforts such as this which eliminate inefficiency and unnecessary costs, and improve the transportation sector's use of new technology. It is our opinion at this point that ATA is correct in its analysis that no discrimination will result.

We seek comments on the proposal, especially as to the existence of any other rules which may hinder or prohibit the proposal. Given the intent to comply with 49 CFR 1057.12(h) and 1220, we do not view them as obstacles to the proposal. The 49 CFR 1220 record retention rules provide for use of magnetic tapes and discs.

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

Dated: October 8, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–32520 Filed 10–17–80; 8:45 am]

BILLING CODE 7035–01–M

[1] A letter dated September 10, 1980 supplementing the petition was also submitted. It provides clarification concerning the breadth of the proposal.

[Finance Docket No. 29494]

Louisiana Midland Railway Co.—Purchase (Portion)— Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee) Between Hodge and Alexandria, La.

October 14, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of the Louisiana Midland Railway Company to acquire and operate a line of railroad owned by the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), located between Hodge and Alexandria, LA. The Commission is also setting a schedule for the proceeding, so that a final decision on the application may be made expeditiously.

DATES:

(1) Verified statements supporting or opposing the application are due November 23, 1980.

(2) Verified statements from the United States Secretary of Transportation and the Attorney General of the United States are due November 23, 1980.

(3) Verified replies are due December 3, 1980.

ADDRESS: An original and 5 copies of all statements make reference to Finance Docket No. 29494 and should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423. Attention: Rock Island Acquisition.

FOR FURTHER INFORMATION CONTACT: Louis Gitomer, (202) 275–7026.

SUPPLEMENTARY INFORMATION: The Louisiana Midland Railway Company (LOAM) filed an application on October 3, 1980, under Section 17(b) of the Milwaukee Railroad Restructuring Act, Pub. L. 96–101, 93 Stat. 736 (1979) and 49 CFR Part 1111, *et seq.*, for authority to purchase certain properties of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) located in Louisiana. The application will be handled under the rules adopted in Ex Parte No. 282 (Sub-No. 4), *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980), 45 *FR* 6107 (January 25, 1980).

The property involved consists of approximately 27.7 miles of track located between Hodge, LA, at milepost 173.2 and Winnfield, LA, at milepost 199.9; assumption of Rock Island trackage rights to operate over the lines of the Louisiana and Arkansas Railway between Winnfield and Alexandria, LA; and purchase of the Rock Island yard located at Alexandria which comprises approximately 38 acres of land.

An interim lease was entered into on August 1, 1980, between the Rock Island Trustee and LOAM, allowing the latter to begin operations over the line between Hodge and Alexandria. The sale and purchase agreement involved in this application was signed by LOAM and the Trustee on August 6, 1980. An order was entered by the Reorganization Court on September 25, 1980, preliminarily approving this transaction. No governmental financial assistance is involved in this proposal.

We have reviewed this application and find that it contains the information required by our regulations. It is therefore complete. To facilitate a final decision in this proceeding, the dates set forth in the schedule noted above will apply. A copy of all comments should be served upon applicant's representatives:

Fritz R. Kahn, Esq.,
Ellen A. Efros, Esq.
Suite 1100, 1660 L Street, NW.,
Washington, DC 10036.

It is ordered:

1. The application in Finance Docket No. 29494 is accepted for consideration.
2. The parties shall comply with all provisions as stated above.
3. This decision is effective on October 14, 1980.

Dated: October 14, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioners Trantum and Alexis not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32522 Filed 10-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29430]

NWS Enterprises, Inc.—Control—Norfolk & Western Railway Co. and Southern Railway Co.

October 1, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Request for further information under 49 CFR 1111.4(c)(2)(v) formerly 49 CFR 1111.4(a)(4).

SUMMARY: The Commission has required applicants in this proceeding to answer certain questions regarding specific markets, geographic areas, or other carriers which are likely to be affected by the proposed transaction.

SUPPLEMENTARY INFORMATION: On July 23, 1980, the Norfolk and Western Railway Company (SR) filed a Notice of Intent to file an application under 49 U.S.C. 11343 and 11344 later this year. The notice was supplemented on September 10, 1980.

Our regulations provide that the Commission may require applicants in a rail consolidation proceeding to provide additional information in support of their application, 49 CFR 1111.4(c)(2)(v). We specifically reserved this right in our order of September 30, 1980, disposing of the waiver request in this proceeding. We have decided to require additional information in this proceeding as set forth below.

We believe the markets and issues dealt with in the questions set out below may be of particular concern in this proceeding. Where applicants' responses indicate that projected traffic levels may differ from current levels, applicants should explain the factors accounting for the difference. We are specifically interested in changes applicants would make after consolidation in routings, in frequency and quality of service, and in traffic solicitation. This information is to be submitted in addition to the operating plan required under 49 CFR 1111.2(b)(4). We expect applicants' answers to the specific items listed to be more detailed than the system operating plan, and to describe the differences between the ways they currently conduct operations and the ways they would conduct operations if the transaction is approved.

I. General Impacts on Traffic Routings

To identify the general impacts of this transaction applicants are to provide: a projected traffic density map (tonnage chart) for the consolidated system with notes explaining (a) the assumptions and methodology used in generating the map and (b) the differences between this map and the current traffic density map required as Exhibit A–14(i) to the application, 49 CFR 1111.2(b)(1)(i).

II. Effect on Local Rail Service in Virginia and North Carolina

a. *North/South Traffic.*

Currently, SR and NW operate parallel routes between points in North Carolina and Northern Virginia/Maryland. Specifically, NW's line runs from Winston-Salem or Durham, NC, to Hagerstown, MD, through the Shenandoah Valley, where connections are made with Conrail and Chessie.

SR's route runs from Winston-Salem (through Greensboro) or Durham to Alexandria, VA, through the Piedmont region, where connections are also made with Conrail and Chessie.

If the transaction is approved, applicants could consolidate their operations. Therefore, applicants are directed to indicate:

1. Amounts of originated, terminated, and overhead traffic on these lines, both current and projected.
2. Whether there will be any consolidation of these north/south lines;
3. A list of the feasible active routings available today for traffic moving north/south through Virginia and North Carolina by carrier (not limited to applicants), and those projected after consummation (not limited to applicants);
4. The impact on communities and shippers along the affected routes if there is a lessening of alternative routings; and
5. The extent to which other rail carriers or modes provide current or potential competitive alternatives for shippers using these routes.

b. *East/West Traffic.*

Currently applicants also operate parallel routes running east/west through North Carolina or Virginia. Southern has a route originating in Norfolk, VA which runs west through Virginia and then northern North Carolina. NW has a route also originating in Norfolk that runs west through southern Virginia.

It appears that these routes compete at various points in southern Virginia and northern North Carolina for local

traffic. Merger could result in consolidation of these lines.

Applicants are directed to indicate:

1. Amounts of originated, terminated and overhead traffic on these lines, both current and projected;

2. Whether there will be any consolidation of these east/west lines;

3. A list of the feasible active routings available today for traffic moving east/west through Virginia and North Carolina by carrier (not limited to applicants), and those projected after consummation (not limited to applicants);

4. The impact on communities and shippers along the affected routes if there is a lessening of alternative routings; and

5. The extent to which other rail carriers or modes provide current or potential competitive alternatives for shippers using these routes.

III. Midwestern Interchange Traffic

Currently, Southern's westernmost gateway is East St. Louis, IL. NW serves Kansas City and St. Louis, and both carriers serve Cincinnati. Service from the East Coast and Middle Atlantic States to these gateway cities may be accomplished over various routes of the proposed system.

Applicants are directed to indicate:

a. The number of available active routings for traffic moving to Cincinnati, St. Louis or Kansas City from points in Maryland, Virginia or North Carolina before and after consummation;

b. The number of available active routings for traffic moving westward from Cincinnati to St. Louis or Kansas City (the midwestern routes) before and after consummation;

c. The anticipated preferred service route for the traffic discussed in (a) and (b) above;

d. The extent to which other rail carriers or modes provide current or potential competitive alternatives for shippers using these midwestern routes.

IV. Impact on Illinois Central Gulf Railroad (ICG)

Currently both SR and NW interchange traffic with ICG.

SR interchanges east/west traffic at East St. Louis with both NW and ICG for traffic moving to Omaha and Kansas City. After consummation SR's traffic at East St. Louis could move single-line to Kansas City and Omaha over NW lines, thus avoiding the ICG.

NW interchanges southbound traffic with ICG at St. Louis heading for eastern gulf ports. After merger the portion of this traffic which originates in the Great Lakes industrial area could move to these ports via the Cincinnati interchange with SR,—thus bypassing St. Louis and ICG.

Applicants are directed to discuss, to the extent possible:

a. The effect of any projected diversions on ICG's future and its ability to provide essential servies; and

b. The extent to which inter- or intramodal alternatives exist or are potentially available to offset any reduction in service along ICG routes.

V. Impact on Chicago & North Western Transportation Co. (CNW)

Currently, SR interchanges traffic with CNW at East St. Louis. Since the transaction, if consummated, would provide SR with a direct connection with western trunk lines via NW, traffic could be diverted from CNW.

Applicants are directed to discuss, to the extent possible:

a. The effect of any diversions on CNW's future and its ability to provide essential services, and

b. The extent to which inter- or intramodal alternatives exist or are potentially available to offset any reduction in service along CNW routes.

VI. Effect of the Transaction on the Transportation of Coal

Both applicants serve significant coal areas. Considering the importance of coal as a source of energy in our nation's future, applicants are directed to:

a. Provide current and projected coal traffic density maps on a consolidated basis for coal traffic on any of the applicants' systems with explanatory notes of the changes;

b. Indicate: (1) the extent to which rail routings or competitive alternatives may be reduced for shippers or receivers of coal; (2) whether planned or potential route consolidations, abandonments, or other operating changes could adversely affect the supply of coal to certain areas or the development of coal supply areas themselves; and (3) the extent to which other modes, or other railroads (whether by alternative routings or future agreements related to trackage rights or similar arrangements) provide current or potential competitive alternatives to mitigate any of the consequences identified in response to this question. Include projections as to future utility sitings in areas served by the applicants. Specify markets and tonnage involved for each answer.

Applicants must provide the requested information as part of their application when filed.

Decided: September 30, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32521 Filed 10-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume 32]

Motor Carrier Alternate Route Deviations

The following letter—notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 19, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 11220 (Deviation No. 59) GORDONS TRANSPORTS, INC., 185 West McLemore Ave. Memphis, TN 38101, filed September 23, 1980. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Memphis, TN over Interstate Hwy 40 to Nashville, TN, then over Interstate Hwy 65 to Louisville, KY, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Memphis, TN, over U.S. Hwy 61 to Sikeston, MO, then over U.S. Hwy 60 to Cairo, IL, then over IL Hwy 37 to Salem, IL, then over U.S. Hwy 50 to Vincennes, IN, then over U.S. Hwy 41 to Terre Haute, IN, then over U.S. Hwy 40 to Indianapolis, IN, then over U.S. Hwy 31 to Columbus, IN, then over IN Hwy 7 to Madison, IN, then over IN Hwy 56 to Scottsburg, IN, then over U.S. Hwy 31 to Sellersburg, IN, then over U.S. Hwy 31–E to Louisville, KY, and also over U.S. Hwy 31–W to Louisville, KY, and return over the same route.

MC 30605 (Deviation No. 35), THE SANTA FE TRAIL TRANSPORTATION COMPANY, 433 E. Waterman, P.O. Box 56, Wichita, KS 67201, filed September 22, 1980. Carrier proposes to operate as a *common carrier,* by motor vehicle, of

general commodities, with certain exceptions, over a deviation route as follows: From Lubbock, TX over U.S. Hwy 62 to El Paso, TX and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Lubbock, TX over U.S. Hwy 84 to Farwell, TX, then over U.S. Hwy 60 to junction NM Hwy 6, then over NM Hwy 6 to Belen, NM, then over U.S. Hwy 85 to Las Cruces, NM, then over U.S. Hwy 80 to El Paso, TX and return over the same route.

MC 30605 (Deviation No. 36), THE SANTA FE TRAIL TRANSPORTATION COMPANY, 433 E. Waterman, P.O. Box 56, Wichita, KS 67201, filed September 26, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Ft. Smith, AR, over US Hwy 59 to Houston, TX, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Ft. Smith, AR over US Hwy 64 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction US Hwy 69, then over US Hwy 69 to junction US Hwy 75, then over US Hwy 75 to Dallas, TX, then over Interstate Hwy 45 to Houston, TX and return over the same route.

MC 42487 (Deviation No. 124), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, P.O. Box 3062, Portland, OR 97208, filed September 29, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviaton route as follows: From junction US Hwy 4 and VT Hwy 22A near Fair Haven, VT over VT Hwy 22A to junction US Hwy 7 near Vergennes, VT, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction US Hwy 4 and VT Hwy 22A near Fair Haven, VT, over US Hwy 4 to Rutland, VT, then over US Hwy 7 to junction VT Hwy 22A near Vergennes, VT, and return over the same route.

Motor Carrier Alternative Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 19, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 1515 (Deviation No. 756), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077, filed September 25, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and the baggage* and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Marysville, CA over CA Hwy 20 to Grass Valley, CA and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Marysville, CA over CA Hwy 70 to junction CA Hwy 65 (Marysville junction), then over CA Hwy 65 to Roseville, CA, then over Interstate Hwy 80 to Auburn, CA, then over CA Hwy 49 to Grass Valley, CA and return over the same route.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket No. A59924, filed September 4, 1980. Applicant: TRANS-AERO SYSTEMS CORPORATION, P.O. Box 429, San Jose, CA 95103. Representative: Virgil J. McVicker, 1005 Railroad Avenue, Santa Clara, CA 95050. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities (except those of unusual value, household goods as defined by the commission, classs A and B explosives, commodities in bulk, motor vehicles, livestock, and commmodities requiring special equipment). Regular routes between points in California, serving intermediate points, as follows: (1) between Weed, CA, and San Diego, CA over Interstate 5 to Sacramento over U.S. Hwy 99 from Sacramento to the junction of Interstate Hwy 5 and U.S. Hwy 99 at a point approximate five miles north of Wheeler Ridge over Interstate 5 to San Diego; (2) between San Jose, CA and Sacramento over U.S. Hwy 101 to the junction of Interstate 80 to Sacramento over California Hwy 17 to the junction of Interstate 80 to Sacramento; (3) between Los Angeles and San Bernardino over Interstate 10; (4) between San Jose and Los Angeles over U.S. Hwy 101; and (5) between Los Angeles and Riverside over Hwy 60. Service is authorized at all off-route points in the counties of Alameda, Los Angeles, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, San Bernardino, and San Diego. Alternate routes for operating convenience only: General commodities, except those of unusual value, household goods as defined by the commission, classes A and B explosives, commodities in bulk, motor vehicles, livestock, and commodities requiring special equipment, between points in California, serving no intermediate points, except as otherwise authorized, as follows: (1) between San Jose and Los Angeles over U.S. Hwy 101 to junction California Hwy 152 to junction Interstate 5 to Los Angeles; (2) between San Jose and Sacramento over Interstate 680 to junction Interstate 580 to junction Interstate 5; (3) between San Jose and Weed over Interstate 680 to junction Interstate 80 to junction Interstate 505 to junction Interstate 5 to Weed; and (4) between Weed and San Diego over Interstate 5. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

Permanent Authority Notices
Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2). These proposals are published as "service sought", (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2. (For example, questions may be raised relating to applicant's contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decision on the merits, regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

MC 135082 (Sub-86F), filed May 23, 1979, and published in the **Federal Register** issues of April 15, 1980 and September 11, 1980 and republished as corrected this issue. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, 4100 Edith Blvd. NE., Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). The purpose of this republication is to correctly identify the state of "MI" to read "MT" which was previously published in error. The rest of the application remains the same as previously published.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32523 Filed 10-17-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 4, 1980, (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-069

Decided: October 10, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 1403 (Sub-6F), filed October 2, 1980. Applicant: CENTRAL TRANSFER COMPANY, a corporation, 100 Kellogg St., Jersey City, NJ. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *general commodities* (except those of unusual value classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in NY, NJ, and PA, on the one hand, and, on the other, points in DE, MD, VA, CT, and DC.

MC 61592 (Sub-499F), filed October 6, 1980. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: Elisabeth A. DeVine, P.O. Box 737, Moline, IL 61265. Transporting (1) *carbon and charcoal*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Scotia, NY, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or

destined to the facilities used by Husky Industries.

MC 89723 (Sub-73F), filed October 1, 1980. Applicant: MISSOURI PACIFIC TRUCK LINES, INC. 210 N. 13th St., St. Louis, MO 63103. Representative: Michael Thompson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in AR, MO, KS, CO, OK, NE, LA, TX, IL, TN, MS, and NM, on the one hand, and, on the other, points in IA, IN, KY, AL, AZ, and OH, restricted to traffic, having a prior or subsequent movement by rail.

MC 92633 (Sub-32F), filed September 29, 1980. Applicant: ZIRBEL TRANSPORT, INC., P.O. Box 933, Lewiston, ID 83501. Representative: Wm. Seehafer (same address as applicant). Transporting (1) *boards and lumber*, from points in CA, to points in ID, (2) *lumber, lumber products, particleboard, and wood products*, in the reverse direction, and (3) *lumber*, from points in ID, to points in AZ, and points in San Juan and Rio Arriba Counties, NM.

MC 107012 (Sub-584F), filed October 6, 1980. Applicant: NORTH AMERICAN VAN LINES, INC. 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilties used by Black & Decker (U.S.), Inc., and its customers.

MC 107012 (Sub-585F), filed October 6, 1980. Applicant: NORTH AMERICAN VAN LINES, INC. 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *heating and air conditioning ducts and fittings*, from Houston, TX, to points in the U.S. (except AK and HI).

MC 107012 (Sub-586F), filed October 6, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *padding*, from East Point, GA, to points in the U.S. (except IL, IN, MI, MO, OH, and WI).

MC 107542 (Sub-2F), filed October 2, 1980. Applicant: MOSKOWITZ MOTOR TRANSPORTATION, INC., Drawer 427, Jewett City, CT 06351. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Over regular routes, transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (1) between Cape May, NJ and Haverhill, MA, from Cape May over unnumbered Hwy to junction U.S. Hwy 9, then over U.S. Hwy 9 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 93, then over Interstate Hwy 93 to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction MA Hwy 97, then over MA Hwy 97 to Haverhill, and return over the same route, (2) between junction Interstate Hwy 95 to U.S. Hwy 7, and, junction Interstate Hwys 495 and 93, from junction Interstate Hwy 95 and U.S. Hwy 7 over U.S. Hwy 7 to junction Interstate Hwy 84, then over Interstate Hwy 84 to junction Interstate Hwy 86, then over Interstate Hwy 86 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction Interstate Hwy 290, then over Interstate Hwy 290 to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction Interstate Hwy 93, and return over the same route, (3) between Deepwater, NJ and Williamstown, MA, from Deepwater over Interstate Hwy 95 to junction U.S. Hwy 9W, then over U.S. Hwy 9W to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction U.S. Hwy 7, then over U.S. Hwy 7 to Williamstown, and return over the same route, (4) between Phillipsbury, NJ and junction Interstate Hwys 78 and 95, from Phillipsbury over U.S. Hwy 22 to junction Interstate Hwy 78, then over Interstate Hwy 78 to junction Interstate Hwy 95, and return over the same route, (5) between Phillipsburg, NJ and junction Interstate Hwy 80 and U.S. Hwy 9W, from Phillipsburg over NJ Hwy 57 to junction U.S. Hwy 46, then over U.S. Hwy 46 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction U.S. Hwy 9W, and return over the same route, (6) between Montauk Point, NY and junction Interstate Hwys 295 and 95, from Montauk Point over NY Hwy 27 to junction NY Hwy 24, then over NY Hwy 24 to junction NY Hwy 495, then over NY Hwy 495 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction Interstate Hwy 95, and return over the same route, (7) between High Point, NJ and Bernardston, MA, from High Point over NJ Hwy 23 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 91, then over Interstate Hwy 91 to Bernardston, and return over the same route, and (8) serving in connection with routes (1) through (7) above, (a) all intermediate points and (b) New York, NY, points in CT, MA, NJ, RI and points in Westchester, Rockland, and Suffolk Counties, NY as Off-route points.

MC 115162 (Sub-545F), filed October 6, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *cast iron products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of cast iron products, between points in the U.S.

MC 116763 (Sub-649F), filed October 3, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., P.O. Box 81, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, classes A & B explosives, those of unusual value, commodities in bulk, and those requiring special equipment), between points in the U.S.

MC 118202 (Sub-161F), filed September 30, 1980. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge St., Winona, MN 55987. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting (1) *foodstuffs* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of gelatin products, between points in Scott County, IA, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, KS, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, VT, VA, TX, WV, and DC.

MC 123812 (Sub-7F), filed October 6, 1980. Applicant: SULLIVAN FREIGHT LINES, INC., C-4 Congress Parkway, Athens, TN 37303. Representative: Blaine Buchanan, 1024 James Bldg., Chattanooga, TN 37402. Transporting *iron and steel articles*, from points in IA, KY, MI, and WI, to points in Washington, County, TN.

MC 125023 (Sub-84F), filed October 1, 1980. Applicant: SIGMA-4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *malt beverages and containers*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages and containers, between points in the U.S., restricted to traffic originating at or destined to the facilities of Jos. Schlitz Brewing Company.

MC 138322 (Sub-26F), filed October 2, 1980. Applicant: BHY TRUCKING, INC.,

9231 Whitmore St., El Monte, CA 91733. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. Transporting (1) *commodities*, the transportation of which because of size or weight require the use of special equipment, and (2) *materials* used in the manufacture of heat exchangers and feed water heaters, between points in Harris County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 139302 (Sub-5F), filed October 6, 1980. Applicant: KREUGER TRUCKING CO., INC., P.O. Box 432, Orchard Park, NY 14127. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Erie County, NY, on the one hand, and, on the other, points in MI.

MC 141622 (Sub-8F), filed October 6, 1980. Applicant: H & W CARRIERS, INC., Box 130, Camargo, IL 61919. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *printed matter*, and (2) *materials and supplies* used in the manufacture and distribution of printed matter, between points in the U.S., under continuing contract(s) with R. R. Donnelly & Sons Company, of Mattoon, IL.

MC 144982 (Sub-11F), filed October 3, 1980. Applicant: OHIO PACIFIC EXPRESS, INC., 683 East Broad St., Columbus, OH 43215. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of metal and wooden storage buildings, from points in Trumbull County, OH, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 147152 (Sub-11F), filed September 29, 1980. Applicant: GENERAL CARRIERS CORPORATION, 9838 Alburtis, Santa Fe Springs, CA 90670. Representative: Miles L. Kavaller, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *general commodities* (except those of unusual value, classes A and B explosvies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) moving on the bills of lading of non-profit shipper associations as defined in 49 U.S.C. Section 10562(3), between points in the U.S.

MC 147573 (Sub-1F), filed October 2, 1980. Applicant: OAK ISLAND EXPRESS, INC., 2 Sixth St., Jersey City, NJ 07302. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. Transporting *such commodities* as are used or dealt in by retail stores (except commodities in bulk), between points in the U.S., under continuing contract(s) with United States Packing & Shipping Co., Inc., of Jersey City, NJ.

MC 148882 (Sub-5F), filed October 6, 1980. Applicant: SUPER TRUCKERS, INC., 3900 Commerce Ave., Fairfield, AL 35064. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Transporting *metal articles*, between points in the U.S., under continuing contract(s) with Pyramid Steel Incorporated, of Billings, MO.

MC 150072 (Sub-2F), filed October 6, 1980. Applicant: DEWEY ENTERPRISES, INC., 3320 New So. Province Blvd., Fort Myers, FL 33907. Representative: Leonard E. Monschein, Suite 108, 1515 NW 7th St., Miami, FL 33125. Transporting *malt beverages*, between points in the U.S., under continuing contract(s) with Cronin Distributors, of Fort Myers, FL.

MC 150423 (Sub-5F), filed September 30, 1980. Applicant: H & M TRANSPORTATION INC., U.S. 42 and 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L St. NW., Suite 1111, Washington, DC 20036. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., restricted to traffic originating at or destined to the facilities used by Ralston Purina Company, under continuing contract(s) with Ralston Purina Company, of St. Louis, MO.

MC 151592 (Sub-1F), filed September 29, 1980. Applicant: D & L TRUCKING SERVICES, INC., 2080 South 9th St., Louisville, KY 40208. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contract(s) with the Ralston Purina Company of St. Louis, MO, and the Kingsford Company of Louisville, KY.

MC 152052F filed October 2, 1980. Applicant: NORTH CENTRAL TRANSPORT CO. INC., 115 E. Barrett Lane, Schaumberg, IL 60193. Representative: Marc J. Blumenthal, 39 S. LaSalle St., Chicago, IL 60603. Transporting (1) *tile*, and (2) *materials, equipment and supplies* used in the manufacture, distribution, and installation of tile, between points in IL, on the one hand, and, on the other, points in IN, IA, MI, OH, and WI.

MC 152052F filed October 2, 1980. Applicant: NORTH CENTRAL TRANSPORT CO., INC., 115 E. Barrett Lane, Schaumberg, IL 60193. Representative: Marc J. Blumenthal, 39 S. LaSalle, St., Chicago, IL 60603. Transporting (1) *tile*, and (2) *materials, equipment and supplies* used in the manufacture, distribution and installation of tile, between points in IL, on the one hand, and, on the other, points in IN, IA, MI, OH, and WI.

Volume No. OP3–039

Decided: October 7, 1980.

By the Commission, Review Board Number 2 Members Chandler, Eaton and Liberman.

MC 1515 (Sub-288F), filed September 22, 1980. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: L. J. Celmins (same address as applicant). Regular routes, transporting *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, between Tampa and Clearwater, FL, over Florida Hwy 60 (Campbell Causeway), serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing authority.

MC 34454 (Sub-3F), filed September 23, 1980. Applicant: GORMLEY MOTOR TRANSPORTATION, INC., 397 Riverside Ave., Medford, MA 02155. Representative: Paul V. Gormley (same address as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in Chesire, Hillsboro, Merrimas, Rockingham, and Stratford Counties, NH, on the one hand, and, on the other, points in CT, MA, RI, NJ, and NY.

MC 43685 (Sub-24F), filed September 22, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same address as applicant). Transporting (1) *lumber, forest products, building materials, machinery*, and *contractors' equipment*, between points in WA, OR, ID, and MT, and (2) *iron and steel articles*, between points in Clark, King, Pierce, Snohomish, and Spokane Counties, WA, Clackamas, Multonomah, Washington, and Yamhill Counties, OR, and Kootenai County, ID, on the one hand, and, on the other, points in WA, OR, ID, and MT.

MC 106674 (Sub-507F), filed September 23, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *cleaning and polishing compounds, textile softeners,*

lubricants, deodorants, disinfectants, hypo-chloride solutions, paints, plastic bags and filters, between the facilities of Economics Laboratory, Inc., in the U.S., on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the named facilities.

MC 144054 (Sub-14F), filed September 22, 1980. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 E. Vilas Rd., Medford, OR 97501. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *electrical appliances,* from the facilities of Intertherm, Inc., at or near Bonneville, MO, to those points in the U.S. in and west of ND, SD, NE, KS, MO, OK, and TX.

MC 145394 (Sub-4F), filed September 23, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting *adhesives, automotive supplies, chemicals, containers, iron and steel articles, machinery, parts* for machinery, and *rubber products,* between points in the U.S., under continuing contract(s) with Murphy-Kullens Warehouses, Inc.

MC 147524 (Sub-4F), filed September 25, 1980. Applicant: SINED LEASING, INC., 108 High Street, Mt. Holly, NJ 08060. Representative: Frank L. Newburger, III, 17th Floor, 1234 Market Street, Philadelphia, PA 19107. Transporting *flour,* in bulk, between points in the U.S., under continuing contract(s) with International Multifoods Corporation, of Minneapolis, MN.

MC 149214 (Sub-3F), filed September 23, 1980. Applicant: TRANSPORT ASSOCIATES, INC., 3512 Rockville Road, Indianapolis, IN 46222. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *iron and steel castings* and *automobile parts,* between points in IN and WI.

MC 150204 (Sub-1F), filed September 23, 1980. Applicant: CAL RENTAL TOOL & SUPPLY, INC., 4557 W. Yellowstone Hwy., Casper, WY 82601. Representative: Gino Cerullo, P.O. Box 1360, Mills, WY 82644. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, between points in WY, CO, UT, MT, and ND, restricted against the transportation of complete oil drilling rigs.

MC 151164 (Sub-1F), filed September 23, 1980. Applicant: T. L. C. CHARTER COACH, INC., 186 New Wilmot Rd., Scarsdale, NY 10583. Representative: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, beginning and ending at points in Westchester, Nassau, Suffolk and Putnam Counties, NY, and extending to points in the U.S., (including AK, but excluding HI), under continuing contract(s) with T.L.C. Senior Tours, Ltd.

MC 151444F, filed September 19, 1980. Applicant: ROBERT A. AND VIVIAN D. CARPENTER, a partnership, d.b.a. RAC TRANSPORT COMPANY, 747 West White, Grand Junction, CO 81501. Representative: Raymond M. Kelley, 450 Capitol Life Center, Denver, CO 80203. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) Between Grand Junction and Denver, CO, (a) over U.S. Hwy 6, and (b) over Interstate Hwy 70, serving the intermediate and off-route points in Adams, Arapahoe, Denver, Mesa, and Jefferson Counties, CO; (2) Between Grand Junction and Craig, CO: From Grand Junction over U.S. Hwy 6 and Interstate Hwy 70 to junction CO Hwys 789 and 13, then over CO Hwys 789 and 13 to Craig, and return over the same route, serving all intermediate points, and serving the facilities of Occidental Oil Shale Project, in Rio Blanco County, CO, as an off-route point; (3) Between Grand Junction and Aspen, CO: From Grand Junction over U.S. Hwy 6 and Interstate Hwy 70 to junction CO Hwy 82, then over CO Hwy 82 to Aspen, and return over the same route, serving all intermediate points; and (4) Between Grand Junction and Montrose CO, over U.S. Hwy 50, serving all intermediate points.

Note.—Applicant intends to tack the requested routes with each other.

Volume No. OP4–088

Decided: October 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

FF 126 (Sub-1F), filed October 6, 1980. Applicant: KNICKERBOCKER DESPATCH, INC., 16 Central Ave., Tenafly, NJ 07670. Representative: Donald E. Cross, 918–16th St. NW., Washington, DC 20006. To operate in interstate commerce, as a *freight forwarder,* transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between points in CT on the one hand, and, on the other, points in MA, RI, NY, and NJ, and (2) between points in MA and RI, and (3) between points in NY and NJ.

MC 41116 (Sub-87F), filed October 7, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S., under continuing contract(s) with Boise Cascade Corporation, of Boise, ID, restricted to traffic originating at or destined to the facilities of Boise Cascade Corporation.

MC 65697 (Sub-59F), filed October 8, 1980. Applicant: THEATRES SERVICE COMPANY, a corporation, P.O. Box 1695, Atlanta, GA 30301. Representative: Paul W. Smith (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives), (1) between Natural Bridge and Phil Campbell, AL, over AL Hwy 5, (2) between Andalusia and Mobile, AL: from Andalusia over U.S. Hwy 29 to Pensacola, FL, then over U.S. Hwy 98 to Mobile, and return over the same route, (3) between Brewton and Mobile, AL: from Brewton over AL Hwy 41 to the AL–FL State line, then over FL Hwyt 87 to Milton, FL, then over U.S. Hwy 90 to Mobile, and return over the same route, (4) between Greenville and Mobile, AL, over U.S. Hwy 31, (5) between Greenville and Mobile, AL, over Interstate Hwy 65, serving the off-route points of Frisco City and Monroeville, AL, and (6) between Milton, FL and Mobile, AL, over Interstate Hwy 10; serving all intermediate points in (1) through (6) above.

Note.—Applicant proposes to tack this authority with its existing regular-route authority.

MC 117786 (Sub-112F), filed October 7, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *alcoholic beverages,* from Melvindale, MI, to points in AZ, CA, CO, OR, and WA.

MC 143776 (Sub-8F), filed October 6, 1980. Applicant: C.D.B.

INCORPORATED, 155 Spaulding SE., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting (1) *chemicals and plastic products* (except commodities in bulk, in tank vehicles, and expanded plastic products), from the facilities of Dow Chemical U.S.A., at Midland, MI to Kansas City, MO.

MC 145277 (Sub-3F), filed October 8, 1980. Applicant: P & P TRUCKING COMPANY, INC., 106 Teaneck Rd., Ridgefield Park, NJ 07660. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Pepsi-Cola Manufacturing Company, Inc., of San Juan, Puerto Rico.

MC 146646 (Sub-120F), filed October 7, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *washing, cleaning, and scouring compounds, and dispensers,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities used by the Calgon Corporation in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147547 (Sub-10F), Filed October 7, 1980. Applicant: R & D TRUCKING COMPANY, INC., Church Rd., Lauderdale Industrial Pk., Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *printed matter,* between points in Lauderdale County, AL, on the one hand, and, on the other, those points in the U.S. in and east of MN, NE, CO, and AZ, restricted to traffic originating at or destined to the facilities used by Anderson News Company, Inc.

MC 150567 (Sub-3F), filed October 7, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (a) *lumber, wood products, lumber mill products,* and (b) *building materials* (except those described in (a) above), between points in the U.S., under continuing contract(s) with Emmer Brothers Company, of Minneapolis, MN.

MC 151207 (Sub-1F), filed October 7, 1980. Applicant: P.S.T. TRANSPORT, INC., 11236 West Ave., San Antonio, TX 78213. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *malt beverages,* from the facilities of Pearl Brewing Company, Inc., at San Antonio, TX, to points in IL, IN, and OH, and (2) *material and supplies* used in the manufacture of malt beverages, in the reverse direction.

MC 151207 (Sub-2F), filed October 7, 1980. Applicant: P.S.T. TRANSPORT, INC., 11236 West Ave., San Antonio, TX 78213. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *malt beverages* from San Antonio, TX, to points in AZ, CA, NM, NV, OR, and WA, and (2) *materials and supplies* used in the manufacture of malt beverages, in the reverse direction, restricted to traffic originating at or destined to the facilities of Pearl Brewing Company, Inc., at San Antonio, TX.

MC 151936 (Sub-2F), filed October 7, 1980. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33802. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Transporting (1) *such commodities* as are dealt in by grocery and food business houses, and (2) *materials, equipment, and supplies* (except in bulk) used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with General Foods Corporation, of White Plains, NY.

Volume No. OP5–032

Decided: October 9, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

W–1329F, filed September 24, 1980. Applicant: JOHN GUTH-MARTINEZ LAKE RESORT, Box 2245, Martinez Lake, AZ 85364. Representative: Bart Baker, 1700 S. First Ave., Suite 108, Yuma, AZ 85364. To operate as a *common carrier* by water, in interstate or foreign commerce, by self-propelled vessels, transporting *passengers and their baggage,* between ports and points in AZ and CA on Martinez Lake and the Colorado River.

MC 1179 (Sub-2F), filed September 30, 1980. Applicant: PFEFFER'S DAILY EXPRESS, a corporation, 44 South West Avenue, Vineland, NJ 08250. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Philadelphia, PA on the one hand, and, on the other, points in NJ.

MC 29839 (Sub-8F) filed, October 3, 1980. Applicant: EVERGREEN STAGE LINES, INC., 9038 North Denver, P.O. Box 17306, Portland, OR 97217. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *passengers and their baggage,* in special operations, beginning or ending at points in Clark County, WA, and Multnomah, Washington, and Clackamas Counties, OR, and extending to points in the U.S. (including AK but excluding HI).

MC 50069 (Sub-563F) filed, October 3, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Ave., Oregon, OH 43616. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *petroleum products,* in bulk, in tank vehicles, from Ironton, OH, to points in KY.

MC 76449 (Sub-32F) filed, October 2, 1980. Applicant: NELSON'S EXPRESS, INC., 675 Market St., Millersburg, PA 17061. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Dauphin and York Counties, PA, on the one hand, and, on the other, Detroit, MI, Louisville, KY, Milwaukee, WI, and points in IL, IN, KS, MO, and OH.

MC 115669 (Sub-201F) filed, October 2, 1980. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Vayle Hayes (same address as applicant). Transporting *malt beverages* (1) from Belleville, IL, St. Paul, MN, and Milwaukee, WI to Auburn, NE, (2) from Belleville and Peoria, IL, Omaha, NE, Memphis, TN, Ft. Worth, TX, and Milwaukee, WI to points in KS, (3) from Omaha, NE and Dubuque, IA to points in AZ, CO, IA, MN, NM, ND, and SD, (4) from Galveston and San Antonio, TX to points in OK, (5) from Dubuque, IA, Omaha, NE, and Galveston, TX to points in AR, (6) from San Antonio, TX to Omaha, NE, and (7) from Ft. Wayne, IN, Dubuque, IA, and Omaha, NE to points in IL, MO and WI.

MC 121568 (Sub-54F) filed, September 26, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *general commodities* (except those of unusual value, classes

A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to facilities of Colonial Fiber Company and its affiliates.

Note.—Applicant intends to tack with its existing authority in MC 121568.

MC 121568 (Sub-55F), filed October 2, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting (1) *outdoor barbecue grills and folding metal furniture,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Metal Engineering Co.

Note.—Applicant intends to tack with its existing authority.

MC 121568 (Sub-56F), filed October 2, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of H. B. Fuller and its affiliates.

Note.—Applicant intends to tack with its existing authority.

MC 126118 (Sub-257F), filed September 30, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting *such commodities* as are used by or dealt in by manufacturers and processors of tobacco products (except in bulk), (1) from points in the U.S. to Owensboro, KY, and (2) from Owensboro, KY, to points in AR, CO, CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, TN, VT, VA, WV and WI.

MC 126118 (Sub-258F), filed October 1, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting *such commodities* as are used by or dealt in by discount and general merchandise stores, between Memphis, TN, and Omaha, NE.

MC 134358 (Sub-4F), filed September 29, 1980. Applicant: CENTRAL DISPATCH, INC., P.O. Box 4941, Kansas City, MO 64120. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *foodstuffs and kindred products* as described in Item 20 of the Standard Transportation Commodity Code, between points in MO and KS.

MC 144029 (Sub-6F), filed September 29, 1980. Applicant: CUMBERLAND TRANSPORTATION CORP., 5950 Fisher Rd., P.O. Box 487, East Syracuse, NY 13057. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Mead Container/ Division of Mead Corp., of Dayton, OH.

MC 147248 (Sub-4F), filed October 2, 1980. Applicant: CONTAINER SHUTTLE SERVICE CORP., Route 8, Box 139, Beaumont, TX 77705. Representative: Charles Norris Driver (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in TX and LA, on the one hand, and, on the other, points in the U.S.

MC 149218 (Sub-9F), filed September 30, 1980. Applicant: SUNBELT EXPRESS INC., Hwy. 78, W., Breman, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *paper and paper products,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in AL, FL, GA, and SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, LA, MO, MS, NC, OH, SC, TN, VA, and WV.

MC 150239 (Sub-2F), filed October 2, 1980. Applicant: PACESETTER TRANSPORT, DIVISION OF EDGEMERE TERMINALS, INC., 8004 Stansbury Road, Baltimore, MD 21222. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030—15th St. NW., Washington, DC 20005. Transporting (1) *Aluminum and aluminum products,* and *equipment, materials, and supplies* used in the manufacture and distribution of aluminum and aluminum products, (except commodities in bulk), (a) between the facilities of Eastalco at or near Frederick, MD, on the one hand, and, on the other, points in NY, NJ, PA, DE, MD, VA, and DC, (b) between Lancaster, PA, and Baltimore, MD, restricted in (b) to traffic moving in foreign commerce only, and (2) *iron and steel articles,* and *equipment, materials, and supplies* used in the manufacture and distribution of iron and steel articles, (except commodities in bulk), between Baltimore, MD, on the one hand, and on the other, points in MD, PA, NJ, NY, DE, VA, and DC.

MC 151378 (Sub-3F), filed September 30, 1980. Applicant: BIG B TRUCK LINES, INC., P.O. Box 67, Jonesburg, MO 63351. Representative: John F. Clark (same as above). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) between points in Warren County, MO, on the one hand, and on the other, St. Louis, IL, and Kansas City, KS.

MC 152039F, filed September 29, 1980. Applicant: CATO TRANSPORT, INC., P.O. Box 446, High Point, NC 27260. Representative: A. W. Flynn, Jr., 314 S. Eugene St., P.O. Box 180, Greensboro, NC 27402. Transporting *new furniture,* from points in Guilford County, NC, to points in SC, GA, FL, AL, NJ, MD, DE, VA, RI, NY, and DC.

MC 152079F, filed October 2, 1980. Applicant: R & S CARTAGE, INC., 1030 South Mount St., Indianapolis, IN 46221. Representative: Constance J. Goodwin, Suite 800—Circle Tower, Five East Market St., Indianapolis, IN 46204. Transporting *industrial and household cleaning products and materials and supplies, janitorial equipment and supplies, insecticides, electronic flycatchers, feminine hygiene products, and air purification equipment,* between points in KY, IL, IN, MI, and OH, under continuing contract(s) with M. R. Blue Co., of South Bend, IN, and Rochester Germicide Company, of Indianapolis, IN.

Volume No. OP5–033

Decided: October 9, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 339 (Sub-13F), filed September 30, 1980. Applicant: LINCOLN MOVING & STORAGE CO., INC., 1071 Andover Park West, Seattle, WA 98188. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. Transporting *household goods* in containers between points in the United States (including AK but excluding HI).

MC 2359 (Sub-27F), filed September 29, 1980. Applicant: DAMEO TRUCKING, INC., 568 Central Ave., Bridgewater, NJ 08807. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048.

Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with John-Manville Sales Corporation of Manville, NJ.

MC 44639 (Sub-96F), filed September 29, 1980. Applicant: L & M EXPRESS CO., INC., 220 Ridge Road, Lyndhurst, NJ 07071. Representative: Robert B. Russell (same address as above). Transporting *wearing apparel,* and *materials* and *supplies* used in the manufacture of wearing apparel (except commodities in bulk), between New York, NY and points in GA, NC, PA, SC, VA, and WV.

MC 54819 (Sub-6F), filed September 30, 1980. Applicant: T. F. BOYLE TRANSPORTATION, INC., 15 Riverhurst Rd., Billerica, MA 08121. Representative: Rhomas F. Boyle (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CT, IL, IN, MA, ME, MD, MI, NH, NJ, NY, OH, PA, RI, and WI.

MC 117119 (Sub-831F), filed October 2, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). Transporting *chemicals* (except plastics) and *plastics,* from the facilities of Union Carbide Corporation at or near Torrance, CA to points in ID, OR, UT, and WA.

MC 117119 (Sub-832F), filed October 2, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). Transporting *such commodities* as are dealt in or used by retail stores (except commodities in bulk), (a) from points in MO, MA, CT, NY, NJ, PA, MD, GA, NC, SC, TN, and TX, to points in IL, AZ, MO, KS, CO, MT, ID, OR, WA, WY, and UT, and (b) from Chicago and Rockford, IL, and points in IN and OH, to points in AZ, CO, MT, WY, UT, ID, WA, and OR.

MC 124078 (Sub-1034F), filed October 3, 1980. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *vegetable oils,* in bulk, between points in Polk County, IA, on the one hand, and, on the other, points in the U.S.

MC 124679 (Sub-127F), filed September 30, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same address as applicant). Transporting (1) *pharmaceuticals, medical supplies, confectioneries, foodstuffs, and personal care products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) (except in bulk), between points in the U.S., (except AK and HI), restricted to traffic originating at or destined to the facilities of Warner-Lambert Company, its subsidiaries, and affiliates.

MC 125368 (Sub-120F), filed October 2, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix 1 to the Report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company, at or near Cactus, TX, to Memphis, TN, and points in LA and MS.

MC 126899 (Sub-131F), filed September 29, 1980. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Buiding, Frankfort, KY, 40601. Transporting *malt beverages and materials, supplies, and equipment* used in the manufacture and distribution of malt beverages between Detroit, MI, and Perrysburg, OH, on the one hand, and, on the other, points in OH, IN, IL, WI, PA, WV, KY, NY, MO, TN, VA, IA, AR, MD, NC, SC, GA, FL, and DC.

MC 127079 (Sub-1F), filed September 29, 1980. Applicant: G & M COACHES, INC., 1538 Fuller SE., Grand Rapids, MI 49507. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A Troy, MI 48084. Transporting *passengers and their baggage,* in special and charter operations, in round-trip tours, beginning and ending at points in Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Mason, Lake, Osceola, Gratiot, Iona, Kent, Ottawa, Allegan, and Barry Counties, MI, and extending to points in the U.S. (except HI).

MC 143008 (Sub-3F), filed September 19, 1980. Applicant: ITG TRUCKING COMPANY, INC., P.O. Box 2823, Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting *cigars,* between points in the U.S., under continuing contract(s) with Jno. H. Swisher & Sons, Inc., of Jacksonville, FL.

MC 146448 (Sub-23F), filed September 30, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (a) between Rochester, NY and Dallas, TX, and (b) between Rochester, NY, on the one hand, and, on the other, points in CA.

MC 148208 (Sub-7F), filed October 1, 1980. Applicant: FUR BREEDERS AGRICULTURAL COOPERATIVE, a corporation, P.O. Box 295, Midvale, UT 84074. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting (1) *feed and feed ingredients,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), (except commodities in bulk), between points in Weber County, UT, on the one hand, and, on the other, points in WA, OR, MT, ID, NV, AZ, CO, WY, NM, and CA.

MC 148329 (Sub-3F), filed October 2, 1980. Applicant: AOL EXPRESS, INC., 6441 "C" St., Anchorage, AK 99502. Representative: Michael B. Crutcher, 2000 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), from Seattle and Takoma, WA to Anchorage, AK, restricted to transportation of traffic to or from the facilities of J. B. Gottstein & Co.

MC 150098 (Sub-1F), filed September 30, 1980. Applicant: CHARLES OFFUTT CO., 105 West Broadway, Bossier City, LA 71111. Representative: Charles Offutt (same as above). Transporting *sporting goods and recreational equipment* between Bossier City, LA, and points in AR, MS, MO, AL, FL, PA, CA, MI, and TN.

MC 150339 (Sub-4F), filed October 3, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Aluminum Smelting & Refining Co., Inc. of Maple Heights, OH.

MC 150339 (Sub-5F), filed October 6, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Commercial Shearing, Inc., of Youngstown, OH.

MC 151498F, filed October 1, 1980. Applicant: DANIEL COAKLEY SR., d.b.a. COAKLEY TRANSPORT, Route 121, Auburn, NH 03032. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *petroleum and petroleum products*, between points in the U.S., under continuing contract(s) with Bailey Distributing Co., Inc., of Manchester, NH.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32518 Filed 10-17-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 4, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-070

Decided: October 10, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 131053F, filed September 30, 1980. Applicant: THREE B TRANSPORTATION, INC., 2307 Bristol Pike, Croydon, PA 19020. Representative: Lawrence E. Bandrowsky (same address as applicant). As a *broker*, to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 144982 (Sub-12F), filed October 3, 1980. Applicant: OHIO PACIFIC EXPRESS, INC., 683 East Broad St., Columbus, OH 43215. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 152062F, filed October 1, 1980. Applicant: POWERS TRUCKING & BROKERAGE, INC., 2332 South Peck Rd., Suite 275, Whittier, CA 90601. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 152112F, filed October 6, 1980. Applicant: CLAYTON W. AYARS, d.b.a., A & A TRUCKING, E. 2640 16th Ave., Post Falls, ID 83854. Representative: Jack Pearce, Suite 1200, 1000 Connecticut Ave., NW., Washington, D.C. 20036. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) *intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 152113F, filed October 6, 1980. Applicant: ARROW COURIER, INC., 251 State St. Extension, Fairfield, CT 06430. Representative: Dennis Geronimo, 10 Scribner Ave., Norwalk, CT 06854. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3-042

Decided: October 8, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 139225 (Sub-1F), filed September 29, 1980. Applicant: INTERSTATE COURIER SYSTEMS, INC., 18 Park Place, Paramus, NJ 07652. Representative: Julius DeVito, 240 Madison Avenue, New York City, NY 10016. Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3-044

Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 126635 (Sub-4F), filed October 1, 1980. Applicant: CHRISTIE-LAMBERT VAN & STORAGE CO., INC., 1010 6th Ave., North, Kent, WA 98031. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. Transporting *general commodities* (except used household goods, hazardous or secret materials, and senitive weapons and

munitions), for the U.S. Government, between points in the U.S.

MC 131055F, filed October 3, 1980. Applicant: ALL WORLD TRANSPORTATION, INC., 7828 Woodside Terrace T-3, Glen Burnie, MD 21061. Representative: Nancy Lee Donnelly (same address as applicant). *Broker*, in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 152035 (Sub-1F), filed September 30, 1980. Applicant: RAYMOND M. CHENOWETH, 1900 Westlund Drive, Las Vegas, NV 89102. Representative: Lawrence Marquette, P.O. Box 711, Pebble Beach, CA 93953. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers,* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP4-089

Decided: October 10, 1980.

By the Commission; Review Board Number 1, Members Carleton, Joyce and Jones.

MC 129326 (Sub-36F), filed October 7, 1980. Applicant: CHEMICAL TANK LINES, INC., P.O. Box 432, Mulberry, FL 33860. Representative: Charles A. Webb, Suite 1111, 1828 L St., N.W., Washington, DC 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 141707 (Sub-2F), filed October 7, 1980. Applicant: JOE A. STEVENS TRUCKING, INC., 454 N. College St., Harrodsburg, KY 40330. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 144867 (Sub-3F), filed October 7, 1980. Applicant: R & J TRANSPORT, INC., 929 No. 24th St., Manitowoc, WI 54220. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting *general commodities* (except used household goods, hazardous or secretive materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP5-031

Decided: October 9, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 41098 (Sub-55F), filed September 29, 1980. Applicant: GLOBAL VAN LINES, INC., Number One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K ST., NW, Washington, DC 20006. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 113908 (Sub-510F), filed October 2, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 N. Packer Rd., P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 152038F, filed September 30, 1980. Applicant: DAVID BRUCE, Park River, ND 58270. Representative: David C. Britton, 1425 Cottonwood Street, Grand Forks, ND 58201. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers,* with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 152048F, filed September 23, 1980. Applicant: F & L TRUCKING CORP., 24 Hamilton Drive, Roslyn, NY 11576. Representative: Robert S. Le Beau (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 152078F, filed October 2, 1980. Applicant: MIDDLESEX COURIER SERVICE, INC., 6 Governor Saltonstall Drive, Billerica, MA 01821. Representative: George C. O'Brien, 12 Vernon St., Norwood, MA 02062. Transporting *shipments* weighing 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32525 Filed 10-17-80; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 60F)]

Southern Pacific Transportation Co.—Abandonment—Near Matheson and Kett in Shasta County, Calif.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided July 23, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Southern Pacific Transportation Company of a continuous line of railroad known as the Matheson Branch extending from milepost 267.65 at or near Matheson to milepost 263.20 at or near Kett in Shasta County, CA, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Southern Pacific Transportation Company based on the above-described finding of abandonment, on or before November 19, 1980, unless on or before November 19, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission Building, Washington, D.C. 20423, no later than 10 days from publication of this Notice.

(2) It is likely that such proffered assistance would: (a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such

assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32519 Filed 10-17-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 791-69]

United States v. Ciba-Geigy Corp.; Proposed Final Judgment, and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of New Jersey in *United States of America* v. *Ciba-Geigy Corporation*, Civil Action No. 791-69. This civil action began on July 9, 1969, when the United States filed a Complaint alleging that Ciba's marketing arrangements for its patented drug hydrochlorothiazide ("HCT") violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by unreasonably restricting sales of HCT. The validity of the HCT patent, which was put in issue when Ciba relied on it as a defense, was also challenged. The court held that Ciba's agreements to supply HCT to other drug companies violated the Sherman Act but ruled against the United States on all other issues.

The proposed Final Judgment requires Ciba to dedicate to the public as of March 31, 1981 its patent rights to HCT and combinations of HCT and other drugs. Absent the proposed Judgment, Ciba's patent rights to HCT will not expire until December 29, 1981, and its patent rights to the HCT combinations will not expire until November 29, 1983.

In addition, the proposed Final Judgment obligates Ciba to take steps in advance of dedicating its patent rights to open up competition in HCT and HCT combinations. The proposed Judgment requires Ciba upon request to grant financially responsible persons unrestricted, nonexclusive, reasonable royalty licenses under the HCT patent to make and sell HCT alone or in HCT combinations. Ciba is also obligated to grant the same rights under the HCT patent to its existing HCT licensees.

Public comment is invited within the statutory 60-day comment period. Comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger B. Andewelt, Assistant Chief, Intellectual Property Section, Antitrust Division (Safe-704), United States Department of Justice, Washington, D.C. 20530 (telephone: 202/724-7966).

Joseph H. Widmar,

Director of Operations.

U.S. District Court, District of New Jersey

United States of America, Plaintiff, v. *Ciba-Geigy Corporation*, Defendant.

Filed: September 30, 1980.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that the Final Judgment entered on October 16, 1979 may be vacated and that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the plaintiff: Sanford M. Litvack, *Assistant Attorney General;* Joseph H. Widmar, Roger B. Andewelt, Charles F. B. McAleer, P. Terry Lubeck, Joseph T. Melillo, Nicholas W. Clark, *Attorneys, Department of Justice*, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For the defendant: Davis Polk & Wardwell; Richard E. Nolan, *A member of the firm.* Kenyon & Kenyon; Hugh A. Chapin, *A member of the firm.* Lowenstein, Sandler, Brochin, Kohl & Fisher; Matthew P. Boylan, *A member of the firm.*

It is so ordered:

Dated: September 30, 1980.

Curtis H. Meanor, *Judge of the District Court.*

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on July 9, 1969, defendant having filed its answer thereto, the trial having been bifurcated, the Court having rendered its opinion on the antitrust issues on April 15, 1976 and its opinion on the patent issues on August 7, 1979, the Court having entered a Final Judgment on October 16, 1979, plaintiff having filed an appeal from the Final Judgment, defendant having filed a cross-appeal, upon joint application of the parties, both appeals having been dismissed and the action having been remanded to this Court, plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without it consitituting any evidence against or admission by any party with respect to any issue of fact or law herein;

Now, therefore, without final adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

The Final Judgment entered on October 16, 1979 is vacated, and this Final Judgment is substituted therefor.

III

As used in this Final Judgment:

(A) "Ciba" means defendant Ciba-Geigy Corporation, a corporation organized and existing under the laws of the State of New York; and any subdivision, subsidiary, or affiliate thereof.

(B) "Hydrochlorothiazide" means 6-chloro-7-sulfamyl-3,4-dihydro-1,2,4-benzothiadiazine-1,1-dioxide.

(C) "Hydrochlorothiazide Combination Patents" means United States Patent Nos. 3,379,612, 3,499,082, and 3,515,786.

(D) "Hydrochlorothiazide Patents" means United States Patent No. 3,163,645.

(E) "Person" means any individual, partnership, association, firm, corporation, proprietorship, joint venture, or other legal or business entity.

IV

This Final Judgment applies to defendant and to its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other Persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

(A) Ciba is ordered and directed upon the request of any or its existing licensees under the Hydrochlorothiazide Patent to extend the licensee's license thereunder to include the right to make, have made, use, and sell Hydrochlorothiazide in combination with any one or more other therapeutically active ingredients selected by the licensee. The royalty rate for the extended license shall be no more than the royalty rate specified in the license at the time of the request. Ciba shall notify each of its existing licensees under the Hydrochlorothiazide Patent whose license may be extended pursuant to this Subsection V(A) of its rights under this Subsection V(A).

(B) Ciba is ordered and directed to grant any financially responsible Person making written application therefor an unrestricted, nonexclusive license under the Hydrochlorothiazide Patent to make, have made, use, and sell Hydrochlorothiazide alone and in combination with any one or more other therapeutically active ingredients selected by the licensee. The royalty rate for the license shall be reasonable, but in no event more than six (6) percent.

(C) Nothing in this Final Judgment shall prevent any Person from attacking at any time the validity or scope of the Hydrochlorothiazide Patent or shall require Ciba to grant or extend any license under any patent other than the Hydrochlorothiazide Patent.

VI

Ciba is ordered and directed at or about the date of entry of this Final Judgment to file with the United States Patent Office pursuant to Section 253 of the Patent Laws (35 U.S.C. § 253) a terminal disclaimer of:

(A) Claims 1, 2, 40, and 41 of the Hydrochlorothiazide Patent for the part of their term remaining after the date of entry of this Final Judgment.

(B) Claim 3 of the Hydrochlorothiazide Patent for the part of its term remaining after March 31, 1981.

(C) Each of the Hydrochlorothiazide Combination Patents for the part of its term remaining after March 31, 1981. Ciba shall furnish plaintiff copies of all terminal disclaimers Ciba files with the United States Patent Office pursuant to this Section VI.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VIII

This Final Judgment will expire on December 31, 1981.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

Entry of this Final Judgment is in the public interest.

Dated:

_____,

Judge of the District Court.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on July 9, 1969, when the United States filed a Complaint challenging defendant's marketing arrangements for its patented drug hydrochlorothiazide ("HCT"). Defendant, Ciba-Geigy Corporation ("Ciba"), had licensed Merck and Co., Inc. ("Merck") and Abbott Laboratories ("Abbott") to make and sell HCT and had vending agreements with several other drug companies pursuant to which the companies purchased HCT for resale. The Complaint alleges that the license and vending agreements violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by unreasonably restricting sales of HCT by the licensees and vendees. Ciba denied the allegations, maintaining that the Abbott license agreement was a legal use of its patent on HCT. The United States then challenged the validity of the patent.

The antitrust issues were tried in the spring of 1975, and the District Court rendered a written opinion on April 15, 1976, reported in 1976–1 Trade Case ¶ 60,908. The Court held that each of Ciba's vending agreements violated Section 1 of the Sherman Act, but that Ciba's license agreements, and its HCT marketing arrangements as a whole, did not violate that Act. The Court refused to grant the United States any relief, except a declaration that Ciba had violated the Sherman Act.

The patent issues were tried in December 1978, and the District Court rendered a written but unreported opinion on August 7, 1979. The Court ruled against the United States on all patent issues.

On October 16, 1979, the District Court entered a Final Judgment in the action. The United States appealed from the Judgment, and Ciba cross-appealed. While the appeals were pending, the United States and Ciba agreed upon a proposed Final Judgment to settle the litigation. The United States and Ciba then jointly asked the appellate court to return the action to the District Court to consider the proposed Judgment. The District Court may substitute the proposed Judgment for the Final Judgment of October 16, 1979, after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except the Court will retain jurisdiction to construe, modify, and enforce the proposed Judgment and to punish violations of the proposed Judgment.

II. Events Giving Rise to the Alleged Violation

In 1958 Ciba invented HCT, a drug useful in treating edema and hypertension, and filed a United States patent application covering HCT and many of its analogues. The Patent Office, relying on a patent on chlorothiazide ("CT"), a previously patented diuretic and antihypertensive, rejected the application on the ground that HCT and the analogues were obvious under Section 103 of the patent laws, 35 U.S.C. § 103. The Patent Office eventually found HCT and the analogues patentable, but only after Ciba filed several affidavits comparing the properties of HCT and CT. Ciba told the Patent Office that the affidavits showed HCT was a significant advance over CT. Ciba's application then became involved in several Patent Office interference proceedings with applications of other inventors that also covered HCT. These proceedings were instituted to determine whether Ciba was the first to invent HCT and certain of its analogues. Ciba eventually prevailed, and the HCT patent issued on

December 29, 1964, as United States Patent No. 3,163,645. Ciba also received three patents covering combinations of HCT and other drugs: United States Patent No. 3,379,612, issued April 23, 1968; United States Patent No. 3,499,082, issued March 3, 1970; United States Patent No. 3,515,786, issued June 2, 1970. Before these HCT combination patents issued, Ciba dedicated to the public the portion of their terms remaining after November 29, 1983, the earliest expiration date of related combination patents issued to Ciba.

In 1959, while its HCT patent application was pending in the Patent Office, Ciba licensed Merck and Abbott to make and sell HCT. Ciba then entered into vending agreements with eight other drug companies pursuant to which Ciba agreed to supply HCT in bulk form, the powdery form in which HCT exists prior to being packed into dosage form, the pill form in which HCT is sold for use by patients.

The Complaint alleges that the effect of Ciba's marketing arrangements was to prevent competition between Ciba and its licensees and vendees, and among the licensees and vendees, and to prevent generic and other drug firms from obtaining HCT in bulk form. The United States contended that Ciba's licensees illegally agreed with Ciba not to sell HCT in bulk form in competition with Ciba. Merck's license contained no express limitation on the forms in which it could sell HCT, but the United States contended that there was an unwritten agreement between Merck and Ciba that except under very limited circumstances, Merck would not supply HCT in bulk form. The Court found, however, that no such agreement existed between Ciba and Merck. Abbott's license limited it to selling HCT in dosage form, and Abbott refused to supply HCT in bulk form because its agreement with Ciba would not permit Abbott to make such sales. The Court held that Abbott's limited license was a legal use of Ciba's presumptively valid HCT patent and did not violate the Sherman Act.

The United States contended that each of the vendee agreements illegally restricted the resale of HCT. Ciba's vending agreements prevented the vendees from selling the bulk HCT they purchased from Ciba except in combination with other drugs, and in most cases, Ciba had to approve the HCT combinations. Ciba marketed three combinations of HCT and other drugs, which were covered by its HCT combination patents, and it consistently refused to allow its vendees to market any of these combinations or their equivalents. Thus, Ciba used its HCT patent to prevent its vendees from selling HCT in bulk form in competition with Ciba, from selling dosage form HCT in competition with Ciba, Merck, and Abbott, and from selling HCT in the three combinations Ciba marketed. The Court held that each of Ciba's vending agreements violated the Sherman Act. The United States also contended that Ciba and its vendees illegally combined to restrict the resale of HCT. The Court, however, rejected this contention, finding that the vendees acted independently regarding the vending agreements.

Based upon the Court's ruling that Ciba's vendee agreements violated the Sherman Act, the United States sought as relief an injunction compelling Ciba to sell bulk HCT and to license its HCT patent, all without restrictions. In addition, the United States asked the Court to prohibit Ciba from engaging in post-sale restraints in the future. The Court, however, denied the United States any relief, except a declaration that Ciba violated the antitrust laws. The Court found that Ciba's illegal practices of restricting the resale of HCT, which Ciba unilaterally abandoned several years before the trial of the antitrust issues, left no lingering effects in the market. The Court also found that there was no evidence from which it could conclude that in the future Ciba will employ illegal post-sale restraints in connection with products it vends.

On the patent issues, the United States challenged the validity and enforceability of the HCT patent and the validity of the HCT combination patents. As to the HCT patent, it contended that HCT was obvious under Section 103, that HCT analogues claimed in the patent also were obvious under Section 103, and that Ciba had procured the patent by fraud. The United States also contended that Ciba had procured the HCT patent by inequitable conduct, making it unenforceable. As to the HCT combination patents, the United States contended that the HCT combinations were obvious under Section 103.[1] The Court denied the United States the opportunity to challenge the obviousness of the HCT analogues, the enforceability of the HCT patent, and the validity of the HCT combination patents. As to HCT itself, the Court found that the United States had not proved that HCT was obvious or that Ciba procured the HCT patent by fraud. On the fraud issue, the Court found that the United States had not proved that Ciba had a fraudulent intent in its dealings with the Patent Office. The Court held that Ciba's HCT patent was valid, making the Abbott license a legal use of the patent.

III. Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The proposed Final Judgment will permit generic and other drug firms to sell HCT and HCT combinations in competition with Ciba and its licensees and vendees well before the HCT and HCT combination patents will expire. The proposed Judgment requires Ciba to dedicate to the public at specified times its patent rights to HCT, the analogues of HCT, and the HCT combinations. With respect to the HCT patents, Ciba is obligated to dedicate to the public claims 1, 2, 40, and 41 when the proposed Judgment becomes final and claim 3 on March 31, 1981. Claim 3 specifically covers HCT, claims 1 and 2 cover HCT and many of its analogues, and claims 40 and 41 cover methods of making the drugs. With respect to the HCT combination patent, Ciba is obligated to dedicate them to the public on March 31, 1981. Absent the proposed Judgment, the HCT patent will not expire until December 29, 1981, and the HCT combination patents will not expire until November 29, 1983.

In addition, the proposed Final Judgment obligates Ciba to take steps in advance of dedicating its patent rights to open up competition in HCT and HCT combinations. The proposed Judgment requires Ciba upon request to grant financially responsible persons unrestricted, nonexclusive licenses under the HCT patent to make and sell HCT alone or in combination with one or more other drugs. The license may not limit the drugs the licensee may combine with HCT. The royalty rate for the license must be reasonable, but in any event no more than six (6) percent. Ciba is also obligated to grant the same rights under the HCT patent to its existing HCT licensees.

The effects on competition of Ciba's obligation to license its HCT patent when the proposed Judgment becomes final are two-fold. First, by paying a reasonable royalty, all generic and other drug firms may compete for sales of HCT alone. Of course, any firm is free to challenge the validity of the HCT patent and thus Ciba's right to collect any royalty at all. Second, by paying a reasonable royalty, these firms may also compete for sales of HCT combinations without concern for the HCT patent. Until the HCT combination patents are dedicated, Ciba may seek to assert these patents and thereby prevent competition in those combinations that are patented. However, Ciba has historically not asserted its HCT combination patents, choosing instead to rely on its HCT patent to shield them from challenges to their validity. If Ciba now elects to rely on its HCT combination patents, their validity may be challenged on the ground of obviousness or any other ground.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Judgment has no prima facie effect in any subsequent private antitrust lawsuits that may be brought against the defendant. Although testimony was taken in this action, the proposed Final Judgment contains nothing to the effect that defendant has violated the antitrust laws.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance

[1] The United States relied in part on two articles describing the same combinations with CT substituted for HCT: E. D. Freis and I. M. Wilson, Potentiating Effect of Chlorothiazide (DIURIL) in Combination With Antihypertensive Agents—Preliminary Report, 26 Med. Ann. District of Columbia 468 (1957); and E. D. Freis et al., Treatment of Essential Hypertension With Chlorothiazide (DIURIL)—Its Use Alone and in Combination With Other Antihypertensive Agents, 166 J.A.M.A. 137 (1958).

with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the government written comments regarding the proposed Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger B. Andewelt, Assistant Chief, Intellectual Property Section, Antitrust Division (SAFE–704), U.S. Department of Justice, Washington, DC 20530.

VI. Alternatives to the Proposed Final Judgment

In the Complaint, the United States requested broad relief to infuse competition into sales of HCT and HCT combinations. This relief appeared appropriate to compensate for the restrictive marketing of these HCT products that had prevailed since 1959. This relief included compelling Ciba to sell HCT in bulk form and to grant to all applicants licenses on reasonable terms to make and sell HCT and HCT combinations, all without restrictions. The Complaint also requested that Ciba be prohibited from using similar marketing arrangements for other drug products.

The proposed Final Judgment will provide all of the competitive benefits that would be obtained from a successful appeal and will provide them sooner. When it becomes final, the proposed Judgment will obligate Ciba upon request to grant financially responsible drug companies unrestricted licenses under the HCT patent to make and sell HCT. This will permit open competition in sales of HCT. Furthermore, as of March 31, 1981, Ciba must dedicate to the public its patent rights to HCT and the HCT combinations. With the patents rights dedicated, drug companies also will be free to compete in the sale of HCT combinations.

The appellate process, if continued, most likely would not be completed until after March 31, 1981. The final appellate decision may hold the HCT patent invalid or unenforceable. In addition, the final appellate decision may permit the United States to challenge the validity of the HCT combination patents, but a final ruling on the validity of the patents most likely would not be reached for several more years. A ruling after March 1981 that the HCT patent is invalid or unenforceable, or a ruling several years later that the HCT combination patents are invalid, is of insufficient value when balanced against the immediate competitive benefits the proposed Judgment will provide.

The proposed Final Judgment provides no prohibitory relief forbidding Ciba from engaging in post-sale restraints in the future. However, on balance it appears unwise to continue the appeal in an attempt to obtain this additional relief. The appeal would be difficult and expensive, and there is some risk of losing this issue on appeal and not getting any prohibitory relief. Moreover, appeal would risk loss or delay of the competitive benefits that would be obtained through entry of the proposed Judgment.

VII. Other Materials

The United States considered no materials or documents determinative in formulating the proposed Final Judgment and, therefore, files none with this Competitive Impact Statement.

Dated: September 30, 1980.

Respectfully submitted,

Roger B. Andewelt,

P. Terry Lubeck,

Joseph T. Melillo,

Nicholas W. Clark,

Attorneys, U.S. Department of Justice.

[FR Doc. 80–32431 Filed 10–16–80; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 80–1401]

United States v. Rockwell International Corp. and Rockwell International Holdings Limited; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS) have been filed with the United States District Court for the Western District of Pennsylvania in *United States of America* v. *Rockwell International Corporation ["Rockwell"] and Rockwell International Holdings Limited ["RIHL"],* Civil Action No. 80–1401. The Complaint in this case alleged that Rockwell's acquisition, through RIHL, of 29.7% of Serck Limited's shares may substantially lessen actual and potential competition in the lubricated plug valve market and the lubricated tapered plug valve submarket in violation of Section 7 of the Clayton Act. The proposed Final Judgment orders Rockwell and RIHL to divest themselves of all Serck shares within four years, and if all shares have not been sold within such time, empowers the Court to appoint a Trustee to sell the shares. Pending divestiture, the proposed Final Judgment enjoins the defendants from (a) voting the Serck shares that they own or control directly or indirectly; (b) being represented directly or indirectly on Serck's Board of Directors; (c) communicating with Serck for the purpose of controlling or influencing, or seeking to control or influence, Serck; or (d) acquiring any equity interest in Serck which would increase their aggregate holding of Serck shares beyond 29.7% of the total outstanding Serck shares. The proposed Final Judgment also enjoins the defendants for ten years from making certain asset or equity interest acquisitions in Serck or any other person engaged in the manufacture, sale or distribution of lubricated plug valves.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202/724–6335).

Joseph H. Widmar,

Director of Operations Antitrust Division.

U.S. District Court, Western District of Pennsylvania

United States of America, Plaintiff, v. *Rockwell International Corporation and Rockwell International Holdings Limited,* Defendants.

Filed: September 30, 1980

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirments of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: September 30, 1980.

For the plaintiff: Stanford M. Litvack, *Assistant Attorney General;* Joseph H. Widmar, John W. Clark, Frank N. Bentkover, *Attorneys, Department of Justice.*

For the defendants: Howrey & Simon, J. Wallace Adair, John DeQ. Briggs III, Fred E. Haynes, Laura Ross Blumenfeld, *Attorneys, Department of Justice Antitrust Division* Washington, D.C. 20530, Telephone: (202) 724–6337.

U.S. District Court Western District of Pennsylvania

United States of America, Plaintiff, v. *Rockwell International Corporation and Rockwell International Holdings Limited,* Defendants.

Filed: September 30, 1980

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on September 30, 1980, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act, 15 U.S.C. § 18.

II

As used in this Final Judgment:

(A) "Rockwell" means defendant Rockwell International Corporation;

(B) "RIHL" means defendant Rockwell International Holdings Limited;

(C) "Serck" means Serck Limited and its officers, directors, agents, employees, subsidiaries, successors and assigns;

(D) "Lubricated tapered plug valve" means a valve containing a vertical truncated cone-shaped plug, with a hole through its center, that rotates 90 degrees about its axis within the valve body. Lubricant is distributed through channels in the plug and body to seal the seating surfaces and facilitate operation. When the plug's hole is aligned with the pipe, fluids or gases flowing through the pipe also pass through the valve; when the plug is turned 90 degrees, the solid face of the plug blocks flow through the valve;

(E) "Lubricated cylindrical plug valve" means a lubricated valve similar in construction and operation to the lubricated tapered plug valve except that it has a cylindrically-shaped plug instead of a truncated cone-shaped plug;

(F) "Lubricated plug valves" means lubricated tapered plug valves and/or lubricated cylindrical plug valves;

(G) "Person" means an individual, partnership, corporation, or any other business or legal entity; and

(H) "Subsidiary" means a company which a person controls or has power to control or in which more than 50 percent of the voting securities are owned by the same person, directly or indirectly.

III

This Final Judgment applies to defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Provided however that no provision of this Final Judgment shall apply to any purchaser of all or part of RIHL's equity interest in Serck solely by virtue of such purchase.

IV

(A) Within four (4) years from the date of entry of this Final Judgment, Rockwell and RIHL are hereby ordered and directed to divest themselves of all of the equity interest in Serck that each owns or controls, directly or indirectly.

(B) If Rockwell or RIHL have not sold all of the equity interest in Serck that each owns or controls, directly or indirectly, within the period specified in (A) above, the Court shall undertake, upon application by plaintiff, to appoint a Trustee for the purpose of selling any remaining equity interest. For the purpose of appointing such Trustee, the Court shall promptly receive nominations from the parties and grant a hearing to the parties as to the qualifications of any nominee. Once appointed by the Court, the Trustee shall be entitled to reasonable compensation and actual expenses to be set by the Court and paid by Rockwell or RIHL.

(C) The Trustee's primary duty shall be to sell all of Rockwell's or RIHL's remaining equity interest in Serck at such price and on such terms as may be required to effect the sale within three months after the date of his appointment. The proceeds of any such sale shall be turned over to Rockwell or RIHL immediately, and in no event later than five (5) business days after the sale of any equity interest in Serck.

(D) Notice of any sale of said equity interest in Serck by Rockwell, RIHL and/or the Trustee shall be provided to the Court and to the plaintiff's Director of Operations, Antitrust Division, Department of Justice, Washington, D.C. 20530, within twenty-four (24) hours thereafter. Such notice may be by telephone but within two (2) business days thereafter shall be confirmed in writing.

V

Pending divestiture of the equity interest in Serck, neither Rockwell nor RIHL shall:

(A) Vote or permit to be voted the Serck shares that Rockwell or RIHL owns or controls directly or indirectly;

(B) Be represented directly or indirectly on the board of directors of Serck;

(C) Communicate with Serck directly or indirectly for the purpose of controlling or influencing, or seeking to control or influence, Serck, Provided however that nothing in this subparagraph prohibits communications between Rockwell and Serck in connection with commercial transactions in the ordinary course of business that do not otherwise violate this Final Judgment; or

(D) Acquire any equity interest in Serck that would increase Rockwell's and RIHL's aggregate equity interest in Serck beyond 29.7 percent of the total equity of Serck.

VI

During the effective period of this Final Judgment (but only for so long as Rockwell continues to be a competitor in the domestic market for lubricated plug valves) neither Rockwell nor RIHL shall acquire or otherwise purchase, without the permission of the Antitrust Division:

(A) Any assets of Serck, wherever located, utilized in the manufacture, distribution, or sale of lubricated plug valves (if permission to aquire assets of Serck is denied by the Antitrust Division, Rockwell or RIHL may apply to the Court for permission to acquire such assets, which will be granted by the Court upon a showing by Rockwell or RIHL that the acquisition of assets will not violate the antitrust laws of the United States);

(B) Any equity interest in Serck (except as may be permitted under Paragraph V(D) of this Final Judgment);

(C) More than one (1) percent of the equity interest in any person that manufactures, distributes or sells lubricated plug valves in the United States; or

(D) Any assets of any person used in the manufacture, distribution or sale of lubricated plug valves in the United States.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports as may be requested, under oath if requested, with respect to any of the matters contained in this Final Judgment.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to

divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VIII

This Final Judgment will expire on the tenth anniversary of its date of entry.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, or for the punishment of any violation hereof.

X

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated:

U.S. District Court For The Western District Of Pennsylvania

United States of America, Plaintiff, v. *Rockwell International Corporation and Rockwell International Holdings Limited*, Defendents.

Filed: September 30, 1980

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), the United States hereby submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 30, 1980, the United States filed a complaint alleging that the acquisition by defendent Rockwell International Corporation ("Rockwell"), through defendant Rockwell International Holdings Limited ("RIHL"), of approximately 30% of the stock of Serck Limited ("Serck") violated Section 7 of the Clayton Act. Entry by the Court of the proposed final judgment will terminate this action. The Court will retain jurisdiction over this matter for such further proceedings as may be required to interpret, modify or enforce the proposed judgment, or to punish violations thereof.

II. Description of the Alleged Violation

Rockwell is a large, diversified corporation that had sales in excess of $6.1 billion in its 1979 fiscal year. It is one of the nation's largest manufacturers of industrial valves. RIHL, a Delaware corporation, is a wholly-owned subsidiary of Rockwell. Serck is a British company whose major business is the manufacture of industrial valves. In 1979, it had sales of approximately $219 million. Serck's operations in the United States are conducted through its wholly-owned subsidiary, Serck Incorporated, which has its principal place of business in Houston, Texas.

On February 1, 1980, Rockwell, through RIHL, purchased 29.7%of Serck's outstanding shares. It then initiated a tender offer to acquire the remaining shares. On April 17, 1980, the United States Department of Justice announced that it would file suit to enjoin the acquisition of the remaining shares if Rockwell persisted with the tender offer. Shortly thereafter, Rockwell withdrew the tender offer and no suit was filed. However, the Department continued to investigate whether Rockwell's acquisition of nearly 30% of Serck's stock violated Section 7 of the Clayton Act. In the course of this investigation, counsel for the defendants and for the Department entered into negotiations aimed at resolving this matter without the expense of extended litigation. These discussions have resulted in the proposed final judgment, which has been filed with the Court simultaneously with the filing of the government's complaint against the defendants.

Had this case gone to trial, the government would have contended that Rockwell's acquisition, through RIHL, of the Serck stock violated Section 7 of the Clayton Act in that it may substantially lessen competition in the domestic market for lubricated plug valves and the submarket for lubricated tapered plug valves. The lubricated plug valve product market consists of lubricated tapered plug valves and lubricated cylindrical plug valves. Lubricated plug valves are used for the flow control purposes in a variety of industrial applications, including oil and gas production, processing, transmission, and distribution. Lubricated plug valves are the valve of choice in many applications due to favorable design characteristics such as quarter-turn operation (i.e., a lubricated plug valve can be turned on or off by moving the handle through a 90 degree arc), durability, bubbletight shutoff, fire safety, and a seal that can be restored in-service through the injection of additional lubricant. Lubricated tapered plug valves differ from lubricated cylindrical plug valves in sufficient degree to constitute a separate submarket of the overall lubricated plug valve market.

The lubricated plug valve market is highly concentrated, with Rockwell the dominant company in the market. In 1979, approximately $57 million of lubricated plug valves were sold in the United States. Rockwell's sales of lubricated tapered plug valves (it does not manufacture lubricated cylindrical plug valves) accounted for approximately 83.5% of the total sales of lubricated plug valves. The lubricated tapered plug valve submarket is also highly concentrated, and Rockwell is also the dominant company in that submarket. Its sales of such valves accounted for approximately 94% of the $50.7 million of lubricated tapered plug valves sold in the United States in 1979.

Serck is, after Rockwell, the second largest manufacturer of lubricated tapered plug valves in the world. Serck is the leading manufacturer of such valves outside the United States and is Rockwell's main competitor in the international market. Since at least 1977, Serck has been trying to expand into the United States, the world's largest market for lubricated tapered plug valves, by means of an acquisition or joint venture that would enable it to manufacture such valves domestically. Serck has been selling lubricated tapered plug valves in the United States since 1977 through various companies, including Serck Incorporated. In 1979, Serck Incorporated's sales of lubricated tapered plug valves accounted for less than 1% of the domestic sales of lubricated plug valves or lubricated tapered plug valves. Given Serck's position in the international market and its plans for expansion in the United States, Serck is the most significant and probable entrant into the manufacture of lubricated tapered plug valves in the United States.

Rockwell's acquisition, through RIHL, of nearly 30% of Serck's stock makes Rockwell the largest shareholder in Serck and gives it the power to exercise great influence, if not actual control, over Serck. Additionally, uncertainty has been created in the minds of potential joint venture partners with Serck (in a domestic valve manufacturing plant) by Rockwell's ownership of this large block of stock and the possibility that, unless restrained by the proposed final judgment, Rockwell may renew its attempt to acquire all of Serck. This uncertainty has had an adverse impact on Serck's efforts to enter into the domestic manufacture of lubricated tapered plug valves.

The government would have contended at trial that Rockwell's acquisition of the Serck stock violated Section 7 in several ways. First, actual competition between Rockwell and Serck will be eliminated and actual competition in the lubricated plug valve market and the lubricated tapered plug valve submarket may generally be substantially lessened. While Serck's sales of lubricated tapered plug valves account for less than 1% of domestic sales, Serck's United States market share understates its competitive potential, given its stated plans to enter into domestic lubricated tapered plug valve production. Second, potential competition may be substantially lessened by the acquisition, which eliminates Serck as an independent actual potential entrant into the manufacture of lubricated tapered plug valves in the United States. Finally, the acquisition also adversely affects the procompetitive influence that Serck has had on the domestic market by the perception that existed of it as a potential entrant into domestic manufacturing.

III. Explanation of the Proposed Final Judgment

The United States and the defendants have agreed in a stipulation that the proposed final judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The final judgment provides that there has been no admission by any party with respect to any issue. Under the provision of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of this judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The terms of the Final Judgment require that Rockwell and RIHL divest themselves of all the Serck shares that each owns or controls, either directly or indirectly, within four years of entry of the final judgment. If Rockwell and RIHL have not completed divestiture within the required time period,

the Court will appoint a Trustee to accomplish the divestiture. The Trustee will sell all of Rockwell's or RIHL's remaining shares of Serck at such price and terms as may be required to effect the sale within three months after the date of his appointment.

Pending divestiture of the Serck shares, neither Rockwell nor RIHL will be permitted to (a) vote or permit to be voted the Serck shares that Rockwell or RIHL owns or controls, directly or indirectly; (b) be represented directly or indirectly on Serck's Board of Directors; (c) communicate with Serck directly or indirectly for the purpose of controlling or influencing, or seeking to control or influence, Serck; or (d) acquire any equity interest in Serck that would increase Rockwell's and RIHL's aggregate holding of the Serck shares beyond 29.7% of the total outstanding shares of Serck. The latter provision permits Rockwell and RIHL to acquire such additional equity interest in Serck as may be necessary to avoid the dilution of their 29.7% ownership interest pending divestiture. Of course, any additional equity purchased by the defendants would be subject to the restriction on voting and the divestiture requirement.

Additionally, during the effective period of the judgment (but only as long as Rockwell continues to be a competitor in the domestic lubricated plug valve market), Rockwell and RIHL are prohibited from acquiring or purchasing, without the permission of the Antitrust Division, (a) any equity interest in Serck (except as explained in the preceding paragraph), (b) more than one percent of the equity interest in any person that manufactures, distributes or sells lubricated plug valves in the United States, or (c) any assets of any person used in the manufacture, distribution or sale of lubricated plug valves in the United States. Furthermore, neither Rockwell nor RIHL may acquire any assets of Serck, wherever located, that are utilized in the manufacture, distribution, or sale of lubricated plug valves, unless it obtains the permission of the Antitrust Division or the Court. The permission of the Court will be granted upon a showing by Rockwell or RIHL that the acquisition of assets will not violate the antitrust laws of the United States.

In order to ensure that the defendants comply with the provisions of the judgment, Paragraph VII sets forth procedures under which representatives of the Department of Justice will be permitted to inspect and copy the defendants documents and to interview their officers, employees, or agents. This paragraph also requires that the defendants submit written reports when requested by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. The term of the Final Judgment is 10 years.

IV. Alternatives Considered to the Proposed Final Judgment

The United States initially sought divestiture by the defendants of the Serck shares within a shorter period of time than four years. However, given the uncertainties and delays of litigation, the United States believes that four years for divestiture of the stock provides adequate relief in light of the fact that the defendants are prohibited by the judgment from exercising any control or influence over Serck pending divestiture.

The United States also initially considered requiring approval by the Department of Justice over any sale of the Serck stock pursuant to the divestiture obligation. The approval requirement was dropped when it became apparent that it might impede the defendants' ability to dispose of the stock without materially advancing the United States' interests. If an antitrust issue is raised by the identity of a purchaser of the divested stock, certain delays required by English procedure (Serck is an English corporation) governing mergers and take-overs should provide the Department of Justice with sufficient time to evaluate the competitive implications, if any, of the sale before the purchaser can effect a merger or take-over of Serck.

The relief in the final judgment will restore the competition that may have been substantially lessened by the defendants' stock acquisition. In addition to restoring Serck as a fully independent competitor, the final judgment will restrict Rockwell's ability to make other acquisitions that might lessen competition in the lubricated plug valve market and the lubricated tapered plug valve submarket.

The government considered the possibility of a full trial on the merits as an alternative to the proposed final judgment. However, a trial would involve substantial expense, as well as a commitment of staff which otherwise could be devoted to other enforcement activities. In addition, it is felt that the proposed final judgment will provide essentially the same relief the government would have obtained had it been successful at trial.

V. Remedies Available to Private Plaintiffs

Any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable remedies that they would have had were the proposed final judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this judgment may not be used as *prima facie* evidence in private litigation.

VI. Procedures Available for Modification of the Proposed Judgment

The proposed final judgment is subject to a stipulation by and between the United States and the defendants that provides that the United States may withdraw its consent to the judgment at any time until the Court has found that entry of the judgment is in the public interest. By its terms, the final judgment provides for the Court's retention of jurisdiction in order, among other reasons, to permit the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the Final Judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act, any person wishing to comment on the proposed judgment may, for the sixty (60) day period prior to the effective date of the judgment, submit written comments to: John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530.

The comments, and the responses thereto, will be filed with the Court and published in the **Federal Register**. The Department of Justice will evaluate all comments and determine whether there is any reason for withdrawal of its consent to the judgment.

VII. Determinative Documents

Since there are no materials or documents which were determinative in formulating a proposal for the consent judgment, none are being filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act.

Fred E. Haynes,

Laura Ross Blumenfeld,

Attorneys, Department of Justice.

[FR Doc. 32432 Filed 10-16-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at the Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20506 in room 1422, from 9:00 to 5:30 pm., on November 5, 1980.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibits beginning after January 1, 1981.

Because the proposed meeting will consider commercial and financial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to authority granted me by the Chairman's Delegation Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806

15th Street, NW., Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80–32565 Filed 10–17–80; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Mathematical Sciences Subcommittee of the Advisory Committee for Mathematical and Computer Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Mathematical Sciences of the Advisory Committee for Mathematical and Computer Sciences

Date and time: November 14, 1980—9:00 a.m. to 5:00 p.m., November 15, 1980—9:00 a.m. to 4:00 p.m.

Place: National Science Foundation, Room 523, 1800 G Street NW., Washington, DC 20550

Type meeting: Open

Contact person: Dr. William G. Rosen, Head, Mathematical Sciences Section, Room 304, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7341

Summary minutes: May be obtained from the contact person at the above address

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the Mathematical Sciences

Agenda:

Friday, November 14, 1980

9:00 a.m.—Introductions—Dr. William G. Rosen, Head, Mathematical Sciences Section

9:30 a.m.—Opening Remarks and Discussion—Dr. William E. Klemperer, Assistant Director, Mathematical and Physical Sciences

10:30 a.m.—Review of the Applied Mathematics program—Professor James M. Glimm

11:15 a.m.—Review of the Modern Analysis program—Professor William W. Veech

12:00 noon—Lunch

1:00 p.m.—Alternative Modes Update—Dr. William G. Rosen

2:00 p.m.—Allocation of Limited Resources—Dr. Ronald Pyke (Chairman)

A. General

B. Instrumentation needs

C. Graduate student support

D. Foreign visitor support

4:00 p.m.—The Case for Mathematics I—Dr. Ronald Pyke

Saturday, November 15, 1980

9:00 a.m.—The Case for Mathematics II

11:00 a.m.—The Regional Conference Program—Dr. Alvin I. Thaler, Acting Program Director for Special Projects

12:00 noon—Effort Reporting—Dr. Grace Wahba

12:30 p.m.—Lunch

1:30 p.m.—The Case for Mathematics III

3:30 p.m.—Other Business

4:00 p.m.—Adjournment

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–32560 Filed 10–17–80; 8:45 am]

BILLING CODE 7555–01–M

Policy Research and Analysis Dissemination, Distribution, and Publication Subcommittee of the Advisory Committee for Policy Research and Analysis and Science Resources Studies; Time Change

Notice is hereby given that the time of the meeting of the PRA Dissemination, Distribution, and Publication Subcommittee to be held on October 23, 1980, has been changed from 2:00 p.m. to 3:30 p.m. This meeting was published in the **Federal Register** on September 24, 1980.

For further information contact Ms. Sharon Dyer (202–634–4790), Division of Science Resources Studies, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

M. Rebecca Winkler,

Committee Management Coordinator.

October 15, 1980.

[FR Doc. 80–32501 Filed 10–17–80; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence; Failure of Control Rods To Insert Fully During a Scram

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). One of the general criteria of the Policy Statement notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. The following description of the event also contains the remedial action taken.

Date and Place—On June 28, 1980, Browns Ferry Unit 3, a Boiling Water Reactor (BWR), located in Limestone County, Alabama, reported that 76 control rods failed to insert fully during a routine shutdown by a manual scram actuation at about 35% power.

Nature and Probable Consequences—Following the manual scram actuation, 76 of 185 control rods failed to insert fully. The partially inserted rods were all (with one exception) on the east side of the core where reactor power level was indicated to be two percent or less. The west side of the core was subcritical. A second manual scram was initiated six minutes later and all partially inserted rods were observed to drive inward but 59 remained partially withdrawn. A third manual scram was initiated two minutes later and 47 rods remained partially withdrawn. Six minutes later an automatic scram occurred when the scram discharge level switch was returned from "bypass" to "normal" while there was a high water level in the scram discharge instrument volume. All rods inserted fully upon this automatic scram. It appears that this was a coincidence in that a manual scram at that time would probably have produced the same result. Core coolant flow, temperature and pressure remained normal for the existing plant conditions.

There was no danger to the general public or plant employees as a result of this event. No radioactivity was released to the environment. There was no indication of fuel damage.

This type of occurrence could result in failure of the control rods to inset fully in part or all of the core on any automatic or manual scram signal. Such a failure to scram on demand has the potential to cause significant fuel damage.

Cause or Causes—The exact cause of the event has not been precisely determined. The problem appears to be hydraulic in nature rather than electrical. The control rod drives (CRDs), which insert and withdraw the attached control rods in a General Electric BWR, are essentially water-driven hydraulic pistons. Upon a scram demand, a relatively high water pressure is applied to the bottom side of the piston by opening a scram inlet valve; a scram outlet valve opens to relieve water pressure above the piston and the rods are rapidly driven up into the reactor core. Water discharged from the 185 individual CRDs is collected in two separate headers consisting of a series of interconnected 6 inch diameter pipes (four on each side of the reactor) called the scram discharge volume (SDV). Each SDV is designed to be continually drained to a scram discharge instrument volume (SDIV) during normal operation and to be ready to receive the scram discharge water when a scram occurs. This instrument volume is monitored for water level. An automatic

scram is initiated upon high level, in anticipation of too much water in the SDV preventing a full rod insertion. The control rod drives at Browns Ferry Unit 3 are grouped in such a manner that the east and west sides of the reactor core are connected to separate SDVs. The east SDV was apparently partially full of water at the time of the event leaving insufficient room for the discharge water. Upon scram actuation, the CRDs drove the rods into the core until pressure equalized on each side of the pistons and the rods stopped inserting.

Following each scram actuation, the scram signal was reset by the operator, allowing water to drain from the SDV and permitting the rods to insert further with each scram attempt. Sufficient water was finally drained from the SDV to allow the rods to insert fully on the fourth scram signal. The exact cause initiating the SDV water accumulation problem is not known at this time. It is postulated that either the drain piping was plugged or inadequate venting of the SDV prevented the water from draining from the SDV following a previous scram.

Actions Taken To Prevent Recurrence

Licensee—The unit remained shutdown while a series of tests was performed in an attempt to determine the cause of the water accumulation in the SDV. Ultrasonic probes were installed on the SDVs to continuously monitor the water level in the SDVs. The unit was authorized to restart on July 13, 1980, as discussed below.

NRC—Immediately following the event, Region II dispatched a core physics specialist to the site to assist the two NRC resident inspectors. Region II also issued a letter confirming the licensee's (Tennessee Valley Authority) commitment to obtain NRC concurrence prior to restart. An evaluation team consisting of the Region II Director, Region II specialists and NRC Headquarters personnel was dispatched to the site to evaluate the significance of this event. A Preliminary Notification was issued to inform other NRC offices promptly. On July 3, 1980, IE Bulletin No. 80–17 was issued to all licensees operating BWRs and required them to conduct prompt and periodic inspections of the SDV; perform two reactor scrams within 20 days while monitoring pertinent parameters to further confirm operability; review emergency procedures to assure pertinent requirements are included; and conduct additional training to acquaint operating personnel with this type of problem. On July 18, 1980, Supplement 1 to Bulletin 80–17 was issued to all licensees operating BWRs. This supplement required an analysis of the "as built" SDV; revised procedures on initiation of the Standby Liquid Control System (SLCS); specifying in operating procedures action to be taken if water is found in the SDV; daily monitoring of the SDV until a continuous monitor can be installed and studying of designs to improve the venting of the SDV.

During testing required by IE Bulletin 80–17, the following anomolies were found:

1. On July 19, following the manual scram at Dresden 3, the SDV was aligned for draining. An ultrasonic test (UT) of the SDV showed the west SDV to be 80 percent filled with water when it was thought to be empty. The SDV contains a ball check valve in the vent line that serves as a vacuum breaker. The ball check provides a vent path directly from the reactor building atmosphere in the event the vent header does not function. The vent header terminates in the Reactor Building Equipment Drain Tank (RBEDT). This line extended into the tank and below the surface of the water. Because the SDV was draining slower than the operators had anticipated, the ball check valve was unseated by the operators and the SDV drain rate increased.

2. At Duane Arnold, the SDIV drain valve was found installed so that pressure in the SDIV tended to unseat the drain valve disk. This resulted in leakage out of the SDIV during the scram. This was corrected by reversing and reinstalling the valve. The scram tests were performed on July 12 and 13 and the drain valve was corrected before return to power operations on July 17, 1980.

3. At the Millstone Unit 1, the scram tests were performed successfully on July 11 through 14. The function of the 10-second delay on scram reset was tested separately from the scram tests. Review of the separate test results by plant personnel established that the scram reset delay feature was not functioning in the scram circuits due to a wiring error on the circuit boards. This was corrected.

4. At Browns Ferry Unit 1, a test scram involving two rods was performed on July 19, 1980. The test showed normal response of level switches in the SDIV. When proceeding to drain the SDIV, however, the SDV did not empty as required and expected. A vacuum in the SDV apparently existed which kept the system from draining. Subsequently, the vacuum was cleared by operator actions and the volume drained properly. Tests are continuing toward determination of the cause and to measure the vacuum.

5. At Nine Mile Point Unit No. 1, one rod failed to scram during the manual scram test on July 14, 1980. This was due to a failure of the scram pilot valve for that rod.

6. On July 21, 1980, the licensee for Peach Bottom 2 & 3 reported that improperly rated solenoids for the backup scram valves had been installed. The installed solenoids were rated at 250-volts DC but were connected to a 125-volt DC power source. These valves are not considered essential to safety because the remainder of the scram system satisfies all NRC licensing requirements. The solenoids were replaced with ones requiring 125-volts DC.

As a result of the above findings, Supplement 2 to IE Bulletin 80–17 was issued on July 22, 1980. This required the BWR licensees to provide a vent path from the SDV directly to the building atmosphere without any intervening component except for the vent valve itself. These modifications had to be completed within 48 hours for plants operating or prior to startup for plants shutdown.

Browns Ferry Unit 3 was authorized to restart on July 13, 1980 following completion of the actions required by IE Bulleting 80–17 and other extensive tests. A letter was issued on July 14, 1980, confirming the actions taken by the licensee and to confirm that the licensee will perform an expedited review of design changes recommended by the reactor vendor (General Electric Company).

Continuing staff review of this event identified a potential for unacceptable interaction between the control rod drive system and the nonessential control air system; therefore, IE Bulletin 80–17 Supplement 3 was issued on August 22, 1980. This Supplement required affected BWR licensees to implement operating procedures within five days which required an immediate manual scram on low control air pressure, or in the event of multiple rod drift-in alarms, or in the event of a marked change in the number of control rods with high temperature alarms. In addition, the licensees were requested to implement procedures which require a functional test using water for the instrument volume level alarm, rod block, and scram switches after each scram event.

Dated at Washington, D.C. this 8th day of October 1980.

For the Nuclear Regulatory Commission
Samuel J. Chilk,
Secretary of the Commissioner.
[FR Doc. 80-32490 Filed 10-17-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-147]

Rockwell International Corp.; Order Terminating Facility License

By application dated July 16, 1974, as supplemented April 30, 1980, Rockwell International Corporation (the licensee) requested authorization to dismantle the Fast Critical Experimental Laboratory (FCEL) reactor located in Ventura County, California, and to dispose of the component parts in accordance with a plant submitted as part of the application, and termination of Facility License No. CX-17. A "Notice of Proposed Issuance of Order Terminating Facility License" was published in the **Federal Register** on July 25, 1980 (45 FR 49730). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has found that the facility has been dismantled and decontaminated, and that satisfactory disposition has been made of the component parts and fuel in accordance with the Commisison's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security or to the health and safety of the public. The facility was dismantled pursuant to the Commissin's Order dated November 1, 1974.

The facility area has been inspected by the Commission's Office of Inspection and Enforcement and radiation surveys confirm that radiation levels meet the values defined in the decommissioning plan, and the area is available for unrestricted access.

Therefore, pursuant to the application by Rockwell International Corporation, Facility License No. CX-17 is hereby terminated as of the date of this Order.

For further details with respect to this action, see (1) application for authorization to dismantle facility and dispose of component parts and for termination of facility license dated July 16, 1974, as supplemented April 30, 1980, (2) the Commission's Order Authorizing Dismantling of Facility dated November 1, 1974, and (3) the Commission's related Safety Evaluation. Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 1st day of October 1980.

For the Nuclear Regulatory Commission.
Thomas M. Novak,
Assistant Director for Operating Reactors, Division of Licensing.
[FR Doc. 80-32489 Filed 10-17-80; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the General Electric Test Reactor; Meeting

The November 5, 1980 meeting of the ACRS Subcommittee on the General Electric Test Reactor (GETR), announced in the **Federal Register** on September 18, 1980, has been rescheduled to be held on November 4, 1980 in Room 1046, 1717 H St., NW, Washington, DC, to continue its review of GETR structural integrity when subjected to design basis loads. In addition, the Subcommittee will discuss other topics such as landslide hazards.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, November 4, 1980
8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the General Electric Company, their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio G. Igne (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., Eastern Time.

Dated: October 15, 1980.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 80-32648 Filed 10-17-80; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

October 15, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447–6201

New Forms

Economics, Statistics, and Cooperatives Service
Sugar Processor Costs
Single time
Sugar beet and sugar cane processors, 76 responses; 304 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Revisions

Economics, Statistics, and Cooperatives Service
Virginia Flue-Cured Tobacco Variety Survey Annually
Tobacco growers, 345 responses; 28 hours
Off. of Federal Statistical Policy and Standard, 673–7974
Economics, Statistics, and Cooperatives Service
Mint Survey
Other (see SF–83)
Mint growers, 1,080 responses; 216 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Economics, Statistics, and Cooperatives Service
Virginia Peanut Variety Survey
Annually
Peanut growers, 326 responses; 82 hours
Off. of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377–3627

New Forms

National Bureau of Standards
Evaluation of Dimensions/NBS
NBS–1167
Single time
Individuals who subscribe to dimensions/NBS, 500 responses; 67 hours
William T. Adams, 395–4814

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697–1195

Extensions

Departmental and other
Report of DOD and Defense related employment as required by Pub. L. 91–121
DD 1787
Annually
Former DOD personnel, 900 responses; 500 hours
Kenneth B. Allen 395–3785

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—426–5030

New Forms

Office of Education
Nonstudent Borrower Application for a Health Education Assistance Loan
OE–768
Annually
Nonstudents (Graduates)—Lending institution, 1,200 responses; 450 hours
Laverne V. Collins, 395–6880

Office of Education
Quality Control Surveys
ED–765
On occasion
Banks and Financial Aid Offices, 240 responses; 150 hours
Laverne V. Collins, 395–6880

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245–7488

New Forms
Office of Human Development
State Plan Preprint for Title IV–E of the Social Security Act (Foster Care and Adoption Assistance)
Other (See SF–83)
State agencies, 220 responses; 880 hours
Barbara F. Young, 395–6880

Office of Human Development
Quarterly Statement of Expenditures for Foster Care and Adoption Assistance
SF–269
Quarterly
State agencies, 220 responses; 880 hours
Barbara F. Young, 395–6880

Office of Human Development
Quarterly Estimate of Expenditures, Allotment Need for Foster Care and Adoption Assistance
SF–269
Quarterly
State agencies, 220 responses; 880 hours
Barbara F. Young, 395–6880

Office of the Secretary
SF–269—Financial Status; SF–270—Request for Advance or Reimbursement
OS–23–80
Quarterly
Agencies administering State plans under 42 CFR 400, 400 responses; 200 hours
Eisinger, Richard, 395–6880

Office of the Secretary
Cuban/Haitian Entrant State Estimate Form
OS–22–80
Annually
Agencies administering State plans under 42 CFR 400, 50 responses; 50 hours
Eisinger, Richard, 395–6880

Social Security Administration
Summary Report on the Low Income Energy Assistance Program
SSA–4473
Quarterly
States administering energy assistance programs, 200 responses 76,000 hours
Barbara F. Young, 395–6880

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Winsor, Acting—426–1887

New Forms

Department and other
Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels

Single time
Persons wishing to apply for temp. license or cert. of serv., 4,000 responses; 133 hours
Hayward, Corinne D., 395–7340

Revisions

Federal Aviation Administration
Operations Specifications
FAA 1014 and FAA 8400–1
On occasion
Applicants for air carrier operating certificates 10,116 responses; 5,408 hours
Hayward, Corinne C., 395–7340

Reinstatements

Federal Aviation Administration
Malfunction or Defects Report—Other Than Scheduled Air Carrier
FAA 8330–2
On occasion
Malfunction or defects reports, 8,000 responses; 2,000 hours
Hayward, Corinne D., 395–7340

Federal Aviation Administration
Certification: Flight Crewmembers Other Than Pilots
FAR 63
On occasion
Airmen, 8,680 responses; 3,955 hours
Hayward, Corinne D., 395–7340

Federal Aviation Administration
Mechanic School Certification Procedures (Manual)
On occasion
All FAA cert. aviation mainte. technical schools
Hayward, Corinne D., 395–7340

Federal Aviation Administration
Application for Aviation Maintenance Technician School Certificate
FAA 8310–6
On occasion
Airmen, 20 responses; 502 hours
Hayward, Corinne D. 395–7340

Federal Aviation Administration
Statement of Qualifications (DMIR–DER–DPRE–DME)
FAA 8110–14
On occasion
Properly qual. indiv. working in the aviation comm., 2,250 responses; 1,350 hours
Hayward, Corinne D., 395–7340

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632–7737

Revisions

Application for Guaranteed Minimum Annuity (For Annuitant)
BRI 49–389
On occasion
CS annuitants eligible under Pub. L. 93–273, 2,400 responses; 600 hours
Veeder, Robert N., 395–4814

TENNESSEE VALLEY AUTHORITY

Agency Clearance Officer—Eugene E. Mynatt—857–2596

New Forms

Tennessee Valley Preference Study
Single time
Individuals in 201 counties in TVA Region A 30,000 responses; 10,000 hours
Charles A. Ellett, 395–7340

WHITE HOUSE

Agency Clearance Officer—Charles Atkins—252–8870

New Forms

Year-End Report to the President and Application for the President's Award for Energy Efficiency [1]
Single time
Uti., fin., inst., gov't., trade assoc., empl., serv., org., etc., 5,000 responses; 1,670 hours
Edward C. Springer, 395–4814

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–32619 Filed 10–17–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

October 14, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of Panel IV (Government and the Advancement of Social Justice) of the President's Commission for a National Agenda for the Eighties, is scheduled for October 22, 1980 from 2:00 p.m. to 4:30 p.m. in New York City. The meeting will be held at the NAACP National Office, 1790 Broadway, New York, New York.

The purpose of the meeting is to discuss, in general, topics pertaining to government and social justice in the eighties.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place Northwest, Washington, D.C. 20006, (202) 275–0116.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–32396 Filed 10–17–80; 8:45 am]

BILLING CODE 3110–01–M

[1] This report may be acted on before the normal 10-day period. The clearance of the questionnaires on an expedited basis is necessary in order to be able to recognize outstanding accomplishments in achieving energy efficiency by public and private sector organizations and individuals before the end of 1980.

Office of Federal Procurement Policy

OMB Circular A–76: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government

October 10, 1980.

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Circular revision.

SUMMARY: The changes incorporated in this revision clarify the intent of Transmittal Memorandum No. 4 in respect to obtaining a contract price used in the cost comparison. The revision clearly states that a current bid or offer obtained from a new solicitation must be used to determine contract costs for comparison to in-house new start costs. In addition, the revision changes the Cost Comparison Handbook to increase the accuracy of the estimate of Government costs associated with the contract mode of performance. Finally, the revision extends for another year the one-year moratorium on compliance with the Circular and the periodic review of inventoried Research and Development activities, except for new starts and expansions as defined in the Circular. This extension will permit further study of available options. The revision advises the Department of Defense to follow their statutory provisions in applying the Circular to Research and Development.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Gerken, Deputy Associate Administrator for Major System Acquisitions and Procurement Strategies, Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, NW., Room 9013, Washington, DC 20503, or telephone 202–395–3254.

Karen Hastie Williams,

Administrator.

Circular No. A–76 Revised; Transmittal Memorandum No. 5

September 26, 1980.

To the Heads of Executive Departments and Establishments.

Subject: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

1. This revision amends Transmittal Memo No. 4 to OMB Circular A–76 (revised), dated

March 29, 1979. The following revisions are made to the Circular and Cost Comparison Handbook as set forth in paragraphs a through c below.

a. *Calculating Contract Costs:* Paragraph 9(b) of Circular A–76 is clarified by adding the following sentences: "All cost comparisons under a new start will be based on the solicitation of firm bids or offers. Prepriced option prices in existing contracts will not be used in lieu of the issuance of a new solicitation when conducting a cost comparison under a new start."

b. *Utilization of Government Capacity:* To ensure that all significant costs are included in the cost comparison, subparagraph F–5(g) of paragraph F–5, entitled "Utilization of Government Capacity," in Chapter V of the Cost Comparison Handbook—Supplement 1 to OMB Circular A–76 is modified as follows. Delete all references to the 5% exception so that the paragraph reads: "Computations similar to those above should also be made for the general and administrative expense rate. Similarly, the impact of contracting-out a product or service on material overhead should be determined."

c. *Application of the Circular to Research and Development:* The paragraph of Transmittal Memorandum No. 4, entitled "Application to R&D Activities," is amended as follows. Compliance with this Circular and the periodic review of inventoried research and development activities, except for new starts and expansions, are deferred for one additional year pending the development of appropriate criteria on determining justified "core capability." The Department of Defense (DOD), however, shall follow the statutory provision of Section 802 of the Defense Appropriation Authorization Act of FY 1980 (Public Law 96–107).

2. This revision is effective immediately and shall apply to all studies in process where no contract award has resulted.

James T. McIntyre, Jr.,

Director.

[FR Doc. 80–32471 Filed 10–17–80; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11395; 812–4724]

Bergen Bank; Filing of Application for an Order Exempting Applicant From All the Provisions of the Act

October 10, 1980.

Notice is hereby given that Bergen Bank A/S ("Applicant") c/o H. Rodgin Cohen, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, filed an application on August 27, 1980 for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant represents that it is one of the three major commercial banks in Norway, and that as of December 31, 1979, based on that date's exchange rate for Norwegian kroners, it had assets of $2.88 billion, deposits of $2.1 billion and capital funds (including reserves and subordinated loan capital) of $163 million. Applicant states that its principal business is the receipt of deposits and the making of loans, and that approximately 93% of its liabilities (excluding capital) consists of deposits. It is stated that approximately 83% of the deposits are from nonbank depositors, and over 90% of its deposits are from Western European countries and the United States. Applicant states that its deposits are received from a broad spectrum of customers, and that approximately 38% of its nonbank deposits are retail deposits received through a domestic network of approximately 100 branches. Applicant states that approximately 43% of its nonbank deposits are received from corporations.

Applicant further represents that its loans total approximately $1.8 billion and that almost all of its loans are to, or guaranteed by, Norwegian persons. According to Applicant, its loan portfolio is widely diversified as to type of borrower. Applicant states that its other assets consist principally of Norwegian government and government-guaranteed bonds, which as of December 31, 1979 amounted to $670 million.

Applicant also represents that, in addition to its deposit and lending business, it engages in other banking and bank-related activities typical of major full service European banks, including fiduciary and investment advisory services, money transfers, foreign exchange, lease financing and underwriting in the Eurobond market.

According to Applicant, its shares are held by an estimated 34,000 investors and are listed on the Oslo Stock Exchange. Applicant represents that approximately 53% of its shares are held by individuals, 31% by institutional investors and 16% by the Kingdom of Norway.

Applicant states that the Government of Norway has adopted a statutory and administrative policy to ensure the solvency of Norwegian commercial banks. It is stated that the basic statute governing commercial banks, the Bank Act of 1961 ("Bank Act"), provides that bankruptcy proceedings cannot be instituted by creditors of commercial banks. Applicant also represents that in a report to the Norwegian Parliament, the Governor of the Norwegian Central Bank (Norges Bank) stated that under no circumstances would the Norges Bank allow a Norwegian commercial bank to default on its obligations, that Norges Bank would provide sufficient loans to achieve that objective, and that the governor of the Norges Bank subsequently confirmed in writing that this policy applied to commercial paper issued in the United States by a Norwegian commercial bank.

Applicant asserts that it is subject to a regulatory structure comparable to that to which United States banks are subject. Applicant states that it is supervised by the Norwegian Bank Inspectorate ("NBI"), which has broad regulatory and enforcement powers with respect to commercial banks. It is represented that under the Bank Act, a Norwegian commercial bank such as Applicant is required to hold: (i) Cash, deposits at other banks with maturities of not more than one month, and government obligations with maturities of not more than five years, in an amount equal to not less than 25% of demand deposits and time deposits with maturities of not more than one month; (ii) similar assets in an amount equal to not less than 5% of time deposits from nonbanks; and (iii) similar assets in an amount equal to not less than 10% of nonbank deposits and demand and one month deposits from banks.

Applicant states that it is required to maintain "primary liquid reserves," consisting generally of high quality assets, in an amount currently equal to 5% of total assets, and that it is currently also required to maintain 30% of its assets in Norwegian Government and similar high class bonds. Applicant also states that it is required to maintain equity capital equal to at least 6.5% of total liabilities after deducting cash in hand, amounts receivable from Norges Bank and government securities, and advances having government or equivalent guarantees, and that it is required to maintain a reserve fund equal to at least one-half its share capital. Applicant represents that the NBI receives monthly statements of financial condition from each Norwegian commercial bank and conducts periodic inspections of each commercial bank, and that NBI prescribes the accounting principles for commercial banks. Applicant states that it cannot engage directly or through subsidiaries in nonbanking activities, and that it may not own real estate in an amount exceeding 4% of its total assets, nor equity securities exceeding 2% of its total assets. Applicant further states that a Norwegian commercial bank

generally may not lend more than 50% of its capital to any borrower, and that its single largest loan is approximately one-half this maximum. Applicant states that loans to related parties are closely regulated through collateralization requirements. Applicant represents that Norwegian governmental authorities appoint a majority of its Board of Representatives, its the highest governing authority, which among other things, elects its board of directors and is required to (i) establish a Control Committee to supervise the activities of the bank and its compliance with all applicable statutes and regulations and (ii) appoint auditors who report to the Board of Representatives through the Control Committee.

Applicant proposes to issue and sell in the United States unsecured prime quality commercial paper notes ("Notes"), in bearer form and denominated in United States dollars, in order to provide an alternative source of supply of United States dollars which supplement United States dollars currently obtained by Applicant in the Eurodollar market. It is stated that under this proposal no Note will be in a denomination smaller than $100,000, and that the Notes will be issued and sold by Applicant to a commercial paper dealer in the United States which will reoffer the Notes as principal to investors in the United States. Applicant represents that it does not currently intend to sell the Notes in the United States in excess of an aggregate of $100 million at any one time outstanding.

Applicant states that it undertakes to ensure that the Notes will not be advertised nor otherwise offered for sale to the general public, but instead will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicant also states that it undertakes to ensure that the dealer will provide each offeree of the Notes prior to purchase with a memorandum which briefly describes Applicant's business and includes its most recent publicly available fiscal year-end balance sheet and income statement, which shall have been audited in such manner as is customarily done for Applicant by its auditors. Applicant represents that such memorandum will describe any material differences between accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks. Applicant states that such memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States and will be updated promptly to reflect material changes in Applicant's financial condition.

Applicant represents that the terms of the Notes, including their maturity and minimum denomination, the amount outstanding at any given time, and their manner of offering to investors, will be such as to qualify them for the exemption from registration provided for certain short-term commercial paper by Section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant states further that the Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of, or the proceeds of which will be used for, current transactions. Applicant states that it will agree with its commercial paper dealer that the Notes will contain no provision for payment on demand, extension, renewal or automatic rollover either at the option of Applicant or the holder. Applicant asserts that, as a consequence, it will not be required to register the Notes under the 1933 Act.

Applicant represents, in addition, that it will not issue and sell the Notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the exemption provided by Section 3(a)(3) of the 1933 Act. Applicant states that it does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act. Applicant further represents that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with the issuance and sale of the Notes.

Applicant also represents that the currently proposed issue of securities and all future issues of securities will have received prior to issuance one of the three highest investment grades from at least one nationally-recognized statistical rating organization and that its United States counsel will have certified that such rating has been received.

Applicant asserts that the Notes will rank *pari passu* among themselves and equally with all other of its unsecured indebtedness (including liabilities to depositors) and will rank prior to its equity securities.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. Applicant also states that it will appoint either such bank, the Commission or some other party which normally acts in such capacity to accept any process which may be served in any action based on the Notes and instituted by the holder of any Note in any State or federal court. Applicant further states that it will expressly accept the jurisdiction of any State or federal court in the City and State of New York in respect of any such action, and that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise, but that its authorized agent will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it may, from time to time, offer other securities, such as debt securities, bankers acceptances and letters of credit supporting commercial paper issued by other companies, but not including shares of its capital stock, for sale in the United States. Applicant represents that any such future offering of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as those customarily used in United States offerings of such securities and undertakes to ensure that each offeree of such securities will be provided with such disclosure documents. Applicant further states that any such future offering will be made with due regard to the provisions of Rule 146 and the doctrine of "integration" referred to in Securities Act Release Nos. 4434, 4552 and 4708 and various "no action" letters made public by the Commission. Applicant states, in connection with any future offering in the United States of its securities, that it will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any state or federal court by the holder of any such security. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been

paid. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. Applicant consent to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Section 3(a)(3) of the Act defines investment company to mean any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Section 6(c) provides that the Commission, by order upon application, may exempt any person from the provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it is applying to the Commission because of uncertainty whether or not foreign commercial banks would be defined as "investment companies" under the Act.

Applicant contends that approval of its application is both necessary and appropriate in the public interest. According to Applicant, a foreign bank would be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with the provisions of the Act and such a result would be inherently inequitable and conflict with the objective of the International Banking Act of 1978, which, Applicant contends, was intended to place foreign banks on a basis of competitive equality in their transactions in the United States with United States banks, which are not required to register as investment companies.

Applicant maintains that foreign banks have a particular need for access to the United States securities markets which goes beyond that for foreign issuers generally. It is stated that because of the development of the large Eurodollar market, major foreign banks which deal in that market need a source of dollars in the event of even a short disruption in the market. Applicant asserts that an exemption pursuant to Section 6(c) could make an important contribution to the stability of the international financial markets. Applicant further asserts that such an exemption would benefit United States investors, and that absent an exemption these investors would be unable to purchase securities issued by foreign banks. Those securities, according to Applicant, represent an increasingly important segment of the short-term, prime quality securities available for purchase.

Applicant asserts further that the exemption requested would be consistent with the protection of investors because there are already in place Norwegian governmental policies and regulatory structures which afford sufficient protection for investors. Applicant asserts that to subject it to the provisions of the Act would be to impose unnecessary regulation upon it, and thereby prevent it from engaging in normal commercial banking operations. Applicant states that in general the operations of commercial banks do not result in abuses the Act was intended to prevent, either because banking regulations prevent such abuses or because banking operations do not lend themselves to such abuses.

Notice is further given that any interested person may, not later than October 31, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32585 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

October 14, 1980.

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 common stock of:

UNR Industries Inc., Common Stock, $2.50 Par Value (File No. 7–5761)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32576 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17217; File No. SR-NASD-80-17]

National Association of Securities Dealers, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on October 1, 1980, the above-mentioned self-regulatory organization filed with the Securities

and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of a proposed amendment to Section C.4 of Part I of Schedule D of the Association's By-Laws. (language to be deleted is bracketed, new language is italicized)

Part I, Paragraph C.4(a)

If accepted for registration, and the market maker's terminal is timely installed, the market maker's registration shall be effective at the start of business on the second business day following receipt of his application by the Corporation. Otherwise the market maker's registration shall be effective at the start of business on the second business day following installation of the terminal. [However, if the registration is received in an issue which has never been previously authorized, the market maker's registration shall be effective at the start of business on the first day that the issue is authorized for quotation.]

Part I, Paragraph C.4(d)

A market maker's initial registration in a security not previously authorized may become immediately effective if a request for registration is received by the Corporation within five business days of authorization of the security.

Purpose of Proposed Rule Change

The proposed amendment will permit immediate registration of market-makers during the initial week of quotations on NASDAQ. This will alter the present practice of two-day registration (except for the first day of trading).

Basis Under the Act for the Proposed Rule Change

Section 15A(b)(11) 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 contain provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, which may be distributed or published by any member or other persons associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations to prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing and publishing quotations.

Comments Received From Members, Participants or Others on the Proposed Rule Change

Comments were neither solicited nor received.

Burden on Competition

The Association foresees no burden on competition caused by the proposed rule change. Indeed, since the proposed amendment would permit earlier inclusion of market maker quotations, competition should be enhanced.

On or before November 24, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 submission 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 November 10, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

October 14, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32497 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17215; File No. SR-NSCC-80-28]

National Securities Clearing Corp.; Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes permanent the previous change to subsection E of Section VIII *PASS-THROUGH EXPENSES* of the NSCC fee schedule as follows:

E. For processing cash or stock dividend claims made against the Corporation's NCC & Co. nominee by NSCC participants and others on and after December 1, 1979; $10.00 per record date claim.

The proposed rule change would make permanent, effective October 24, 1980, SR-NSCC-79-13 which had previously become effective on October 24, 1979 for a one year period of time.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change continues the use of the established $10.00 processing fee for each dividend claim made on and after December 1, 1979 against NSCC's NCC & Co. nominee by participants and non-Participants alike which fee will be utilized by NSCC to defray the costs of processing such claims.

The proposed rule change relates to the equitable allocation of reasonable dues, fees and other charges.

No comments on proposed rule change have been solicited or received.

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six 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 November 10, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32577 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17216; SR-Phlx-80-20]

Philadelphia Stock Exchange; Order Approving Proposed Rule Change

October 14, 1980.

On August 25, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx"), 17th Street & Stock Exchange Place, Philadelphia, PA 19103, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change regarding exchange disciplinary procedures. The rules set forth, among other things, procedures relating to investigations, the issuance of complaints, hearings and review. The rules also define the powers of the Business Conduct Committee the Hearing Committee and its panels and staff.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17130, September 8, 1980) and by publication in the Federal Register (45 FR 61058, September 15, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the proposed rule changes enhance the exchange's ability to comply with its statutory obligations to enforce compliance with the Act, the rules and regulations thereunder, and its own rules; to discipline its members and their associated persons for rule violations in an appropriate manner with fitting sanctions; and to provide fair procedures for discipline in accordance with Sections 6(b) (1), (6) and (7), respectively.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32587 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17214; File No. SR-SCCP 80-4]

Stock Clearing Corp. of Philadelphia; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 1, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes an amendment to Rule 23, Compensation, which deals with charges for services rendered. SCCP proposes a reduction in the PHILADEP depository fee charged for deposits of securities known as "legal" items from the current $15.00 to $7.50. The text of the rule change is attached as Exhibit 2.

Basis and Purpose of Proposed Rule Change

The purpose of the reduced fee for legal deposits is to make it more cost related, and to encourage our participants to use our facilities for this service.

The proposed rule change provides equitable allocation of reasonable dues, fees and other charge among participating members in accordance with the standards set forth in Section 17A(b)(3)(D) of the Act.

No formal comments have been solicited or received regarding the proposed Rule change. The membership was advised of the proposed rate reduction in PHILADEP Participant Bulletin No. 80-8.

No burden on competition will be imposed by the proposed Rule change. The proposed rate schedule does not discriminate between marketplaces, nor does it inhibit clearing interfaces.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof, with the Secretary of the 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 in the caption above and should be submitted on or before November 10, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 14, 1980.

[FR Doc. 80-32578 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21744; 70-6505]

West Penn Power Co.; Proposal To Issue and Sell Promissory Notes to Authority in Connection With Financing of Pollution Control Facilities

October 14, 1980.

Notice is hereby given that West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, an electric utility subsidiary company of Allegheny Power System, Inc., 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 6,7,9,10 and 12 of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The proposed transactions involve the financing, including the transfer to and purchase from Washington County Industrial Development Authority ("Authority") by West Penn, of certain air and water pollution control equipment and facilities including a flue gas desulferization system, associated sludge disposal and handling facilities, precipitators, lime unloading handling and storage facilities, fly ash handling systems, a new chimney, associated land and interests in land and equipment (collectively known as the "Facilities"), now under construction at West Penn's Mitchell Power Station ("Mitchell") located in Washington County, Pennsylvania. The Facilities are required to be installed to meet air quality standards pursuant to consent decrees embodying settlement agreements with the Federal Environmental Protection Agency and the Pennsylvania Department of Environmental Resources.

The Authority proposes to finance the Facilities by issuing and selling its tax exempt pollution control revenue bonds ("Bonds") in one or more series with a maturity of not less than three and not more than forty years. It is not expected that the amount of Bonds to be issued will exceed $60 million. The Bonds will be issued in either coupon or registered form under a trust indenture with a corporate trustee approved by West Penn, which will provide for redemption, sinking funds, no call and other appropriate provisions, and such bonds shall be sold at such times, in such principal amounts, at such rates and for such prices as shall be approved by West Penn.

At the date the financing is consummated, West Penn will transfer to the Authority title to those portions of the Facilities then in place at Mitchell, subject to the first mortgage lien of the indenture securing West Penn's first mortgage bonds and to a second lien to be imposed on the Facilities. Title to those portions of the Facilities thereafter constructed shall vest in the Authority. The aggregate purchase price of the Facilities will be an amount equal to the aggregate principal amount of the Bonds issued by the Authority.

To evidence its obligation to pay the purchase price of the Facilities, West Penn will deliver concurrently with the issuance of each series of Bonds its non-negotiable pollution control notes ("Notes"), corresponding to such series of Bonds with respect to principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Payments on such notes will be made to the trustee and applied to pay the maturing principal, redemption prices, interest and other costs of the Bonds as the same become due. West Penn also proposes to pay any trustees' fees or other expenses incurred by the Authority. The Notes will be secured by a second lien on the Facilities and certain other properties, pursuant to a Mortgage and Secruity Agreement creating a mortgage and security interest in the Facilities and certain other property. It is stated that the Notes will not constitute "unsecured debt" within the meaning of the provisions of West Penn's charter.

West Penn intends to accomplish a permanent long-term financing of the Facilities through the proposed transactions. If the current high interest rates prevail at the proposed time of the financing, it may be advantageous for West Penn to complete the financing in two phases. The first phase would be the issuance of three year bonds by the Authority and notes by West Penn. The second phase would be the refunding of those three year bonds and notes sometime prior to their maturity with long term bonds and notes having a maturity not to exceed forty years. Such refunding would be the subject of a post-effective amendment.

It is expected that the Authority will engage Goldman, Sach's & Co. and any co-managers that may be desirable to provide financing advice and, together with such other underwriters as may be designated, to underwrite the sale of the Bonds. Fees, commissions and expenses of the underwriters and of legal counsel will be included in the total cost of the Facilities.

The Bonds will be secured by the Notes and will be supported by various convenants of West Penn to be contained in a Pollution Control Financing Agreement. West Penn will cause the Facilities to be completed and will have complete control of the operation of the Facilities including maintenance thereof.

The proceeds to be received by West Penn will be added to its general funds to reimburse its treasury for expenditures made or to be made in connection with the Facilities, including costs to complete construction thereof and to pay fees and expenses associated therewith. As of December 31, 1980, it is expected that about $20 million of such expenditures will have been made.

The fees, commissions and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. The proposed transactions are subject to authorization by the Public Utility Commission of Pennsylvania. The Department of Environmental Resources of the State of Pennsylvania will be required to certify that the Facilities are being installed for air quality purposes. The Secretary of Commerce of the Commonwealth of Pennsylvania is required to certify the proposed transactions. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested persons may, not later than November 10, 1980, 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 applicant-declarant 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 filed or as it may be 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 Rule 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 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. 80-32586 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposal No. 06/06-0236]

American Energy Investment Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102(1980)), by American Energy Investment Corporation, Suite 203, 4543 Post Oak Place Drive, Houston, Texas 77027, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors and shareholders are:

Name and Address, Title and Relationship, Percent of Ownership

John C. Deuss, Mijmeegsebaan 45, Groesbeek, Holland; Chairman of the Board and Director; None.
John J. Hoey, 17 E. 74th St., New York, NY 12021; President, Investment Advisor and Director; 5.
Michael Corrie, 17 Garden St., Garden City, NY 11530; Secretary and Director; None.
Manuel Paredes, 4543 Post Oak Place Dr., Suite 203, Houston, TX 77027; Treasurer and Director; None.
John D. Ritchie, 923 Fifth Ave., New York, NY 10021; Director; None.
Dr. Leslie C. Peacock, Route 3, Box 139D, Brenham, TX 77833; Director; None.
Etablissement Financier Poussin, Postfach 21498, Im Ziel 430, T-L-9493, Mauren, Liechtenstein; Shareholder; 95.

The Etablissement Financier Poussin is wholly owned by John C. Deuss.

The Applicant proposes to begin operations with a capitalization of $2,500,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant may render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of the Notice, submit written comments on the proposed SBIC to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program 59.011, Small Business Investment Companies.)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32589 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0211]

Florists' Capital Corp.; Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Florists' Capital Corporation (Florists), 10524 West Pico Boulevard, Los Angeles, California 90064, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1980) for approval of a conflict of interest transaction.

Florists proposes to loan $21,500 to Edgard and Margaret Roegiers (Roegiers) to purchase inventory, supplies equipment and goodwill of a flower shop business located at 18400 South New Hampshire Avenue, Gardina, California 90248 from Brian Conroy, the brother of Florists' president and chairman of the board, Christopher M. Conroy.

Brian Conroy is defined as an Associate of Florists by Section 107.3 of the SBA Regulations. As a result, Florists' financing of the Roegiers falls within the purview of § 107.1004(b)(5) of the SBA Regulations, and its loan to the Roegiers requires prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Santa Barbara, California area.

(Catalog of Federal Domestic Assistance Program No. 95.001, Small Business Investment Companies.)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32590 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0266]

PBC Venture Capital, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On August 6, 1980, a notice was published in the Federal Register (45 FR 52293) stating that PBC Venture Capital, Inc., 1408 18th Street, Bakersfield, California 93301, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)) for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et. seq.).

Interested persons were given until the close of business on August 21, 1980, to submit written comments on the application to the SBA.

Notice is hereby given that no written comments were received and, having considered the application and all other pertinent information, the SBA approved the issuance of License No. 09/09-0266 on September 29, 1980, to PBC Venture Capital, Inc., pursuant to Section 301(c) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32591 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1935]

Kentucky; Declaration of Disaster Loan Area

Martin County and adjacent counties within the State of Kentucky constitute a disaster area as a result of damage caused by torrential rains, strong winds and flash flooding which occurred on August 21-22, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at: Small Business Administration, District Office, Federal

Office Building, Room 188, 600 Federal Place, Louisville, Kentucky 40202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32592 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1938]

Minnesota; Declaration of Disaster Loan Area

Stearns County and adjacent counties within the State of Minnesota constitute a disaster area as a result of damage caused by a tornado, winds and thunderstorm which occurred on September 3, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 8, 1980, and for economic injury until the close of business on July 6, 1981, at: Small Business Administration, District Office, Plymouth Building—Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 7, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32595 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan area No. 1941]

North Carolina; Declaration of Disaster Loans Area

The following 80 counties and adjacent counties within the State of North Carolina constitute a disaster area as a result of a natural disaster (drought). Date: 5/1–9/24/80.

County

1. Alamance
2. Alexander
3. Alleghany
4. Anson
5. Beaufort
6. Bertie
7. Bladen
8. Brunswick
9. Buncombe
10. Burke
11. Cabarrus
12. Camden
13. Caswell
14. Chowan
15. Cleveland
16. Columbus
17. Craven
18. Cumberland
19. Currituck
20. Davidson
21. Davie
22. Duplin
23. Durham
24. Edgecombe
25. Forsyth
26. Franklin
27. Gaston
28. Gates
29. Granville
30. Greene
31. Guilford
32. Halifax
33. Haywood
34. Hertford
35. Hoke
36. Iredell
37. Jackson
38. Johnston
39. Jones
40. Lenoir
41. Lincoln
42. Macon
43. Madison
44. Martin
45. Mecklenburg
46. Montgomery
47. Moore
48. Nash
49. Northampton
50. Onslow
51. Orange
52. Pamlico
53. Pasquotank
54. Pender
55. Perquimans
56. Person
57. Pitt
58. Randolph
59. Richmond
60. Robeson
61. Rockingham
62. Rowan
63. Rutherford
64. Sampson
65. Scotland
66. Stanly
67. Stokes
68. Surry
69. Swain
70. Transylvania
71. Union
72. Vance
73. Wake
74. Warren
75. Washington
76. Wayne
77. Wilkes
78. Wilson
79. Yadkin
80. Yancey

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 6, 1981, and for economic injury until the close of business on July 6, 1981 at: Small Business Administration, District Office, 230 S. Tryon Street, Suite 700, Charlotte, North Carolina 28202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 6, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32594 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1934]

Ohio; Declaration of Disaster Loan Area

Ashtabula County and adjacent counties within the State of Ohio constitute a disaster area as a result of damage caused by torrential rains and flooding which occurred on August 5, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at:

Small Business Administration, District Office, AJC Federal Building—Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32598 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1933]

Ohio; Declaration of Disaster Loan Area

Butler County and adjacent counties within the State of Ohio constitute a disaster as a result of damage caused by flooding which occurred on August 18, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at:

Small Business Administration, District Office, Federal Building—U.S. Court House, 85 Marconi Boulevard, Columbus, Ohio 43215

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32596 Filed 17-15-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1931]

Ohio; Declaration of Disaster Loan Area

Williams County and adjacent counties within the State of Ohio constitute a disaster area as a result of damage caused by heavy rainstorm and flooding which occurred on July 28, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at:

Small Business Administration, District Office, AJC Federal Building—Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32597 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1925]

Oklahoma; Declaration of Disaster Loan Area

All counties within the State of Oklahoma constitute a disaster area as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Adair	drought	6/25/80-8/14/80
Alfalfa	do	6/25/80-8/14/80
Atoka	do	6/25/80-8/14/80
Beaver	do	6/25/80-8/14/80
Beckham	do	6/25/80-8/14/80
Blaine	do	6/25/80-8/14/80
Bryan	do	9/15/79-8/14/80
Caddo	do	9/15/79-8/14/80
Canadian	do	6/25/80-8/14/80
Carter	do	9/15/79-8/14/80
Cherokee	do	6/25/80-8/14/80
Choctaw	do	6/25/80-8/14/80
Cimarron	do	6/25/80-8/14/80
Cleveland	do	6/25/80-8/14/80
Coal	do	6/25/80-8/14/80
Cotton	do	9/15/79-8/14/80
Comanche	do	9/15/79-8/14/80
Craig	do	6/25/80-8/14/80
Creek	do	6/25/80-8/14/80
Custer	do	6/25/80-8/14/80
Delaware	do	6/25/80-8/14/80
Dewey	do	6/25/80-8/14/80
Ellis	do	6/25/80-8/14/80
Garfield	do	6/25/80-8/14/80
Garvin	do	6/25/80-8/14/80
Grady	do	9/15/79-8/14/80
Grant	do	6/25/80-8/14/80
Greer	do	9/15/79-8/14/80
Harmon	do	9/15/79-8/14/80
Harper	do	9/15/79-8/14/80
Haskell	do	6/25/80-8/14/80
Hughes	do	6/25/80-8/14/80
Jackson	do	9/15/79-8/14/80
Jefferson	do	9/15/79-8/14/80
Johnston	do	9/15/79-8/14/80
Kay	do	6/25/80-8/14/80
Kingfisher	do	6/25/80-8/14/80
Kiowa	do	9/15/79-8/14/80
Latimer	do	6/25/80-8/14/80
Leflore	do	6/25/80-8/14/80
Lincoln	do	6/25/80-8/14/80
Logan	do	6/25/80-8/14/80
Love	do	9/15/79-8/14/80
Marshall	do	9/15/79-8/14/80
Major	do	6/25/80-8/14/80
Mayes	do	6/25/80-8/14/80
McClain	do	6/25/80-8/14/80
McCurtain	do	6/25/80-8/14/80
McIntosh	do	7/01/80-8/14/80
Murray	do	9/15/79-8/14/80
Muskogee	do	7/01/80-8/14/80
Noble	do	6/25/80-8/14/80
Nowata	do	6/25/80-8/14/80
Okfuskee	do	6/25/80-8/14/80
Oklahoma	do	6/25/80-8/14/80
Okmulgee	do	6/25/80-8/14/80
Osage	do	6/25/80-8/14/80
Ottawa	do	6/25/80-8/14/80
Pawnee	do	6/25/80-8/14/80
Payne	do	6/25/80-8/14/80
Pittsburg	do	6/25/80-8/14/80
Pontotoc	do	6/25/80-8/14/80
Pottawatomie	do	6/25/80-8/14/80
Pushmataha	do	6/25/80-8/14/80
Roger Mills	do	6/25/80-8/14/80
Rogers	do	6/25/80-8/14/80
Seminole	do	6/25/80-8/14/80
Sequoyah	do	6/25/80-8/14/80
Stephens	do	9/15/79-8/14/80
Tillman	do	9/15/79-8/14/80
Texas	do	6/25/80-8/14/80
Tulsa	do	6/25/80-8/14/80
Wagoner	do	6/25/80-8/14/80
Washington	do	6/25/80-8/14/80
Washita	do	6/25/80-8/14/80
Woods	do	6/25/80-8/14/80
Woodward	do	6/25/80-8/14/80

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 24, 1981, and for economic injury until the close of business on June 24, 1981, at:

Small Business Administration, District Office, 200 NW. 5th Street-Suite 670, Federal Building, Oklahoma City, Oklahoma 73102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008)

Dated: September 24, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32593 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 12:00 noon, Wednesday, October 29, 1980, at the International Hawaiian Inn, 1102 N. Central, Phoenix, Arizona, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Mack Kehoe, Advocacy Officer, U.S. Small Business Administration, 3030 N. Central Avenue, Phoenix, Arizona 85012—(602) 221-2206.

Dated: October 10, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-32588 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-80-133]

New York Harbor Vessel Traffic Service; Advisory Council Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the New York Harbor Vessel Traffic Service Advisory Committee to be held on Wednesday, November 19, 1980, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park Office, New York, New York, beginning at 10:00 a.m. The agenda for the meeting will be as follows:

1. Discuss the present operation of the New York Vessel Traffic Service.

2. Discuss the future planning proposals and implementation of the New York Vessel Traffic Service.

3. Presentation on the application of marine traffic engineering concepts to New York Harbor.

4. Comments and questions from the floor.

The New York Harbor Vessel Traffic Service Advisory Committee was established by the Commander, Third Coast Guard District to advise on the need for, and development, installation and operations of a Vessel Traffic Service for New York Harbor. Members of the Committee serve voluntarily without compensation from the Federal Government, either travel or per diem.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time. Additional information may be obtained from Captain D. J. Linde, Executive Director, New York Harbor Vessel Traffic Service Advisory Committee, U.S. Coast Guard, Governors Island, New York, New York 10004 or by calling (212) 668-7954.

Issued in Washington, D.C. on October 9, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 80-32575 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-14-M

[CGD 78-135b]

Waiver of Navigation and Vessel Inspection Laws and Regulations, Suspension of Requirements for Survey, Inspections, and Measurement of M/V Lionheart

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of order.

SUMMARY: The Coast Guard has extended the order suspending the provisions of law requiring survey, inspection, and measurement of the *M/V Lionheart* until December 31, 1980, or until a replacement vessel for the *M/V Lionheart* is placed in operation, whichever occurs first. The order was due to expire on September 30, 1980. The extension has been granted to allow the *M/V Lionheart* to continue in present service pending the availability of a replacement vessel.

EFFECTIVE DATE: This extension became effective on September 29, 1980.

ADDRESS: The material referenced in this notice will be available for examination and copying between 7 a.m. and 5 p.m., Monday through Thursday, except holidays, at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593 (202) 426–1477.

FOR FURTHER INFORMATION CONTACT: Commander Lloyd C. Burger, c/o Commandant (G-MVI/24), U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426–2178.

SUPPLEMENTARY INFORMATION: 1. The original order was issued on October 24, 1978, and has been extended twice since that time. The background and rationale for issuing the original order and the extensions are explained in detail in Federal Register notices of November 2, 1978, (43 FR 51161), July 26, 1979, (44 FR 43833), and October 11, 1979, (44 FR 60836).

2. On August 21, 1980, Coordinated Caribbean Transport, Inc. (CCT) submitted a request to the Coast Guard to extend the original order to December 31, 1980. According to the request, an additional extension is needed to provide sufficient time for delivery of the RO–RO vessel being built in West Germany. Delivery was scheduled for September 1, 1980, but delays have occurred in completing Coast Guard inspections of the vessel. Also, the ARTUBAR barge originally scheduled for completion on March 1, 1980, has been delayed until 1981. Based upon these considerations, a determination has been made to extend the order for a further 3 month period to allow the *M/V Lionheart* to continue in service pending delivery of a replacement vessel. The terms of this extension make the original order effective through December 31, 1980, or until a replacement vessel for the *M/V Lionheart* is placed in operation, whichever occurs first.

4. This notice was drafted by Commander Lloyd C. Burger, Office of Merchant Marine Safety, and William R. Register, Office of the Chief Counsel.

(46 U.S.C. 82; 49 U.S.C. 1655(b); E.O. 10289; and 49 CFR 1.45(a))

Dated: October 14, 1980.

Clyde T. Lusk, Jr.,

Captain, U.S., Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 80-32574 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Northwest Region; New Authority as Lead and Certificating Region for Transport Category Airplanes

This is to provide notice that on or about November 1, 1980, the Northwest Region of the Federal Aviation Administration with its headquarters at Seattle, Washington, will assume additional authority for the certification and certain staff functions relating to transport category airplanes. Presently, regional authority includes the certification responsibility for aeronautical products manufactured in the Northwest Region which consists of the states of Washington, Oregon, and Idaho. The principal airplane transport category manufacturer is The Boeing Commercial Airplane Company. The new authority assigned to the region will include the following:

- Serve as certificating region for domestic manufactured airplanes over 75,000 pounds gross takeoff weight and all foreign manufactured airplanes being certificated as transport category airplanes regardless of weight; and
- Serve as "lead region" for FAR Part 25: Airworthiness Standards: Transport Category Airplanes.

As a "certificating region", the Northest Region will hold final authority and responsibility for type (including supplemental type), production and newly manufactured airworthiness certification or approval of these products, including Airworthiness Directive issuance authority and responsibility. As a "lead region", it will perform national headquarters staff functions relative to the type certification, production and original airworthiness certification programs encompassed by FAR Part 25.

The following organizational changes will be effected:

1. An Aircraft Certification Area office will be established in the Los angeles area with responsibility for the day-to-day type, production and original airworthiness certification related to McDonnell-Douglas and Lockheed airplanes. These functions were formerly performed by the Western Region of the FAA.

The temporary address of the Los Angeles Area office will be: Aircraft Certification Area, ANW–100L, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009.

2. Air Aircraft Certification Area office will be established in the Seattle area with similar responsibilities for The Boeing Commercial Airplane Company, foreign manufactured transport category airplanes, and all other engineering and manufacturing activities located within the Northwest Region. These functions with respect to foreign aircraft were formerly performed by the Europe, Africa and Middle East Office with Headquarters in Brussels, Belgium.

The address of the Seattle Area office will be: Aircraft Certification Area, ANW—100S, FAA Building, Boeing Field, Seattle, Washington 98108.

3. Transport category airplane certification Project Managers will be located in other regional offices and the Europe, Africa and Middle East Office as required.

4. Both the Los Angeles and Seattle Area offices will report to a newly established Aircraft Certification Division, located in the Northwest Regional Headquarters.

The address of the Aircraft Certification Division will be: Aircraft Certification Division, ANW—100, FAA Building, Boeing Field, Seattle, Washington 98108.

5. The authority to issue Airworthiness Directives on McDonnell-Douglas and Lockheed airplanes, formerly exercised by the Director of the Western Region, and on foreign manufactured products, formerly exercised by the Director of Airworthiness (Washington Headquarters), will now be exercised by the Director of the Northwest Region.

This information will be reflected in the Federal Aviation Administration Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, this 7th day of October, 1980.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 80-32339 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement, Hartford and Litchfield Counties, Conn.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Hartford and Litchfield Counties, Connecticut.

FOR FURTHER INFORMATION CONTACT: David R. Billings, Environmental Engineer, Federal Highway Administration, 990 Wethersfield Avenue, Hartford, Connecticut 06114.

Telephone (203) 244–2437; or James F. Byrnes, Jr., Assistant Director, Office of Environmental Planning, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut, Telephone 9203) 566–5704.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Connecticut Department of Transportation (Department), will prepare an environmental impact statement (EIS) on a proposal to construct Connecticut State Route 72 (Rt. 72) on new location in the City of Bristol. This statement will involve analysis of six alternatives for the Rt. 72 corridor through Bristol, an assessment of the transportation needs west through Plymouth and Thomaston, and analysis of the effect of Rt. 72 build alternatives on demand for the proposed upgrading of the Waterbury to Hartford rail line as a commuter service.

The location of the preferred corridor for Rt. 72 in Bristol was based upon an earlier *Corridor Location Study for the Relocation of Connecticut Route 72 Bristol.* This corridor extends from Forestville Avenue, at the Bristol-Plainville town boundary westward through Bristol, passing south of existing Rt. 72, until it joins existing Rt. 72 at the Bristol-Plymouth town boundary, a distance of about 5.9 miles. Construction of transportation improvements in this corridor is considered desirable to accommodate existing and projected traffic demands and to divert a high volume of through traffic from local streets in Bristol.

Alternatives through Bristol under consideration include: (1) taking no action; (2) arterial highway facility terminating at Route 229; (3) grade separated, limited-access expressway facility terminating at Route 229; (4) arterial highway facility terminating at the Bristol-Plymouth town Boundary; (5) grade separated, limited access expressway facility terminating at the Bristol-Plymouth town boundary; (6) Mass Transit improvements.

This proposal has an extensive history of coordination with State, local and regional agencies and organizations. Additional public informational meetings concerning traffic, engineering, environmental, social, economic and land use issues will be held.

Early coordination with appropriate local, regional, State and Federal agencies will be accomplished to assist in the identification and evaluation of significant environmental impacts resulting from the proposed action and measures to mitigate adverse impacts which result from that action.

Since previous coordination has identified major areas of environmental concern, a formal scoping meeting is not deemed to be necessary at this time. Agency and public input will be sought through early coordination and through informal public informational meetings. The Department of Housing and Urban Development will be requested to assist as a cooperating agency in the preparation of this EIS due to their approving, concurrence and commenting responsibility.

The following Federal Agencies will also be invited to submit comments on this proposed action as they relate to the particular agency's field of expertise: the U.S. Fish and Wildlife Service, the Soil Conservation Service, the Corps of Engineers, the Environmental Protection Agency, the Heritage Conservation and Recreation Service, and the Water Resources Council. Other appropriate State and local agencies will also be requested to comment.

Other agencies, organizations, and individuals interested in submitting comments or questions should contact the FHWA or the Connecticut Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Research, Planning and Construction: The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: October 7, 1980.

D. J. Altobelli,

Division Administrator, Hartford, Conn.

[FR Doc. 80–32323 Filed 10–17–80; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Waiver Petition Docket HS–80–12]

McCloud River Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the McCloud River Railroad Company (MCR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the MCR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The MCR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–80–12 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Department of Transportation, (Nassif Building), 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before November 24, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Department of Transportation (Nassif Building), 400 Seventh Street, SW., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on October 2, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80–32428 Filed 10–17–80; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Petition to Commence Defect Proceedings; Denials

This notice sets forth the reasons for the denials of petitions to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On April 11, 1980, Peter F. Carpenter of Palo Alto, California, petitioned NHTSA to commence a defect proceeding with respect to allegedly leaking fuel injectors in 1973–75 Mercedes Benz passenger cars. NHTSA had received eight similar complaints over a 6-year period and sent the nine complaints to the manufacturer for review. The reply from Mercedes Benz analyzed seven of the conditions complained of, including Mr. Carpenter's, as the result of faulty servicing by persons other than authorized Mercedes dealers. The two remaining complaints involved a leaking fuel hose and a clogged injector. Since there was no reasonable possibility that a defect order would be issued, the agency denied the petition on August 13, 1980.

Milton J. Thomas of Houston, Texas, asked the agency on April 27, 1980, to investigate whether the fuel system used to supply gasoline to the carburetor from the fuel pump on 1978 Mercury Cougar 359 C.I.D. engines may cause fires. Mr. Thomas had experienced a fire in his car which a damage appraisal service attributed to a rupture in the fuel line. NHTSA investigated all 1978 Ford Motor Company passenger cars with the 359 C.I.D. engine, of which over 180,000 were built. Total complaints of fire received by Ford and NHTSA from this population numbered 13. The cause of the fires was not known though several owners suspected fuel leaks.

In NHTSA's experience, engine compartment fires have been experienced in all makes and all years. Changes made to the 1978 359 C.I.D. engine fuel system appear to reduce the likelihood of fuel leakage. Since the total picture did not indicate that fuel systems on these vehicles present an unreasonable risk to safety, the petition was denied on August 27, 1980.

On May 1, 1980, John R. Carter of Redwood City, California, asked the agency whether 1979 Chevrolet C–10 pick-up trucks contained defective upper control arm attachments and diesel crankshafts, having experienced problems with both components in his vehicle. NHTSA's investigation covered 1978–1980 GMC and Chevrolet trucks with the C–10 chassis, including an examination of its own files of consumer complaints, manufacturer's service bulletins, parts return program, etc., and asked the manufacturer for records of complaints. Two additional complaints of upper control arm attachment failure were discovered. From a population of almost 98,000 diesel-engined trucks, 82 complaints of cracked or broken crankshafts were received. No fatalities or injuries were reported which occurred as a result of either type of failure; and on September 2, 1980, the petition was denied.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 10, 1980.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 80-32581 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes on or before November 19, 1980.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8487-N	Brunswick Corporation, Lincoln, NE	49 CFR 173.302, 178.44	To manufacture, mark and sell non-DOT specification fiberglass reinforced plastic pressurized containers with welded aluminum liners for shipment of various non-flammable compressed gases. (Modes 1, 2, 3, 4 and 5.)
8488-N	Born Free Plastics, Inc., Gardena, CA	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.346(a).	To manufacture, mark and sell DOT Specification 34 polyethylene containers for shipment of various Class B poisons, and flammable liquids. (Modes 1, 2, and 3.)
8489-N	FMC Corporation, Philadelphia, PA	49 CFR 173.154	To authorize shipments of sodium persulfate, potassium persulfate, ammonium persulfate and sodium perborate monohydrate, classed as oxidizers; and sodium sulfide, classed as a flammable solid in 2,200 pound polyethylene lined polypropylene bags. (Modes 1, and 3.)
8490-N	Houghton Chemical Corporation, Allston, MA	49 CFR 173.245(a)(31)	To authorize shipment of acetic acid (glacial) monoethanolamine and monethanolamine solutions classed as corrosive materials in a 4 compartmented bottom unloading MC-306 cargo tank constructed or type 304 stainless steel. (Modes 1.)
8491-N	Union Carbide Corporation, New York, NY	49 CFR 173.206(f)	To authorize shipment of batteries comparised of multiple cells not to contain more than 35 grams of lithium metal per outside containers as non-regulated. (Modes 1, 2, 3, 4 and 5.)
8492-N	Bacharach Instrument Company, Santa Clara, CA	49 CFR 173.304(a)(2), 175.3	To manufacture, mark and sell a DOT specification cylinder (calibration device) for shipment of liquefied hydrogen sulfide. (Modes 1, 2, 3, and 4.)
8493-N	Gibson Cryogenics, Lakeside, CA	49 CFR 173.315	To manufacture, mark and sell a non-DOT specification 2000 and 4000 gallon capacity cryogenic pressurized container for shipment of liquid nitrogen. (Modes 3.)

New Exemptions—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8494-N	Fruehauf Corporation, Omaha, NE	49 CFR 173.119, 178.342-6(a)	To manufacture, mark and sell a non-DOT specification MC-307-AL cargo tanks equipped with sight glass gauges for shipment of various flammable liquids such as casing head gasoline and petroleum crude oil. (Mode 1.)
8495-N	Walter Kidde & Company, Inc., Belleville, NJ	49 CFR 173.304, 178.47, 175.3	To manufacture, mark and sell a non-DOT specification spherical containers similar to DOT Specification 4DS for shipment of bromotrifluoromethane pressurized with nitrogen. (Modes 1, 2, 3, 4 and 5.)
8496-N	American Cyanamid Company, Wayne, NJ	49 CFR 173.351	To authorize shipment of solutions containing less than 5% hydrocyanic acid, classed as poison B liquid, in packages prescribed in Section 173.332. (Modes 1, and 2.)
8497-N	Roper Plastics, Inc., New York, NY	49 CFR 178.19-2, Part 173, Subpart F	To manufacture, mark and sell a high-density polyethylene pail of up to 6-gallons capacity conforming to a DOT Specification 34 except for polyethylene melt index value for shipment of various corrosive liquids. (Modes 1, 2, and 3.)
8498-N	Hunter Drums, Limited, Burlington, Ontario	49 CFR 173.119, 173.221, 173.245, 173.249, 173.250, 173.256, 173.257, 173.263, 173.265, 173.266, 173.272, 173.277, 173.287, 173.288, 173.289, 173.292, 173.346, 178.19.	To manufacture, mark and sell non-DOT specification 55 gallon tight head polyethylene drums for shipment of certain corrosive liquids, flammable liquids, poison B liquids, liquid organic peroxides and hydrogen peroxide solutions. (Modes 1, 2, and 3.)
8499-N	Hedwin Corporation, Baltimore, MD	49 CFR 173.119, 173.125, 173.272, 173.228, 173.346.	To manufacture, mark and sell DOT Specification 34 30-gallon polyethylene drums for shipment of certain flammable, corrosive and poison B liquids. (Modes 1, 2, and 3.)
8500-N	Talley Industries of Arizona, Inc., Mesa, AZ	49 CFR 173.154, 175.3	To qualify a passive restraint system containing a propellant explosive Class B as a flammable solid classification. (Modes 1, 2, 3, and 4.)
8501-N	Dynatrans, Gothenburg, Sweden	49 CFR 173.315	To authorize shipment of certain liquefied compressed gases in non-DOT specification IMCO Type V portable tanks. (Modes 1, 2, and 3.)
8502-N	Bland Brothers, Inc., New York, NY	49 CFR 173.400	To authorize shipment of trick noisemakers, Class C explosives, packaged 50 each in a sealed polyethylene bag overpacked 2 to a box, to be shipped without the explosive C label. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 9, 1980.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32417 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in arlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes on or before November 4, 1980.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No.	Applicant	Renewal of exemption
970-X	Callery Chemical Co., Callery PA	970
3198-X	E. I. du Pont de Nemours & Company, Incorporated, Wilmington, DE	3193
4039-X	Airco Industrial Gases, Murray Hill, NJ	4039
4490-X	National Aeronautics and Space Administration, Washington, DC	4490
4607-X	Armstrong Laboratories Division, West Roxbury, MA	4607
4717-X	Stauffer Chemical Company, Westport, CT	4717
4844-X	BAJ Vickers Ltd., London, England	4844
5038-X	Synthatron Corporation, Parsippany, NJ (See Footnote 1)	5038
5186-X	Liquid Carbonic Corporation, Chicago, IL	5186
5263-X	Dow Corning Corporation, Midland, MI	5263
5403-X	Halliburton Services, Inc., Duncan, OK	5403
5456-X	J. T. Baker Chemical Company, Phillipsburg, NJ	5456
5767-X	Du Bois Chemical Company, Cincinatti, OH	5767
5825-X	Phillips Petroleum Company, Bartlesville, OK	5825
5959-X	Ethyl Corp., Baton Rouge, LA	5959
6016-X	Airco Welding Products, Murray Hill, NJ (See Footnote 2)	6016
6334-X	U.S. Department of Defense-MTMC, Washington, DC	6334
6369-X	E. I. du Pont de Nemours & Company, Incorporated, Wilmington, DE	6369
6418-X	Shell Oil Company, Houston, TX	6418
6434-X	Mobil Chemical Company, Richmond, VA	6434
6484-X	International Minerals and Chemical Corporation, Mundelein, IL	6484
6543-X	Synthatron Corporation Corporation, Parsippany, NJ (See Footnote 3)[156543	
6554-X	Pennwalt Corporation, Philadelphia, PA	6554
6610-X	Oxirane Chemical Company, Pasadena, TX	6610
6611-X	Phillips Petroleum Company, Bartlesville, OK	6611
6611-X	Cities Service Company, Tulsa, OK	6611
6651-X	Park Chemical Company, Detroit, MI	6651
6651-X	Enthone, Inc., New Haven, CT	6651
6668-X	Union Carbide Corporation, Linde Division, Tarrytown, NY	6668
6672-X	Chandler Evans Inc., West Hartford, CT	6672
6726-X	Born Free Plastics, Inc., Gardena, CA (See Footnote 4)	6726
6765-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 5)	6765
6772-X	Monsanto Company, St. Louis, MO	6772
6949-X	Monsanto Company, St. Louis, MO	6949
6949-X	FMC Corporation, Philadelphia, PA	6949
7005-X	Lowaco, S.A., Geneva, Switzerland	7005
7005-X	Societe Anonyme por L'Industrie Chimique, Mulhouse Cedex, France	7005
7013-X	ASM Enterprises, Incorporated, Pine Bluff, AR	7013
7041-X	Ethyl Corporation, Baton Rouge, LA	7041
7046-X	J. T. Baker Company, Phillipsburg, NJ	7046
7063-X	Hooker Chemical Company, Houston, TX (See Footnote 6)	7063
7066-X	Compagnie des Containers Reservoirs, Paris, France	7066
7085-X	California Seal Control Corporation, San Pedro, CA	7085
7096-X	Fike Metal Products Corporation, Blue Springs, MO	7096
7220-X	Grief Bros. Corporation, Springfield, NJ	7220
7235-X	Luxfer USA Limited, Riverside, CA (See Footnote 7)	7235
7423-X	The Dow Chemical Co., Freeport, TX	7423
7493-X	Hugonnet, S.A., Paris, France	7493
7517-X	Trinity Industries, Inc., Dallas, TX	7517
7574-X	Remmers-Tomkins Flight Service, Inc., Burlington, IA	7574
7625-X	Hydrite Chemical Company, Milwaukee, WI	7625
7654-X	Eastman Kodak Company, Rochester, NY	7654
7677-X	San Diego Gas & Electric Company, San Diego, CA	7677
7765-X	Carleton Controls Corporation, East Aurora, NY	7765
7808-X	Whitmire Research Laboratories, Inc., St. Louis, MO	7808
7820-X	Compagnie des Containers Reservoirs, Paris, France	7820
7820-X	Liquor Control Board of Ontario, Toronto, Canada	7820
7949-X	Riegel Textile Corporation, Ware Shoals, SC	7949
8002-X	Lowaco, S.A., Geneva, Switzerland	8022
8002-X	Tankcargo Container Leasing S.A., Geneva, Switzerland	8002
8002-X	Compagnie des Containers Reservoirs, Paris, France	8002
8002-X	Eurotainer, Paris, France	8002
8023-X	Acurex Corporation, Mountain View, CA (See Footnote 8)	8023
8053-X	Eastman Kodak Company, Rochester, NY	8053
8056-X	Hapag-Lloyd AG, Hamburg, Germany	8056
8057-X	Hapag-Lloyd AG, Hamburg, Germany	8057
8059-X	Acurex Corporation, Mountain View, CA (See Footnote 9)	8059
8063-X	Union Carbide Corporation, Linde Division, Tarrytown, NY	8063
8094-X	Milport Chemical Company, Milwaukee, WI	8094
8192-X	Grief Brothers Corporation, Springfield, NJ (See Footnote 10)	8192

[1] To authorize additional flammable liquids.

[2] Request renewal and to extend retest period from two years to five years.

[3] To authorize additional flammable liquids.

[4] To authorize shipment of corrosive liquids, poison B liquids, flammable liquids and hydrogen peroxide solutions as additional commodities.

[5] To authorize water as an additional mode of transportation, for shipment of liquified hydrogen; and to provide for minor tank appertenance changes.

[6] To renew and authorize the use of a DOT Specification 35.

[7] To authorize oxygen and helium-oxygen mixtures as additional commodities.

[8] To renew and to modify various mechanical and test features of the cylinder.

[9] To renew and to modify various mechanical and test features of the cylinder.

[10] Request removal of the single trip service restriction.

Application No.	Applicant	Parties to exemption
3121-P	Air Products and Chemicals, Inc., Allentown, PA	3121
6267-P	Hill Brothers Chemical Company, Orange, CA	6267
6824-P	GPS Industries, City of Industry, CA	6824
7005-P	CATU Containers, S.A., Geneva, Switzerland	7005
7052-P	Allen-Bradley, Twinsburg, OH	7052
7066-P	Tankcargo Container Leasing, Geneva, Switzerland	7066
7714-P	W. R. Zane & Co., of La., Inc., New Orleans, LA	7714
7819-P	Lowaco, S.A., Geneva, Switzerland	7819
7819-P	CATU Containers, S.A., Geneva, Switzerland	7819
7893-P	Lowaco, S.A., Geneva, Switzerland	7893
7893-P	Catu Containers, S.A., Geneva, Switzerland	7893
8000-P	Catu Containers, S.A., Geneva, Switzerland	8000
8000-P	Lowaco, S.A., Geneva, Switzerland	8000
8002-P	CATU Containers, S.A., Geneva, Switzerland	8002
8012-P	Lowaco, S.A., Geneva, Switzerland	8012
8012-P	Catu Containers, S.A., Geneva, Switzerland	8012
8156-P	Cryogenic Rare Gas Labs., Inc., Newark, NJ	8156
8380-P	Fomo Products, Inc., Akron, OH	8380
8390-P	Allied Chemical Company, Morristown, NJ	8390
8441-P	Battery Disposal Technology, Inc., Clarence, NY	8441
8441-P	Sanders Associates, Inc., Nashua, NH	8441
8441-P	Power Conversion, Inc., Mount Vernon, NY	8441

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Trnsportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 9, 1980.

J. R. Grother,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32416 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-60-M

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the venue and proposed agenda for a public meeting which will review the recent activities of the MTB relating to the development of international standards for the transport of dangerous goods.

DATE: November 20, 1980, 9:30 a.m. to 4:00 p.m.

ADDRESS: Room 9230, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Edward A. Altemos, International Standards Coordinator, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590 (202/426-0656).

SUPPLEMENTARY INFORMATION:

Particular topics to be reviewed at this meeting will include:

1. Items on the agenda for the December 1980 meeting of the United Nations Committee of Experts on the Transport of Dangerous Goods.

2. Status of the development of the International Civil Aviation Organization's (ICAO) dangerous goods regulations.

3. Recent decisions of the RID/ADR Joint Meeting with respect to the packaging and classification of dangerous goods.

Interested persons are invited to attend and participate in this meeting.

Issued in Washington, D.C., on October 10, 1980.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32419 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 80-252]

Revocation of Customhouse Cartman's License No. 168 Issued by the Area Director of Customs, Newark, N.J. to Di Jub Leasing Corp.

Notice is hereby given that on October 7, 1980, pursuant to the provisions of section 565, Tariff Act of 1930, as amended, and section 112.30 of the Customs Regulations (19 CFR 112.30), it was decided to revoke the Customhouse Cartman's License No. 168 issued in the District of Newark on December 19, 1975, to Di Jub Leasing Corporation of Hoboken, New Jersey. This revocation is effective as of October 7, 1980.

R. E. Chasen,

Commissioner of Customs.

October 7, 1980.

[FR Doc. 80-32524 Filed 10-17-80; 8:45 am]

BILLING CODE 4810-22-M

Office of the Secretary

Delegation of Privacy Act Systems of Records

AGENCY: Department of the Treasury, Office of the Secretary.

ACTION: Deletion of Privacy Act Systems of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Assistant Director (Management Analysis) gives notice of the deletion of Treasury/OS 00.042—OMO Management Consultants File. (45 FR 18668, March 21, 1980)

The responsibility for recommending management consultants is no longer in this office. The records in this system have become obsolete and are being destroyed.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT:

Linda K. Zannetti, Departmental Disclosure Officer, 1500 Pennsylvania Avenue, Washington, D.C. 20220.

Dated: October 9, 1980.

W. J. McDonald,

Assistant Secretary (Administration).

[FR Doc. 80-32463 Filed 10-17-80; 8:45 am]

BILLING CODE 4810-25-M

[Public Debt Series No. 31-80]

Treasury Notes of October 31, 1982, Series X-1982

October 15, 1980.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $4,500,000,000 of United States securities, designated Treasury Notes of October 31, 1982, Series X-1982 (CUSIP No. 912827 LD 2). The securities will be sold at auction with bidding on the basic of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated October 31, 1980, and will bear interest from that date, payable on a semiannual basis on April 30, 1981, and each subsequent 6 months on October 31 and April 30, until the principal becomes payable. They will mature October 31, 1982, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, October 22, 1980. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 21, 1980.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Teasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securties specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1.Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5., must be made or completed on or before Friday, October 31, 1980. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Teasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, October 28, 1980. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 80-32748 Filed 10-19-80; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL ENERGY REGULATORY COMMISSION.

October 15, 1980.

TIME AND DATE: 10 a.m., October 22, 1980.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

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) 357-8400.

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 Division of Public Information.

Power Agenda—466th Meeting, October 22, 1980, Regular Meeting (10 a.m.)

CAP-1. Project No. 2811, Klickitat County Public Utility District No. 1.
CAP-2. Docket No. ER80-508, Boston Edison Co.
CAP-3. Docket No. RE80-10, Wisconsin Power & Light Co.
CAP-4. Docket No. ER80-113, Central Telephone & Utilities Corp.

Miscellaneous Agenda—466th Meeting, October 22, 1980, Regular Meeting

CAM-1. Docket No. QF80-19, Cranston Print Works Co.
CAM-2. Docket No. QF80-21, French Paper Co.
CAM-3. Docket No. QF80-15, Glen L. Custer.

Gas Agenda—466th Meeting, October 22, 1980, Regular Meeting

CAG-1. Docket No. RP81-1-000, Michigan Wisconsin Pipeline Co.
CAG-2. Docket No. RP80-144, Commercial Pipeline Co., Inc.
CAG-3. Docket No. CP80-242, United Gas Pipe Line Co.
CAG-4. Docket No. CI75-21, Perry R. Bass, et al.; Docket No. CI74-372, Shell Oil Co.; Docket No. CI72-878, Energy Resources, Inc.; Docket No. CI75-456, Exchange Oil and Gas Corp.; Docket No. CS80-122, Ann B. Little; Docket No. CS80-152, HCW Income Properties; Docket No. CS80-176, H&H Gas Co.; Docket No. CI75-221, Arco Oil & Gas Co., a division of Atlantic Richfield Co.; Docket No. CI69-420, Conoco, Inc.; Docket No. CI79-97, Phillips Petroleum Co.; Docket Nos. CI65-1363 and CI65-1369, Exxon Corp.; Docket No. CI66-106, Pennzoil Producing Co.; Docket No. CI68-1333, Marathon Oil Co.; Docket No. CI71-750, Bass Enterprises Production Co.; Docket No. CI64-1244, Exxon Corp. (operator), et al.
CAG-5. Docket No. CI80-436, Texaco, Inc.
CAG-6. Docket No. CP80-388, Tennessee Gas Pipeline Co.
CAG-7. Docket No. CP80-251, Michigan Wisconsin Pipe Line Co.
CAG-8. Docket No. CP80-375, Consolidated Gas Supply Corp.; Northern Natural Gas Co., Division of Internorth, Inc.; Michigan Wisconsin Pipe Line Co. and El Paso Natural Gas Co.
CAG-9. Docket No. CP80-384, Michigan Wisconsin Pipe Line Co.
CAG-10. Docket No. CP80-359, United Gas Pipe Line Co.
CAG-11. Docket No. CP80-345, Midwestern Gas Transmission Co.
CAG-12. Docket No. CP80-370, Columbia Gas Transmission Corp. and Equitable Gas Co.
CAG-13. Docket No. CP80-482, Northern Natural Gas Co., division of Internorth, Inc.
CAG-14. Docket No. CP80-491, Northern Natural Gas Co.
CAG-15. Docket No. CP79-19, Mountain Fuel Supply Co.

Power Agenda—466th Meeting, October 22, 1980, Regular Meeting

I. Licensed Project Matters

P-1. Reserved.

II. Electric Rate Matters

ER-1. Docket No. ER80-434, Duke Power Co.
ER-2. Docket Nos. ER80-379 and ER80-380, Utah Power & Light Co., Deseret Generation & Transmission Cooperative.
ER-3. Docket No. ER80-329, Central Power & Light Co.
ER-4. (A) Docket No. EF80-2011, Bonneville Power Administration (system rates); (B) Docket No. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.
ER-5. Docket Nos. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.
ER-6. Docket Nos. ER77-488 and ER78-520 (phase II), El Paso Electric Co.

Miscellaneous Agenda—466th Meeting, October 22, 1980, Regular Meeting

M-1. Docket No. RM80-65, exemption from all or part of part I of the Federal power act of small hydroelectric power projects with an installed capacity of 5 megawatts or less.
M-2. Docket No. RM80- , eligibility, rate and exemptions of qualifying and utility-owned geothermal small power production facilities.
M-3. Reserved.
M-4. Reserved.
M-5. Docket No. RM80- , revision to the regulations governing preservation of records.
M-6. Docket No. RM80-11, statement of policy on distributor access to Outer Continental Shelf Gas
M-7. (A) Docket No. RM80-50, high-cost natural gas: Production enhancement procedures; (B) Docket No. RM80-14, final regulations under section 105 and 106(b) of the Natural Gas Policy Act of 1978; (C) Docket No. RM80-21, regulations under section 110, 105 and 106(b) of the Natural Gas Policy Act of 1978; (D) Docket No. SA80-90, American Petrofina Co. of Texas, et al.
M-8. Docket No. RM79-76 (Texas—1), high-cost gas produced from tight formations.
M-9. Docket No. GP81- , U.S. Geological Survey—New Mexico, section 108 NGPA determination, El Paso Natural Gas Co., Huerfanito unit No. 75 well, USGS docket No. NM4274-79, FERC No. JD80-36472.
M-10. Docket No. GP80-42, Sea Robin Pipeline Co.

Gas Agenda—466th Meeting, October 22, 1980, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket Nos. RP75-105 and RP76-94 (offshore plant depreciation rate), Columbia Gulf Transmission Co.

II. Producer Matters

CI-1. Reserved.

III. Pipeline Certificate Matters

CP-1. Reserved.

Kenneth F. Plumb,

Secretary.

[S-1917-80 Filed 10-16-80; 9:37 am]

BILLING CODE 6450-85-M

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., October 23, 1980.

PLACE: 1700 G Street, NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

MATTERS TO BE CONSIDERED:

Application for Bank Membership—The Elmira Savings Bank, Elmira, N.Y.
Service Corporation Activity—Cragin Federal Savings & Loan Association, Chicago, Ill.
Preliminary Application for Conversion to a Federal Mutual Charter—Columbia Banking Savings & Loan Association, Rochester, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Sunnyside Savings & Loan Association, Long Island City, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Schenectady Savings & Loan Association, Schenectady, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Cross-County Savings & Loan Association, Middle Village, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Clover Savings & Loan Association, Camden, N.J. (now located in Pennsuken, N.J.)
Application for Modification of Dividend Restriction—Sunwood Corporation, Parker, Colo. and Sun Savings & Loan Association, Loveland, Colo.

No. 408, October 16, 1980.

[S–1918–80 Filed 16–10–80; 11:03 am]

BILLING CODE 6720–01–M

3

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 2:30 p.m., October 23, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: Processing of section 15 agreements.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–1919–80 Filed 10–16–80; 11:32 am]

BILLING CODE 6730–01–M

4

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, October 23, 1980.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Presentation on advertising approval process by the Association of National Advertisers and the American Association of Advertising Agencies, with question and answer period to follow.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523–3830; recorded message: (202) 523–3806.

[S–1922–80 Filed 10–16–80; 2:41 pm]

BILLING CODE 6750–01–M

5

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Friday, October 24, 1980.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20508.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to public:

(1) Oral Argument in Beltone Electronics Corporation, et al., Docket 8928.

Portions closed to the Public:

(2) Executive Session to discuss Oral Agument in Beltone Electronics Corporation, et al., Docket 8928.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523–3830; recorded message: (202) 523–3806.

[S–1923–80 Filed 10–16–80; 2:41 pm]

BILLING CODE 6760–01–M

6

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, August 23, 1980.

PLACE: Room 117, 701 E Street N.W., Washington, D.C. 20436.

STATUS: Emergency meeting—less than 10 days prior notice. Open to the public.

MATTERS TO BE CONSIDERED:
1. Investigation 337–TA–89 (Copper Rod)—vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1921–80 Filed 10–16–80; 1:57 pm]

BILLING CODE 7020–02–M

7

[USITC SK–80–48A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 67827, October 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, October 21, 1980.

CHANGES IN THE MEETING: Additional item added to the agenda. In deliberations held Thursday, October 16, 1980, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted, by unanimous consent, to add the following item to its agenda for the meeting to be held on Tuesday, October 21, 1980:

7. Investigation 337–TA–89 (Copper Rod)—Vote.

Commissioners Alberger, Calhoun, Moore, and Stern determined by unanimous consent that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Bedell was not present for the vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1920–80 Filed 10–16–80; 1:54 pm]

BILLING CODE 7020–02–M

federal register

Monday
October 20, 1980

Part II

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Determination of Hudsonia Montana To Be a Threatened Species, With Critical Habitat

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Hudsonia Montana To Be a Threatened Species, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Hudsonia montana* (mountain golden-heather) to be a Threatened species and determines its Critical Habitat under the authority contained in the Endangered Species Act. This plant occurs in North Carolina solely on public lands administered by the U.S. Forest Service. The plant is threatened by human trampling and other factors. This determination of *Hudsonia montana* to be a Threatened species will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on November 19, 1980.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 703/235–2771.

SUPPLEMENTARY INFORMATION: *Hudsonia montana* (mountain golden-heather) was first discovered on the summit of Table Rock, North Carolina in 1816, by Thomas Nuttall. Today all known populations of the species occur within an eight kilometer radius of Table Rock, and all are on public lands administered by the U.S. Forest Service. The plant is a low perennial shrub with needle-leaves and yellow flowers which measure about two centimeters across. The plants occur on open wind-swept rock ledges. The continued existence of this plant and the fragile plant community in which it occurs are threatened by trampling. This rule determines *Hudsonia montana* to be a Threatened species and implements the protection provided by the Endangered Species Act. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of this action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Hudsonia montana* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. The notice of review and the proposal included *Hudsonia ericoides* ssp. *montana* rather than *Hudsonia montana*. Treatment of this taxon as a subspecies by Skog and Nickerson (1972) was followed by the Smithsonian Institution and thus the derived **Federal Register** publications. Since 1972, however, this taxon has been treated as a species by various authors. Recent morphological, cytological, and population studies by Morse (1979) have confirmed the distinctness of *Hudsonia montana* from *Hudsonia ericoides*.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal along with four other proposals which had expired.

Based on sufficient new information the Service reproposed *Hudsonia montana* on May 29, 1980 and proposed its Critical Habitat for the first time (45 FR 3633). Additional studies conducted by the local Fish and Wildlife Service Area Office this spring and research provided by Dr. L. E. Morse in January of this year provided additional biological evidence verifying the precarious status of the species. A public meeting was held on this proposal on July 1, 1980, in Morganton, North Carolina.

The regulations to protect Endangered and Threatened plant species appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Summary of Comments and Recommendations

In the May 29, 1980, **Federal Register** proposed rule (45 FR 36331) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of North Carolina, the U.S. Forest Service, and local governments notifying them of the proposed rule and soliciting their comments and suggestions. All comments received during the period from May 29, 1980, through August 27, 1980, were considered and these are discussed below.

The Governor of North Carolina commented that the *Hudsonia* proposal was referred to the North Carolina Plant Conservation Board, which had already placed the plant on North Carolina's threatened plant list. A representative of the North Carolina Department of Agriculture which administers North Carolina's Plant Protection Act spoke at the public meeting. Those comments will be summarized later with the other public meeting comments.

The North Carolina Natural Heritage Program commented favorably on the listing of *Hudsonia montana* and stated that they felt the designation of Threatened status was appropriate. The Burke County Manager commented that Burke County endorsed the listing of *Hudsonia montana* as Threatened.

The U.S. Forest Service commented that they feel their management program adequate to conserve *Hudsonia montana* and therefore did not recommend listing. Service Response: The Forest Service only began developing a monitoring plan in the spring of 1980 to determine what management is needed for *Hudsonia montana*. Once management begins and if long range monitoring shows the plant not to be Threatened, steps will be taken by the Service to delist the species. At this time, the species fits the definition of Threatened and is being listed accordingly.

The Garden Club of America commented that they support the listing of *Hudsonia montana* as a Threatened species. Two private citizens commented that they support the listing of *Hudsonia montana* as Threatened and provided information on status and threats.

A public meeting concerning the proposal of *Hudsonia montana* to be a Threatened species was held on July 1, 1980, in Morganton, North Carolina. Thirty-six people attended. Presentations concerning *Hudsonia montana* and its listing as Threatened were made by Service personnel. Statements and questions from the audience were then entertained. A representative of the North Carolina Department of Agriculture described North Carolina's plant protection program and the North Carolina Plant Conservation Act. He pointed out that *Hudsonia montana* is on the State's list as a threatened species and that Federal listing would complement the protection offered by the State law.

An individual representing a rock climbing and outdoor recreation group voiced concerns over the impact of the listing on such activities. A representative of the North Carolina Bow Hunters' Association voiced concern over the impact of the listing on hunting in Linville Gorge. These concerns were addressed by Service personnel and it was pointed out that such impacts should be minimal or non-existent. If the Forest Service did decide in the future to close areas where the populations of the species occur to hikers and climbers, only several small areas would be involved. Such action would not put an undue burden on climbers in the area since there are many better climbing spots within a matter of feet which are not occupied by *Hudsonia montana*. In fact, Outward Bound, a private enterprise which teaches rockclimbing, among other things, and leases land in the Forest has volunteered help in identifying and monitoring areas occupied by the plant. The audience offered other similar observations and comments in an informal discussion which followed.

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Hudsonia montana* (mountain golden-heather) is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Hudsonia montana* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range. Hudsonia montana* was originally collected by Thomas Nuttall in 1816, from the summit of Table Rock Mountain in Burke County, North Carolina. Since its discovery, it has been collected at infrequent intervals from this and several other locations all within Burke County, North Carolina. The species was assumed extinct by various recent treatments due to the failure of botanists to relocate the populations. However, all earlier known populations were still extant in 1978 (Morse 1980).

Although all previously known populations are still extant, two populations have shown declines in the number of individuals present (Morse 1980). Nuttall, in 1816, described *Hudsonia montana* as abundant and forming extensive caespitose patches on Table Rock (Pennell 1936). In 1978, approximately 21 plants (including juvenviles and seedlings) were observed to be present on Table Rock (Morse, 1980).

This apparent reduction is, in part, due to trampling and soil compaction by human visitors. One location receives heavy use by hikers and campers and one camp fire circle resulted in the partial charring of one large clump of *Hudsonia montana*. The other populations have not been monitored, so changes in the populations cannot be readily determined. All populations are threatened by the heavy use the area receives from hikers and rock climbers and all populations show impact from trampling. Misplaced trails or inadequately regulated hiking and climbing could destroy entire populations or population segments in a short period.

Hudsonia montana grows on exposed quartzite ledges in an ecotone between bare rock and *Leiophyllum*—dominated heath balds which merge into pine oak forest. All populations occur on public lands administered by the U.S. Forest Service in the North Fork Catawba River Planning Unit, Pisgah National Forest, North Carolina.

Efforts to develop a habitat management and monitoring plan are being initatied for the *Hudsonia montana* populations by U.S. Forest Service personnel. Possible measures which this plan could incorporate include:

(a) Regulations restricting climbing, campfires, and off-trail hiking on designated ledges;

(b) Consideration of *Hudsonia* requirements in trail maintenance operations;

(c) Realignment of trails at locations where these pose a threat to the plant and implementation of erosion control measures at these locations; and

(d) Monitoring studies to evaluate the maintenance and reproduction of *Hudsonia montana*.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation (including grazing).* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* During the summer of 1979, North Carolina passed new legislation to protect its Endangered plants. At this time, the State is in the process of developing a list of species to be included under that legislation and *Hudsonia montana* was included upon that list as of July 1, 1980.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a Threatened, Endangered, rare, or unique species (36 CFR 261). These regulations, however, may be difficult to enforce. The Endangered Species Act will offer additional protection to this species.

(5) *Other natural or man-made factors affecting its continued existence. Hudsonia montana* is an early pioneer species and evidence indicates that overtopping by taller shrubs may result in the death of the *Hudsonia* plants. Removal of these taller shrubs overtopping the *Hudsonia* should be considered in the management plan for the species. Seedlings have been noted most often in distrubed subtrates so preparation of seed beds perhaps by fire or other means may also be necessary.

The small size and number of the populations cuase this species to be in greater danger of extinction due to natural fluctuations of populations, especially in the case of the three smaller populations.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, in accordance with provisions of Section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed, in accordance with the provisions of Section 4 of this Act, upon a

determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for *Hudsonia montana* is being determined to include all known populations of this species in North Carolina. Adjacent suitable habitat is being included as essential to the conservation of the species because it provides an area for natural expansion. Modifications of this Critical Habitat desgination may be proposed in the future.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation.

Any activity which would result in increased trampling or disturbance of the fragile areas where *Hudsonia montana* occurs would adversely modify the Critical Habitat. The long-term solution for best protecting *Hudsonia montana* may be to greatly reduce the human traffic in the immediate areas where this plant occurs. In this respect, Critical Habitat designation may affect Federal activities as this may require prohibiting the development of new trails in areas where the plant occurs, relocating old trails, or other steps by the Forest Service.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis and believes at this time that economic and other impacts of this action are not significant. As stated above, designation would impact only Forest Service practices relating to controlling recreational land use. The Service has been in contact with the Forest Service and others who had input into the impact analysis of determining this Critical Habitat. This economic analysis served as part of the basis for the Service's decisions as to whether or not to exclude any area from the Critical Habitat for *Hudsonia montana*.

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Hudsonia montana* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR § 17.71 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. International and interstate commercial trade in *Hudsonia montana* does not exist. It is anticipated that few permits involving plants of wild origin would ever be issued, since this plant is not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal in the case of *Hudsonia montana*.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now accrue to *Hudsonia montana*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Hudsonia montana*, but also to insure that their actions are not likely to result in the destruction of adverse modification of its Critical Habitat which has been determined by the Director. A discussion of the Forest Service's involvement appears in the Critical Habitat section of this rule. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 844). The primary author of this rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235–1975).

Literature Cited

Morse, Larry E. 1980. Report on the Conservation of *Hudsonia montana*, a Candidate Endangered Species. *In:* Geographical Data Organization for Rare Plant Conservation, edited by Larry E. Morse and Mary Sue Henifin, The New York Botanical Garden, Bronx, New York (In Press).

Morse, L.E. 1979. Systematics and Ecological Biogeography of the Genus *Hudsonia (Cistaceae), the Sand Heathers. Ph.D. dissertation. Harvard University, Cambridge, Mass.*

Pennel, F.W. 1936. Travels and scientific publications of Thomas Nuttall. *Bartonia* 18:1–51.

Skog, J.T. and N.H. Nickerson. 1972. Variation and Speciation in the genus *Hudsonia. Ann. Missouri Botanical Gardens* 59:454–464.

Regulations Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cistaceae—Rockrose family:						
Hudsonia montana	Mountain golden-heather	U.S.A. (NC)	T		17.96(a)	NA

§ 17.26 [Amended]

2. Also, the Service amends 17.96(a) by adding the Critical Habitat of *Hudsonia montana* after that of Brassicaceae-*Erysimum capitatum* var. *angustatum* (Contra Costa wallflower) as follows:

Family Cistaceae: Mountain golden heather (*Hudsonia montana*) North Carolina; Burke County; the area bounded by the following: on the west by the 2200' contour; on the east by the Linville Gorge Wilderness Boundary north from the intersection of the 2200' contour and the Shortoff Mountain Trail to where it intersects the 3400' contour at "The chimneys"—then following the 3400' contour north until it reintersects the Wilderness Boundary—then following the Wilderness Boundary again northward until it intersects the 3200' contour extending west from its intersection with the Wilderness Boundary until it begins to turn south—at this point the Boundary extends due east until it intersects the 2200' contour.

Dated: September 30, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service

[FR Doc. 80-32468 Filed 10-17-80; 8:45 am]

BILLING CODE 4310-55-M

federal register

Monday
October 20, 1980

Part III

Department of Commerce

Bureau of the Census

Census Undercount Adjustment: Basis for Decision

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Undercount Adjustment: Basis for Decision

The following report sets forth the basic assumptions related to a decision on whether, when, and how to adjust 1980 census results for possible undercoverage of the population. This report was developed prior to Judge Gilmore's decision on the suit brought by the City of Detroit and does not analyze the issue of adjusting the population count for apportionment purposes.

This report provides information on the process that the Bureau is following in order to arrive at a decision which considers all relevant information. The report is structured in terms of critical assumptions, supporting information, and rebuttals to those assumptions. Its purposes are (1) to distill into meaningful information 2 years of deliberation on the issues, and (2) to provide a direct and practical response mechanism for a final round of comment and discussion before decisions are made later this year.

The Bureau is interested in any reactions or comments on particular parts of the report as well as general comments. Any information—either supporting or rebutting—is welcomed as input to the final decision. However, as the Bureau is under very tight deadlines for the decision, please submit any comments to the Director, Bureau of the Census, Washington, D.C. 20233, by October 31, 1980.

Dated: October 13, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

Section and Subject

Section A—Introduction

A substantial body of knowledge has been developed over several decades as to the accuracy and completeness of decennial censuses. There is also, now, wide recognition that the shortcomings of census enumerations and the resulting statistics may have adverse consequences for the end uses of census data, even though the census remains, in our judgment, the most comprehensive and uniform statistical profile that our free society can achieve.

Through its own evaluation work, the Bureau has produced estimates of census undercount for the past three censuses; the preferred estimates were 3.3 percent in 1950, 2.7 percent in 1960, and 2.5 percent in 1970. For the 1970 census, the principal evaluation studies show that the most plausible estimates of undercoverage were 1.9 percent for the White population and 7.7 percent for the Black population, with variations in coverage among geographic areas and for age/sex categories.

For the 1980 census, the Post Enumeration Program (PEP) is intended to expand our knowledge of the levels and types of census undercoverage. Certain studies, for example, are designed to develop reasonable estimates of undercount for the Hispanic population, and possibly other minority groups, and for subnational areas such as the States and selected substate areas.

Census undercoverage has always been a concern of elected officials—Federal, State, and local. During the 19th century, when there was no systematic knowledge of undercount, communities and their elected representatives nonetheless called attention to perceived deficiencies in the decennial censuses that they believed shortchanged them of monies, prominence, prosperity, or political representation. For the 1980 census, these concerns have focused largely on political representation and the distribution of Federal funds to State and local governments. Because of these real concerns and the increasing ability of statisticians to measure census coverage, proposals have emerged to adjust census figures so that the "whole number of persons" would include those omitted from the actual enumeration.

For the past two years, the Bureau has committed itself to deal with the undercount adjustment issue in a careful, systematic, and open way, so that decisions on the questions of whether, when, and how to adjust would be clearly understood, if not embraced, by all affected individuals and groups (see section B).

The debates about undercount adjustment have also found expression in legislative proposals and lawsuits. On September 25, 1980, a Federal District Court judge issued an opinion which, if sustained, would require adjustments for apportionment purposes and reserve to the court a decision on whether the statutory deadline of December 31, 1980, for reporting census figures to the President should be extended until acceptable adjusted data are compiled. The Bureau has considered the extent to which adjustment for apportionment purposes is permissible and feasible, and it has been our view that Federal Statutes do not permit adjustment for that purpose, and that it is not operationally feasible to do so within the time constraints set by law. These aspects of the adjustment issue are discussed in section D of this report, which was prepared prior to the September 25th opinion.

Discussions about adjustment will continue, regardless of the outcome of litigation. In the following section (C) we concentrate on the most critical assumptions that we believe provide the basis for decisions about adjustment. These assumptions represent a wide range of contributions made by many individuals and organizations outside the Bureau as well as through the two workshops. The Bureau is responsible for selection of the assumptions that are discussed here as most important. We invite reaction and comment on these assumptions.

Review of this report will be concurrent with the processing and tabulating phases of the 1980 census which will result in the transmittal of the count of the total population of each State to the President in December 1980. The magnitude of census undercount in 1980, as well as its distribution among geographic areas or population characteristics, has not yet been determined. The earliest information we will have on 1980 undercount will be rough approximations subject to later revision. While those approximations can also impinge on the decisions, based on what we now know, they will not alter the critical assumptions on which the decision should be made.

Section B. Procedures for Arriving at a Decision on Undercount Adjustment

The Bureau has established a procedure for considering undercount adjustment where it might be permitted by law, time schedules and resource availability, and supported by professional judgment. The procedure that is being followed is outlined below:

Initially, the Secretary of Commerce requested that the National Academy of Sciences review and evaluate the 1980 census data collection plans, including the undercount adjustment issue. A special panel convened by the Academy conducted the desired research and issued a report stating the judgment, among other things, that on balance an improvement in equity would be achieved through an adjustment. The

panel did not recommend either a particular technique for adjustment or that adjusted figures be used for legislative apportionment. At the same time, the panel pointed out that the application of an adjustment methodology has arbitrary features and that the figures for some areas would be further from the correct population than the actual census count.

Next, the Bureau conducted a 3-day intensive workshop in September 1979 at which Bureau staff members attempted to surface all assumptions that would underlie a decision on whether providing a set of adjusted data is desirable and feasible. Technical and policy issues were identified and recommendations were made for additional information needed to make the final decision.

Third, the Bureau hosted a Conference on Census Undercount in late February of this year. Attended by a diverse body of professionals from academic, business, Federal and local governmental, and legal communities, the Conference was successful in presenting research results and in eliciting opinions on a wide range of topics related to the undercount issue. A discussion of invited papers followed each presentation, thereby affording the Bureau staff insight into the concerns of individuals viewing undercount adjustment from differing perspectives. The Bureau issued a report on the undercount conference that presented all papers in full and summaries of the discussions.

Fourth, during the first week of September, the Bureau conducted a second workshop to facilitate the concluding process of decisionmaking. Analyses of our ability and the time required to produce adjusted data, guidelines for deciding the issue and the legal aspects and possible implications of providing adjusted data were prepared for this workshop. The purpose of the workshop was to integrate the issues which had surfaced and to reach a consensus as to a final set of critical assumptions which must underlie the ultimate decision. The findings of that workshop are being made available for public comment in this document.

Finally, by November/December of this year, consonant with the instruction from the Secretary of Commerce to the Director of the Bureau of the Census, (see Appendix A) and based on all the information obtained through the preceding steps and on any preliminary assessment of census coverage, the Bureau will decide whether or not adjusted data can or should be made available for official uses *other than apportionment.* If the decision is to provide data adjusted for the estimated undercount, the questions of when and how an adjustment is to be made, how the data will be presented, and how the data will be used in postcensal estimates programs will also be assessed.

With respect to its two workshops, the Bureau adopted a proven process for dealing with ill-structured problems. In this process, participants are divided into groups according to contrasting views and positions. Each group surfaces assumptions, and challenges the assumptions of other groups. Through this exercise, a wide range of views and issues emerge, and these are coupled to facts that strengthen or weaken specific assumptions as well as affect the individuals or segments of the public that support those assumptions and have perceived stakes in the outcome of the decision process. The published report from the September workshop expressed this wide range of assumptions and stakeholders.

Section C—The Basic Question and Critical Assumptions

As noted in the introduction and discussed fully in section D, we have argued that Federal statues do not permit us to adjust census results for purposes of apportionment, and are convinced that it is not operationally feasible to do so in accordance with timing requirements as set forth in Federal law.

Issues concerning adjustment go well beyond these purposes, however, and the resolution of those issues will have consequences throughout the decade. Principal among them is the distribution of Federal and State revenues to subordinate units of government on the basis of decennial census data, and on population and income estimates compiled regularly between censuses from other sources and linked in various ways to census results.

Through the workshop process many issues and assumptions were thoroughly discussed and debated (see Appendix B). This section examines only those considered most critical in making the decisions on whether, when, and how to adjust, without extensive discussion of specific end uses of census information. The format for discussing the critical assumptions provides key premises, supporting information, and possible rebuttals to the assumption. This approach is intended to encourage the reader to act to specific as well as general points; to defend, reject, or modify assumptions; or to present counterarguments. Although predispositions are not entirely avoidable, we have attempted to develop an approach that provides a reasonably neutral framework for comment.

The assumptions are examined with reference to this basic question: *Should the Census Bureau adjust the 1980 census results for purposes other than apportionment?*

A "Yes" answer to this question requires that certain critical assumptions be accepted as plausible.

If, however, the assumptions are rejected because the rebuttals are considered stronger, then the answer to this question should be "No."

These assumptions are organized around three broad premises and supporting statements shown on the following page and discussed later in terms of specific assumptions and rebuttals beginning on the pages noted in the margin. Background materials are listed in Appendix C.

Critical Assumptions

I. The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

a. We will have a data base from evaluation studies that is substantially improved from previous censuses.

b. The Bureau has in the past demonstrated the ability to develop acceptable procedures to meet similar challenges.

II. It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

a. Other options (anyone who chooses can adjust), though plausible, do not meet societal needs for accuracy, credibility, and consistency.

b. The Bureau is best equipped to apprise society of the limitations of adjusted census data.

III. The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

a. Adjustments to headcounts that produce more accurate figures are desirable; information obtained from evaluation studies will provide partial adjustments for large geographic areas rather than all geographic areas at one point in time.

b. Acceptable adjustments for measures of population characteristics are also desirable; results of evaluation studies will provide for only limited adjustments for characteristics, but additional research throughout the decade may permit extending the range

of characteristics for which satisfactory adjustments could be produced.

c. An acceptable adjustment that includes adjusting for uncounted undocumented aliens will not be possible at the time adjustment for other groups is; however, the inability to adjust for every group does not take away the responsibility to adjust for those for which data are available. During the decade, further information may become available to enable adjustment for undocumented aliens.

The following assumptions deal with the broad premise:

The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

Critical Assumption

The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughout the decade.

Basis of Assumption

The Bureau has the responsibility to continue to improve the state of the art by striving to achieve greater statistical accuracy in coverage estimates.

Supporting Information

1. The Bureau has historically advanced the level of knowledge regarding undercoverage estimates.

2. An ongoing program permits expansion of the number and kinds of areas covered and would contribute to accuracy as more data and refined methods are employed.

3. The continuing reevaluation of coverage provides the flexibility to respond to methodological advances, new data, and changes in policies, programs, and enabling legislation.

4. This policy is in line with the traditional approach of revising and improving current data series.

5. Work is continuing on the development of undercoverage estimates for Hispanics, since this group may be affected by specific programs.

6. The present schedule of research and evaluation work calls for different pieces of information to become available at different points in time.

Reubttal

1. Once a revision is made, reevaluation will result in increased demands for revised numbers, and this will lead to confusion among data users as to which data sets should be used for various purposes.

2. The Bureau often neglects to anticipate the broad consequences of an issue. Thus an announcement of new findings which the Bureau regards merely as technical improvements may have widespread impact that the Bureau fails to recognize in advance.

3. Lack of congressional or administration support could result in budgetary constraints limiting the Bureau's work in this area.

4. Changes in type of funding or a reduction in funding for the census count in 1990 may occur if, for example, Congress argues that based upon 1980 results, adjustments are cheaper *and* more accurate.

5. The census is recognized to be the best measure of the U.S. population. Doing anything to that count might not necessarily improve it.

Critical Assumption

The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

Basis of Assumption

In the past, when the Census Bureau has been confronted with a significant information need, it has been able, over time, to develop a statistically acceptable procedure for generating the required information.

Supporting Information

1. The need for credible employment statistics during the Depression era was the impetus for the development of sample survey methodology leading to the Current Population Survey.

General Revenue Sharing generated the need for current estimates of the population for 39,000 general-purpose governments.

3. The Bureau has experimented with and tested the following methodologies which have shown some promise:

a. Matching studies

b. Demographic analysis

c. Regression analysis or refined synthetic estimation

4. The Bureau is supporting research related to adjustment methodologies.

5. The Bureau has been able to rearrange priorities to expedite carrying out the Post Enumeration Program.

6. The Bureau will have available throughout the next 3 years the results of the Post Enumeration Program, which should provide the following:

a. Estimates of undercount for total population at the State level.

b. Estimates of undercount by region for age, sex, race, and Hispanic origin.

c. Information about undercount related to income, education, labor force, urban vs. rural, and metropolitan vs. nonmetropolitan areas that could be used in regression analysis or in refined synthetic estimation.

Rebuttal

1. Although the need to generate "adjusted" totals for geographic subdivisions has existed for the past couple of decades, the Bureau has not yet developed a procedure it is willing to implement today.

2. Results of the 1980 census test program, especially for Oakland and Richmond, indicate there are a number of difficulties in the match studies that still need to be resolved.

3. There is a stated concern within the professional statistical community that the techniques being developed are at the "frontier" and are not yet ready for implementation.

Critical Assumption

A Census Bureau adjustment procedure would be recognized as equitable, legally acceptable, meeting professional standards, and providing users with more accurate data.

Basis of Assumption

In the past, the need to provide adjustment procedures to take care of nonresponse and undercoverage biases has resulted in the development of statistically acceptable and useful procedures.

Supporting Information

1. Survey undercoverage in the Current Population Survey is adjusted for by using the ratio of survey estimates to independently derived population control totals. (The control totals are based on previous census data, which do not include adjustments for undercoverage in the census.

2. To improve coverage in the 1978 Census of Agriculture, a direct enumeration of an area sample was used to supplement mailing lists. Since the sample data provided reliable estimates for State totals only, data for lower levels were not adjusted. Both adjusted State totals and unadjusted data below the State level were published. The size of the adjustment from the area sample was also published with the adjusted State data.

3. There currently is being developed an adjustment procedure (based on direct estimates of the undercount) for the national and State levels, using data which will be available from demographic analysis and the Post Enumeration Program.

4. A study of the effect of population adjustment on General Revenue Sharing allocations in two States showed that most areas tended to move in the direction of their "proper" allotment (although this means a decrease in allotment for most areas), "proper" being determined by both population and income adjustments.

5. The National Academy of Sciences' panel on decennial census plans concluded that "inequities resulting from the geographic differentials in the decennial census undercount could be reduced by adjustment of the data for underenumeration."

6. The courts, in the past, have upheld Bureau procedures because they could be shown to be neither arbitrary nor capricious.

Rebuttal

1. Currently there is no adequate methodology for measuring the quality

(limitations) of adjusted figures at geographic levels below the State.

2. Studies of synthetic estimates have shown that any areas with undercount rates much above or below the national average would be adjusted in such a way that error rates for those areas would be high.

3. Estimates from demographic analysis are subject to unknown errors, especially in the net immigration component.

4. Examination of the effects of an adjustment procedure on allocation of funds will result in the realization that there are more "losers" than "winners."

The following assumptions deal with the broad premise:

It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

Critical Assumption

The Census Bureau is recognized as having the ability to objectively make and defend the appropriate decision on whether or not to adjust. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

Basis of Assumption

The Bureau has long been recognized as an agency of unquestioned integrity. It has a history of systematically studying the undercount problem and took the lead in bringing the issue into the open. The Bureau has the appropriate technical skills, resources, and specialized knowledge to develop and implement a procedure for adjusting census data.

Supporting Information

1. Bureau leadership in this area will enhance the credibility of the results, in view of the Bureau's accumulation of information on the undercount not shared by other organizations.

2. Official statistics issued by the Bureau are accepted by the public as impartial and free of vested interests.

3. Legislators, program administrators, and courts of law give sanction to census data as official Government statistics.

4. Affected parties have strongly expressed their opinions that the Bureau should make the adjustment. No one has questioned the Bureau's competence in this area, nor its objectivity or integrity.

5. Through conferences and workshops, the Bureau encouraged discussion and debate on the adjustment issue so that all relevant information could be considered in arriving at a sound decision.

6. A large-scale Post Enumeration Program is in place and funded; it will provide the necessary information for adjustments for States and other subnational areas.

Rebuttal

1. Census statistics are in the public domain; users are free to accept, modify, or reject them (and sometimes do).

2. The judiciary has not always prescribed the use of decennial census figures when superior data are available from a source other than the Census Bureau.

3. Census data are used for a multitude of purposes; adjusted data are not appropriate for all of them. The responsibility for proper use of data, including appropriate adjustments, rests with the user.

4. There are other reputable institutions that can produce adjusted census data which would be acceptable for many purposes.

5. Equity is essentially a political issue, and the decision whether or not to adjust census data should be made by Congress, not by the Census Bureau.

Critical Assumption

A simple synthetic adjustment procedure would not satisfy the Census Bureau's standards for accuracy.

Basis of Assumption

The Bureau implements new statistical methods only when certain general standards of data quality can be statisfied.

Supporting Information

1. A most important criterion is that there should be some knowledge of the limitations of the data to reduce misuse of statistics that are not fully reliable.

2. The Bureau's analyses of 1970 census undercount show that geographic variation is substantial. The simple synthetic method is not sensitive to this variation, and can, in fact, introduce serious defects not present in the unadjusted data.

3. If the undercount for specific age/race/sex groups were the same among subunits below the national level, the method would be acceptable.

4. The simple synthetic method is dependent on readily available independent estimates of undercount for population subgroups, and therefore provides no direct means for adjusting for the undercount of Hispanics.

5. Bureau research, and comparable studies by Canada for its census, demonstrate that adjustments by this method would produce more errors than superior methods that can be refined as more information is available from evaluation projects.

Rebuttal

1. The simple synthetic method is uncomplicated, easily understood, and timely. Its use would produce acceptable results on the average.

2. In view of the important and immediate uses of census results, adoption of the simple synthetic method will produce adjusted data quickly, and such data will correct for some of the most serious defects of unadjusted data.

3. The Bureau has an obligation to reduce statistical inequity even through the method used may not satisfy its highest standards of data quality.

4. The National Urban League recommends that synthetic adjustments be used for States and local areas and that the national undercount rate for Blacks be used for subnational adjustment for the Hispanic undercount.

5. Application of the simple synthetic method requires only that the null hypothesis be satisfied—that there is no *statistically significant* difference in undercoverage rates among geographic areas.

6. Alternatives to the synthetic method depend partly on demographic analysis, for which a number of questionable assumptions must be made to derive national undercount estimates.

7. According to the National Commission on Employment and Unemployment Statistics, adjustments for undercount in labor force statistics by use of the synthetic method would be smaller in magnitude that the adjustments the Census Bureau traditionally makes to account for underreporting of income and unemployment in its Current Population Survey.

The following assumptions deal with the broad premise:

The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

Critical Assumption

Recognizing the present limits of technical feasibility, affected parties will accept and find useful initial adjustments for larger geographic areas only, despite program requirements for data for smaller areas.

Basis of Assumption

The demand for statistical adjustment of decennial census data stems in large part from the conviction that differential population undercoverage, especially of minorities such as the Black and Spanish-origin populations, produces serious inequity in the administration of Federal and State programs, especially those which distribute funds according to statistical formulas. Adjustment for

States and large metropolitan areas, which should be feasible by 1982, will be an important step toward improved program administration.

Supporting Information

Population data, both counts and characteristics, are key elements in many formulas used to distribute billions of dollars in Federal funds annually.

2. Partial adjustments, such as for selected geographic areas and key characteristics, would satisfy some program requirements.

3. About one-third of the population lives in the 30 largest SMSA's for which adjustment is expected to be feasible within 2 years.

Rebuttal

1. Limited adjustments are not adequate:

a. An adjustment would be of dubious utility unless it applied to all geographic levels for which stakeholders have a program interest.

b. Many Federal agencies indicate that adjustment should be applied to all levels for which they have program responsibility.

2. Census results without adjustment are adequate; unadjusted census data have been valuable in the past and will continue to be useful, partly because they provide internally consistent figures for use in program administration and formula grants.

3. The Census Bureau should be in the counting business. Its staff is the most competent and highly regarded in that field.

4. Going beyond an absolute count would be to go outside of the mission of the Census to try to solve the problems of society.

Critical Assumption

No currently available adjustment procedure will provide more accurate numbers than the actual counts for *all* units of government or down to the block level; therefore, adjustments to relevant geographic levels must be made over time as procedures are refined geographically.

Basis of Assumption

None of the currently known procedures have been tested for their capability to measure the undercount at all levels for all units of government.

Supporting Information

1. There is a stated concern within the professional statistical community that the techniques being developed are still in the experimental stage and are not yet ready for implementation.

2. Canadian experience with reverse record checks indicates that simple synthetic adjustment might not be appropriate for geographic subdivisions below the regional level.

3. Comparisons of demographic estimates for States with those computed by synthetic methods also raise doubts about the accuracy of synthetic adjustment for small areas.

4. Demographic estimates are available only for the Nation and are still developmental for the States.

5. Standards against which to measure and evaluate adjustment procedures are not yet available for the smallest geographic areas.

6. To make estimates for every unit of government involves an assumption that undercount rates from the sample area apply to areas not in the sample.

7. Even though more accurate numbers cannot be provided for all units, it is important to increase the accuracy of as many as possible; improving the level of accuracy of some numbers is better than leaving them alone. Demographic estimates of national undercount by age, sex, and race will be available in the spring of 1981. Estimates of the undercount, based on evaluation studies, for the States, the 30 largest SMSA's, and 10 cities, and for the Hispanic undercount at the national level, will be available in late 1981, and improvements in these estimates will be possible by 1983.

Rebuttal

1. Adjustments for smaller geographic areas could be made using various synthetic or regression techniques. Although the data might be of unknown accuracy, at least a complete set of "official" data would be available for program administration.

2. Multiple series of adjusted census data may be unacceptable to users of census data.

3. The Census Bureau may not be capable of handling the workload required to produce multiple sets of printed and taped census figures.

4. There would be "numerator-denominator" difficulties in Federal program implementation where unadjusted and adjusted figures had to be combined to produce rates and ratios for program analysis or fund allocation formulas.

5. Because of difficulties in producing small area detail counts and characteristics, publication of official data could be delayed with corresponding adverse effects on timely application of census results for policy planning and program implementation.

Critical Assumption

In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics such as age and income; adjustment for a limited number of key characteristics will satisfy the most important program needs.

Basis of Assumption

Agencies are dependent on accurate distributions of the population by certain demographic characteristics in order to carry out major program goals.

Supporting Information

1. Adjustment for some areas and not others is acceptable for many programs.

2. Legislated programs are often targeted at specific segments of the population; for example, the Elementary and Secondary Education Act allocates funds on the basis of the number of children ages 5 through 17 in low-income families.

3. The distribution of General Revenue Sharing funds could be adjusted if and when adjustment factors are available for all geographic areas and for income.

4. Among the characteristics most commonly incorporated into funding formulas are race, age, per capita income, family income, and employment and unemployment.

Rebuttal

1. No timely adjustments are feasible:

a. Current methodology does not produce estimates of acceptable quality for the adjustment of characteristics.

b. The time it may take to implement an adjustment of this type will not satisfy agency needs for timely data.

2. A few adjustments are not enough:

a. Different adjustment techniques must be used for various characteristics. This will result in a combination of adjustment procedures ranging from very sophisticated to simple raking, and therefore there may be inconsistencies in the data.

b. Program agencies have indicated the need for adjustment of many characteristics and will press for adjustment of more than a limited number of key characteristics.

Critical Assumption

Given the estimated magnitude of the undocumented-alien population and the fact that the Bureau's policy is to count all residents, it is important to include the development of an estimate of their "true" number as part of the 1980 census evaluation and statistical adjustment program.

Basis for Assumption

The stated policy of the Census Bureau is to enumerate all U.S. residents, regardless of legal status.

Supporting Information

1. Current interpretation of the Constitution indicates that the census should enumerate all residents.

2. Determining the legal status of respondents would be a complex legal undertaking and is not feasible or appropriate in a statistical activity such as the census.

3. Ultimately, a valid estimate of the undercount by demographic methods cannot

be made without an estimate of undocumented residents in the estimate of the "true" population. Since some undocumented residents were likely to have been counted in the 1980 population census, they must also be accounted for in the national population estimates for consistency in making an adjustment.

4. Users of census data require complete information about all residents of the United States and its subnational areas.

5. Undocumented residents have an impact on economic and political life in the United States.

6. The speculative estimates of undocumented residents indicate this group may be a significant portion of the population. The number could be as high as several million.

7. Because of their reported concentration in certain areas of the country, the underenumeration of undocumented aliens could reduce political representation and funds allocated to certain States and cities.

Rebuttal

1. The Bureau does not now have a methodology to estimate the number of undocumented residents nationally or for geographic subdivisions, and the available evidence indicates an uneven geographic distribution of such persons.

2. It may not be possible to derive an estimate of undocumented immigrants to include in the estimated "true" population.

3. Including undocumented residents in the census or the undercount estimates may not be acceptable to Congress.

4. Even if no method is available to adjust for an undercount of undocumented aliens, that does not relieve the Bureau of the responsibility to adjust for other groups for which estimates are available.

Section D. Factors That Prevent Adjustment for Apportionment

The purpose of this statement is to summarize in nonlegal and nontechnical language the Census Bureau's position on the subject of statistical adjustment of the 1980 Decennial Census counts to be used to reapportion the U.S. House of Representatives.

The need for this statement arises from public confusion—generated by various lawsuits and attendant publicity—as to whether the Bureau could legally or operationally make such adjustments. The statement was prepared for the Undercount Adjustment Workshop held September 2–5, and, therefore, was completed before a decision was rendered in the Detroit suit.

The Issue

For a variety of reasons, not all persons are counted in the census. The 1970 census figures, for example, are estimated by one technique to have fallen about 2½ percent below the "true" population. All earlier censuses, going back to the first enumeration in 1790, are believed to have had net underenumeration. The courts have indirectly addressed the issue of underenumeration and concluded that officially released (albeit incomplete or not final) census results are appropriate for apportionment and redistricting.[1]

Knowledge of the extent and character of census undercounts has expanded considerably in the past two decades and with that expansion of knowledge there has been a growing interest in the possibility of adjusting both national and local area census counts to include statistical estimates of omissions. The specific issue is whether it is possible and appropriate to adjust 1980 census counts that will be used to reapportion seats in the House of Representatives among the States and to redistrict within States. This issue has two key parts:

1. Would it be legal?

2. If legal, would it be operationally feasible?

The answer to both questions is no.

The Legal Foundation

Statistical programs of the Federal Government, such as the Decennial Censuses of Population and Housing (hereafter, census) are authorized, controlled, and ultimately accountable within a specific legal framework. In the case of the census, the foundation and specific constraints are established in Article 1, Section 2 of, and the 14th Amendment to, the Constitution. The Constitution also confers full authority for the determination of census procedures on the Congress.[2] Congress, in turn, has delegated the responsibility for the conduct and content of the census to the Secretary of Commerce and to the Director of the Bureau of the Census; this statutory delegation is found in Title 13 of the U.S. Code (hereafter, Title 13). The delegation of responsibility for procedural and other matters has been tested in court and upheld.[3] This broad delegation of authority is, of course, subject to both specific and general constraints arising from the Constitution, Title 13 and other statutes.

In discharging its mandated responsibilities the Bureau of the Census (hereafter, Bureau) also faces other constraints. Important among these are the current state of census-taking technology and the state of knowledge in the statistical and demographic professions, the availability of adequate budgetary and other resources (including, particularly, a sufficient number of effective enumerators), public attitudes toward the census and government information collection in general, and various time constraints.

Paramount among time constraints are the statutory requirements that the Congress be notified of the population court by State and the appropriate number of Representatives for each State within one week after the opening of the next session of Congress after Census Day (or roughly 9½ to 10 months from Census Day)[4] and that local area data for redistricting within States be provided no later than one year after Census Day (April 1, 1981).[5]

Constitutional Provisions

Article I, Section 2, of the Constitution states:

> Representatives * * * shall be apportioned among the several states which may be included with this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years ater the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

The term, "actual Enumeration", means a census or a headcount. A "census" has been judicially defined as "an official enumeration of the inhabitants with details of sex, age, family, etc., and the public record thereof * * * A 'census' is not an estimate of the population."[6] The legal definition does not differ from the common or historical usage.[7]

This original population base for apportionment was revised with the abolition of slavery; the fourteenth amendment to the Constitution modified the first sentence to provide that:

> Representatives shall be apportioned among the several States according to their respective numbers, *counting* the whole number of persons in each State, excluding Indians not taxed.

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[1] *Asbury Park Press, Inc. v. Wooley*, 33 (1960) and *East Chicago v. Stans*, Civil No. 70–H–156 (1970).

[2] *Bethel Park v. Stans*, 449 F.2d 575 (1971).

[3] *Quon v. Stans, 309 F. Supp 604 (1970).*

[4] Title 2, U.S. Code

[5] Title 13, U.S. Code

[6] *Union Electric Co. v. Curie River Electric Coop., Inc.*, 571 S.W. 2nd 790, 794 (Mo. App. 1978). See also, *State v. Nabours*, 286 P. 2d 752, 755, 1955 (to "enumerate means 'to designate' or specifically mention, in detail, or reckon singly.")

[7] *Webster's Third New International Dictionary*, p. 361 (1976) ed.; *New English Dictionary On Historical Principles*, p. 219–20 (1893).

Since the passage of the income tax law, there are no longer any Indians not taxed who are to be excluded from the apportionment population, so that it now includes the "whole number of persons" in each State to be arrived at by an "actual Enumeration" or count.

In the phrase, "in such manner as they shall by Law direct.", the Constitution grants to Congress the authority to determine the manner and, hence, methods by which the census shall be taken. The Congress, through enactment of Title 13, has legislatively delegated the determination of the manner and methods of conducting the census to the Secretary of Commerce and the Director of the Bureau of the Census.

Title 13, U.S. Code

In its delegation of authority in Title 13, the Congress explicitly authorized the use of sampling as a means of estimating characteristics of the population. Section 141(a) of Title 13, which requires that the decennial census be taken, provides:

> The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date", in such form and content as he may determine, including the use of sampling procedures and special surveys.

At the same time, in Section 195 of Title 13, the Congress expressly prohibited the use of sampling in the apportionment process, saying:

> Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as "sampling" in carrying out the provisions of this title.

Thus, Title 13 clearly continues the constitutional mandate and historical precedent of using the "actual Enumeration" for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated.

There are, of course, methods other than sampling for estimating population and some have argued that the exclusion of sampling does not cover such alternatives. There are two relevant responses:

First, alternative methods for undercount adjustment were discussed in a General Accounting Office (GAO) report [8] to the House Committee on Post Office and Civil Service in a manner that underscored their developmental and experimental status. Although the GAO report recommended greater efforts to adjust for undercounts, the Committee did not authorize use of such adjustment techniques under Title 13, thus continuing the requirement of use of the actual enumeration.

Second, and perhaps more importantly, the framers of the Constitution drew a clear distinction between an "actual Enumeration" and an estimate, regardless of its underlying methods. In the absence of an "actual Enumeration," seats were apportioned in the first House of Representatives based upon what was characterized as "a mere conjecture" of population, which was contrasted to the more "precise standard" anticipated from the later census.[9]

Congressional Intent

The legislative history of Title 13 makes it eminently clear that sampling was not to be used in apportionment. Relative to the initial enactment of section 195, the relevant House report states: [10]

> Section 195 provides that the Secretary of Commerce may authorize the use of the statistical method known as sampling in carrying out the purpose of Title 13, if he deems it appropriate. However, section 195 does not authorize the use of sampling procedures in connection with apportionment of Representatives.
>
> The purposes of section 195 in authorizing the use of sampling procedures is to permit the utilization of something less than a complete enumeration, as implied by the word "census," when efficient and accurate coverage may be effected through a sample survey. Accordingly, except with respect to apportionment, the Secretary of Commerce may use sampling procedures when he deems it advantageous to do so.

Furthermore, enactment of section 195 was at the specific request of the Department of Commerce to provide authority to use sampling in the context of the overall census enumeration to achieve economies of operation. Thus, in the context of an understanding that an actual enumeration was required for apportionment purposes, the Congress granted authority for the use of sampling for other purposes.

The Congress had an opportunity in the 1976 amendments to Title 13 to consider expansion or alteration of section 195 and, even in the presence of recommendations to do so, chose not to modify section 195 to permit any undercount adjustment or correction. The continuation of the longstanding actual enumeration requirement is fully binding on census activities.

Other Opportunities for Congressional Action

In meeting its oversight responsibilities, the Congress has had ample opportunity to instruct the Bureau to make adjustments for underenumeration. The clearest such opportunity occurred in 1977, when the House Committee on Post Office and Civil Service considered, but chose not to report, H.R. 10386. In its final form this bill would have provided for "corrections" of the actual enumeration and, thereby, relaxed the obligation for an actual census.[11] H.R. 9623 and H.R. 8871, the precursors of H.R. 10386, were the subject of subcommittee hearings in which the proposal to require undercount "corrections" and other proposed changes in Title 13 were discussed extensively.[12]

The frequent Congressional hearings concerned with the census in particular, and the Bureau's programs in general, have provided ample opportunity for the Congress to consider undercount adjustments. In no instance has a proposal to adjust census results gone beyond a full Committee. When consulted, the Bureau has steadfastly maintained that, even if it were legal, a statistically defensible underenumeration adjustment of the census counts to be used for apportionment was not possible given statutory time constraints and the experimental and developmental character of possible undercount adjustment techniques.

Operational Feasibility

The issue is not just—or even—whether an adjustment should be done. Rather, it is whether an appropriate adjustment could be done within the time deadlines posed by statute. Tabulation of the total population by States required for the apportionment of Representatives in Congress must be completed and reported to the President by December 31, 1980. Tabulations for political subdivisions in the various States must be reported to the States by April 1, 1981. For the following reasons, it is the judgment of the Bureau that such adjustment to the counts to be used for apportionment would not be operationally feasible within the statutory time constraints.

[8] Comptroller General of the United States, *Report to the House Committee on Post Office and Civil Service on Programs to Reduce the Decennial Census Undercount*, B-78395 (May 5, 1976), p. 21–22.

[9] See Ferrand, *Records of the Federal Convention of 1787*, Vol. 1, p. 578–9.

[10] H.R. Rep. No. 85–1043, 85th Cong., 1st. Sess. (1957), p. 10.

[11] See, Section 143., "Corrections in census counts, H.R. 10386, 95th Congress, 1st. Sess. (1977), p. 9–11.

[12] See hearings on H.R. 8871, Hearing before the Subcommittee on Census and Housing, 95th Congress, 1st Sess., No. 95–46, (1977).

At the minimum, such adjustment would require:

1. A reliable estimate of the undercount with specific estimates for such demographic, socioeconomic, administrative, and geographic subgroups as were needed for a pre-agreed adjustment methodology. At best, preliminary estimates of the undercount based on demographic analysis (race, sex and age) should be available around April 1, 1981. Preliminary estimates of the undercount would, of course, be subject to revisions, and, based on past experience, such revisions might be large.

2. Completion of the special data development efforts necessary to estimate State level undercounts by match studies and selected other analyses. This is necessary to address the problem of differential geographic undercounts arising from operational or other nondemographic factors. Fully tabulated data from these efforts will not be available until the fall of 1981 at the earliest. These activities involve direct matches of census returns with other surveys, some of which are not scheduled for collection until January 1, 1981, and includes sifting through the entire census file; a file that is expected to include records for more than 85 million households and more than 222 million individuals. It is impossible to complete the requisite work in time for the use of any adjusted data for Congressional apportionment among and within the States.

3. To properly lay the foundation for public, congressional, legal, and administrative acceptance of adjusted census counts for any purpose, there must be a suitable interval for statisticians, demographers, and the widely interested user community both to study and analyze the methodology to be used, and to assess the evidence in support of that methodology vis-a-vis alternative techniques. It is essential that this step engage the best minds and most interested users outside the Bureau as well as incorporate the best work within the Bureau.

4. Finally, it is essential that the Bureau be prepared to fully defend the accuracy of the chosen adjustment. The courts have long recognized the census counts as having a "presumptive correctness" and that alternatives that might be considered for redistricting would have to exhibit "clear, cogent and convincing evidence" to support their validity.[13] The Bureau has always adopted similar criteria in reaching decisions on new methods. In the case of undercount adjustment for apportionment purposes, because the first three conditions could not be met within the statutory time deadlines, *no* clear, cogent or convincing evidence could possibly be provided.

Operational Facets of "Actual Enumeration"

The 1980 census data covering the vast majority of Americans will result from a pure count in the full tradition and practice of actual enumeration. That is, the individual form will be completed (generally by a family respondent), checked for omissions or errors, and sent through a device which derives the statistical information and puts it into the Bureau's computer. The computer, in turn, prints the necessary tabulations for reapportionment calculations, and, later, for other statistical purposes. In enumeration and processing, however, there are situations which require error corrections or special efforts to ensure that the most accurate and complete count is achieved. Error correction and coverage improvement in the 1980 census requires information gained in the enumeration process as to the existence of a person or household at a specific location.

Substitution for Enumeration and Processing Reasons

Substitution is the process by which all the characteristics for one enumerated person are used during data processing to describe another enumerated person whose characteristics are unknown. This process has been used in previous censuses. Substitution is being used in the 1980 census as follows:

Close-out. After repeated visists by an enumerator to a housing unit known to be occupied, the enumerator is instructed, as a last resort, to determine at least the number of persons living in the unit as well as housing characteristics. This is usually obtained from neighbors, building manager, or other knowledgeable persons. The census form is identified as a "close-out" in machine readable form and the number of occupants is entered. During processing, characteristics are "substituted" by the computer for each person in a "close-out" household. If the number of occupants is unknown, an entire set of characteristics for a neighboring household is substituted. (The specific field guidelines for such procedures are described in the 1980 Census operations manuals).

Unreadable questionnaires. Occasionally during shipment or the processing of data, census forms are lost, destroyed, or damaged so as to be unreadable by the machine. In such instances, replacement questionnaires are entered into the system that indicate the number of persons, if any, in the living quarters. When possible, this information is obtained from master control counts for each address that is entered by the field staff during the actual census. By "reading" the replacement questionnaires, the characteristics for these enumerated persons are "substituted" by the computer from information reported for other persons. When master control counts are not available or the number of damaged forms is small, both the numbers and characteristics are substituted. In 1970, characteristics for more than 3 million enumerated persons were "substituted" for the two reasons described above. In 1980, the Bureau expects to hold substitution for these reasons to about 2¼ million persons.

Coverage Improvement—1980 and 1970

The Bureau's extensive coverage improvement program for the 1980 census is discussed in detail in a recent article by Peter Bounpane and Clifton Jordan of the Bureau staff.[14] Of the substantial improvements over 1970 procedures, two aspects of the 1980 coverage improvement program deserve special mention in the instant situation: The vacancy recheck and the post-enumeration post office check in conventional areas.

Vacancy Recheck. As the proportion of single, 2-person and 2-worker households has increased along with greater mobility, there has been growing difficulty in obtaining a census report for each occupied dwelling unit. One aspect of this problem has been a tendency on the part of enumerators to judge that a dwelling unit is vacant when, in fact, the residents were simply not home at the times the enumerator called. A special survey taken in the closing phase of the 1970 census showed that about one of every ten dwelling units classified as vacant by enumerators was actually occupied. Because the potential for even greater underenumeration from this type of situation grew during the 1970's and was clearly shown in the Bureau's intercensal surveys, a special, intensive recanvass of every dwelling unit classified as vacant is being undertaken in the 1980 census. Persons identified as omitted in this followup effort will, of course be added to the count.

In 1970, the magnitude of the problem of misclassification of dwelling units as

[13] *Dixon v. Hassler*, 412 Supp. 1036, 1976.

[14] "Plans For Coverage Improvement in the 1980 Census", *Papers and Proceedings of the Social Statistics Section of the American Statistical Association*, 1978.

vacant did not become apparent until initial field work had been largely completed. At that time, the cost, complexity, and delays associated with a recanvass would have delayed census processing to a point where the counts for apportionment probably would not have been available within the required time period. To correct this problem, a carefully designed and monitored program of substitution for units with a high probability of being occupied was used.[15] This use of substitution was of considerable concern within the Bureau and, even though the courts had regularly decided that the procedures used in the 1970 census were within the meaning of the Constitution and neither arbitrary nor capricious, a decision was made to recanvass completely in 1980, eliminating the need for the 1970-type activity.

The Post-Enumeration Post Office Check. About 5 percent of the 1980 population count is expected to be found in rural or remote areas where enumerators visit the household and complete or check the census form on the spot. The Bureau has learned that dwelling units are more likely to be completely missed than in urban areas. The Bureau, therefore, again enlisted the aid of the U.S. Postal Service in an effort to identify missed households. In 1980, a census enumerator will make an on-the-spot check of missed units as indicated by the post-enumeration postal service check. As with the vacancy check, this procedure will take place before the local census office is closed and any persons that were missed will be added to the count.

In 1970, by contrast, the timing and budgetary situation did not permit a direct canvass of post-office identified misses. Consequently, limited substitution was used in the South where the miss problem was most pronounced.[16] Because field procedures permit a direct early visit, no such substitution will be used in the 1980 census.

Coverage Improvement Vis-a-Vis Undercount Adjustment

Coverage improvement in the 1980 Census will rely almost entirely on strict observation by Bureau employees in reference to master control counts, rechecks or special recanvass procedures. *By contrast,* undercount adjustment means direct additions of persons to the basic count by statistical means alone, without any direct evidence of the actual existence of the persons or of the dwelling units in which they may reside. A variety of techniques are available for such adjustments, but they have the common characteristic of assigning individuals to a specific geographic area. Such assignments would have an uncertain effect on accuracy; they may make the resulting estimates for the majority of areas less accurate even as they bring the national total closer to the "true" population. As indicated by the proceedings of the Conference on Census Undercount,[17] there is no consensus on an optimal procedure for such allocation.

May 13, 1980.

Appendix A

Memorandum For: Vincent Barabba, Director, Bureau of the Census.
Through: Courtenay M. Slater (C.M.S.), Chief Economist for the Department of Commerce.
Subject: 1980 Census: Statistical Adjustment for Undercoverage.

Apparent undercoverage in previous decennial censuses has led to widespread interest in the possibility of statistical adjustments to the 1980 census data. Extraordinary efforts have been undertaken by the Census Bureau to achieve the most complete coverage possible in 1980. The extent of any undercount will not be known for some months. You are now engaged in an active and systematic process of examining the validity of various methods of measuring and analyzing a possible undercount in the 1980 Census, as well as the desirability of making adjustments once the existence and extent of an undercount is determined. This process should continue with the following guidelines.

1. Planning for and execution of a program to evaluate census data should continue to be given high priority by the Bureau and should proceed as expeditiously as is consistent with good professional standards.

2. There should be full and frequent consultation with the Chief Economist and the General Counsel throughout this process.

3. Federal agencies and interested parties among the general public should be kept informed regarding the Bureau's examination of this issue and should be given adequate opportunity to comment on the approach being taken by the Bureau.

The culmination of this process should be a decision by the Director of the Census Bureau on whether and how any statistical adjustment should be made to 1980 census data. This decision should take full cognizance of the importance of:

(1) the need for confidence that any adjustment will produce more accurate information regarding the distribution of the population and the relevant characteristics of that population;

(2) the defensibility of any adjustment methodology that may be used;

(3) a continued public perception of the accuracy, reliability, and objectivity of census data; and

(4) the very great public need for accurate and timely data about the U.S. population and its characteristics.

Even if there were some basis for an adjustment of the population count to be used for apportionment of the House of Representatives, I do not believe that any adjustment can be made prior to the statutory deadline for the delivery of this information to the President. I do expect, however, that by the end of this calendar year, or shortly thereafter, you will be prepared to announce a decision on adjusting the census data for other uses.

I should appreciate receiving from you a detailed description of the process to be followed in arriving at the above decision, and shall expect you to take direct personal charge of this process.

Philip M. Klutznick,

Secretary of Commerce.

Appendix B—Assumptions Discussed at the Second Census Undercount Workshop

1. A simple synthetic adjustment procedure would be timely.

2. The courts will accept adjusted Census Bureau numbers.

3. Any adjustment of the census counts will increase the demand for further adjustments for racial, ethnic, and socioeconomic groups.

4. The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughtout the decade.

5. The nature of the Congressional legislative stucture and process, and knowledge of the complexity in determining gains and losses, will lead to maintaining the status quo, i.e., the use of *straight counts.*

6. Any adjustment procedure implies two sets of population counts—one adjusted and the other unadjusted.

7. There would be "numerator-denominator" difficulties in the use and interpretation of census data if not all census figures are adjusted.

8. The Census Bureau has to take into account the major uses of its data in making its decision whether or not to adjust.

9. Minorities will insist on complete adjustments at the lowest geographic levels, because they believe that this will bring them closer to the truth and equity in funds allocation.

10. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

11. The Census Bureau can change operational procedures to improve timeliness, detail, etc., of a complex procedure for adjustment of census counts.

12. A simple synthetic adjustment procedure will not meet Census Bureau standards for accuracy.

13. Major users of census data are capable of using multiple sets of data.

14. Given the estimated magnitude of the undocumented resident population and the fact that our policy was to count all residents,

[15] See, Joseph Waksberg and Margaret A. giglitto, *The Effect Of Special Procedures To Improve Coverage In The 1970 Census, April 1973; and Bureau of the Census, Effect Of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

[16] *Effect of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

[17] *Conference On Census Undercount,* July 1980.

it is important to attempt to incorporate an allowance for this group in the expected (i.e., corrected) population and hence in the estimates of the undercount.

15. Given the potential for reducing the great uncertainty in our estimates of the undocumented resident population over time, the estimates of undercoverage will need to be modified with the passage of time for this reason.

16. The confidence of the Census Bureau to make a decision, to defend its position vis-a-vis stakeholders, and in its technical abilities has improved.

17. The Census Bureau is less hypersensitive to pressure applied by stakeholders.

18. All stakeholders must act through the Courts, Congress or the Administration.

19. It is assumed that the selected adjustment procedure will be accepted by stakeholders.

20. The anticipated reactions of segments of the public should not be the driving force behind the Bureau's decision to adjust or not to adjust.

21. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

22. Local area data required by Federal programs must be of sufficient quality to be credible in the courts.

23. Adjustment of census data would respond to widely expressed public policy needs.

24. In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics, such as age and income, as well as for total population counts; however, adjustment for a limited number of key characteristics will satisfy the most important program needs.

25. The Administration will view support of the use of straight census counts to be consistent with expenditures for coverage improvement.

26. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of critical variables within 3 years of the census.

27. Regardless of the adjustment procedure used, there is currently no adequate methodology for measuring the quality of the adjusted figures.

28. Bureau professional staff would support the use of actual census counts rather than adjusted figures until the methodology area determines that there is a statistically acceptable adjustment technique.

29. Most stakeholders will expect that an adjustment procedure will be applied to all levels for which they have program interest.

30. No currently available adjustment procedure will provide more accurate numbers than the actual census counts for all units of government.

31. If an adjustment to census data is made, minorities other than Blacks will expect the Bureau to develop separate adjustment ratios to cover their populations.

32. An adjustment procedure would receive initial support from a wide range of stakeholders; however, there will be active opposition to the adjustment as the effects become known.

33. Pressure for a timely adjustment may force the Bureau to make an adjustment that does not make use of the information that will become available from the full set of evaluation studies. As more information becomes available, additional adjustments will be called for. Multiple adjustments could lead to more litigation.

34. A Bureau decision to adopt an adjustment procedure that is not statistically defensible is a step toward politicizing the Bureau.

35. Adjustment of census counts will result in the perception that the Bureau has changed the numbers for political purposes.

36. Adjustment of 1980 census data will raise serious doubts about whether the current investment in data collection should be repeated for the next census, whether the costs of data collection for surveys and other censuses are cost effective, and whether rigorous statistical standards for data quality are necessary. Concerns about response burden could intensify and the high levels of respondent cooperation could diminish.

Appendix C—References and Background Material

Discussion Toward the 1980 Undercount Adjustment Decision

1. Bounpane, Peter, and Mayer Zitter. "Technical Issues in Adjusting for the Census Undercount," presented at the 1980 Annual Meeting of the American Statistical Association, Houston, Texas: August 11–14, 1980.

2. Letter to the Honorable William Lehman, Chairman, Subcommittee on Census and Population, House Committee on Post Office and Civil Service, from the Comptroller General of the United States, November 9, 1978, GGD–79–7.

3. National Academy of Sciences, National Research Council, Assembly of Behavioral and Social Sciences, Committee on National Statistics, Panel on Decennial Census Plans. *Counting the People in 1980: An Appraisal of Census Plans.* Washington, DC: 1978.

4. Passel, Jeffrey S. and Jacob S. Siegel. "Measuring the Coverage of the Hispanic Population of the United States in the 1970 Census by Demographic Analysis," revised version of a paper presented at the 1979 Annual Meeting of the Southwestern Social Science Association, Fort Worth, Texas: March 28–31, 1979.

5. Siegel, Jacob S., Jeffrey S. Passel and J. Gregory Robinson. "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," Working paper for the research staff of the Select Commission on Immigration and Refugee Policy, January 1980.

6. U.S. Bureau of the Census. *Conference on Census Undercount, Proceedings of the 1980 Conference,* Washington, DC: July 1980. See especially:

"The Census Bureau Experience and Plans," Jacob S. Siegel and Charles D. Jones

"Adjusting for Decennial Census Undercount: An Environmental Impact Statement," Peter K. Francese

"The Impact of Census Undercoverage on Federal Programs," Courtenay M. Slater

"The Impact of the Undercount on State and Local Government Transfers," Herrington J. Bryce

"Should the Census Count Be Adjusted for Allocation Purposes: Equity Considerations," Ian P. Fellegi

7. U.S. Bureau of the Census. "Coverage of Population in the 1970 Census and Some Implications for Public Programs," *Current Population Reports,* Series P–23, No. 56, Washington, DC: U.S. Government Printing Office, 1975.

8. U.S. Bureau of the Census. 1970 Census of Population and Housing, *Evaluation* and Research Program, "Estimates of Coverage of Population by Sex, Race, and Age: Demographic Analysis" Issued February 1974, Reprinted June 1976.

9. U.S. Bureau of the Census. *Proceedings of the Census Undercount Workshop, September 5–8, 1979,* Washington, DC: October 2, 1979.

Framework for the Decisionmaking Process

10. Mason, Richard O. and Ian I. Mitroff, *A Primer for SAST: Strategic Assumption Testing and Surfacing for Strategic Management.*

11. Toulmin, Stephen, Richard Rieke and Allan Janik. *An Introduction to Reasoning.* New York: Macmillan Publishing Co., Inc., 1979.

[FR Doc. 80–32557 Filed 10–17–80; 8:45 am]

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federal register

Monday
October 20, 1980

Part IV

Department of Education

Research in Education of the Handicapped: Proposed Rules and Announcement of Closing Date for Transmittal of Applications for Certain Projects for Fiscal Year 1981

DEPARTMENT OF EDUCATION

45 CFR Part 121h

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations for the Research in Education of the Handicapped Program to clarify the definition of eligible applicants, and to reflect administrative policy decisions regarding Federal direction of the program.

These regulations make explicit that both nonprofit and profit making organizations are eligible to participate in the program. They also provide a means for the Secretary to direct portions of available funds to particular types of research and model program activities through the establishment of priorities for major program activities.

DATES: Comments must be received on or before December 19, 1980.

ADDRESSES: Comments should be addressed to Jane Case Williams, U.S. Department of Education, Office of Special Education, Room 3117, Donohoe Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jane Case Williams. Telephone (202) 245–3387.

SUPPLEMENTARY INFORMATION: This program sponsors both research and model projects. Research projects are designed to identify and solve critical problems involved in educating handicapped individuals and to translate those solutions into the development of practical techniques and materials. Model projects develop and implement innovative approaches to the education of the handicapped.

The program is authorized to support research activities and model programs through grants or contracts.

These proposed regulations amend the present system of selecting annual priorities for funding. The Secretary has determined that the funding priorities for model programs in the current § 121h.10 are inadequate.

The following amendments are proposed:

(a) The revision of § 121h.3 to clarify that profit making organizations are eligible for contracts under Part E of the Education of the Handicapped Act.

(b) The revision of § 121h.4 to define both Research and Model Programs.

(c) The deletion of § 121h.5 as unnecessary due to the addition of the new §§ 121h.9 and 121h.12.

(d) The addition of new § 121h.9 to list priority areas from which the Secretary may annually choose priority areas for funding Research and Model Programs.

For the Student Initiated Research priority area, the Secretary proposes to limit eligible applicants to post-secondary students to assist in the implementation of the State-wide personnel development plan mandated by Part B of the Education of the Handicapped Act.

(e) The addition of a new § 121h.10 to explain how the Secretary selects and announces a priority area.

(f) The addition of a new § 121h.11 to explain that the Secretary establishes a separate competition for each selected priority, and to discuss how the Secretary treats an application that addresses both a priority and non-priority area.

(g) The addition of a new § 121h.12 to state that, regardless of any priority area selected by the Secretary, the Secretary funds a separate competition each year to accept applications for any activity authorized under Part E of the Education of the Handicapped Act.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before December 19, 1980, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3165, 400 6th Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1441–1444))

Dated: October 15, 1980.

(Catalog of Federal Domestic Assistance No. 84.023, Research in Education of the Handicapped)

(Sec. 641–644, Education of the Handicapped Act, as amended 84 Stat. 185 (20 U.S.C. 1441–1444), unless otherwise noted)

Steven A. Minter,

Acting Secretary of Education.

The Secretary of Education proposes to amend Title 45 CFR Part 121h as follows:

PART 121h—RESEARCH IN EDUCATION OF THE HANDICAPPED

1. Section 121h.3 is revised as follows:

§ 121h.3 Eligible parties.

The Secretary may make grants to or contracts with States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations. In addition the Secretary may award contracts to profitmaking organizations.

(20 U.S.C. 1441–1442)

2. Section 121h.4 is revised as follows:

§ 121h.4 Research and model projects.

(a) Research projects supported under this part are designed to generate knowledge about the education of handicapped children and to translate such knowledge into practical techniques and materials.

(b) Model projects supported under this part develop and implement innovative educational programs that serve handicapped individuals either directly or indirectly. These projects are designed to—

(1) Improve significantly an aspect of the education of the handicapped population;

(2) Continue beyond the award period; and

(3) Provide for the dissemination and replication of a successful program.

(20 U.S.C. 1441–1442)

§ 121h.5 [Deleted]

3. Section 121h.5 is deleted.

4. Sections 121h.9 and 121h.10 are revised as follows:

§ 121h.9 Priorities for Research and Model Programs.

The Secretary may select annually one or more priorities from the following:

(a) *Research Integration Projects.* This priority supports projects that examine the state of the art in areas related to education of the handicapped and that analyze and interpret future research needs in those areas.

(b) *Technology Utilization Research Projects.* This priority supports research on the actual use of technological devices and systems in schools and by students.

(c) *Assessment Research Projects.* This priority supports research on, the use of existing assessment instruments and systems related to education of the handicapped.

(d) *Youth Employment Research Projects.* This priority supports research into the role of the school in increasing the employability of handicapped children, and into any option open to handicapped children providing for the transition from school to work.

(e) *Ethnic or Racial Group Handicapped Research Projects.* This priority supports research dealing with the unique educational problems resulting from a combination of membership in a particular racial or ethnic group and handicapping condition(s).

(f) *Non-vocal Communication Research Projects.* This priority supports research in educational programs for non-vocal, severely handicapped children.

(g) *School Based Research Projects.* This priority supports research based upon data available from school records focusing on issues related to the implementation of Part B of the Education of All Handicapped Childern Act.

(h) *Student Initiated Research Projects.* This priority provides support to post-secondary students to initiate and direct a broad range of research and research-related projects focusing on the education of handicapped children. The Secretary proposes to limit eligible applicants to post-secondary students to assist in the impementation of the Statewide personnel development plan mandated by Part B of the Education of the Handicapped Act.

(i) *Related Services Demonstration Projects.* This priority supports innovative demonstration projects focusing on the provision of related services for handicapped children as defined by Part B of the Education of the Handicapped Act, and other facilitative services or activities which complement the implementation of that Act.

(j) *Secondary Age/Level Demonstration Projects.* This priority supports innovative demonstrations of educational services delivery to handicapped children who are of post-elementary age or grade level.

(k) *Specific Handicapping Conditions.* This priority supports projects focusing on the provision of special education and related services to language impaired, autistic, or seriously emotionally disturbed children.

(20 U.S.C. 1441–1442)

§ 121h.10 How the Secretary selects and announces a priority.

(a) The Secretary selects a priority based upon current needs in the education of handicapped children, as those needs arise in the implementation of Part B of the Education of the Handicapped Act.

(b) The Secretary announces the priority areas selected for each fiscal year in the Application Notice for that year.

(20 U.S.C. 1441–1442)

5. New §§ 121h.11 and 121h.12 are added as follows:

§ 121h.11 How the Secretary uses a priority.

(a) The Secretary establishes a separate competition for each selected priority area. An application which does not address a priority area will not be considered in the competition for that area.

(b) If an application addresses both a priority area and a nonpriority area, the Secretary may consider that part which addresses the priority area separately from that part which does not.

(20 U.S.C. 1441–1442)

§ 121h.12 Separate competition for all authorized research and model programs activities.

In addition to the use of any priority area selected under § 121h.9, the Secretary establishes separate competitions, under both the Research and Model Programs, for any activity authorized under Part E of the Education of the Handicapped Act.

(20 U.S.C. 1441–1442)

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BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

School Based Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for school based research projects for fiscal year 1981.

Applications are invited for requests to support new research projects related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research based on data available from school records, and focused on issues related to the implementation of Part B of The Education of the Handicapped Act, as amended by Pub. L. 94–142.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by December 19, 1980.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023J, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $200,000 is available for support of School Based Research projects. Projects should be for twelve months or less duration and budgeted at less than $20,000.

Applications forms: Application forms and program information are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register**. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32503 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Research Integration Projects

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for research integration projects for fiscal year 1981.

Applications are invited for new projects for support of integration of research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support projects that examine the state of the art in critical areas related to education of the handicapped, integrate available research information, and analyze and interpret future research needs in those areas.

Research Integration grants may include costs of reviewing the literature, contacting persons involved in on-going projects pertinent to the review topic, and preparing written reports of the review findings and research recommendations.

Closing Date for Transmittal of Applications: Applications must be mailed or hand delivered by December 19, 1980.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023H, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-deliverd will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $150,000 is available for support of up to 16 research integration projects at funding levels of up to $20,000. Projected timelines should be 12 months or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW, (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Divison General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32504 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Handicapped Children's Model Program

AGENCY: Department of Education.

ACTION: Closing date notice for transmittal of applications for fiscal year 1981.

Applications are invited for new demonstration projects under the Handicapped Children's Model Program.

Authority for this program is contained in Section 641 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441).

This program issues awards to States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations.

The purpose of this program is to develop and conduct model programs designed to meet the special educational needs of handicapped children.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by January 5, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.023D, Washington, D.C. 20202.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $2,000,000 is available for support of new demonstration projects in 1981. It is expected that about 25 new grants will be awarded. The range of funded projects is expected to be from approximately $50,000 to $110,000 per year. In 1980, the average award was $104,000.

There will be separate competitions for each of the three priorities specified, and a general competition for applications addressing other innovative activities authorized under the Handicapped Children's Model Program. An applicant may submit a comprehensive project which addresses two or more of the specified priorities.

Priorities for funding: The notice of proposed rulemaking, found in the proposed regulations section of this issue of the **Federal Register**, authorizes the Secretary to select from among eligible activites and areas (45 CFR proposed § 121h.9) those to which priority may be given through announcement in the **Federal Register.**

Each year the Secretary selects priorities based on the Secretary's determination of the current needs in the education of handicapped children. In addition to funding projects addressing announced priorities, the Secretary may choose to support projects that do not address a specified priority but are

within the scope of the authorized activities under section 641 of Part E of the Education of the Handicapped Act.

For fiscal year 1981, the Secretary selects the following three priority areas for funding:

(1) *Related Services Demonstration Projects.* This priority supports innovative demonstration projects focusing on the provision of related services for handicapped children, as defined by Part B of the Education of the Handicapped Act, and other facilitative services or activities which complement the implementation of that Act;

(2) *Secondary Age/Level Demonstration Projects.* This priority supports innovative demonstrations of educational services delivery to handicapped children who are of post-elementary age or grade level; and

(3) *Specific Handicapping Conditions.* This priority supports projects focusing on the provision of special education and related services to language impaired, autistic, or seriously emotionally disturbed children.

Application forms: Application forms and program information packages are expected to be ready for mailing November 4, 1980. They may be obtained by writing to the Handicapped Children's Model Program, Program Development Branch, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Special procedures: Every applicant is subject to the State and areawide clearinghouse review procedures under OMB Circular A–95 and the Department's implementing regulations in EDGAR (see "APPLICABLE REGULTIONS"), 45 CFR 100a.170–100a.173.

An applicant should check with its appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) up to 60 days for review, consultation, and comments on the application.

In its application each applicant must provide—

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of Part I of OMB Circular A–95 but did not receive any clearinghouse comments.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Children's Model Program (45 CFR Part 121h);

Note.—Proposed amendments to the selection criteria for model programs (45 CFR 121h.8) were published in the **Federal Register** on April 3, 1980 (45 FR 22813).

Further amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register**. These amendments, when they become final will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FURTHER INFORMATION: For further information contact the Handicapped Children's Model Program, Program Development Branch, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone (202) 245–3387.

(Catalog of Federal Domestic Assistance No. 84.023D, Handicapped Children's Model Program)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80–32505 Filed 10–17–80; 8:45 am]

BILLING CODE 4000–01–M

Assessment Research Projects

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for assessment research projects.

Applications are invited for new projects for support of Assessment Research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The Assessment Research program supports research on assessment which is related to the education of the handicapped. Applications must focus on research relating to existing assessment instruments and systems and not on new test development.

Closing date for transmittal of applications: Applications for awards must be mailed or hand delivered by January 9, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023E, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $250,000 is available for support of Assessment Research. Projects should be planned to be completed within a twelve month period, and budgeted at $50,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h).

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 13, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW. (Room 3165, Donohoe Building), Washington, D.C. 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32506 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Nonvocal Communication Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for non-vocal communication research projects for fiscal year 1981.

Applications are invited for new projects for support of non-vocal communication research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research addressing communication alternatives for the non-vocal, severly handicapped child.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 9, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023K, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delievered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets, SW., Washington, D.C.

The application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $200,000 is available for support of Non-vocal Communication Research projects. Projects should be planned for 12 months' duration or less, and budgeted at $40,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW., (Room 3165, Donohoe Building), Washington, D.C. 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32507 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Technology Utilization Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for Technology Utilization Research projects for fiscal year 1981.

Applications are invited for new projects for support of technology utilization research related to education of the handicapped.

Authority for this program is contained in Sections 641 and 642 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research on the actual use of technological devices and systems in schools and by students as it relates to handicapped children.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 9, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023L, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets, SW, Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $200,000 is available for support of Technology Utilization Research projects. Projects should be planned for 12 months' duration or less, and budgeted at $40,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW, (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register**. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32508 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Youth Employment Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for youth employment research projects for fiscal year 1981.

Applications are invited for new projects for support of youth employment research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research in the role of the school in increasing the employability of handicapped youth. Issues which may be addressed include any option open to handicapped youth that provides for transition from school to work.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 23, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023F, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $250,000 is available for support of Youth Employment Research projects. Projects should be planned for completion within a 12 month Period, and budgeted at $50,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32509 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Minority Handicapped Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for ethnic or racial group handicapped research projects for fiscal year 1981.

Applications are invited for new projects for support of racial or ethnic group handicapped research projects related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research dealing with the unique educational problems resulting from a combination of membership in a particular racial or ethnic group and handicapping condition(s).

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 23, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023G, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $250,000 is available for support of Minority Research projects. Projects should be planned to be completed within a 12 month period, and budgeted at $50,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h).

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW. (Room 3165, Donohoe Building), Washington, D.C. 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32510 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Field Initiated Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for field initiated research for fiscal year 1981.

Applications are invited for new projects for support of Field Initiated research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to provide a source of support for a broad range of research and development projects which fall outside the areas of interest defined by solicitations for directed research activities. The appropriate areas of interest for projects are limited only by the mission of the Research program—support of applied, educational research relating to education of the handicapped.

Closing date for transmittal of applications: Applications for awards must be mailed or hand delivered by February 6, 1981.

Applications delievered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023C, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $1,500,000 is available for support of new Field Initiated Research projects in 1981. Based on a mean grant amount in recent years of approximately $95,000 we expect that about 15 new grants will be awarded. The range of funding for 1980 projects was from under $15,000 per year to over $200,000. Most awards were for under $100,000 per year.

While the limit on duration of projects is 60 months, the vast majority of field-initiated projects are for one to three years. In the event that assistance is provided for multiple year projects, grant awards will be for a budget period of a single year's duration with continuation awards made in accordance with 45 CFR 100a.117, 118 and 100a.250–253.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW, (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32511 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Handicapped Children's Model Program

AGENCY: Department of Education.

ACTION: Closing date notice for transmittal of applications for fiscal year 1981.

Applications are invited for noncompeting continuation projects under the Handicapped Children's Model Program.

Authority for this program is contained in Section 641 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441).

This program issues awards to States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations.

The purpose of this program is to develop and conduct model programs designed to meet the special educational needs of handicapped children.

Closing date for transmittal of applications: To be assured of consideration for funding, and application for a noncompeting continuation award should be mailed or hand delivered by March 12, 1981.

If the application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.023D, Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, and Federal holidays.

Available funds: The funding level for the Handicapped Children's Model Program for noncompeting continuations is expected to be approximately $5,500,000 for fiscal year 1981. During the previous year of the program, the range of individual awards for continuation projects was between $55,000 and $145,000.

Application forms: Application forms and program information packages are expected to be ready for mailing by January 8, 1981. They may be obtained by writing to the Elementary, Secondary, Postsecondary Section, Program Development Branch, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that applicants not submit information that is not requested.

Special procedures: Every applicant is subject to the State and areawide clearinghouse review procedures under OMB Circular A–95 and the Department's implementing regulations in EDGAR (see "Applicable Regulations"), 45 CFR 100a.170–100a.173.

An applicant should check with its appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) up to 60 days for review, consultation, and comments on the application.

In its application each applicant must provide—

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of Part I of OMB Circular A–95 but did not receive any clearinghouse comments.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Children's Model Program (45 CFR Part 121h).

Note.—Proposed amendments to the selection criteria for model programs (45 CFR 121h.8) were published in the **Federal Register** on April 3, 1980 (45 FR 22813). Further amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FURTHER INFORMATION: For further information contact the Handicapped Children's Model Program, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245–9722.

(20 U.S.C. 1441)

(Catalog of Federal Domestic Assistance, No. 84.023D, Handicapped Children's Model Program)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 32512 Filed 10–17–80; 8:45 am]

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federal register

Monday
October 20, 1980

Part V

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Interstate System Withdrawal and Substitution; Revision of Regulations

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 450 and 476

Interstate System Withdrawal and Substitution; Revisions

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) are issuing these revised regulations to implement statutory amendments pertaining to the withdrawal of certain nonessential Interstate highway routes from the Interstate System and to the use of funds thus authorized for substitute highway or nonhighway public mass transit projects.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. L. A. Staron, Office of Engineering (202–426–0404), or Mr. Frank Calhoun, Office of the Chief Counsel (202–426–0761), in the Federal Highway Administration (FHWA); or in the Urban Mass Transportation Administration (UMTA), Mr. Richard White, Office of Transit Assistance (202–472–6997), or Mr. John Collins, Office of the Chief Counsel (202–426–1907), all at 400 Seventh Street, SW., Washington, D.C. 20590. The FHWA hours are from 7:45 a.m. to 4:15 p.m. and the UMTA hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations provide for the withdrawal of certain uncompleted or planned highways on the Interstate System in and connecting urbanized areas (within a State) and the transfer of their funding entitlements to other transportation projects under the Interstate transfer provisions first enacted in the Federal-Aid Highway Act of 1973. States and local jurisdictions can use these transfer provisions to accommodate revised plans for providing urban transportation. Involved, basically, are two major steps: the withdrawal of a nonessential segment of the Interstate System, and the substitution of highway and/or transit projects to serve the area that would have been served by the withdrawn segment.

In order to be considered for withdrawal, a segment of the Interstate System must be within an urbanized area or the segment can also pass through and connect urbanized areas within a State. Specifically excluded are segments added to the System after May 5, 1976, as substitutes for segments withdrawn under 23 U.S.C. 103(e)(2), open to traffic segments, toll roads incorporated in the System, and routes which were added to the System under 23 U.S.C. 139. Also excluded are segments added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted. Further, the approval of any new Interstate withdrawals is not permitted after September 30, 1983, unless the segment was under judicial injunction prohibiting its construction on November 6, 1978.

The withdrawal request is a joint submittal of the Governor and local governments within whose jurisdiction the Interstate segment would have been located and must include, for the portion of segments within an urbanized area, the concurrence of the metropolitan planning organization (MPO) representing the principal elected officials of the area. The request should be submitted to FHWA and UMTA through the FHWA Division Administrator in the State involved.

The principal Federal decision in an Interstate withdrawal is the determination that the segment is not essential to completion of a unified and connected Interstate System.

Joint approval of a withdrawal by the Federal Highway and Urban Mass Transportation Administrators authorizes an amount from general funds of the U.S. Treasury to be appropriated for substitute projects serving the same area. The amount is computed from the Federal share for completion of the segment, as shown in the latest Interstate Cost Estimate (ICE) approved by Congress, and is adjusted quarterly, up or down, according to price trends in Federal-aid highway construction. This adjustment continues for unobligated funds up to the point that each substitute project under the withdrawal is approved, until the balance of funding authorized by the withdrawal is fully obligated. General fund appropriations for substitute projects are provided by Act of Congress on an annual basis.

Substitute funds may be used in any combination for a wide variety of highway and public mass transit projects. The Federal share for the projects chosen will be up to 85 percent of the project cost. Highway projects are street and highway improvements on any of the Federal-aid systems described in 23 U.S.C. 103. Transit projects include any undertaking to develop, improve, or purchase public mass transit facilities or equipment (with the exception of operating assistance), such as construction of fixed rail facilities and purchase of bus and rail rolling stock, and other transportation equipment.

The 1978 Federal-Aid Highway Act imposes two critical time limitations concerning substitute projects. Substitute projects must receive Federal approval by September 30, 1983, and (providing sufficient Federal funds are available) be under construction or under contract for construction by September 30, 1986. To meet the first time limitation, the regulations call for the submission of a concept program which identifies the proposed substitute projects to be approved. This concept program should be endorsed by the MPO of the urbanized area (for those projects in or serving that urbanized area) or by the jurisdiction served by a project (for those projects in or serving the nonurbanized area connecting corridor). The concept program should be submitted by the Governor or his/her designee to the Federal Highway Administrator. The Urban Mass Transportation Administrator and the Federal Highway Administrator act jointly in the review and approval of concept programs.

The second time limitation involves the actual implementation of substitute projects and is therefore dependent on the availability of Federal funding and the completion of any required preliminary steps such as public hearings, environmental impact statements, final design, etc. Subject to the deadlines and funding availability, projects may be advanced for obligation of Federal funds immediately or as they individually become ready.

Governors or their designees submit applications for nonhighway transit projects to the appropriate Urban Mass Transportation Administration (UMTA) Regional Office and for highway projects to the FHWA Division Office.

Transit project applications are developed by transit officials for the area or by local governments in consultation with the transit officials. Highway projects are developed by the State or local officials responsible for the highway system and type of improvement involved. Urbanized area (50,000 or more population) projects must be based on the urban transportation planning process for the area and must be selected by the MPO and endorsed in an annual element of a Transportation Improvement Program

(TIP/AE). Projects outside an urbanized area must have the concurrence of the responsible officials of the local jurisdictions in which the projects are located. Substitute highway projects, however, need not be processed through the annual statewide program of Federal-aid highway projects.

Substitute project requests for Federal authorization to proceed or for grant approval are processed in the same manner as similar projects programmed under normal FHWA procedures (for highway projects) and UMTA procedures (for nonhighway public mass transit projects).

Disposition of Comments

A notice of proposed rulemaking for proposed revisions to the Interstate System withdrawal and substitution program was published in the Federal Register on January 10, 1980 (45 FR 2296). Sixty comments were received. These include: Seven from State governors, seven from State legislators, eighteen from State highway agencies, two from other State agencies, eleven from cities and counties, three from planning organizations, two from national local government organizations, three from private citizen groups, two from a trade organization, and one each from the House of Representatives Committee on Public Works and Transportation, a transit operator, a national utility organization, a private citizen, and a Federal agency.

The commentors generally expressed support for the proposed regulations, many suggested editorial and other minor changes and clarifications. In the preparation of the final regulations, set forth below, consideration was given to all comments received in response to the notice of proposed rulemaking, insofar as they relate to matters within the scope of the notice. Except for editorial changes, and except as specifically discussed hereinafter, these regulations and the reasons therefor are the same as contained in the notice. Most of the changes are clarifications rather than substantive alterations; however, several comments resulted in substantive alterations to the regulations. In view of the interest in these regulations, each section of these final regulations which has been revised or which was the subject of major commentary or concern is discussed in detail below.

General

Several commentors took issue with requirements that the Governor, specifically, must act at several key points in the withdrawal/substitution process. A major objection was based on existing longstanding delegations of authority to highway or transit agencies resulting from State law or policy. The regulations, however, repeat statutory language wherein withdrawal requests and substitute projects must be submitted by the Governor. They also extend the latter statutory requirement to submittal of the substitute projects concept program by the Governor. To emphasize the statutory requirement, a definition of "Governor" has been added under § 476.2(b) and "or his/her designee" has been deleted from § 476.308(a). Nevertheless, the definition recognizes the right of these chief executives to delegate their authority for the above actions when the delegations are documented as specifically referring to these regulations. The Department will accept the actions of designees thus established who are acting for the Governor.

A basic premise of these regulations is that Governors (including their specific designees) and local officials have the responsibility in the Interstate transfer process to meet the needs of their own jurisdictions in such a way that programs of mutual benefit can be implemented and that conflicts can be resolved. The techniques for meeting these responsibilities include those that have been tested by time in categorical programs of the Department such as Section 3 public transportation grants and Federal-aid Primary System highway authorizations or have been the subject of intermodal regulations for transportation planning in urbanized areas. The new characteristics of Interstate transfer, however, would have led to much more extensive State-local procedural requirements if the State's chief executive were not assigned a key role by the legislation.

The Department reaffirms the June 1974 preamble statement on the regulations hereby being revised that: "The Federal Government will not be an arbiter in these matters of State and local decisionmaking." At that time the statement referred to State-local coordination of withdrawal requests and to disagreements about essentiality of Interstate segments. Additional areas of decisionmaking to which this applies are programing of Federal and State funds across time on a statewide basis, distribution of substitute funds from a single withdrawal between urbanized areas and jurisdictions in nonurbanized connecting corridors, balancing of available funds to meet substitute highway and substitute transit needs on a statewide basis, and project development and submittal procedures. Each of these and other important decisionmaking areas can have critical State level, State-local, and local level implications which are properly resolved, when necessary, by the Governor prior to Federal involvement.

The Department agrees with comments to the effect that the proposed regulatory wording had the unintended effect of diminishing the decisionmaking role of the Governor by implying mandatory pro forma submittal of requests endorsed by local officials. Clarifying amendments have been made to §§ 476.308(a) and 476.310(e).

Four comments were received concerning the deadlines for submitting withdrawal requests and concept programs. Prior to September 30, 1983, the concept programs will be used primarily for budget purposes. The projected funding needs contained in the programs will facilitate the preparation of accurate budget proposals. Funding requests for individual projects may be submitted and approved without previously being approved in concept, as part of a concept program, until September 30, 1983. After September 30, 1983, in addition to budgeting purposes, concept approval becomes a prerequisite to individual project approvals. The only exception to this is for those concept programs related to Interstate segments which were under injunction prohibiting their construction as of November 6, 1978. In these cases the September 30, 1986, time limitation will govern approval of withdrawals and the development of substitute projects. Since all withdrawals and project concepts (except those under injunction) must be approved prior to September 30, 1983, it was suggested in the NPRM preamble that they should be submitted by July 30, 1983, to provide adequate time for review and approval. Withdrawal requests and concept programs submitted between July 30, 1983, and September 30, 1983, will be given prompt consideration so that the September 30, 1983, time limitation can be met. However, the statutory language does not provide any flexibility with regard to this time limitation. It may be difficult to provide approvals for requests which are submitted just prior to September 30, 1983, if they lack appropriate documentation or are found deficient in some other regard. Additional guidance concerning the preparation and submission of concept programs will be provided in directives shortly after issuance of this final rule.

One comment asked whether the programming of an Interstate substitute transit project in the Annual Element of a Transportation Improvement Program (TIP/AE) would affect the availability of

UMTA capital grant funding under the Section 3 and 5 capital grant programs. Section 103(e)(4) of Title 23, U.S.C., requires that Interstate substitution funds be "supplementary to and not in substitution for" funds available under the Urban Mass Transportation Act, of 1964, as amended. As such, the use of these funds will not jeopardize the availability of UMTA Section 5 formula apportioned funds and Section 3 discretionary grant funds, to the extent that discretionary funds are available. In addition, § 476.312 of the regulation provides for the utilization of Interstate substitution funding in combination with other Federal mass transit and/or highway funding for the purppose of implementing a project which might not otherwise be possible through the use of only one source of funding.

One comment suggested the regulations be revised to permit the further designation of Interstate routes because the provisions of the Federal-Aid Highway Act of 1978 could be interpreted to permit the continued designation of routes with Federal Interstate funding. This suggestion was not adopted because the statutory language clearly has been read in Section 107(a)(1) and 107(b) of the 1978 Act to prohibit designation of mileage as part of the Interstate System.

Definitions (§ 476.2)

This section includes only those definitions considered necessary. Two new definitions were included and four of the previous definitions were revised as a result of comments received.

One comment noted that the term "concurrence," as defined in § 476.2(b)(2), was not appropriate for the way the term was used in § 476.310(b) and (c). The definition has been modified so that it is appropriate for usage throughout the final rule.

A definition for "Governor" was added. The need for this new definition is discussed in this preamble under "General," above, and under "Proposals For Substitute Public Mass Transit And Highway Projects (§ 476.310)," below.

Several comments were received requesting clarification of the definition of "open to traffic" as it was contained in proposed § 476.2(b)(5). Additional clarification has been provided in the revised definition as contained in renumbered paragraph (6) and also in § 476.302(b)(5). Some of the language from the preamble was included in the regulation. One comment suggested that "new location" should be eliminated from the reference to a highway being replaced by an entirely new facility as the phrase is not pertinent in evaluating whether or not a facility should be considered "open to traffic." We agree that this is not always a valid measure and have not included this NPRM preamble wording in the final regulations. No attempt was made to provide a precise definition which would cover the wide variety of potential cases. The determination on a segment's classification as "open to traffic" will be made on a case-by-case basis after reviewing the history of the Interstate segment, currently approved design concept, operational characteristics, and other pertinent information.

Several comments and questions were received concerning types of projects that could be approved as substitute highway projects. The definition of a "substitute highway project" has been revised to remove any question of consistency with the provisions of Title 23, U.S.C., by allowing any undertaking on the Federal-aid systems described in 23 U.S.C. 103 which is eligible for Federal financial assistance under Title 23. The definition now makes reference to several eligible projects including projects for high occupancy vehicle lanes, carpooling and vanpooling. The original wording was intended to allow any construction, as defined in Title 23, U.S.C., which would be done on any Federal-aid highway system under the provisions of Title 23, but was not intended to include undertakings on other highway systems.

One comment noted that the proposed revised definition of a "substitute nonhighway public mass transit project" appeared to expand project eligibility beyond the legislative authority of 23 U.S.C. 103(e)(4). The definition has been amended to conform to that used in the original regulation with an appropriate modification to reflect the transportation improvement program requirements of 23 CFR 450.306.

Several comments requested clarification on what constitutes "under construction or under contract for construction" as this wording was used in § 476.310(g). A new definition has been included in § 476.2(b)(10), for "under construction or under contract for construction." The new definition indicates that obligations or grants for physical construction must have occurred which would fully commit the ultimate project in both length and scope. Detailed guidance will be provided later on this item in the form of FHWA and UMTA directives.

Applicability (§ 476.302)

This section describes the Interstate System segments to which these regulations do and do not apply. It also discusses the time limitation for approval of withdrawal requests. Two substantial revisions were made and clarification was provided in one subparagraph as a result of comments received.

The House Public Works Committee expressed disagreement with allowing application for withdrawal on a segment which "has portions within an urbanized area and has portions outside the same urbanized area but in close proximity to that area." The final regulations reflect this comment by providing for withdrawal of only those segments entirely within urbanized areas and segments that pass through and connect urbanized areas in a State in paragraph (b).

Paragraph (b)(5) discusses open to traffic Interstate segments. Clarification has been provided for segments in which only a portion, between logical termini, is open to traffic.

One comment questioned the applicability of the regulations to a segment added to the Interstate System by specific legislation. When the proposed rule was being prepared for publication, Department policy concerning such additions was not firmly established and therefore could not be reflected. Now, Department policy has been developed to a point where these additions can be addressed in this final rule. Congress mandated these routes and it is evident from their legislative histories that Congress considered the routes to be of great importance. Although the Department may have the legal authority to approve the withdrawal of such segments, it would be highly inappropriate to remove a segment from the Interstate System which Congress, by law, had directed to be added to the System. Therefore, the Department will not approve the withdrawal of any segment added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted. This restriction is reflected in new subparagraph (6) of § 476.302(b).

Withdrawal Request (§ 476.304)

This section contains a discussion of the requirement for joint submission of a withdrawal request by the Governor and local government concerned. It also outlines the items which must be included in the request. Only one minor clarifying revision was made to this section as a result of comments received. Additional clarification is offered in this section of the preamble.

Two comments were received concerning the need to include public involvement in the withdrawal process with one comment suggesting responsible local civic or neighborhood

groups be permitted to initiate withdrawal requests. Secion 103(e)(4) of title 23, U.S.C., requires a withdrawal request be made jointly by "the State Governor and the local governments concerned." In some cases, these parties may consider it appropriate to hold public hearings or request other input from various sources before making a decision. In other cases, adequate information may already be available from the normal planning and preliminary project activities. Another comment received from a city expressed concern that the rules for requesting withdrawal of an interstate segment could be interpreted so as to preclude use, in the State and local decisionmaking process, of the legislative devices of referendum and initiative. Nothing in these rules is intended to preclude the legislative prerogative of a State or local electorate with respect to the withdrawal process so long as the action is permissible under State and/or local law.

In the absence of specific legislative requirements, it is not considered appropriate to prescribe the specific arrangements or determinations upon which State and local officials must base their decision.

Two comments were received concerning the role of metropolitan planning organizations (MPO's) in the withdrawal and substitution process. This role was not introduced by the current regulatory revision but has been a part of the process since the original notice of proposed rulemaking on March 11, 1974. It is considered critical to retain the involvement of the parties responsible for long-range, comprehensive planning in urbanized areas in decisions having a significant impact on the development of those areas. The Department believes that in urbanized areas the local governments concerned and the responsible local officials should be involved in withdrawal and substitution decisions. Such cooperation and consultation is considered important and in keeping with the emphasis on local involvement in 23 U.S.C. 134. Additionally, it assures that all concerned entities are kept informed of plans and decisions affecting their interests. The representation of the MPO is primarily a State/local matter. However, 23 CFR 450.104(d) does require that principal elected officials of general purpose local government within the jurisdiction of the MPO have adequate representation on the MPO. Selection of project concepts and the development of substitute projects are consistent with the normal procedures for FHWA and UMTA projects.

Several commentors asked who was responsible for acting on behalf of local governments concerned in partnership with the Governor in proposing withdrawal requests (e.g., Chief Executive, Council, Commission, etc.). The regulations do not prescribe who is responsible for acting on behalf of the local government concerned in this situation. It is assumed that a delineation of authority exists within each municipality which established appropriate roles for governing the affairs of that municipality. The Department is looking for an action that is current and binding for the particular form of local government. Unless there are reasons to believe otherwise, it is assumed that the individual group that has taken a concurrence action on behalf of the local government concerned has the authority to do so. Also, the District of Columbia expressed concern that the proposed regulations would prescribe an internal operation since the term "Governor" was understood and would now be defined to mean the Mayor for that area. Once again, this is not the case. Should the Mayor have the local authority to act as the unilateral representative of the District of Columbia in such matters, then his concurrence alone would be sufficient both in terms of acting as the Governor and as the local government concerned.

One comment suggested that § 476.304(b) could be clarified by adding a statement that the concurrence of the responsible local officials is required regardless of the method used to accomplish the required joint submittal for segments in urbanized areas. This requirement was indicated in § 476.304(a) but has also been added to paragraph (b) to provide the suggested clarification.

At least six commentors took issue with the lack of precision in not requiring unanimous local support for withdrawal of an Interstate segment. Recommendations were received suggesting the regulations require total support of all local governments concerned or support of a "majority" or a stated percent of the local government concerned. The Department continues to view the statutory language as not requiring local unanimity and basically judgmental in application. Substantial local support coupled with the approval of the Governor and, in urbanized areas, with concurrence of responsible local officials has proven to be a workable approach in withdrawal submissions to date, and would become no clearer if assigned a numerical guideline.

One comment suggested that the intent of the statute with regard to withdrawals of nonurbanized portions of segments did not require support by nonurbanized local governments concerned. While it can be agreed that emphasis in withdrawals is given to urbanized areas by the legislation, no basis can be found for excluding any local government, in whose jurisdiction the segment lies, from an assessment of substantial local support.

One comment suggested that when a withdrawal request is being prepared, the entire Federal-aid system in the corridor should be reviewed and expanded to include all major roadway facilities. These regulations require the participation of the MPO in the decision to withdraw a segment of the Interstate System and the selection of projects in a manner consistent with the urban transportation planning process for the area. As a part of this process, it is expected that the transportation plans for the affected area will be reevaluated to take into consideration the effect of deleting a significant link in the highway network. As part of the normal planning process, this evaluation would consider the need to revise the functional classification of roads and streets, possible changes in the Federal-aid system, and the additional demands which will be placed upon portions of the remaining network within the corridor.

Withdrawal Approval (§ 476.306)

This section describes factors considered prior to Departmental approval, procedures for adjusting authorized funds, and other technical matters related to the approval of a withdrawal request. Only one subparagraph was revised as a result of comments received. However, this section of the preamble provides clarification for other comments received.

The regulations provide for the approval of withdrawals by the Federal Highway Administrator and the Urban Mass Transportation Administrator. A question was raised as to why the UMTA Administrator is directly involved in the withdrawal approval process since the principal Federal decision is the determination that the segment is not essential to completion of a unified and connected interstate System. The Secretary delegated authority to administer 23 U.S.C. 103 to the Federal Highway Administrator except as it involves mass transportation projects authorized by 23 U.S.C. 103(e)(4), which are delegated to

the Urban Mass Transporatation Administrator. The Department recognizes the principal decision in withdrawal is determination of essentiality; however, as all withdrawals potentially involve both substitute highway and transit projects, and the substitute project funds are appropriated by Congress to UMTA, the dual review and approval serves to assure the early involvement of all parties and clearly indicates the withdrawal-substitution program is a coordinated program. The joint review and approval processing of withdrawal requests is working quite well and has been retained in the regulations.

Several comments were received concerning the essentiality determination made by the Federal Highway Administrator. Once defense needs are considered, the principal Federal decision in an Interstate withdrawal is the determination that the segment is not essential to a unified and connected Interstate System. This decision is made on the basis of national transportation needs without consideration of a withdrawal's impact on local transportation needs or plans. It is assumed that the effects of the withdrawal upon the local system has been evaluated and any necessary measures will be taken as part of the normal planning process. The primary concern in an essentiality decision is to assure the remaining system continues to retain connectivity and will continue to provide all necessary links for the reasonable movement of people and goods either through or around the area of the withdrawal.

A determination that a segment is not essential can be requested at any time by the Governor or designated MPO. Although the designation of a route segment as an "essential gap" in the Interstate Gap Study [1] does indicate the route has a high priority for construction, this designation does not of itself preclude its withdrawal if other routes are available which will maintain essential Interstate route connectivity.

Three comments were received concerning the use of the "Composite Index," as shown in the quarterly publication "Price Trends for Federal-Aid Highway Construction" [2] to adjust the funding authorized by a withdrawal. The composite index shown in the first table of the publication will be used rather than the composite index in the table entitled "Price Trends for Federal-Aid Highway Construction-Rural, Urban, and Rural and Urban Combined," because it is weighted to reflect the actual value of construction rather than an adjustment to arbitrary base quantities which do not reflect the actual value of construction in either urban or rual areas. The quarterly composite indexes will be used to adjust funding availability rather than the three quarter moving index. By using the quarterly index, the adjustment more closely reflects the requirement in 23 U.S.C. 103(e)(4) to make the adjustment "as of the date of approval of each substitute project." The national composite index will be used rather than a State or local index to assure an adequate sample upon which to base an index.

One comment questioned the need to retain "May 5, 1976" and "the second calendar quarter of 1976" in § 476.306(b) because they appear outdated. These references are only necessary to describe the method of computing previous adjustments to the amount authorized for several of the earliest withdrawals. They are not relevant to the method of computing subsequent adjustments for these withdrawals or withdrawals approved after May 5, 1976. Because the references are primarily of historical significance and they tend to confuse the current procedures for determining amounts authorized for substitute projects by a withdrawal, they have been eliminated from the final rule.

Two comments were received concerning § 476.306(f), which references the payback provisions of 23 CFR Part 480. Pub. L. 96–106 will require revisions to the payback regulations. Until the revised payback regulations are issued, any payback requirements will be governed by 23 CFR Part 480 with appropriate modifications reflecting the new law. It is considered beyond the scope of this regulation to provide detailed guidance on the existing payback regulation or how that regulation will be revised to reflect the Pub. L. 96–106.

Concept Approval for Substitute Projects (§ 476.308)

This section outlines the procedures for development and submission of concept programs. Several changes (primarily editorial) were made to this section as a result of comments received.

Two comments were received which suggested that the final regulations require that responsible local officials consult with officials of special purpose programs, such as air pollution control agencies in areas designated as nonattainment for carbon monoxide or ozone by the Environmental Protection Agency, park and recreation agencies, etc., before selecting Interstate substitute transit and highway projects. Although the Department agrees that it is in a region's best interest to consider the important contributions mass transit and highway projects can make in alleviating special regional problems and promoting regional goals and interests, it does not believe that it is appropriate for the Federal Government to prescribe a process which should be developed at this stage at the State and local level. As such, the final regulations do not incorporate these comments and assume that the selection of substitute projects by responsible local officials will culminate from a careful planning, review, and coordination process which evaluates the transportation merits of the proposed substitute project as well as the protential for broader positive impacts for the area.

Several commentors asked whether a new submittal of a concept program would be required if a submission had previously been made. The regulations require a submission of a program of substitute projects for joint approval by FHWA and UMTA before September 30, 1983. Since no previous substitute project concepts have been approved in compliance with these regulations, a resubmission of the concept program which includes the information specified will be required through the FHWA.

Several comments asked if the projects must be included in a transportation improvement program (TIP) when submitted as part of a concept program. All substitute projects do not need to be included in an approved TIP when the concept program is submitted. These projects may be added to the TIP as appropriate for the urbanized area which the projects will serve. However, the TIP should be revised to include those projects which are expected to be initiated within the time frame of the area's TIP and must be included in the annual element of the TIP prior to authorization of the work.

The proposed regulations indicated that, as part of the concept program submission (§ 476.308(a)(2)(iii)), a summary would be needed of the anticipated level of funding needs by fiscal year, as estimated on a substitute transit and highway project-by-project basis. It is understood that it is a difficult task to predict accurately the actual timing of application submissions

[1] Report of the Secretary of Transportation to the U.S. Congress in accordance with section 102(b) of the Federal-Aid Highway Act of 1976, House Committee on Public Works and Transportation, Committee Print 95–18, 95th Congress, 1st Sess., October 1976. Available for inspection and copying pursuant to 49 CFR Part 7, Appendix D.

[2] Published by FHWA, Interstate Reports Branch. It is available for inspection and copying pursuant to 49 CFR Part 7, Appendix D.

and corresponding funding needs of individual projects over a multi-year time frame. Also, it is recognized that this requirement could result in a large number of proposed adjustments and refinements to previously approved project concepts. In order to avoid this potential shortcoming without undermining the usefulness of the concept program in this regard, § 476.308 was revised to require, in paragraph (a), individual fiscal year funding estimates for the area only on an overall transit and/or highway basis rather than on a specific project-by-project basis. In this manner, the advancement of specific application requests can be gauged within a broadly planned implementation strategy which should be sufficiently flexible to accommodate priority needs of the local area as they might change.

New paragraph (a)(3) has been added to clarify the role of the Governor in the preparation and submission of concept programs. This role is discussed in greater detail under the section entitled "General" above. Along these lines, paragraph (a)(4) has been revised by deleting "or his/her designee." This corresponds to the new definition of "Governor" contained in § 476.2(b)(3).

Six comments requested clarification or offered suggestions concerning § 476.308(b)(1). This section has been revised to clarify that the adjustments and refinements to project concepts after September 30, 1983, relate only to those project concepts approved prior to that date. Section 107(b) of the Surface Transportation Assistance Act of 1978 precludes approval of new substitute projects after September 30, 1983. As detailed substitute project plans are developed and funding needs are more accurately determined, minor modifications from the previously approved concept descriptions as well as adjustments in both individual project funding needs and overall yearly funding needs may be necessary. These types of adjustments and refinements will be permitted to approved concepts. It is recognized that currently unforeseen circumstances could prevent implementation of certain approved project concepts by the September 30, 1986, deadline. It is therefore suggested that sufficient flexibility be designed into an overall concept program to permit some of the projects to drop out and yet have a sufficient number of remaining projects to utilize available funding. The degree of flexibility necessary would be dependent on the nature of overall substitution program. As discussed above, § 476.308(a)(1)(iii) has been modified to require only yearly anticipated needs on an overall basis rather than project-by-project yearly needs. To some extent, this facilitates the development of a sufficiently flexible concept program.

Proposals For Substitute Public Mass Transit and Highway Projects (§ 476.310)

This section provides details concerning the development of individual substitute projects, including funding applications and deadlines. Actual changes to this section, from the proposed rule, are primarily editorial in nature. This section of the preamble explains these changes and provides additional clarification where changes were not considered appropriate.

Two requests for clarification on the geographic setting requirements for substitute projects were received. Section 476.310(a) indicates that substitute projects must serve the urbanized area or nonurbanized area corridor, or both, from which the Interstate segment was withdrawn. For those Interstate segments involving a single urbanized area this means that a substitute project may be located anywhere within the urbanized area. In those cases, a substitute project may also be located outside the urbanized area if it can be demonstrated that the project serves the urbanized area. For those Interstate segments involving more than one urbanized area and a connecting nonurbanized area corridor, substitute projects can be in or serving either urbanized area. They can also be in or serving the nonurbanized area connecting corridor.

A large number of comments were received concerning paragraphs (b) and (c). Several comments requested clarification or offered interpretation of the requirement that a substitute project must "serve the urbanized area or the connecting nonurbanized area corridor, or both." As stated in the notice of proposed rulemaking, this does not require substitute projects to be located along the right-of-way of the withdrawn route nor does it even require these projects to be located within the same corridor. However, the total package of projects should serve the needs of the area which would have been served by the withdrawn route. Since project selection is to be made by the "responsible local officials of the urbanized area or areas to be served," the selection process should, in most cases, generate a package of projects which address the needs of the area to be served. While § 476.314(a)(1) requires the respective Administrators of UMTA and FHWA to determine that substitute projects serve the urbanized area or the nonurbanized corridor or both from which the Interstate segment was withdrawn, this Federal judgment will rely heavily upon the local decision-making process to reflect the needs of the area to be served.

One comment expressed concern that the responsible local official of an urbanized area would be selecting substitute projects in and serving a nonurbanized area connecting corridor. Paragraphs (b) and (c) have been revised in an effort to clarify the roles of the selecting parties. Responsible local officials, in a nonurbanized area connecting corridor, select substitute projects located in or serving the nonurbanized area corridor. In the case of a substitute project which is located outside, but serves the nonurbanized area corridor, the concurrence of the jurisdiction in which the project is located is needed.

Another commentor believed that the term "responsible local officials of the jurisdiction to be served" in § 476.310(c) could lead to difficulty in determining which nonurbanized jurisdiction should be involved in substitute project selection. It is recognized that most nonurbanized connecting corridors will not have an established forum for local decisionmaking. Local jurisdictions in the corridor will, therefore, have to rely on State-local arrangements under the purview of the Governor to develop an equitable distribution of substitute funds.

A clarifying parenthetical phrase has been added to § 476.310(b) which indicates that all subsequent actions made by the Department which amend or are related to 23 CFR Part 450, Subpart A will be applicable to substitute projects.

Several comments were received concerning paragraph (d) which indicates that substitute highway projects need not appear in the statewide Federal-aid program. By law, substitute highway projects are to be submitted by the Governor or his/her designee. For this reason, it would be inappropriate to require these projects to be a part of the State highway agency's annual program of projects (105 program). The requirement that individual projects must be in the annual element of an urbanized area's transportation improvement program should be sufficient to assure that the work will be compatible with the area's transportation plans. In addition, the requirement of § 476.310(e) that "substitute highway projects shall be developed in accordance with the policies and procedures established for the Federal-aid highway system" assumes and assures that the State highway agencies will have a significant

role in the development of these projects. Finally, these regulations do not prohibit the inclusion of substitute highway projects. If a State prefers, these projects may be included in its statewide program of projects.

Several comments expressed concern that the requirement in § 476.310(e) for submission of substitute transit and highway projects by the Governor was a change from previous policy and procedures even though there was not a corresponding change in legislation on this matter. A number expressed concern that the traditional transit operator-city/UMTA relationship was being jeopardized by the proposed regulations. Under regulations issued on June 12, 1974 (39 FR 20658, 23 CFR Part 476), and amended on November 8, 1974 (39 FR 39659), the submission of proposals for substitute public mass transit projects was accomplished by the Governor (see § 476.310 of the June 12, 1974 regulation). This was based on an interpretation of the requirements of Section 137(b) of the Federal-Aid Highway Act of 1973 (Pub. L. 93–87). Section 110(a) of the Federal-Aid Highway Act of 1976 (Pub. L. 94–280) further amended Section 103(e)(4) of Title 23, United States Code, to provide for substitute projects "* * * which are selected by the responsible local officials of the urbanized area or area to be served, and which are submitted by the Governor of the State in which the withdrawn route was located." These regulations continue the requirement that all substitute projects be submitted by the Governor, but it is not the intent of the regulations to interfere with the development phase of transit project applications which is usually done by transit officials for the area or by local governmental units in consultation with transit officials. Also, the law has been interpreted to allow States to develop their own procedures as to how the Governor will accomplish his/her submission of the application. In fact, a new definition of "Governor" has been created which makes clear that the Governor may make a specific delegation of authority to other State and local officials to act on his/her behalf in any withdrawal and substitution action should he/she so desire. There are many stages during which the Governor can delegate transit project application responsibility to local officials, such as immediately after the withdrawal action is approved, after he/she endorses the annual element to a Transportation Improvement Program (TIP/AE) for a specific year, after he/she approves and submits the required concept program (see § 476.308), etc. Also, there are a number of options which the Governor may select in submitting an application if there is no delegation of authority made. For example, the Governor may actually submit the locally-prepared application; he/she may forward the locally-prepared and formally-executed application with a letter of concurrence; he/she may provide the local applicant a letter of concurrence to accompany a locally submitted and executed application, etc. The regulations are designed to ensure that local, regional, and State interests are considered in the advancement of substitute transit projects without otherwise disturbing the traditional local-UMTA direct relationship.

Administrator's Review and Approval of Substitute Projects (§ 476.314)

This section discusses the technical aspects of the Federal review and approval of individual substitute projects. Two comments were received on this section which concerned the participation ratio for a substitute project. One comment indicated it would be preferable to apply the same participation ratio for substitute projects as used on the Interstate System. Section 107(a)(2) of the Surface Transportation Assistance Act of 1978 requires that substitute funding not exceed 85 percent. Therefore, the statutory provisions do not permit increasing the Federal share to 90 percent. The second comment on this item requested clarification of the statement in the proposed regulations that the Federal funding share for substitute projects was not to exceed 85 percent. Another provision in the proposed regulations indicated that requests for substitute nonhighway public mass transit projects were to be developed and processed in accordance with the policies and procedures established for the UMTA Section 3 capital grant program. The latter provision appears to be contradictory since the Federal share for UMTA Section 3 projects is 80 percent, and not 85 percent. There has been an addition to § 476.314(f) in the final regulations which clarifies that the Federal funding share for all substitute projects approved after November 6, 1978, shall not exceed 85 percent, notwithstanding the normal funding ratios for these types of projects under UMTA and FHWA programs. This implements the amendment to Section 103(e)(4) of Title 23, U.S.C., made by Section 107(a)(2) of Title I of the Surface Transportation Assistance Act of 1978.

Note.—The FHWA and UMTA have determined that this document contains a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory analysis is available for inspection in the public docket and a copy may be obtained by contacting Mr. L. A. Staron of the program office at the address specified above.

Accordingly, Part 450, Subpart C and Part 476, Subparts A, B, C, and D of Title 23, Code of Federal Regulations, are revised to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: October 15, 1980.

John S. Hassell, Jr.,
Federal Highway Administrator.
Theodore C. Lutz,
Urban Mass Transportation Administrator.

PART 476—INTERSTATE HIGHWAY SYSTEM

Subpart A—General

Sec.
476.2 Definitions

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both

476.300 Purpose.
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476.310 Proposals for substitute public mass transit and highway projects.
476.312 Combined proposal.
476.314 Administrator's review and approval of substitute projects.

Authority: 23 U.S.C. 103(e)(4), 103(h), and 315; 49 CFR 1.48(b) and 1.51(f).

Subpart A—General

§ 476.2 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) The following terms, where used in the regulations in this part, have the following meaning—

(1) "Base cost year" for the latest Interstate System cost estimate approved by Congress shall be the calendar year specified in the Interstate Cost Estimate Manual [1] for that

[1] The "Instructional Manual for the Preparation and Submission of the (Year) Estimate of the Cost of Completing the Interstate System in Accordance with section 104(b)(5) of Title 23, U.S.C., Highways," published by the Federal Highway Administration.

Footnotes continued on next page

estimate. For example, the base cost year for the 1972 estimate is 1970.

(2) "Concurrence" means written agreement which is currently binding on the concurring party and which addresses the specific proposal being submitted for approval.

(3) "Governor" means the Governor of any one of the fifty States and the Mayor of the District of Columbia. It also refers to any State or local entity specifically designated by the Governor for the purpose of executing any of his/her responsibilities under this part.

(4) "Interstate segment" means any designated, toll-free route, or portion thereof, of the Interstate System.

(5) "Local governments concerned" means local units of general purpose government under State law within whose jurisdiction the Interstate segment lies, or is to be withdrawn.

(6) "Open to traffic" means a segment which has been constructed or has had major improvements with Federal-aid Interstate funds and open to normal Interstate traffic; or a segment which was an existing freeway, meeting acceptable Interstate geometric standards and recognized as the final location of the route, when incorporated into the System. "Open to traffic" does not mean a segment of existing highway that is ultimately planned to be replaced by an entirely new facility.

(7) "Responsible local officials" means:

(i) In urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization in accordance with Part 450, Subpart A of this title, and;

(ii) In rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments.

(8) "Substitute highway project" means any undertaking for highway construction, which may encompass phases of work including preliminary engineering, right-of-way, and actual construction, individually or any combination thereof, on any of the Federal-aid systems described in 23 U.S.C. 103 and which is eligible for Federal financial assistance under title 23, U.S.C. A substitute highway project may include the construction of exclusive or preferential bus lanes, high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and corridor parking facilities to serve bus and other public mass transportation passengers. A substitute highway project may also be a carpool and vanpool project including but not limited to, providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(9) "Substitute nonhighway public mass transit project" means any undertaking to develop or improve public mass transit facilities or equipment. A project in an urbanized area must be included in and related to the transportation improvement program (TIP) required under 23 CFR 450.306. The TIP in urbanized areas and all projects in nonurbanized areas must include either the construction of fixed rail facilities, or the purchase of passenger equipment, or both. Passenger equipment includes buses, fixed rail rolling stock, and other transportation equipment for passenger use.

(10) "Under construction or under contract for construction" means funds for physical construction have been obligated (for highway projects) or have been included in an approved grant (for transit projects) which would commit the final development of the ultimate project in both length and scope. When projects do not involve physical construction, "under construction or under contract for construction" means the obligation of funds (for highway projects) or grant approval (for transit projects) has occurred.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both

§ 476.300 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures for implementation of 23 U.S.C. 103(e)(4), which permits the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects or both.

§ 476.302 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to an Interstate segment at any stage of development if:

(1) The segment is within an urbanized area; or

(2) The segment passes through and connects urbanized areas within a State.

(b) The regulations in this subpart shall not apply to:

(1) A segment removed from the Interstate System prior to August 13, 1973;

(2) A segment added to the Interstate System after May 5, 1976, under the provisions of 23 U.S.C. 103(e)(2);

(3) Interstate segments designated under 23 U.S.C. 139;

(4) A toll bridge, tunnel, or approach thereto for which funds were advanced in accordance with 23 U.S.C. 124(b); or

(5) After September 30, 1979, an Interstate segment open to traffic before the date of the proposed withdrawal. If only a portion of an Interstate segment (between logical termini) is open to traffic the regulations of this subpart are applicable to the portion not open to traffic. The open to traffic portion will be removed from the Interstate System under 23 U.S.C. 103(f).

(6) Any segment added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted.

(c) Withdrawal requests may not be approved under this subpart after September 30, 1983, unless the route segment was under a court injunction prohibiting its construction as of November 6, 1978. For segments under such injunction, withdrawal requests may not be approved under this subpart after September 30, 1986. However, as indicated in § 476.310(g), the September 30, 1986, substitute project construction time limitation remains applicable to these segments.

§ 476.304 Withdrawal request.

(a) A request to withdraw an Interstate segment within a State under this subpart shall be submitted jointly by the Governor and local governments concerned. For those segments within urbanized areas, the concurrence of responsible local officials is also required. The withdrawal request shall be submitted to the Federal Highway Admininstrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Joint submittal may be accomplished by a single request prepared by the Governor and concurred in by the local governments concerned. This may also be accomplished by a request by the Governor with separate concurrence documentation by the local governments concerned. In either case, for those

Footnotes continued from last page
U.S. Department of Transportation, is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

segments within urbanized areas, the concurrence of responsible local officials is also required. While unanimous local action is not required, the withdrawal request is expected to have substantial support.

(c) The request for withdrawal shall include the following:

(1) A statement that the request is filed pursuant to 23 U.S.C. 103(e)(4).

(2) Reasons why the segment is not essential to the completion of a unified and connected Interstate System.

(3) A detailed statement of mileage and cost of the segment to be withdrawn as included in the latest Interstate cost estimate approved by Congress.

(4) An assurance that a toll road will not be constructed in the traffic corridor which would be served by the segment.

§ 476.306 Withdrawal approval.

(a) The Federal Highway Administrator and the Urban Mass Transportation Administrator may approve the withdrawal of an Interstate segment under the provisions of this subpart after considering the impact of the withdrawal on national defense needs if:

(1) The requirements of § 476.304 are met; and

(2) The Federal Highway Administrator determines that the segment is not essential to completion of a unified and connected Interstate System.

(b) When the withdrawal of an Interstate segment is approved under paragraph (a) of this section, an amount equal to the Federal share of the cost to complete the withdrawn segment as shown in the latest Interstate System cost estimate approved by Congress is authorized for substitute projects. The amount authorized will be increased or decreased, as determined by the Federal Highway Administrator, based on changes in construction costs of the withdrawn route occurring between the base cost year of the latest cost estimate approved by Congress which included the costs of the withdrawn route and the date of approval of each substitute project. The changes in construction costs will be computed on the basis of the Composite Index shown in the quarterly publication "Price Trends for Federal- Aid Highway Construction." [1] For purposes of cost adjustments, the Composite Index for the calendar quarter within which the approval of the substitute project occurs will be used in computing the change in construction costs.

[1] Published by FHWA, Interstate Reports Branch, and available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

(c) Authorizations of funds made available by the withdrawal of an Interstate route under 23 U.S.C. 103(e)(4) shall remain available until expended within the limitations described in § 476.310 (f) and (g).

(d) Effective as of date of approval of the withdrawal of an Interstate segment, the unobligated apportionments for the Interstate System of the State receiving the approval will be reduced in the proportion that the Federal share of the cost of the withdrawn segment bears to the Federal share of the total cost of all Interstate routes in the State as reported in the latest Interstate System cost estimate approved by Congress.

(e) Mileage withdrawn under the provisions of this subpart may not be redesignated in any State under any provision of title 23, U.S.C.

(f) The payback of Federal-aid Interstate funds expended on a segment withdrawn under this subpart shall be governed by 23 CFR Part 480, Use and Disposition of Property Acquired by States for Modified or Terminated Highway Projects.

(g) Segments withdrawn under the provisions of this subpart may not be redesignated under the provisions of 23 U.S.C. 139.

§ 476.308 Concept approval for substitute projects.

(a) A concept program which identifies the proposed substitute projects to be approved in concept and which, as a minimum, accounts for all unobligated funding made available by this subpart must be submitted as soon as practicable after the effective date of this subpart or after a withdrawal is formally approved.

(1) The substitute project concepts included in the program must be selected in a manner consistent with the procedures provided in § 476.310(b) and (c).

(2) The concept program submission must contain:

(i) A proposed split, if any, of Interstate withdrawal authorizations between transit and highway projects;

(ii) A concept description (e.g., type of work, termini, length, estimated cost, number and type of vehicles, size and type of facility, identification of major transportation investment, etc.) of the proposed transit and/or highway projects for which concept approval is requested; and

(iii) A summary of the anticipated level of overall funding needs by individual fiscal year, as estimated on a general transit and/or highway basis.

(3) The concept program shall be endorsed by the Governor and the responsible local officials.

(4) The concept program should be submitted by the Governor to the Federal Highway Administrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Approval of substitute project concepts must be given jointly by the Federal Highway Administrator and the Urban Mass Transportation Administrator by September 30, 1983. This time limitation does not apply to segments which were under court injunction prohibiting construction as of November 6, 1978.

(1) Adjustments and refinements to the previously approved project concepts may be permitted after September 30, 1983.

(2) Approval of the project concepts does not commit funding under this subpart nor does such approval constitute an obligation on the State or local governments to fully implement the project concepts. Approval of a project concept is processed as a categorical exclusion under 23 CFR Part 771.

§ 476.310 Proposals for substitute public mass transit and highway projects.

(a) The proposed substitute projects must serve the urbanized area or connecting nonurbanized area corridor, or both, from which the Interstate segment was withdrawn.

(b) Substitute projects in or serving urbanized areas shall be based on an urban transportation planning process in accordance with 23 CFR Part 450, Subpart A (and policies and regulations pertaining thereto), and shall be selected by the responsible local officials of the urbanized area in accordance with 23 CFR Part 450, Subpart C. Substitute projects located outside but serving the urbanized area shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(c) Substitute projects in or serving the nonurbanized area corridor shall be selected by the responsible local officials of the nonurbanized area corridor. Substitute projects located outside but serving the nonurbanized area corridor shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(d) Applications for substitute nonhighway public mass transit projects shall be developed either by the principal elected officials of general purpose local units of government in consultation with local transit officials or by local transit officials. Substitute highway projects shall be developed in accordance with the policies and procedures established for the Federal-

aid highway system of which they will be a part. Substitute highway projects need not appear in the statewide Federal-aid program described in 23 CFR Part 630, Subpart A.

(e) Applications for substitute nonhighway public mass transit projects are submitted to the Urban Mass Transportation Administrator by the Governor. Requests for authorization to proceed with substitute highway projects are submitted to the Federal Highway Administrator by the Governor.

(f) After September 30, 1983, only applications for those substitute projects which have previously received concept approval under § 476.308 should be submitted.

(g) Substitute projects (for which sufficient funds are available) must be under construction or under contract for construction by September 30, 1986. This time limitation is applicable to all substitute projects, including those related to Interstate segments which were under court injunction prohibiting construction on November 6, 1978. Approval for substitute projects not meeting this requirement will be withdrawn or not issued, and no funds will be appropriated or authorized for these projects.

§ 476.312 Combined proposal.

A proposal for one or more substitute projects may be combined with projects utilizing other Federal funds available including, but not limited to, financial assistance available under either the Urban Mass Transportation Act of 1964, as amended, or 23 U.S.C. 104. Only the funds available from a withdrawal under this subpart are constrained by the limiting amount described in § 476.306(b).

§ 476.314 Administrator's review and approval of substitute projects.

(a) The Urban Mass Transportation Administrator shall review substitute nonhighway public mass transit projects and the Federal Highway Administrator shall review substitute highway projects to determine that the projects meet the following requirements.

(1) The proposed projects serve the urbanized area or connecting nonurbanized area corridor or both from which the Interstate segment was withdrawn.

(2) The Federal share of the costs of the proposed projects which is to be provided under this subpart by virtue of the withdrawal of an Interstate segment does not exceed the Federal share of the cost of the withdrawn segment, as determined in § 476.306(b).

(b) Approval of substitute projects can be given only to the extent that authority to obligate the funds is available.

(c) For substitute nonhighway public mass transit projects, the approval of the plans, specifications, and estimates of a project, or any phase thereof, shall be deemed to occur on the date the Urban Mass Transportation Administrator approved the substitute project or phase thereof in accordance with the policies and procedures established for the UMTA section 3 capital grant program.

(d) Substitute highway projects will be approved by the Federal Highway Administrator in accordance with policies and procedures established for the Federal-aid highway program.

(e) Approval of a substitute project or phase thereof obligates the United States to pay its proportional share of the cost of the project or phase thereof out of the general funds in the Treasury.

(f) The Federal share for substitute projects approved after November 6, 1978, shall not exceed 85 percentum, notwithstanding the Federal share for nonhighway public mass transit projects established under the Urban Mass Transportation Act of 1964, as amended, and highway projects under Title 23, U.S.C.

(g) The labor protective provisions of Section 3(e)(4) of the UMT Act of 1964, as amended, (49 U.S.C. Section 1602(e)(4)) are applicable to nonhighway public mass transit projects funded under the provisions of this subpart.

Transportation Improvement Program; Amendments

PART 450—PLANNING ASSISTANCE AND STANDARDS

The FHWA and the UMTA hereby amend Subpart C of Part 450, Chapter I of Title 23, Code of Federal Regulations, as follows:

1. By revising § 450.302(a)(4) to read as follows:

§ 450.302 Applicability.

(a) * * *

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

* * * * *

2. By revising the definition of "Interstate substitution projects" in paragraph (b) in § 450.304 *Definitions* to read:

§ 450.304 Definitions.

* * * * *

(b) * * *

"Interstate substitution projects" means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

* * * * *

§§ 450.310, 450.318, and 450.320 [Amended]

3. By amending §§ 450.310(b), 450.318(b)(1), and 450.320(a)(1) to delete the phrase "nonhighway public mass transportation projects" wherever it appears therein and to substitute in lieu thereof the words "nonhighway public mass transit projects."

4. By amending § 450.310 to add a new paragraph (f) as follows:

§ 450.310 Annual element: Project initiation.

* * * * *

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.318 [Amended]

5. By revising § 450.318(a) to read:

(a) The projects proposed to be implemented with Federal assistance under sections 3 and 5 of the Urban Mass Transportation Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual element of the transportation improvement program submitted by the MPO to the Urban Mass Transportation Administrator.

* * * * *

6. By amending § 450.318(b)(1) to delete the words "and 103(e)(4) (Withdrawal of Interstate segments and substitution of public mass transportation projects)".

7. By amending § 450.318(b)(2) to delete the words "104(b)(3) (Extensions of Federal-aid primary and secondary systems)" and substitute in lieu thereof the words "104(b)(1) (Projects on urban extensions of the Federal-aid primary system)".

8. By amending § 450.318(b)(3) to delete the words "104(b)(3) (Projects on urban extensions of the primary and secondary systems)" and substitute in lieu thereof the words "104(b)(1) (Projects on urban extensions of the primary system)".

§ 450.320 [Amended]

9. By amending § 450.320(a)(2) to delete "included in the statewide program of projects under 23 U.S.C. 105" and substitute in lieu thereof the words "included in the annual element of the transportation improvement program".

(23 U.S.C. 103(e)(4), 105, 134(a), and 135(b); secs. 3, 4(a), and (5) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1603(a), and 1604; and 49 CFR 1.48(b) and 1.51(f))

[FR Doc. 80-32620 Filed 10-17-80; 8:45 am]
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federal register

Monday
October 20, 1980

Part VI

Department of Transportation

Office of the Secretary

Washington National Airport; Temporary Allocation of IFR Reservations; Notice and Request for Comments

Part VI

Department of Transportation

Office of the Secretary

Washington National Airport Temporary Allocation of ITA Reservations; Notice for Comment

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 93

[Notice No. 80-14]

Special Federal Aviation Regulation; Temporary Allocation of IFR Reservations at Washington National Airport; Notice and Request for Comments

AGENCY: Department of Transportation/ Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: This notice requests comments on the temporary allocation of Instrument Flight Rules (IFR) reservations or "slots" for operations (takeoffs and landings) of air carriers except air taxis at Washington National Airport, a "high density" airport under 14 CFR Part 93, Subpart K. Under that regulation, air carriers are limited to 40 scheduled IFR operations per hour at National. In the past, air carrier IFR slots were allocated by an air carrier scheduling committee. On October 14, the committee advised the Department that it is deadlocked and unable to reach any agreement with respect to the period December 1, 1980 to April 26, 1981. A copy of the committee's letter is set forth below. This notice requests public comment on the mechanism that should be used for allocation of the available slots for that period and thereby provide for orderly operations at the Washington National Airport and for an efficient utilization of the navigable airspace.

DATE: Comments must be received by 5:30 p.m., October 23, 1980.

ADDRESS: Send comments in duplicate to: Docket Clerk; Notice No. 80-14, Office of the General Counsel, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Gregory Wolfe, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, Department of Transportation, Washington, D.C. 20590, telephone No. 202-426-4710.

or

Rick Yates, Office of Industry Policy, Industry Operations Division, Department of Transportation, Washington, D.C. 20590, telephone No. 202-426-4422.

SUPPLEMENTARY INFORMATION:

Need for Expedited Action and Invitation for Comments

Because a rule is necessary to maintain an efficient airspace system, because the carriers must settle their own system-wide schedules, and because the schedules must be resolved quickly in order to meet various publication dates, I find that, although public comments are desirable, a short comment period is all that can be provided. Consequently, interested persons are invited to submit such written data, views or arguments as they may desire until 5:30 p.m. on October 23, 1980, regarding this notice. Communications should identify the Notice number and be submitted in duplicate to the Docket Clerk, Office of the Secretary, Notice No. 80-14, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, or be delivered in duplicate to Room 10421, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments delivered must be marked: Notice No. 80-14. Comments may be inspected at Room 10421 between 9:00 a.m. and 5:30 p.m.

Commenters wishing the DOT to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Notice No. 80-14." The postcard will be dated and time stamped and returned to the commenter.

All communications received before 5:30 p.m., October 23, 1980, will be considered by the Secretary in the adoption of a rule. All comments submitted will be available, both before and after the closing date for comments, in the docket for examination by interested persons. Comments submitted after that date will be considered by the Department in making changes to the rule if warranted.

(Secs. 103, 307(a) and (c), 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. section 1303, 1348 (a) and (c), and 1354(a)); Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655); Sec. 2, Act for the Administration of Washington National Airport (54 Stat. 688))

Issued at Washington, D.C. on October 16, 1980.

Thomas G. Allison,

General Counsel.

Airline Scheduling Committees, Walter S. Coleman, Director

October 14, 1980.

Hon. Langhorne M. Bond,

Administrator, Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C.

Dear Mr. Bond: On behalf of the Washington Airline Scheduling Committee I am writing to advise you that at its recent meeting the Committee was unable to adjust slot requests to comply with the FAA quota assigned to certificated air carriers beyond November 30, 1980.

We assume that you will contact individual carriers with regard to their slot needs at DCA for the period December 1, 1980 through April 25, 1981.

Sincerely,

Jack B. Hempstead,

Acting Chairman.

[FR Doc. 80-32805 Filed 10-17-80; 10:22 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication 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

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMUNITY SERVICES ADMINISTRATION

62065 9–18–80 / Rural Development Loan Program provisions

ENERGY DEPARTMENT

62031 9–18–80 / Definition of "small hydroelectric power project"

INTERIOR DEPARTMENT

Indian Affairs Bureau

62034 9–18–80 / Provisions for acquisition of land by U.S. in trust for individual Indians and tribes

PERSONNEL MANAGEMENT OFFICE

62413 9–19–80 / Senior Executive Service; appointment, reassignment, transfer, and reinstatement; competitive and excepted service

SECURITIES AND EXCHANGE COMMISSION

62418 9–19–80 / Confidential treatment procedures under the Freedom of Information Act

TRANSPORTATION DEPARTMENT

Coast Guard—

53135 8–11–80 / Puget Sound vessel traffic service regulations
[*See also* 45 FR 48822, July 21, 1980]

National Highway Traffic Safety Administration—

62083 9–18–80 / Federal motor vehicle safety standards; new pneumatic tires for passenger cars

List of Public Laws

Last Listing October 16, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 1946 / Pub. L. 96–448 "Staggers Rail Act of 1980" (October 14, 1980; 94 Stat. 1895) Price $3.50.

H.R. 7085 / Pub. L. 96–449 Hostage Relief Act of 1980 (October 14, 1980; 94 Stat. 1967) Price $1.

S. 2597 / Pub. L. 96–450 Intelligence Authorization Act for Fiscal Year 1981 (October 14, 1980; 94 Stat. 1975) Price $1.

H.R. 4310 / Pub. L. 96–451 To amend the Federal Boat Safety Act of 1971 to promote recreational boating safety through the development, administration, and financing of a national recreational boating safety improvement program, and for other purposes (October 14, 1980; 94 Stat. 1983) Price $1.25.

H.R. 7665 / Pub. L. 96–452 Fifth Circuit Court of Appeals Reorganization Act of 1980 (October 14, 1980; 94 Stat. 1994) Price $1.

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