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Wednesday
November 26, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

78615 **Death of John W. McCormack** Executive Order

78617 **Upland cotton impact quota** Presidential Proclamation

78962 **Education** ED proposes amending regulations for the Bilingual Education Training Projects Program and gives notice of closing date for new projects under the Bilingual Education Act; comments by 1-12-81, various closing dates (Part IV of this issue) (4 documents)

78918 **Improving Government Regulations** Commerce publishes semiannual agenda of significant regulations (Part III of this issue)

78755 **Grant Programs—Education** ED extends closing dates for the fund for the Improvement of Postsecondary Education Program; new dates 12-2-80 and 1-21-81

78798 **Clean Air** EPA publishes notice regarding motor vehicle recall

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Highlights

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

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

78700 **Grant Programs—Energy** DOE/SOLAR extends comment period to 12–8–80 on energy audit training and certification grants

78624 **Credit Unions** NCUA publishes proposal regarding State chartered Federally insured credit unions as most favored lenders; effective 11–19–80

78980 **Environmental Protection** EPA proposes standards limiting emissions of volatile organic compounds from new, modified, and reconstructed beverage can surface coating operations; comments by 2–5–81 (Part VI of this issue)

78726 **Old-age, Survivors and Disability Insurance** HHS/SSA proposes continued payment of benefits to individuals under Vocational Rehabilitation plans

78735 **Grant Programs—Withdrawal** HHS/PHS withdraws notice of decision to develop regulations to cover formula grants for preventive health service programs; effective 11–26–80

78630 **Safety** CPSC exempts child-protection packaging requirements for sodium fluoride drug preparations, including liquid and tablet forms; exemption effective 11–26–80

78624 **Banking** FRS publishes regulations regarding changes in discount rates

78689 **Television** FCC publishes regulations regarding type acceptance of broadcasting equipment; effective various dates

78633 **Income Tax** Treasury/IRS provides regulations relating to definition of "land used in farming" for purpose of determining whether soil and water conservation expenditures are deductible; effective taxable years beginning after 1953

78902 **Surface Mining** Interior/BLM publishes regulations regarding surface management of Public Lands under U.S. Mining Laws; effective 1–1–81 (Part II of this issue)

78727, 78747–78749 **Privacy Act Documents** DOD (5 documents)

78851 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Executive Order 12252 of November 24, 1980

The Honorable John William McCormack

As a mark of respect to the memory of the Honorable John William McCormack, former Speaker of the United States House of Representatives and a Representative of the State of Massachusetts, it is hereby ordered, pursuant to the provisions of Section 4 of Proclamation 3044 of March 1, 1954, as amended, that until interment, the flag of the United States shall be flown at half-staff on all buildings, grounds and naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

Jimmy Carter

THE WHITE HOUSE,
November 24, 1980.

[FR Doc. 80-37047
Filed 11-24-80; 2:55 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4805 of November 24, 1980

Special Limited Global Import Quota for Upland Cotton

By the President of the United States of America

A Proclamation

1. Section 103(f)(1) of the Agricultural Act of 1949, as added by Section 602 of the Food and Agriculture Act of 1977 (the Act) (91 Stat. 913, 934; 7 U.S.C. 1444(f)(1)), provides that whenever the Secretary of Agriculture determines that the average price of Strict Low Middling one and one-sixteenth inch cotton (micronaire 3.5 through 4.9), hereinafter referred to as "Strict Low Middling Cotton," in the designated United States spot markets for a month exceeded 130 per centum of the average price of such quality of cotton in such markets for the preceding thirty-six months, notwithstanding any other provisions of law, the President shall immediately establish and proclaim a special limited global import quota for upland cotton. A quota, effective from April 3 through July 2, 1980, was placed in effect by Proclamation No. 4742.

2. When a special quota has been established during the preceding twelve months, the amount of the next quota is to be the smaller of twenty-one days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent three months for which data are available or the amount required to increase the supply to 130 percent of the demand. The quota is to remain in effect for a ninety-day period.

3. The Secretary of Agriculture has informed me that he has determined that the average price of Strict Low Middling Cotton in the designated spot markets for the month of September 1980 has exceeded 130 per centum of the average price of such cotton in such markets for the preceding thirty-six months. The Secretary's determination was based upon the following data:

(a) The average price of Strict Low Middling Cotton in the designated spot markets for the month of September 1980 was 87.1 cents per pound.

(b) The average price of Strict Low Middling Cotton in the designated spot markets for the thirty-six months preceding the month of September 1980 (September 1977 through August 1980) was 62.85 cents per pound.

4. Twenty-one days of domestic mill consumption of upland cotton, which is any variety of the Gossypium hirsutum species of cotton, at the seasonally adjusted rate of the most recent three months for which data are available (June 1980 through August 1980) is 238,633,920 pounds.

5. On the basis of computations made in accordance with Section 103(f)(1) of the Act, a quantity of 261,757,920 pounds of upland cotton is required to increase the supply of such cotton to 130 percent of the demand therefor.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Constitution and Statutes of the United States of America, including Section 103(f)(1) of the Agricultural Act of

1949, as added by Section 602 of the Food and Agriculture Act of 1977, and in order to establish a special ninety-day limited global import quota for 238,633,920 pounds of upland cotton, do proclaim that the temporary provision set forth in item 955.07 of Part 3 of the Appendix to the Tariff Schedules of the United States is hereby amended to read as follows:

"Item	*Article*	*Quota Quantity (in pounds)*
955.07	Notwithstanding any other quantitative limitations on the importation of cotton, upland cotton, if accompanied by an original certificate of an official of a government agency of the country in which the cotton was produced attesting to the fact that cotton is a variety of the Gossypium hirsutum species of cotton, may be entered during the 90-day period November 28, 1980 through February 25, 1981.....	238,633,920 pounds".

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 80-37129
Filed 11-25-80; 10:39 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Revision of Interest Rate

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: This action changes the interest rate charged on delinquent assessments from one percent to one and one-half percent per month. The action is necessary to bring the interest rate more into line with current comparable rates.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Analysis relative to this action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." Notice was published in the October 29, 1980, issue of the **Federal Register** (45 F.R. 71571) that the Department was considering a proposal to change the interest rate charged handlers for delinquent assessments from one percent to one and one-half percent per month. A 15-day comment period was provided. No comments were received.

This action was unanimously recommended by the Cherry Administrative Board under § 930.41(b) of marketing Order No. 930 (7 CFR Part 930). The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Board is the agency established under the order to administer its terms and conditions. Under the marketing order, the Board may charge interest on assessments not paid by handlers within a prescribed time after billing. The current interest charge of one percent per month on the unpaid balance has been in effect since 1972. This action will revise the charge to one and one-half percent per month to reflect a rate more in line with current comparable rates.

It is hereby found that this action will tend to effectuate the declared policy of the act. Therefore, paragraph (b) of § 930.107 Subpart—Rules and Regulations (7 CFR 930.101–930.591) is revised to read as follows:

§ 930.107 Assessment procedure.

* * * * *

(b) Each handler shall pay interest of one and one-half percent per month on any unpaid balance beginning 30 days after date of billing.

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

Dated: November 21, 1980, to become effective January 1, 1981.

D. S. Kuryloski,

Deputy Director Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-36938 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 966

Tomatoes Grown in Florida; Approval of Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment extends 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 promotes orderly marketing of such tomatoes and keeps less desirable sizes and qualities from being shipped to consumers.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Statement relative to this final rule is available on request from Mr. Porter.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 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.

Notice of proposed rulemaking was published in the October 20, 1980, **Federal Register** (45 FR 69245) inviting comments by November 19, 1980. None was filed.

The amendment is based upon recommendations made by the committee at its public meeting in Palm Beach, Florida, on September 5, 1980.

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 regulation

is similar to those issued during past seasons and to the temporary regulation in effect during October 12 through November 30, 1980. The 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 will 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. This season, as in the previous one, a 2/32 inch overlap of sizes is permitted to help alleviate the problem. The requirements, including those of 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 are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments may be allowed to certain special purpose outlets without regard to minimum grade, size, container or inspection requirements provided that safeguards are used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Since no purpose would be served by regulating tomatoes used for relief, experimental or charity purposes such shipments are also exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments are exempt.

The following types of tomatoes are 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 area are being 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 permits persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This reduces the problem of enforcement on small shipments of essentially noncommercial nature. The requirements concerning special pack shipments are intended to help handlers in the production area 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 may be exempted from the size requirements of the regulation.

Findings. After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the amendment to the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) and that (1) shipments of the 1980–81 crop tomatoes grown in the production area have begun 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 the 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.

Section 966.319 (45 FR 67298, October 10, 1980) is amended 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) of this section or are exempted by paragraphs (b) or (d) of this section.

(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 § 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$^{7}/_{32}$	2$^{11}/_{32}$
6x6	2$^{11}/_{32}$	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 4¼ 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) of this section 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 exempt 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 Section 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.

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

Dated November 21, 1980 to become effective December 1, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-36939 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1493

[Amdt. 1]

Export Credit Guarantee Program (GSM–102); Guaranteeing Against Defaults by Foreign Banks

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the CCC Export Credit Guarantee Program—Subpart A—Guaranteeing Against Defaults by Foreign Banks (7 CFR Part 1493) to make it clear that (1) CCC will not, for any actions, omissions or statements made by an exporter over which the assignee has not control, reduce its liability or annul its coverage under a payment guarantee to an assignee for any commodities shipped, and (2) CCC will not withhold any portion of the proceeds that may become due and payable to the assignee under the payment guarantee even if an exporter has obtained other coverage for such loss.

EFFECTIVE DATE: November 25, 1980. Comments by January 26, 1981.

FOR FURTHER INFORMATION CONTACT: L. T. McElvain or Thomas Pomeroy, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, D.C. 20250, telephone (202) 447–3224. Actions of this kind were anticipated under the provisions of 7 CFR Part 1493 and are specifically considered in the Final Impact Statement prepared for that part. That Final Impact Statement which describes the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individuals.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 120446, and has been classified as "not significant".

Kelly M. Harrison, General Sales Manager, FAS has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because CCC has received a number of inquiries from state and national banks concerning the assignee's protection under the CCC Export Guarantee Program.

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

The amendment will make clear to assignees of payment guarantees that, where commodities have been exported, CCC does not intend to hold them responsible or take any action or raise any defense against any assignee for any action, omission or statement made by an exporter, over which the assignee has no control, provided the exporter submits the report required under 7 CFR 1493.7 and the exporter or the assignee provides the statements and documents specified in Section 1493.8. However, CCC still retains its rights to annul the payment guarantee with respect to commodities which have not been shipped in the situation above-described.

The amendment will also assure that CCC will not withhold any portion of the amount due from CCC to the assignees under CCC's payment guarantee where the exporter has obtained other coverage for the same loss. CCC's rights are protected in this regard since the exporter is required under Section 1493.10 to turn over to CCC any monies received from any source for the defaulted payment.

Accordingly, 7 CFR Part 1493, CCC Export Credit Guarantee Program (GSM–102), Subpart A—Guaranteeing Against Defaults by Foreign Banks, is amended as follows:

Section 1493.9 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 1493.9 Payment of loss.

* * * * *

(b) CCC's maximum liability will be limited to the lesser of (1) the guaranteed value as shown in the payment guarantee plus eligible interest or (2) the percentage of the exported value as specified in the payment guarantee plus eligible interest.

* * * * *

(d) Notwithstanding any other provision of the regulations set forth in this Subpart to the contrary, with regard to commodities shipped to which the payment guarantee is applicable CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that (1) the exporter complies with the reporting requirements under § 1493.7 and (2) the exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.8.

(Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c(f)))

Signed at Washington, D.C. on November 18, 1980.

Fred C. Welz,

Acting Vice President, Commodity Credit Corporation and General Sales Manager, Foreign Agricultural Service.

[FR Doc. 80-36891 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Harris County in Texas, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment excludes a portion of Harris County in Texas, from the areas quarantined because of exotic Newcastle disease under the regulations

in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

In § 82.3(a)(3), relating to the State of Texas, paragraph (v) relating to the premises of Exotex, Inc., (David Allen), 5720 Bingle Road, Houston, Harris County is deleted.

* * * * *

(Secs. 4–7. 23 Stat. 32, as amended; secs. 1 and 2, 32 stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C. this 20th day of November, 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 36868 Filed 11–25–80; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Relased From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Hawaii County in Hawaii, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment excludes a portion of Hawaii County in Hawaii, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

In § 82.3(a)(13), relating to the State of Hawaii, paragraph (i) relating to the premises of Avian Distributions, Inc., (John L. Sobel), Makuu Road, Keaau, Hawaii County is deleted.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 20th day of November 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80–36739 Filed 11–25–80; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

Licensing Requirements for the Storage of Spent Fuel in an Independent Fuel Spent Storage Installation; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: In a **Federal Register** document published on November 12, 1980 (45 FR 74693), the NRC added a new Part 72 to its regulations to cover the specific licensing requirements for the storage of spent fuel in an independent spent fuel storage installation (ISFSI). The effective date was inadvertently printed as November 28, 1980. This document corrects the

error and publishes the effective date of December 12, 1980.

DATE: Part 72 is effective December 12, 1980.

FOR FURTHER INFORMATION CONTACT:
John D. Philips, Chief, Rules and Procedures, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–7086.

Dated at Bethesda, Maryland this 20th day of November, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80–36883 Filed 11–26–80; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country. In addition, the Board adopted a surcharge of 2 percentage points on frequent use of the discount window by large borrowers.

EFFECTIVE DATE: The changes were effective on the date specified below.

FOR FURTHER INFORMATION CONTACT:
Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3257).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. Sec. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357, Part 201 is amended as set forth below:

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

The rates for short term adjustment credit provided to depository institutions § 201.3(a) of Regulation A are:

Federal Reserve Bank of—	Rate	Effective
Boston	12	Nov. 17, 1980.
New York	12	Nov. 17, 1980.
Philadelphia	12	Nov. 17, 1980.
Cleveland	12	Nov. 17, 1980.
Richmond	12	Nov. 17, 1980.
Atlanta	12	Nov. 17, 1980.
Chicago	12	Nov. 17, 1980.
St. Louis	12	Nov. 17, 1980.
Minneapolis	12	Nov. 17, 1980.
Kansas City	12	Nov. 17, 1980.
Dallas	12	Nov. 17, 1980.
San Francisco	12	Nov. 17, 1980.

A 2 percent surcharge is imposed additionally on borrowings for short-term adjustment purposes of institutions with deposits of $500 million or more.

2. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank of—	Rate	Effective
Boston	12	Nov. 17, 1980.
New York	12	Nov. 17, 1980.
Philadelphia	12	Nov. 17, 1980.
Cleveland	12	Nov. 17, 1980.
Richmond	12	Nov. 17, 1980.
Atlanta	12	Nov. 17, 1980.
Chicago	12	Nov. 17, 1980.
St. Louis	12	Nov. 17, 1980.
Minneapolis	12	Nov. 17, 1980.
Kansas City	12	Nov. 17, 1980.
Dallas	12	Nov. 17, 1980.
San Francisco	12	Nov. 17, 1980.

(b) The rates of other extended credit provided to depository institutions where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank of—	Rate	Effective
Boston	13	Nov. 17, 1980.
New York	13	Nov. 17, 1980.
Philadelphia	13	Nov. 17, 1980.
Cleveland	13	Nov. 17, 1980.
Richmond	13	Nov. 17, 1980.
Atlanta	13	Nov. 17, 1980.
Chicago	13	Nov. 17, 1980.
St. Louis	13	Nov. 17, 1980.
Minneapolis	13	Nov. 17, 1980.
Kansas City	13	Nov. 17, 1980.
Dallas	13	Nov. 17, 1980.
San Francisco	13	Nov. 17, 1980.

3. Section 201.53 is revised to read as follows:

§ 201.53 Emergency credit for other than depository institutions.

The rates for emergency credit to individuals, partnerships, or corporations other than depository institutions under § 201.3(c) of Regulation A are:

Federal Reserve Bank of—	Rate	Effective
Boston	15	Nov. 17, 1980.
New York	15	Nov. 17, 1980.
Philadelphia	15	Nov. 17, 1980.
Cleveland	15	Nov. 17, 1980.
Richmond	15	Nov. 17, 1980.
Atlanta	15	Nov. 17, 1980.
Chicago	15	Nov. 17, 1980.
St. Louis	15	Nov. 17, 1980.
Minneapolis	15	Nov. 17, 1980.
Kansas City	15	Nov. 17, 1980.
Dallas	15	Nov. 17, 1980.
San Francisco	15	Nov. 17, 1980.

(12 U.S.C. 248(i). Interprets or applies (12 U.S.C. 357))

By order of the Board of Governors, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80–36894 Filed 11–25–80; 8:45 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

[IRPS 80–11]

Statement of Interpretation and Policy; State Chartered Federally Insured Credit Unions As Most Favored Lenders

AGENCY: National Credit Union Administration.

ACTION: Statement of interpretation and policy.

SUMMARY: This document states that Section 205(g)(1) of the Federal Credit Union Act grants most favored lender status to a state chartered federally insured credit union. It also states that Section 205(g)(1) applies only when a credit union is granting a loan other than a first mortgage loan, a business loan of $1,000 or more, or an agricultural loan of $1,000 or more. As a result, when the interest rate a credit union could normally charge on such a loan is less than one percent over the discount rate for 90-day commercial paper, the credit union can charge an interest rate of up to one percent plus the discount rate *or* it can charge any interest rate any other lender (such as a bank or a savings and loan association) could charge on the same loan under state law. This interpretation and policy statement is being issued in response to requests

from a credit union and a trade association.

EFFECTIVE DATE: November 19, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: John L. Culhane, Jr., Attorney Advisor, Office of General Counsel, at the above address. Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: Under the National Bank Act, a national bank is authorized to charge interest at the rate allowed by the laws of the state where it is located *or* 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal reserve district where it is located, whichever is greater, 12 U.S.C. 85. Because national banks can under certain circumstances charge any rate allowed to any other lender under state law, they have been said to have most favored lender status.

Recently, the Office of General Counsel of the Federal Home Loan Bank Board ruled that Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 also grants most favored lender status to federally insured savings and loan associations. After this ruling was issued, a credit union and a trade association asked NCUA to review Section 205(g)(1) of the Federal Credit Union Act to determine if a state chartered federally insured credit union also has most favored lender status.

Section 205(g)(1) was added to the Federal Credit Union Act by Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980. Title V contains three parts overriding state usury laws. Part A applies to first mortgage loans. As amended, Part B applies to business and agricultural loans on $1,000 or more. Part C applies to all other loans. Under Part C, Section 523 amended the Federal Credit Union Act by adding Section 205(g)(1). 12 U.S.C.A. 1785(g)(1).

Section 205(g)(1) reads as follows:

> If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State, constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve District where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

The first question, then, is how should the phrase "the applicable rate prescribed in this subsection," be interpreted. Although the phrase is not entirely clear, NCUA believes the rate referred to is one percent over the discount rate for 90-day commercial paper. That rate is the only rate specifically set out in the Section 205(g)(1). As a result, if the interest rate a state chartered federally insured credit union could normally charge on a loan is *less* than one percent over the discount rate for 90-day commercial paper, then the credit union can either charge up to one percent over the discount rate *or* "the rate allowed by the laws of the State, territory, or district where the credit union is located."

The next question, then is how should the phrase "the rate allowed by the laws of the State . . . where the [financial institution] is located" be interpreted. Under the National Bank Act, such language has been interpreted as granting most favored lender status to the financial institution. *See Tiffany* v. *National Bank of Missouri*, 85 U.S. 409, 413 (1974), *cited with approval*, *Marquette National Bank* v. *First Omaha Corp.*, 439 U.S. 299, 314 (1978).

Another interpretation would be that the "rate allowed" is the same as the rate "permitted," i.e. the "rate allowed" is the interest rate that normally applies to loans made by a state chartered federally insured credit union under state law (for example, the interest rate set out in the state credit union act). Under this interpretation the credit union could charge either the interest rate it normally charges on loans under state law or up to one percent over the discount rate on 90-day commercial paper. However, NCUA believes that interpreting the phrase "rate allowed" to grant most favored lender status to state chartered federally insured credit unions is the better interpretation.

Under the most favored lender interpretation a credit union has the option to charge up to one percent over the discount rate or to charge the same rate any other lender (such as a bank or a savings and loan association) could charge on the loan under state law. Such an interpretation is more consistent with the language of Section 205(g)(1); it would give meaning to the final clause, "whichever may be greater." The different options are only triggered if the "rate permitted" is less than one percent over the discount rate, but this rate would always be the lesser if the "rate permitted" and the "rate allowed" are the same. The phrase "whichever may be greater" is redundant unless unless the "rate allowed" is different from the "rate permitted."

Not only does the statutory language support this interpretation, but so does the legislative history. Even though the legislative history of Section 205(g)(1) is sparse, there is some indication that Congress intended to grant most favored lender status to state chartered federally insured credit unions. In discussing the Conference Report on H.R. 4986, Senator Bumpers expressed his approval of the provisions permitting state chartered federally insured credit unions to charge either 1 percent over the discount rate or the rate permitted by state law (if that rate is higher), notwithstanding state usury laws. He indicated he supported the change because it would remove the competitive advantage National banks have by virtue of the most favored lender status they enjoy under 12 U.S.C. 85. 126 Cong. Rec. S 3177 (daily ed. March 27, 1980).

For these reasons, NCUA has determined to interpret Section 205(g)(1) to grant most favored lender status to state chartered federally insured credit unions. In reaching this decision NCUA is also mindful of the fact that as of August 1, 1980 one state had authorized an interest rate ceiling of 10 percent for its state chartered credit unions, at least ten states had authorized interest rate ceilings for state chartered credit unions of 15 percent or less, and one other state authorized an interest rate ceiling of 16 percent.

State chartered federally insured credit unions are cautioned that a different Section, Section 525 of the Depository Institutions Deregulation and Monetary Control Act of 1980, permits a state to elect not to have Section 205(g)(1) apply in that state. Before granting loans under the authority of this interpretive ruling, a state credit union should contact the state supervisory agency to determine whether or not Section 205(g)(1) has been superceded.

Text of Statement of Interpretation and Policy [IRPS 80–11]

Section 205(g)(1) of the Federal Credit Union Act states that:

> If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve District where the insured credit union is located or at the rate allowed by the laws of the State,

territory, or district where such credit union is located, whichever may be greater.

NCUA interprets this Section to grant most favored lender status to state chartered federally insured credit unions. Whenever one per centum in excess of the discount rate on ninety-day commercial paper at the Federal Reserve bank in the Federal Reserve District where such credit union is located is higher than the interest rate the credit union could normally charge on any loan (other than a mortgage loan, a business loan of $1000 or more, or an agricultural loan of $1000 or more), then the credit union has two options. The credit union may charge either up to one per centum in excess of that discount rate *or* it may charge any rate any other lender could charge on that loan under state law, whichever is greater.

Rosemary Brady,

Secretary, NCUA Board.

November 21, 1980.

[FR Doc. 80-36890 Filed 11-25-80; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 1

Oral Presentations Before the Commission and Communications With Commissioners and Their Staffs in Trade Regulation Rulemaking Proceedings

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Federal Trade Commission amends its procedures governing oral presentations before the Commission and communications with Commissioners and their staffs in trade regulation rulemaking proceedings in accordance with the provisions of section 18 of the FTC Act, as amended by section 12 of the FTC Improvements Act of 1980, Pub. L. No. 96–252.

EFFECTIVE DATE: These rules are effective on November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Jerome Tintle, (202) 523–3487, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On July 31, 1980 (at 45 FR 50814), the Commission published for comment proposed amendments to Commission Rules 1.13(i) and 1.18 (a) and (c) implementing the provisions of Section 18 of the FTC Act, as amended by Section 12 of the FTC Improvements Act of 1980, Pub. L. No. 96–252. Interested parties were given until September 29, 1980, later extended to October 20, 1980 (45 FR 67359), to submit written comments. After reviewing the comments, the Commission has determined to promulgate as final rules the proposed amendments with a revision of Rule 1.18(a) as suggested by the comments.

Communications by Outside Parties

(1) Two comments object to the Commission's proposal to retain in Rule 1.18(c)(1) the provision requiring the placement of timely oral communications on the rulemaking record and untimely ones on the public record. The objection is based upon the language of subsection 18(j) of the FTC Act which states that transcriptions or summaries of meetings with outside parties "shall be * * * included in the rulemaking record."

In its July 31, 1980, Notice, the Commission noted that a literal interpretation of subsection 18(j) could result in the placement on the rulemaking record of communications which, if made in the course of the proceeding, would be untimely, thereby subverting the orderly rulemaking process. 45 FR at 50815. It further observed that the problem of untimely communications could be resolved by a rule limiting the period for meetings between Commissioners and outside parties to the initial comment period—an approach which would substantially reduce the period of time now available for such meetings. *Id.* One comment also objects to the latter approach on the grounds that it would conflict with Congress' intent "to encourage the Commissioners to meet with outside parties." Report of the Senate Committee on Commerce, Science, and Transportation on S. 1991, S. Rep. No. 96–500, 96th Cong., 1st Sess. 22 (1979) (hereinafter cited as "Senate Report").

The Commission continues to believe that the more reasonable alternative would be to interpret subsection 18(j) as requiring placement of communications from outside parties on the rulemaking record when appropriate. We find no indication in the legislative history that Congress intended subsection 18(j) to afford outside parties the opportunity to submit information for the record after established deadlines and thereby subvert the orderly rulemaking process and create a privileged status for meetings between Commissioners and outside parties. On the contrary, the legislative history of subsection 18(j) indicates that Congress intended to make the Commission's current rules governing *ex parte* contacts by outside parties "statutory." Senate Report at 4 and 22.[1] Accordingly, Rule 1.18(c)(1) retains the provisions specifying that oral communications will be placed on the rulemaking record only if they comply with the applicable requirements for written submissions at that stage of the proceeding, and that noncomplying oral communications will be placed on the public record.

(2) One comment suggests that the advance notice requirement of proposed Rule 1.18(c)(1)(ii) be restricted to face-to-face communications between a Commissioner and outside parties. The rationale given is that subsection 18(j) speaks only in terms of "meetings" between Commissioners and outside parties and that to impose the requirement upon other forms of oral communications (such as by telephone) would be contrary to Congress' intent. The Commission disagrees. The advance notice requirement of subsection 18(j) is intended to enable Commissioners to meet with outside parties "[w]ithout the fear that they may be susceptible to charges of improper ex parte *contacts.*" Senate Report at 22 (emphasis added). The Senate Report's reference to "contacts" clearly suggests that Congress intended subsection 18(j) to apply to any oral communication, whether face-to-face or otherwise. A restrictive interpretation of the term "meeting" would defeat the purpose for which Congress imposed the advance notice requirement.

(3) The comments concerning the alternative methods for recording meetings with outside parties vary. One recommends that all meetings be transcribed verbatim. Others favor summaries in all cases. One suggests that the rules be amended to provide for verbatim transcription only in exceptional cases and to require persons seeking contact with Commissioners to bring a summary with them. The Commission has determined to retain both options as proposed and not to amend the rules to limit verbatim transcription to exceptional cases. The Commission also believes that in cases where Commissioners determine to

[1] The Senate Report at page 22 describes the Commission's rules which were in effect at that time as requiring meetings with outside parties to be "on the record." We assume, however, that when the Senate Committee on Commerce, Science, and Transportation wrote its report on S. 1991 in November 1979, it knew that the Commission's rules, which had been promulgated in March 1979 (44 FR 16366–68 (Mar. 19, 1979)), permitted only timely communications to be placed on the rulemaking record and required untimely ones to be placed on the public record. Hence, the Committee's use of the phrase "on the record" in that context must refer to the Commission's then existing practice of placing timely communications on the rulemaking record and untimely communications on the public record.

permit summaries, the substance of a meeting is best summarized after the meeting, although an individual Commissioner may at his or her discretion require a summary to be submitted by the outside party in advance of, or at the time of, the meeting.

(4) One comment recommends that the rules be amended to provide an exception to the notice and recordation requirements where an oral communication unexpectedly occurs in the course of a chance encounter (*e.g.*, at professional or social functions) and where the outside party does not intend to circumvent the rules. The Commission believes that the exception would be impractical to implement since its application would depend upon a Commissioner's knowing the intent of the outside party. The Commission acknowledges the possibility of chance encounters with persons who are unaware of the limitations on communications about a rulemaking proceeding and the possibility that such persons may say something of relevant substance before the Commissioner can alert him or her to the limitations. In such instances, the Commissioner will make every effort to cut off inadvertent oral communication and determine whether anything of relevance to the merits of the rulemaking proceeding was communicated and thus should be recorded.

Communications by Commission Staff Members

(1) Several comments suggest that proposed Rule 1.18(c)(2) be amended to require the disclosure of all *ex parte* communications from the rulemaking staff, charging either that proposed Rule 1.18(c)(2)'s adoption *in haec verba* of the language of subsection 18(k) defeats the purpose of the subsection or that the Commission's interpretation of subsection 18(k) is far more restrictive than Congress intended. Other comments support proposed Rule 1.18(c)(2) and suggest that the Commission expand and clarify its explanation for the proposed rule.

Comments opposed to proposed Rule 1.18(c)(2) rely upon certain statements contained in the Senate Report to the effect that S. 1991 would require "any" meeting between Commissioners and the rulemaking staff to be "on the record," Senate Report at 4, and that it was "intended to treat the staff and other persons equally for the purpose of ex parte contacts * * *." Senate Report at 23. However, those statements pertain to a provision of S. 1991 that was dropped by the Senate in favor of the much less restrictive provision of subsection 18(k). The statements therefore do not reflect the intent of Congress in adopting the latter.

The version of S. 1991 introduced by Senator Ford on November 8, 1979,[2] and reported out by the Senate Committee on Commerce, Science, and Transportation on November 20, 1979, included a provision which would have required the Commission to promulgate a rule prescribing disclosure of "any communication relevant to the merits" of a rulemaking proceeding from a member of the rulemaking staff to a Commissioner. 125 Cong. Rec. S16486 (daily ed. Nov. 9, 1979); S. 1991, 96th Cong., 1st Sess. § 11 (1979).

In December 1979, however, Senator Ribicoff introduced an amendment to S. 1991 which would substitute for the broad restriction on intra-agency communications a provision requiring disclosure only of a staff communication of "any fact relevant to the merits" of the rulemaking proceeding "that is not on the rulemaking record." 125 Cong. Rec. S19069 (daily ed. Dec. 18, 1979). During consideration of S. 1991 by the full Senate, Senator Ford on February 7, 1980, offered an amendment to S. 1991 that was substantially identical to Senator Ribicoff's and he explained that the amendment "would require that when the Commissioners communicate with the rulemaking staff *on matters not in the record* concerning a pending rulemaking that a summary of those conversations be kept." 126 Cong. Rec. S1231 (daily ed. Feb. 7, 1980) (emphasis added). Senator Ribicoff, noting that Senator Ford had agreed to his amendment, stated that the amendment would "[l]imit the ex parte restrictions on communications between Commissioners and staff *to those matters which are new and not already on the public record.*" 126 Cong. Rec. S1232 (daily ed. Feb. 7, 1980) (italic added).

The narrow restriction on intra-agency *ex parte* contacts was thereupon adopted by the Senate as part of its amendments to H.R. 2313.[3] *Id.* The provision as passed by the Senate was included in the conference substitute on H.R. 2313 [4] and was enacted into law as subsection 18(k) of the FTC Act. The portion of the Conference Report which discusses that section states that the Senate amendment would require the FTC to promulgate rules providing "that contacts between the Commissioners and the rulemaking staff be 'on the record' *when discussing facts relevant to the rulemaking but which are not in the rulemaking record.*" H.R. Rep. No. 96–917, 96th Cong., 2d Sess. 32 (1980) (emphasis added). Thus, it is clear both from the language of subsection 18(k) and its legislative history that Congress intended to require the disclosure only of such communications from the rulemaking staff as discuss new facts which are not already on the rulemaking record.

(2) One comment, while acknowledging that subsection 18(k) imposes only a limited disclosure requirement as respects intraagency *ex parte* contacts, suggests that the Commission nevertheless take this opportunity to expand its regulations so as to provide for equal treatment of the rulemaking staff and outside parties (a) by requiring disclosure of all staff communications with the Commission, (b) by requiring all meetings between Commissioners and staff to be noticed in advance, (c) by establishing a cut off point on all *ex parte* contacts by the staff like that imposed on outside parties by Rule 1.18(c)(i)(ii), and (d) by limiting meetings between the Commission and staff to the same period provided for meetings between the Commission and outside parties under Rule 1.13(i). The rationale for the suggested changes is that FTC rulemaking is "hybrid" in form, incorporating many elements of APA adjudicatory procedures, that rulemaking staff members function as "advocates" in rulemaking proceedings, and that fairness requires that outside parties be given the opportunity to respond to the position taken by staff "advocates."

The fact that trade regulation rulemaking incorporates quasi-adjudicatory procedures "does not * * * convert rulemaking into quasi-adjudication." *Ass'n of Nat'l Advertisers, Inc.* v. *FTC*, No. 79–1117, slip op. at 18 (D.C. Cir. Dec. 27, 1979); *United Steelworkers of America* v. *Marshall*, No. 79–1048, slip op. at 29–30 (D.C. Cir. Aug. 15, 1980). Even if it is assumed for the sake of argument that a rulemaking staff member does function as an "advocate," as long as his conduct remains "within the general boundaries of the *deliberative* process" and his communications with the Commission "[remain] within the boundaries of *deliberative* material" and do not involve "new hard data off the record," his role as a staff advocate does not violate due process. *United Steelworkers of America* v. *Marshall*, *supra*, at 27. See also *Katharine Gibbs School (Inc.)* v. *FTC*, 612 F.2d 658 (2d

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[2] 125 Cong. Rec. S16297 (daily ed. Nov. 8, 1979).

[3] H.R. 2313 was considered by the Senate in lieu of S. 1991 and was amended by the Senate to be consistent with S. 1991. 126 Cong. Rec. S1241–42 (daily ed. Feb. 7, 1980).

[4] The House version of H.R. 2313 did not include a provision on *ex parte* contacts.

Cir. 1979); *Association of Nat'l Advertisers, Inc.* v. *FTC, CCH 1979–2 Trade Cas. ¶ 62950 (D.C. Cir. 1979); Hercules, Inc.* v. *EPA*, 598 F.2d 91 (D.C. Cir. 1978); *Environmental Defense Fund* v. *EPA*, 598 F.2d 62 (D.C. Cir. 1978). The decision in *United Steelworkers of America, supra*, also reaffirmed the guidance first announced in *Hercules, supra*, that the question of separation of functions in rulemaking is "one for Congress or the agencies to resolve." Slip op. at 35. With respect to the Federal Trade Commission, Congress has, of course, resolved the issue by enacting subsection 18(k). Finally, in connection with the promulgation of its original version of Rule 1.18(c), the Commission set forth its reasons for allowing staff communications:

> Staff communications serve a positive function by allowing Commissioners, in reviewing what are often massive records that have not been shaped by a clearcut adversarial process, to receive assistance from those persons in the Commission who are most familiar with the record. To seek assistance from staff members who have not participated in the rulemaking proceeding, as some comments suggest, would result in a misallocation of resources by ignoring the people best-suited to aid the Commission. 42 FR at 60562 (Nov. 28, 1977).

Accordingly, the Commission has determined not to expand Rule 1.18(c)(2) beyond the requirements imposed by subsection 18(k).

(3) Some comments propose that Rule 1.18(c)(2) be expanded to include guidelines or criteria for use in determining whether a staff communication constitutes a factual communication within the meaning of subsection 18(k) and the Commission's rule. The determination whether or not a particular communication from the staff is subject to disclosure under subsection 18(k) and the Commission's rule will necessarily have to be made on a case-by-case basis. In general, however, the Commission interprets the phrase "any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record" to include both specific, adjudicative-type facts and broad, legislative-type facts which are not already part of the rulemaking record. On the other hand, the Commission does not interpret the phrase as requiring the disclosure of communications from the staff which constitute advice on matters of law, strategy, policy, or procedure or which review, analyze, evaluate, or summarize the evidence in the record so long as such communications do not discuss facts, specific or general, that are not already on the rulemaking record.

(4) One comment suggests that communications from the rule-making staff be transcribed verbatim if the content of those communications is not already accurately reflected in the rulemaking record. The Commission believes that this suggestion would be costly and burdensome to implement because it would necessitate verbatim recordation of all communications from the rulemaking staff in order to assure the transcription of the limited category of communications required to be disclosed by subsection 18(k).

(5) Two comments recommend amendments to proposed Rule 1.18(a). One suggests that the rule be amended to include in the definition of "rulemaking record" a reference to staff communications required by subsection 18(k) to be placed on the rulemaking record. The Commission agrees with this suggestion and has amended Rule 1.18(a) to include a reference to communications placed on the rulemaking record pursuant to § 1.18(c). Another comment proposes: (1) that the phrase "summary and findings of the presiding officer" be substituted for the phrase "recommended decision of the presiding officer" which the comment claims causes uncertainty over whether the presiding officer's report would include his findings and conclusions; and (2) that the comma between the words "presiding officer" and "and the staff recommendations" be deleted so as to make clear that public comments on both the presiding officer's recommended decision and the staff recommendations would become part of the rulemaking record. The phrase "recommended decision of the presiding officer" was adopted on May 29, 1980 (45 FR at 36341), so as to conform the Commission's rules with subsection 18(c) of the Federal Trade Commission Act, as amended by section 9 of the FTC Improvements Act. Since Rule 1.13(g) as adopted on May 29, 1980 (45 FR at 36341), incorporates the language of new subsection 18(c)(1) requiring the presiding officer to make a "recommended decision based upon [his] findings and conclusions * * * as to all relevant and material evidence * * *," no uncertainty is caused by Rule 1.18(a)'s mere reference to "recommended decision." The Commission, however, does agree with the comment's second suggestion and has amended Rule 1.18(a) to delete the comma between "presiding officer" and "and the staff recommendations."

Accordingly, the Commission amends 16 CFR Chapter I as follows:

1. By revising § 1.13(i) to read as follows:

§ 1.13 Rulemaking proceeding.

* * * * *

(i) *Commission review of the rulemaking record.*—The Commission shall review the rulemaking record to determine what form of rule, if any, it should promulgate. During this review process, the Commission may allow persons who have previously participated in the proceeding to make oral presentations to the Commission, unless it determines with respect to that proceeding that such presentations would not significantly assist it in its deliberations. Presentations shall be confined to information already in the rulemaking record. Requests to participate in an oral presentation must be received by the Commission no later than the close of the comment period under § 1.13(h). The identity of the participants and the format of such presentations will be announced in advance by the Office of Public Information in the Commission's *Weekly Calendar and Notice of "Sunshine" Meetings* and in accordance with the applicable provisions of 5 U.S.C. 552(b) and § 4.15 of the Commission's Rules of Practice. Such presentations will be transcribed verbatim or summarized at the discretion of the Commission and a copy of the transcript or summary and copies of any written communications and summaries of any oral communications relating to such presentations shall be placed on the rulemaking record.

2. By revising §§ 1.18(a) and 1.18(c) in its entirety to read as follows:

§ 1.18 Rulemaking record.

(a) *Definition.*—For purposes of these rules the term "rulemaking record" includes the rule, its Statement of Basis and Purpose, the verbatim transcript of the informal hearing, written submissions, the recommended decision of the presiding officer and the staff recommendations as well as any public comment thereon, verbatim transcripts or summaries of oral presentations to the Commission, any communications placed on the rulemaking record pursuant to § 1.18(c), and any other information which the Commission considers relevant to the rule.

* * * * *

(c) *Communications to Commissioners and Commissioners' personal staffs.*—(1) *Communications by outside parties.*—Except as otherwise provided in this subpart or by the Commission, after the Commission votes to issue an initial notice of proposed rulemaking, comment on the proposed rule should be directed to the presiding officer pursuant to § 1.13.

Communications with respect to the merits of that proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment:

(i) *Written communications.*—Written communications, including written communications from members of Congress, received within the period for acceptance of initial written comments shall be forwarded promptly to the presiding officer for placement on the rulemaking record. Written communications received after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the presiding officer, who will determine whether such communications comply with the applicable requirements for written submissions at that stage of the proceeding. Communications that comply with such requirements will be promptly placed on the rulemaking record. Noncomplying communications and all communications received after the time periods for acceptance of written submissions will be placed promptly on the public record.

(ii) *Oral Communications.*—Oral communications are permitted only when advance notice of such oral communications is published by the Commission's Office of Public Information in its *Weekly Calendar and Notice of "Sunshine" Meetings* and when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the rulemaking record together with any written communications and summaries of any oral communications relating to such oral communications. Transcripts or summaries of oral communications which occur after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the presiding officer together with any written communications and summaries of any oral communications relating to such oral communications. The presiding officer will determine whether such oral communications comply with the applicable requirements for written submissions at that stage of the proceeding. Transcripts or summaries of oral communications that comply with such requirements will be promptly placed on the rulemaking record together with any written communications and summaries of any oral communications relating to such oral communications. Transcripts or summaries of noncomplying oral communications will be promptly placed on the public record together with any written communications and summaries of any oral communications relating to such oral communications. No oral communications are permitted subsequent to the close of the postrecord comment period, except as provided in § 1.13(i). If an oral communication does otherwise occur, the Commissioner or Commissioner advisor will promptly place on the public record either a transcript of the communication or a memorandum setting forth the contents of the communication and the circumstances thereof; such transcript or memorandum will not be part of the rulemaking record.

(iii) *Congressional communications.*—The provisions of paragraph (c)(1)(ii) of this section do not apply to communications from members of Congress. Memoranda prepared by the Commissioner or Commissioner advisor setting forth the contents of any oral congressional communications will be placed on the public record. If the communication occurs within the initial comment period and is transcribed verbatim or summarized, the transcript or summary will be promptly placed on the rulemaking record. A transcript or summary of any oral communication which occurs after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the presiding officer, who will determine whether such oral communication complies with the applicable requirements for written submissions at that stage of the proceeding. Transcripts or summaries of oral communications that comply with such requirements will be promptly placed on the rulemaking record. Transcripts or summaries of noncomplying oral communications will be placed promptly on the public record.

(2) *Communications by certain officers, employees, and agents of the Commission.*—Any officer, employee, or agent of the Commission with investigative or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission is prohibited from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of *ex parte* matters as authorized by law. (Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended (5 U.S.C. 552).)

By direction of the Commission, dated November 20, 1980. Chairman Pertschuk and Commissioner Pitofsky concurred and submitted a separate statement.

Carol M. Thomas,

Secretary.

Statement of Chairman Pertschuk

As Commissioner Pitofsky's concurring statement indicates, the Commission has already taken various steps to respond to concerns about fairness in our rulemaking proceedings. I support the measures that have been taken thus far. At the same time, I continue to believe that the rulemaking staff is capable of providing a balanced analysis of the record as well as its recommendations based on that analysis. The present procedures, in my opinion, safeguard against undue influence. Moreover, it is important to emphasize, as Commissioner Pitofsky does, that the rulemaking staff possesses a knowledge of the record that is absolutely vital to the Commission's understanding and resolution of issues presented in rulemaking proceedings. The Commission recognized this asset at its meeting last July when it made the decision not to alter the fundamental responsibility of the rulemaking staff for objectively analyzing and interpreting the record. I believe we must continue to have full and informal access to the rulemaking staff's valuable knowledge of the record, and should be cautious in considering changes that would reduce the rulemaking staff's involvement in our review process.

Statement of Commissioner Robert Pitofsky

Several comments urged that the Commission amend its proposed Rule 1.18(c)(2) so as to require that the Commission's rulemaking staff deal with the Commission only on an "on-the-record" basis. *Ex parte* communications between Commissioners and staff would be prevented not only with respect to a "fact which is relevant to the merits of [the] proceeding which is not on the rulemaking record"—a requirement now imposed by the FTC Improvements Act of 1980—but to all staff summaries and interpretations of the record and to policy advice. In effect, under their

proposal, the staff would be placed on the same *ex parte* footing as people outside the agency.

I agree that Congress did not require such treatment of staff in subsection 18(k) of the FTC Improvement Act of 1980. On the other hand, I have become increasingly concerned about the fairness of off-the-record staff communications with Commissioners in our rulemaking proceedings and the perception that such communications create.

The records in our rulemaking proceedings often have been of enormous length (averaging 50,000 pages and running up to 500,000 pages) and factual and policy issues are extremely complex. Staff members who have worked for years on these proceedings develop valuable knowledge about the record and sophisticated views about key policy questions. As a result, the staff is in a position to influence greatly the Commission's final proposals. The length of these records and the complexity of underlying issues create competing concerns. On the one hand, it would be extremely difficult for the Commission to address rulemaking questions in an informed way without the uninhibited and continuous assistance of the rulemaking staff. On the other hand, staff devotion to a single project over a period of years and the adversary clashes that often develop during the proceeding can generate in some rulemaking projects a will-to-win in the staff which influences their view of the record and their recommendations.

Rulemaking proposals by regulatory staffs usually do offer a balanced view of the issues, and, of course, Commissioners are not helpless even in the hands of a rulemaking staff committed to its own recommendations. Senior staff members at the Commission, Bureau of Economics personnel, the Presiding Officer, industry representatives, and the Commissioners' personal staffs all have an opportunity to review and comment upon staff proposals. In fact, I believe this multi-faceted review usually has enabled the Commission to have before it a full range of policy proposals and factual analysis.

I am convinced that the imposition of strict *ex parte* limitations on communications from agency staffs is not the best way to address this problem, but I believe the issue of a proper staff role in our rulemaking deserves our continuing attention. I can concur in today's Commission action, however, because of my understanding that the Commission, in future rulemaking, will make efforts through various procedural experiments to address the issue of the dual role of the staff as advocates and as advisors to the Commission. For example, at the Commission's July 1980 rulemaking policy review session, a consensus was reached that the Presiding Officer should play a more important role in assessing staff recommendations. The Commission has amended its rules to require that the staff report precede the Presiding Officer's report, and the Commission is committed to ensuring that the Presiding Officer's office has the necessary resources to carry out the expanded function of measuring staff conclusions against the record.

In addition to these changes, I hope that future consideration will be given on a rule by rule basis to segregating the staff, so that one group advocates the rule during the rulemaking process and another group interprets the record and works with the Commission in its review function. While this approach is expensive and may cause some delay, it may be the best way of proceeding when there is reason to believe at the outset that a long and bitter adversary process is likely.

The staff's role in rulemaking is an important regulatory issue and the Commission is closer to it than reviewing judges or members of Congress. It is important that the Commission, through careful experimentation, seek additional ways to preserve an effective staff role which in appearance and reality is fair to all interested parties.

[FR Doc. 80-36997 Filed 11-24-80, 12:06 pm]
BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Human Prescription Drugs in Oral Dosage Forms; Exemption of Sodium Fluoride Drug Preparations, Including Liquid and Tablet Forms, Containing No More Than 264 Milligrams of Sodium Fluoride Per Package From Child-Protection Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues an exemption from child-protection packaging requirements for sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 milligrams (mg) of sodium fluoride per package and containing no other substances subject to the requirements for special packaging under the Poison Prevention Packaging Act of 1970.[1] An exemption for aqueous solutions of sodium fluoride containing no more than 264 mg of sodium fluoride per package is currently in effect. The Commission believes that child-protection packaging for all generic forms of sodium fluoride containing no more than 264 mg of sodium fluoride per package is unnecessary to protect children from serious illness or injury, based upon the low toxicity of sodium fluoride and the lack of serious adverse human experience associated with ingestion of the drug. The Upjohn company, manufacturer of a multiple vitamin product in chewable tablet form containing 221 mg of sodium fluoride per package, petitioned the Commission to exempt its sodium fluoride-containing product.

DATE: The exemption is effective November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Charles Jacobson, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1980, the Commission proposed an exemption from the child-resistant packaging regulations under the Poison Prevention Packaging Act of 1970 (PPPA) for sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 milligrams (mg) of sodium fluoride per package, (45 FR 17593). The Commission took that action in response to a petition (PP 79-2) from the Upjohn Company requesting an exemption for sodium fluoride tablet preparations containing no more than 221 mg of sodium fluoride per package. The petitioner's product is a multiple vitamin that uses sodium fluoride as an anticaries agent (for the prevention of dental decay) and is a prescription drug that is regulated under the PPPA solely on the basis of its fluoride content. Another main use of sodium fluoride is as an insecticide/rodenticide.

[1] A majority of Commissioners—Chairman King and Commissioners David Pittle and Stuart Statler—approved issuance of the final exemption for sodium fluoride drug preparations containing not more than 264 mg of sodium fluoride per package. Commissioner Sam Zagoria voted to grant the petitioner's request and issue an exemption for sodium fluoride tablets containing not more than 221 mg of sodium fluoride per package. Commissioner Edith Sloan dissented from the decision to issue a final exemption and has issued a separate opinion which is on file in the Office of the Secretary of the Commission.

Aqueous solutions of sodium fluoride containing no more than 264 mg of sodium fluoride per package are currently exempted from the Commission's child-protection packaging requirements at 16 CFR 1700.14(a)(10)(vii). This exemption was based upon the Commission finding that 264 mg of sodium fluoride is less than an acutely toxic dose (42 FR 62363–4, December 12, 1977). In addition, the exemption was based upon the safety recommendation of the American Dental Association that no more than 264 mg of sodium fluoride be dispensed at one time.

Although the petitioner requested an exemption only for its chewable tablet preparation of sodium fluoride containing a maximum of 221 mg of sodium flouride per package, the Commission recognized in the proposal document the fact that the oral toxicity of sodium fluoride is not significantly affected by the dosage form. In other words, the toxicity of sodium fluoride in tablet preparations is considered by the Commission to be no greater than the toxicity of equivalent dosages of the currently exempted liquid preparations.

For this reason, the Commission decided to propose an exemption for sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 mg of sodium fluoride per package and containing no other substance subject to the special packaging regulations. The Commission noted in the proposal document that there are currently sodium fluoride tablet preparations containing up to 264 mg of sodium fluoride per package. In this document the Commission, therefore, is revising the existing exemption for aqueous solutions of sodium fluoride by extending the exemption to all generic forms of sodium fluoride drug prescriptions but maintaining the maximum dosage level at 264 mg of sodium fluoride per package.

Grounds for Exemption

As was noted in the proposed exemption, the Upjohn Company contends that the same fact, lack of toxicity, which justified an exemption for aqueous solutions containing no more than 264 mg of sodium fluoride per package supports the current request. The petitioner also cites as justification for an exemption the lack of adverse human experience data associated with ingestion of its sodium fluoride-containing product. From 1965 until January, 1979, only one report of an accidental ingestion of the product by a child 5 years of age or younger has been received by the petitioner. This report involved a 3 year old child who ingested 15 tablets, for a maximum of 33.15 mg of sodium fluoride, without symptomatology.

An examination of the most current data sources available to the Commission confirms that there is a continued lack of serious adverse reaction by young children who have accidentally ingested sodium fluoride.

The National Clearinghouse for Poison Control Centers (NCPCC) reported, for 1977–1979, a total of 398 ingestions of medicinal products containing sodium fluoride by children under 5. Of these, 54 exhibited symptoms, and one was hospitalized.

The NCPCC data from 1969 through 1976 reported 1,496 ingestions by children under 5 years of age of anticaries products which contain no more than 264 mg of sodium fluoride per package. Fifty-two of the 1,496 cases exhibited symptoms. The symptoms ordinarily exhibited were nausea, vomiting, abdominal pain, diarrhea, headache, and a fever of more than 101°F. Nineteen of the 1,496 cases resulted in hospitalizations which were generally of an unspecified duration. One death of a one year old child as a result of ingesting sodium fluoride was also reported in the NCPCC data from 1969 through 1976. This death was listed under the chemical name "sodium fluoride" and tabulated under the general heading of "chemicals," which indicates that the product involved may have been an insecticide/rodenticide or a pure entity rather than an anticaries agent.

The Commission's Poison Control Center contract data for 1976 and 1977 reveal 254 ingestions by children under 5 years of age of anticaries products which contain no more than 264 mg of sodium fluoride per package. Twenty-seven of these cases exhibited symptomatology such as nausea, vomiting, diarrhea and lethargy. In addition, there was one 2-day hospitalization.

The Commission's National Electronic Injury Surveillance System (NEISS) for 1977 and 1978 reports 18 ingestions by children under 5 years of age of anticaries products containing no more than 264 mg of sodium fluoride per package. All of the 18 children were treated and released from the reporting hospital emergency room. Data reported through NEISS for 1979 reveal 4 incidents of ingestion by children under 5 associated with products containing sodium fluoride. Three of the children were treated and released; one was hospitalized. During the period of January 1, 1980 to August 1, 1980, 3 incidents of ingestion by children under 5, associated with sodium fluoride, were reported. The three children were treated and released.

The Commission's National Injury Information Clearinghouse currently has on file 4 in-depth investigations of ingestions by children under 5 years of age of anticaries tablets containing sodium fluoride. These incidents occurred in 1976, 1977, 1978 and 1979. All 4 children were treated in hospital emergency rooms and released. As of August 7, 1979, there were no death certificates or consumer complaints on file with the National Injury Information Clearinghouse that were associated with anticaries tablets containing sodium fluoride.

The Commission also conducted a toxicological evaluation of sodium fluoride. The Commission concurs with the petitioner that the toxicity of tablets containing sodium fluoride is similar to the toxicity of aqueous solutions containing sodium fluoride. The existing Commission exemption of aqueous solutions containing no more than 264 mg of sodium fluoride was based upon the Commission finding that 264 mg of sodium fluoride is less than an acutely toxic dose.[2] In addition, the exemption conformed with the safety recommendation of the American Dental Association that no more than 264 mg of sodium fluoride be dispensed at one time.

A general review by the Commission staff of the scientific and medical literature reveals that most of the reported sodium fluoride poisonings have resulted from its usage as an insecticide/rodenticide rather than its usage as a human oral prescription anticaries drug. However, the literature search did reveal 3 reported fatalities of children under 5 years of age from the ingestion of dosage levels of fluoride preparation which are considerably greater than the maximum level of this proposed exemption. The symptoms most commonly presented in acute sodium fluoride ingestions include nausea, vomiting, diarrhea, abdominal pain, salivation, muscular weakness, tremors, convulsions, hypotension, nephritis, and, in fatal cases, respiratory paralysis and cardiac arrest.

Information available to the Commission indicates that the lethal dose of sodium fluoride is about 5 grams in adults and about 3 grams in children. The Commission notes that an important factor in limiting severe toxic reactions is that sodium fluoride, in even moderately large doses, is a gastric and intestinal irritant which tends to induce vomiting and diarrhea. If such vomiting

[2] See 42 FR 62363–4, December 12, 1977.

occurs at an early stage following the sodium fluoride ingestion, which it usually does, then the risk of injury is considerably reduced. The Commission is aware, however, that the ingestion of 1 gram of sodium fluoride by a child would be likely to result in severe symptomatology or even lethality if vomiting were not to occur or if medical treatment were significantly delayed.

The Commission notes that there is a relatively low incidence (about one percent) of adverse reactions associated with normal dosages of sodium fluoride. These adverse reactions, which include gastrointestinal hemorrhages, exzema, dermatitis and uticaria type reactions, are a result of hypersensitivity to fluoride. These reactions cease upon termination of sodium fluoride therapy. It appears that the problem most often associated with the normal sodium fluoride usage as an anticaries agent is a chronic one and involves mottling of the teeth (fluorosis).

The Commission solicited the opinion of its Technical Advisory Committee (TAC) on Poison Prevention Packaging. Of the 14 TAC members who commented on the petition, 9 members recommended granting the exemption, 4 members recommended denial, and one member abstained.

The 9 members who recommended granting the exemption cited the current exemption of aqueous solutions containing no more than 264 mg of sodium fluoride; these members also stated that the marketing history, toxicology, and human experience for sodium fluoride-containing drugs demonstrate that there is a limited risk of severe toxic reaction from accidental ingestion.

The 4 TAC members who recommended denial of the petition cited the following considerations: (1) sodium fluoride should not be exempt from the special packaging regulations, the previous exemption notwithstanding; (2) there is a lack of adequate justification for the exemption, such as a lifesaving urgency requiring rapid access to the product; (3) flavored chewable sodium fluoride tablets provide more of an incentive for children to accidentally ingest the product than the currently exempted liquid forms; (4) an accidental ingestion could be a traumatic experience for the victim and his/her parents; and (5) increasing numbers of exemptions are likely to confuse pharmacists and result in greater noncompliance with special packaging regulations.

The Commission notes that while such considerations as product form, flavoring, and need for rapid access may enter into the evaluation of certain PPPA exemption requests, the major consideration remains the toxic potential of the exempted package and the human experience data.

The Commission also reviewed the medical literature that was cited by some of the TAC members in support of their recommendations to deny the exemption request. The review revealed that such literature was not directly related to the issues involved in the petition; one article involved the symptomatology associated with accidental ingestion of hydrofluoric acid, which is far more toxic than sodium fluoride, and another article involved the symptomatology associated with ingestion of sodium fluoride by cancer and leukemia patients, who probably have lowered fluoride tolerance. The Commission notes that individual variability in tolerance to fluoride cannot be used to predict toxicity in a normal population. In the case of fluoride therapy, information available to the Commission indicates that the incidence of adverse reactions is low and that those reactions that do occur subside upon termination of therapy. The Commission also notes that there is no scientific rationale for predicting a greater incidence of adverse reactions in children, whether due to intolerance or other factors. In fact, human experience data and the medical literature indicate very few adverse reactions, particularly in children.

The one TAC member who abstained noted what appeared to be a discrepancy in the drug's toxicity and its dosage regimen. The dosage regimen is based upon normal fluoride intake through drinking water. The Commission staff notes that the cautionary note accompanying the product limits use of the drug when certain amounts of fluoride are found in the daily drinking water. Fluoride supplementation is indicated only when the fluoride level of normal drinking water falls below certain limits. These cautions are designed to preclude the development of chronic fluoride overdosage (fluorosis).

The Commission also solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. The Agency states that it previously had recommended granting the current exemption of liquid fluoride-containing products based on scientific literature which indicated that 264 mg of sodium fluoride was less than an acutely toxic dose. While observing that the product form is different, FDA states that the composition of sodium fluoride-containing tablets is not significantly different from currently exempted products, and that there is a lack of reports of accidental ingestions of these products resulting in serious toxic effects. Based upon the lack of reported substantial hazard, FDA concluded that the exemption request should be granted.

Response to Comments

The Commission received two comments, from the American Society of Hospital Pharmacists and from an interested person, in response to the proposed exemption.

The Society expressed support for exemption of sodium fluoride drug preparations containing no more than 264 mg of sodium fluoride per package.

The other commenter stated that sodium fluoride preparations are potentially toxic to young children and that, in cases where multiple dosages of the drug are prescribed for use in a single household, this potential is compounded. This commenter also suggested that flavored sodium fluoride tablets entice young children to ingest them.

The Commission notes that a toxicological evaluation of sodium fluoride, conducted by the staff and discussed above, concludes that 264 mg is unlikely to be a toxic dose in young children. Most of the reported sodium fluoride poisonings have resulted from its use as an insecticide/rodenticide rather than from its use as a human oral prescription anticaries drug. Three fatalities of children under five, reported in the literature, resulted from the ingestion of dosage levels of sodium fluoride drug preparations which were considerably greater than the maximum level (264 mg) of the proposed and this final exemption. In addition, the Commission points out that substantial human experience data reveal a low incidence of adverse reaction from ingestion of normal dosages of either flavored or unflavored preparations of this drug.

As to the issue of multiple dispensing of the drug, the Commission notes that human experience data do not support the contention that young children are likely to be poisoned from ingestion of this drug as the result of either single or multiple dispensings. Despite this lack of data concerning any poisonings from multiple dispensings, the Commission has, as an additional precaution, included language in this preamble (see below) urging medical and dental practitioners and pharmacists to observe the American Dental Association recommendation that no more than 264 mg of sodium fluoride be dispensed at one time. (Similar language was contained in the preamble to the proposed rule).

Findings

Based on currently available information showing the low toxicity of sodium fluoride and the lack of serious adverse human experience reported from ingesting sodium fluoride, the Commission finds that sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 mg of sodium fluoride per package, do not pose a risk of serious personal illness or serious injury to children. The Commission emphasizes that this exemption level is partly based on the American Dental Association safety recommendation that no more than 264 mg of sodium fluoride be dispensed at one time. The Commission urges that medical and dental practitioners and pharmacists observe this recommended limitation in the interest of protecting young children from potentially toxic ingestions as a result of exposure to excessive amounts of sodium fluoride-containing preparations. The Commission also emphasizes that this exemption is limited to sodium fluoride-containing products which contain no other substances subject to the requirements for special packaging under 16 CFR 1700.14(a)(10).

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and that, therefore, environmental review of exemptions is generally not required (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required (§ 1021.5(b)(3)).

With respect to this exemption of sodium fluoride drug preparations containing no more than 264 mg of sodium fluoride from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the comment on the proposal, the poison control statistics from the National Clearinghouse for Poison Control Centers and from six poison control centers under contract with the Commission, medical and scientific literature and other Commission data sources, and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act (PPPA) of 1970, with the Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the Act, the Commission concludes that an exemption from the special packaging requirements for sodium fluoride drug preparations containing no more than 264 mg of sodium fluoride per package should be issued as set forth below. Accordingly, under the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, sections 2(4), 3, 5; 84 Stat. 1670–72; 15 U.S.C. 1471 (4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–572, sec. 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by revising paragraph (a)(10)(vii), as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription Drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(vii) Sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 milligrams of sodium fluoride per package and containing no other substances subject to this § 1700.14(a)(10).

Dated: November 20, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-36893 Filed 11-25-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Interim Regulations

Correction

In FR Doc. 80–33811 appearing on page 72110 in the issue of Friday, October 31, 1980, make the following correction.

On page 72111, center column, in paragraph (c)(2) of § 404.1255a put "45 FR 72110, October 31, 1980" in the line reading "(insert FR citation and date this material is published)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7740]

Income Tax; Soil and Water Conservation Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the definition of the phrase "land used in farming" for purposes of determining whether soil and water conservation expenditures are deductible. The Internal Revenue Service has reconsidered its prior interpretation of that phrase in light of court decisions that found the interpretation overly restrictive. The regulations set forth a new interpretation of the phrase for the guidance of taxpayers making soil and water conservation expenditures.

DATES: The regulations are effective for taxable years beginning after 1953.

FOR FURTHER INFORMATION CONTACT: Paul A. Francis of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 175 of the Internal Revenue Code of 1954 (45 FR 12850). The amendments were proposed to set forth a new interpretation of the phrase "land used in farming" for purposes of determining whether expenditures for soil and water conservation are deductible. No public hearing on the proposed amendments was requested, and accordingly none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted without change by this Treasury decision.

Purpose of Amendments

These amendments reflect Service consideration of the holdings with respect to the deductibility of soil and

water conservation expenditures in *Behring v. Commissioner*, 32 T.C. 1256 (1959), acq. withdrawn and acq. in result substituted, 1972–1 C.B. 1, *Estate of Straughn v. Commissioner*, 55 T.C. 21 (1970), acq., 1976–2 C.B. 3, and *Duda & Sons, Inc. v. United States*, 383 F. Supp. 1303 (M.D. Fla. 1974), *rev'd on other grounds*, 560 F. 2d 669 (5th Cir. 1977).

One of the conditions for deduction of soil and water conservation expenditures under Code section 175 is that the expenditures be in respect of "land used in farming". Section 175 (c)(2) defines "land used in farming" as land used (before or simultaneously with the expenditures) by the taxpayer or a tenant of the taxpayer for the production of crops, fruits or other agricultural products or for the sustenance of livestock.

The regulations deal with two issues raised in the cited cases with respect to the meaning of the phrase "land used in farming". The first issue is the application of section 175(c)(2) in the case of a taxpayer with newly acquired farmland. The second is the application of that provision to a tract of land only a part of which is actually used in farming.

Newly Acquired Farmland

Section 175(c)(2) makes no reference to a taxpayer who has newly acquired land which was used in farming by a predecessor. Regulation § 1.175–4(a)(2) provides that such a taxpayer may deduct soil and water conservation expenditures made before the taxpayer actually begins to farm the land only if the use of the land by the taxpayer is substantially a continuation of the use by the predecessor.

In *Straughn* the Internal Revenue Service argued that a new owner could not deduct conservation expenditures because the use of the land by the new owner for growing grapes was not substantially a continuation of its prior use for growing wheat and cotton. The Tax Court rejected the distinction drawn by the Service between different types of agricultural products and held that the taxpayer could deduct the expenditures. The United States District Court for the Middle District of Florida found the *Straughn* decision persuasive and also permitted deductions under similar circumstances in the *Duda* case.

The regulations adopted by this Treasury decision provide that any type of farming use of the land by the taxpayer may satisfy the requirement that the use of the land be substantially a continuation of its prior use in farming. Thus, a taxpayer who plants crops on land previously used for grazing livestock would be entitled to deduct conservation expenditures if the other conditions of section 175 are met.

Part of Tract Used in Farming

In *Duda* and in *Behring* taxpayers contended that use of any part of a tract of land in farming made the entire tract "land used in farming" within the meaning of section 175(c)(2). Under that view conservation expenditures in respect of a previously unfarmed part of a tract could be deductible if some other part of the tract was actually used in farming. The court in *Behring* accepted the taxpayer's theory, but the court in *Duda* rejected it and denied the claimed deductions.

The regulations adopted by this document provide that conservation expenditures are deductible only to the extent that they are allocable to land actually used in farming. The regulations provide rules for the allocation of conservation expenditures that benefit both land used in farming and other land of the taxpayer that does not qualify as "land used in farming".

Comments Received

The only comment relating to the issue of deductibility where only a part of a tract is used in farming requested that the regulations follow the *Behring* opinion rather than the *Duda* opinion. The Internal Revenue Service believes that the *Duda* opinion correctly states the law on this point.

Other comments with respect to the notice of proposed rulemaking urged that the regulations permit deductions under section 175 when land is being prepared for its first use in farming. The suggested rule, however, would be inconsistent with the explicit requirement in section 175(c)(2) that the land be used in farming simultaneously with or before the soil and water conservation expenditures. Note also that Congress has specifically provided for deduction of land clearing expenditures under section 182.

Review

The Treasury Department will review these regulations from time to time in light of comments received from offices within the Treasury Department or from other sources.

Drafting Information

The principal author of these regulations was Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

The amendments to 26 CFR Part 1 published as a notice of proposed rulemaking in the **Federal Register** for February 27, 1980 (45 FR 12850), are hereby adopted as proposed.

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

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: November 12, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

26 CFC Part 1 is amended as follows:

§ 1.175 [Deleted]

Paragraph 1. Section 1.175 is deleted.

Par. 2. Paragraph (a)(1) of § 1.175–2 is amended by adding at the end thereof the following new sentence:

§ 1.175–2 Definition of soil and water conservation expenditures.

(a) *Expenditures treated as a deduction.* (1) * * * For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

* * * * *

Par. 3. Section 1.175–4 is amended to read as follows:

§ 1.175–4 Definition of "land used in farming.

(a) *Requirements.* For purposes of section 175, the term "land used in farming" means land which is used in the business of farming and which meets both of the following requirements:

(1) The land must be used for the production of crops, fruits, or other agricultural products, including fish, or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. Land used for the sustenance of livestock includes land used for grazing such livestock.

(2) The land must be or have been so used either by the taxpayer or his tenant at some time before or at the same time as, the taxpayer makes the expenditures for soil or water conservation or for the prevention of the erosion of land. The taxpayer will be considered to have used the land in farming before making such expenditure if he or his tenant has employed the land in a farming use in the past. If the expenditures are made by the taxpayer in respect of land newly acquired from one who immediately prior to the acquisition was using it in

farming, the taxpayer will be considered to be using the land in farming at the time that such expenditures are made, if the use which is made by the taxpayer of the land from the time of its acquisition by him is substantially a continuation of its use in farming, whether for the same farming use as that of the taxpayer's predecessor or for one of the other uses specified in paragraph (a)(1) of this section.

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

Example (1). A purchases an operating farm from B in the autumn after B has harvested his crops. Prior to spring plowing and planting when the land is idle because of the season, A makes certain soil and water conservation expenditures on this farm. At the time such expenditures are made the land is considered to be used by A in farming, and A may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

Example (2). C acquires uncultivated land, not previously used in farming, which he intends to develop for farming. Prior to putting this land into production it is necessary for C to clear brush, construct earthen terraces and ponds, and make other soil and water conservation expenditures. The land is not used in farming at the same time that such expenditures are made. Therefore, C may not deduct such expenditures under section 175.

Example (3). D acquires several tracts of land from persons who had used such land immediately prior to D's acquisition for grazing cattle. D intends to use the land for growing grapes. In order to make the land suitable for this use, D constructs earthen terraces, builds drainage ditches and irrigation ditches, extensively treats the soil, and makes other soil and water conservation expenditures. The land is considered to be used in farming by D at the time he makes such expenditures, even though it is being prepared for a different type of farming activity than that engaged in by D's predecessors. Therefore, D may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

(c) *Cross reference.* For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

Par. 4. The following new section is added immediately after § 1.175–6:

§ 1.175–7 Allocation of expenditures in certain circumstances.

(a) *General rule.* If at the time the taxpayer paid or incurred expenditures for the purpose of soil or water conservation, or for the prevention of erosion of land, it was reasonable to believe that such expenditures would directly and substantially benefit land of the taxpayer which does not qualify as "land used in farming," as defined in § 1.175–4, as well as land of the taxpayer which does so qualify, then, for purposes of section 175, only a part of the taxpayer's total expenditures is in respect of "land used in farming."

(b) *Method of allocation.* The part of expenditures allocable to "land used in farming" generally equals the amount which bears the same proportion to the total amount of such expenditures as the area of land of the taxpayer used in farming which it was reasonable to believe would be directly and substantially benefited as a result of the expenditures bears to the total area of land of the taxpayer which it was reasonable to believe would be so benefited. If it is established by clear and convincing evidence that, in the light of all the facts and circumstances, another method of allocation is more reasonable than the method provided in the preceding sentence, the taxpayer may allocate the expenditures under that other method. For purposes of this section, the term "land of the taxpayer" means land with respect to which the taxpayer has title, leasehold, or some other substantial interest.

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

Example (1). A owns a 200-acre tract of land, 80 acres of which qualify as "land used in farming." A makes expenditures for the purpose of soil and water conservation which can reasonably be expected to directly and substantially benefit the entire 200-acre tract. In the absence of clear and convincing evidence that a different allocation is more reasonable, A may deduct 40 percent (80/200) of such expenditures under section 175. The same result would obtain if A had made the expenditures after newly acquiring the tract from a person who had used 80 of the 200 acres in farming immediately prior to A's acquisition.

Example (2). Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 80 acres which qualify as land used in farming; any benefit to the other 120 acres would be minor and incidental. A may deduct all of such expenditures under section 175.

Example (3). Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 120 acres which do not qualify as land used in farming. A may not deduct any of such expenditures under section 175. The same result would obtain even if A had leased the 200-acre tract to B in the expectation that B would farm the entire tract.

[FR Doc. 80–36926 Filed 11–21–80; 4:36 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

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

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

ACTION: Final rule.

SUMMARY: The State of Texas has proposed to alter the Texas permanent program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) by amending two regulations relating to the designation of areas as unsuitable for surface coal mining. Part 943 is hereby amended to reflect the approval of these amendments to the Texas permanent program.

DATE: The approval of these amendments is effective on November 26, 1980.

ADDRESSES: Copies of the full text of the Texas program, including the amendments, are available for inspection during regular business hours at the OSM Headquarters Office and the Region IV Office and the central office and field offices of the Texas Railroad Commission at the addresses listed below:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Room 153, South Interior Building, Washington, D.C. 20240;
Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106;
Texas Railroad Commission, Surface Mining and Reclamation Division, 1124 S. Inter-Regional Highway, Austin, Texas 78704;
Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Woodgate Office Park, Suite 125, 1121 East SW. Loop 323, Tyler, Texas 75703;
Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Building, 1419 3rd Street, Floresville, Texas 78114.

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:

Background on Texas Program Submission and the Secretary's Approval

On July 20, 1979, OSM received a proposed regulatory program from the State of Texas. The program was submitted by the Texas Railroad Commission, the State regulatory authority. The Texas permanent program was approved conditionally, effective February 16, 1980, in accordance with 30 CFR 732.13(i). The conditional approval was published under 30 CFR 943.11, on February 27, 1980, (45 FR 13008). The Texas program was subsequently amended to satisfy the condition of the approval and 30 CFR 943.11 was amended to reflect the approval of the Texas program without condition on June 18, 1980 (45 FR 41136–41137).

Submission of Amendments

On March 27, 1980, OSM received a proposal from the Texas Railroad Commission containing three amendments to the state regulations. One of the three related to the award of costs, including attorneys' fees in administrative proceedings, and satisfied the condition of the approval of the Texas program. On June 18, 1980, the Secretary approved this amendment (to Texas Rule 051.07.04.023) and removed the condition of the approval of the Texas program (45 FR 41136–41137).

The remaining two amendments contained in the March 27, 1980, letter pertained to Texas Rule 051.07.04.070 concerning the State process for designating areas unsuitable for mining and are the subject of this notice. The amendments affect the provisions that interpret "valid existing rights" and "the close of public comment period" relative to petitions to designate areas unsuitable for mining. The procedures for review of proposed permanent program amendments are contained in 30 CFR 732.17 (44 FR 15328, March 13, 1979).

Discussion of Amendments

(a) "Valid existing rights" provision:

Texas has proposed an amendment to its definition of "valid existing rights" by adding a new subsection to that definition in Texas Rule 051.07.04.070, relating to the interpretation of the document used to establish valid existing rights.

On February 6, 1980 (45 FR 8244), OSM proposed to amend subsection (c) of the definition of valid existing rights in 30 CFR 761.5, to add the option of relying upon applicable state case law concerning interpretation of documents that convey mineral rights.

In the preamble to that proposed rule, OSM stated:

> In order to implement what the Secretary believes is Congress' intent that state case law on the subject not be overruled, the Secretary is proposing that Subsection (c) of Part 761.5 be changed to provide an alternative basis for valid existing rights determinations. Where a state has case law establishing some other standard for interpreting documents which convey mineral rights, this law will be used to interpret documents executed in that state.

The Texas program that was approved conditionally on February 16, 1980, did not contain a provision similar to 30 CFR 761.5(c) relating to the interpretation of the terms of the document relied upon to establish valid existing rights.

The Secretary determined that the absence of this provision did not prevent the approval of the Texas program; however, OSM did advise Texas that this aspect of its program could be improved by adding a provision similar to 30 CFR 761.5(c). Accordingly, Texas proposed such a program amendment. The proposed amendment is consistent with OSM's proposed rule (*See* 45 FR 8244). Texas added a new subsection (c) to Rule 051.07.04.070, and the original subsection (c) has been re-designated subsection (d).

The proposed Texas amendment reads as follows:

"Rule 051.07.04.070 is supplemented by the following language after paragraph (b)(2) under *valid existing rights.*

(c) "Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon Texas case law concerning the interpretation of documents conveying mining rights. When no Texas case law exists, interpretation shall be based upon the usage and custom at the time and place where the document came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

(d) "Valid existing rights does *not* mean mere expectation of a right to conduct surface coal mining. (Examples of rights that alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a State or Federal permit.)"

(b) "Close of public comment period" provision:

During the review of the Texas program, prior to the Secretary's conditional approval on February 16, 1980, OSM advised Texas that its Rule 051.07.04.070 could lead to confusion as to when the public comment period actually closes during the process for designating lands unsuitable for coal mining because of the ambiguous language of the regulation. Although this was determined not to be a significant problem that would prevent approval of the Texas program, OSM did suggest that Texas clarify this language at some future time. Texas agreed that the language of Rule 051.07.04.070 could have been clearer and has accordingly proposed to amend that language by adopting the following regulation:

"Rule 051.07.04.070 is amended as follows:

"Close of public comment period means the close of a public hearing on a surface mining permit application. When no public hearing is held, this time shall be 30 days after the last publication of the newspaper notice required by section .207(a)."

Background on Approval Process

On July 2, 1980, the regional director published notice in the Federal Register announcing receipt of the program amendments (45 FR 44967–44969). The notice announced a public comment period through July 30, 1980, and that a public hearing would be held if requested of the regional director by July 15, 1980, and contained the full text of the program amendments.

The regional director did not receive any requests for a public hearing, so none was held. The one written comment was considered by OSM and is addressed below under the section entitled "Disposition of Comment."

On September 17, 1980, the regional director recommended to the Director of OSM that the program amendments be approved

Director's Findings

Pursuant to 30 CFR 732.15(b)(9) and 732.17(f)(2), the Director finds that the proposed program amendments are consistent with SMCRA and the provisions of 30 CFR Chapter VII, Subchapter F, for the designation of areas as unsuitable for surface coal mining.

Disposition of Comment

The Heritage Conservation and Recreation Service (HCRS) suggested that upon completion, the Memorandum of Agreement between OSM and the Advisory Council on Historic Preservation be made part of the Texas program.

The HCRS comment did not specifically address the two proposed amendments to the Texas program; however, a copy of the completed memorandum will be provided to Texas.

Approval of Amendments

The amendments to the Texas permanent program are hereby approved. A new section 30 CFR 943.15 is added to include approved amendments to the Texas program. 30 CFR 943.15(a), specifically, is added to include the approval of the two amendments of March 27, 1980, and is effective on November 26, 1980.

Additional Findings

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval.

This document is not a significant rule under Executive Order 12044 or 43 CFR part 14, and no regulatory analysis is being prepared on this approval.

This approval does not require the concurrence of the Administrator of the Environmental Protection Agency. On January 28, 1980, the Administrator of the Environmental Protection Agency transmitted written concurrence on the Texas permanent program. The amended regulatory provisions approved in this document are not aspects of the Texas permanent program that 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.*).

The effective date of the conditional approval of the Texas permanent program (February 16, 1980) shall be used to compute any time requirements that commence with program approval.

Dated: November 20, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

PART 943—TEXAS

A new section, 30 CFR 943.15, is added to read as follows:

§ 943.15 Approval of Regulatory Program Amendments.

(a) The Texas permanent regulatory program amendments received by OSM on March 27, 1980, are approved effective November 26, 1980.

[FR Doc. 80-36941 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 950

Conditional Approval of the Permanent Program Submission From the State of Wyoming Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On August 15, 1979, the State of Wyoming submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). After opportunity for public comment and thorough review of the initial program submission, the Secretary of the Interior determined that certain parts of the Wyoming program met the minimum requirements of SMCRA and the Federal permanent program regulations and others did not. Accordingly, the Secretary of the Interior approved the Wyoming program in part on February 15, 1980. Notice of that decision and the Secretary's findings were published in the **Federal Register** on March 31, 1980 (45 FR 20930–20982). The State of Wyoming resubmitted its program for approval by the Secretary on May 30, 1980. The resubmitted program included those portions of the initial submission not approved by the Secretary on February 15, 1980. After opportunity for public comment and thorough review of the program resubmission, the Secretary of the Interior determined that the Wyoming program, including the resubmission, does, with minor exceptions, meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary of the Interior has conditionally approved the Wyoming program.

EFFECTIVE DATE: November 26, 1980.

ADDRESSES: Copies of the Wyoming program submission and the administrative record on the Wyoming program submission are available for public inspection and copying during business hours at:

Wyoming Department of Environmental Quality, Land Quality Division, Hathaway Building, Cheyenne, Wyoming 82002.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 30 East Grinnell Street, Sheridan, Wyoming 82801.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 933 Main Street, Lander, Wyoming 82520.

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, Washington, DC 20240, Telephone (202) 343–4728.

FOR FURTHER INFORMATION CONTACT:

Mr. 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, N.W., Washington, DC 20240; telephone (202) 343–4225.

Mr. Donald Crane, Regional Director, Region V, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202; telephone (303) 837–5421.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is organized to assist understanding of the findings underlying the Secretary's decision. It is divided into six major parts:

A. General Background on the Permanent Program
B. General Background on the State Program Approval Process
C. General Background on the Wyoming Program
D. Secretary's Findings
E. Explanation of the Secretary's Findings
F. Approval

Part A sets forth the statutory and regulatory framework of the Surface Mining Control and Reclamation Act of 1977 (SCMRA).

Part B sets forth the general statutory and regulatory scheme applicable to all States which wish to obtain primary jurisdiction to implement the permanent program within their borders.

Part C summarizes the steps undertaken by Wyoming and officials of the Department of the Interior, beginning with Wyoming's initial program submission and its program resubmission, and leading to the decision being announced today.

Part D contains the findings the Secretary has made with respect to each of the thirty (30) criteria for evaluation of a State program found in SMCRA and the Secretary's regulations.

Part E contains the reasons for each finding in Part D and the disposition of comments from the public and governmental agencies. For most findings, only the significant differences between Federal laws and rules and resubmitted portions of the Wyoming program are discussed and evaluated. Part E omits detailed discussions of

differences between Federal laws and rules and the Wyoming program, and detailed analysis of relevant public comments, which were discussed and approved in the Secretary's partial approval of the initial program submission as published in the **Federal Register** on March 31, 1980 (45 FR 20930–20982).

Part F identifies those parts of the Wyoming program which are conditionally approved.

It should be noted that these findings are an important part of the record for use as future indicators as to why Wyoming's program was deemed equivalent to SMCRA and consistent with applicable Federal regulations.

It should also be noted that Wyoming's program does not yet apply on Federal lands. Numerous mines in Wyoming conduct operations, in whole or in part, on "Federal lands" containing Federal mineral rights, surface rights, or both. Section 523(c) of SMCRA provides that a State may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State. Pursuant to this authority, Wyoming has submitted a proposed cooperative agreement, which was published in the **Federal Register** on July 8, 1980 (45 FR 45927–45931), and public comment was invited. On October 1, 1980, OSM published a notice of proposed rulemaking (45 FR 64971). A public hearing was held in Cheyenne, Wyoming on October 30, 1980, and the public comment period expired on November 7, 1980. A final rule concerning the proposed Wyoming cooperative agreement is forthcoming. Because it is not yet final, however, this conditional approval does not include the cooperative agreement, which is subject to a separate rulemaking.

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 initial program rules, 30 CFR Parts 710–725, 42 FR 62639.

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 program within the State. If a State program is approved in full, the State will be the primary regulator of activities on non-Federal and non-Indian lands subject to SMCRA, rather than the Federal government.

The Federal rules for the permanent program, including procedures for States to follow in submitting State programs and minimum standards the State programs must meet to be eligible for approval, are found in 30 CFR Parts 700–797 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 860) 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 15484), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 2600), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the rules have been published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629) and August 6, 1980 (45 FR 52306–52324). Portions of these rules have been suspended, pending further rulemaking, on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), December 31, 1979 (44 FR 77454–77455), January 30, 1980 (45 FR 6913), and August 4, 1980 (45 FR 51547–51550).

B. General Background on State Program Approval Process

Any State wishing to assume primary jurisdiction over the regulation of coal mining within its borders may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The Federal rules governing State program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, opportunity for the State to add to or modify the program, and opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with the timetable set by the Secretary, or disapprove the program in whole or in part. If any parts of the program are disapproved, the State may submit a revision correcting the items which did not meet the requirements of SMCRA and applicable Federal regulations. If any of these revised program parts are 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 Secretary implements the Federal program. A State may not assume primary jurisdiction until all parts of its program have been approved.

Different criteria apply to various elements of a State program for the purpose of determining whether they can be approved by the Department. The three categories of potential program elements, each with its own standard of review, are discussed in the March 31, 1980, **Federal Register** (45 FR 20930 et seq.).

The special requirements under SMCRA and 30 CFR Chapter VII for anthracite mines in Pennsylvania are not applicable in Wyoming.

Before Wyoming made its initial program submission and subsequent resubmission, challenges to the Secretary's permanent program regulations were brought by representatives of industry, two States, and several environmental groups in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit, *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

The Secretary, in reviewing State programs, is complying with the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Wyoming program, the Secretary has adhered to the Federal rules as cited in "General Background on the Permanent Program," above, and as affected by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation.*

In response to the arguments raised in the challenges, the Secretary voluntarily suspended several of the permanent program regulations. These suspensions were announced in the **Federal Register** on November 7, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447) and January 30, 1980 (45 FR 6913).

Because of the litigation's complexity, the court has issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but suspended or remanded all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but suspended or remanded some forty additional parts, sections or subsections of the regulations. A listing of all the suspended and remanded regulations was published in the **Federal Register** on July 7, 1980 (45 FR 45604–45609).

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. One 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. In making its resubmission, Wyoming was aware of the regulations suspended by the Secretary and the regulations remanded by the court and made modifications to several of its regulations in light of the suspensions and remands. (See the May 28, 1980, Memorandum from Nancy Wood to the Environmental Quality Council in the Wyoming resubmission (Vol. 3A).) Governor Herschler has requested that the Secretary not disapprove such provisions in the Wyoming program. (See Administrative Record Document Nos. WY–220 and WY–233.) Accordingly, the Secretary is approving provisions which, though they contain language from suspended and remanded Federal regulations, are otherwise acceptable.

In view of the three court decisions, the Secretary is applying the following standards to the review of State 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. The Secretary also 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 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 State provision is that the requirements of that provision 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 or remanded regulation and no State program will be disapproved for failure to contain a suspended or remanded regulation.

4. Nonetheless, a State must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based remanded or suspended regulations.

5. A State program may not contain any provision which is inconsistent with a provision of SMCRA.

6. Programs will be evaluated only on the basis of provisions other than those 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.

7. Upon promulgation of new 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 30 CFR 732.17, concerning State program amendments, will govern this process.

On July 10, 1980, the United States Court of Appeals for the District of Columbia Circuit ruled that State programs need not contain minimum permit application requirements beyond those specified in sections 507 and 508 of SMCRA.

(*In re: Permanent Surface Mining Regulation Litigation*, No. 80–1308). On August 25, 1980, that court agreed to rehear the case, and vacated its earlier opinion. Accordingly, that decision presently has no effect on the Secretary's conditional approval of the Wyoming program.

To codify decisions on State programs, Federal programs, and other matters affecting individual states, OSM has established Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Wyoming's program are found in 30 CFR Part 950.

C. Background on the Wyoming Program Submission

Initial Submission

On August 15, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Wyoming. Notice of receipt of the submission initiating the program review was published in the August 22, 1979, **Federal Register** (44 FR 49313–49314) and in newspapers of general circulation within the State. The announcement invited public participation in the initial phase of the review process relating to the regional director's determination of whether the submission was complete.

On September 10, 1979, a public review meeting on the Wyoming program was conducted by the Governor of Wyoming in Cheyenne. A transcript of this meeting was placed in the administrative record on September 20, 1979 (Administrative Record No. WY–17).

On September 20, 1979, a public review meeting on the program and its completeness was held by the regional director in Cheyenne, Wyoming; September 20 was also the close of the public comment period on completeness (Administrative Record No. WY–24). On October 24, 1979, the regional director published notice in the **Federal Register** (44 FR 61266–61267) that he had determined the program submission to be complete.

On October 26, 1979, the Wyoming Department of Environmental Quality submitted an amendment to its program submission, containing a **Federal Register** notice and a letter relating to the regional director's finding of completeness (Administrative Record No. WY–36).

On December 11, 1979, the regional director published notice in the **Federal Register** (44 FR 71798–71799) and in newspapers of general circulation within the State setting forth procedures for the public hearing and comment period on the substance of the Wyoming program. The public comment period was scheduled to close January 7, 1980. On January 7, 1980, a public hearing on the Wyoming submission was held in Cheyenne, Wyoming, by the regional director.

During the period from January 2 through January 21, 1980, various meetings were held between the Secretary and his representatives, on one hand, and the Governor of Wyoming and various other State officials, on the other, concerning draft

amendments to the Wyoming program. Minutes and notes of these meetings are in the public record and were the subject of a **Federal Register** notice on January 15, 1980, (45 FR 2912) and public comment period. None of those draft materials was made an official part of the initial submission. Discussion of those items in the March 31, 1980, **Federal Register** (45 FR 20930–20982) was for general guidance to both the State and the public and did not bind the Secretary in making the decision announced today. Discussions of the draft materials and their location in the administrative record may be found in Part C of the March 31, 1980, **Federal Register** (45 FR 20933–20934).

On January 28, 1980, the regional director submitted to the Director of OSM his analysis of the Wyoming program, noting numerous differences between the program and the Federal regulations, and copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record. The regional director recommended to the Director that the Wyoming program be approved in part.

On February 14, 1980, OSM published in the **Federal Register** (45 FR 10046–10047) a notice of the availability of the views on the Wyoming program submitted by 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 State program.

On February 15, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence with the Secretary's approval of those parts of the Wyoming program approved in the initial decision.

On February 15, 1980, the Director of OSM recommended to the Secretary that the Wyoming program be partially approved. The Secretary accepted that recommendation and approved the Wyoming program, in part.

The Secretary informed the State of his decision in a letter to Governor Herschler on February 15, 1980, which included the Secretary's findings on both the approved and disapproved parts of the formal Wyoming program. The public announcement of the decision was published in the **Federal Register** on March 31, 1980 (45 FR 20930–20982). A copy of the letter to Governor Herschler is available for review in the administrative record. The February 15, 1980, decision was based on the formal submission of August 15, 1979, (Administrative Record No. WY–3), as amended on October 26, 1979.

Resubmission

On May 30, 1980, Wyoming resubmitted for approval by the Secretary those portions of its program that were not approved by the Secretary on February 15, 1980. Notice of receipt of the resubmission and notice of a public hearing were published in the **Federal Register** on June 4, 1980 (45 FR 37697–37699). A public hearing was held in Cheyenne, Wyoming, on June 19, 1980, and the record was open for public comment until June 24, 1980.

On July 9, 1980, OSM officials discussed eighteen issues raised during review of the Wyoming resubmission with Wyoming officials by telephone (Administrative Record No. WY–204). On July 25, 1980, notice was published in the **Federal Register** (45 FR 49595–49599) that the record on the Wyoming resubmission was being reopened to allow the public to comment on the eighteen issues and on the provisions of the Wyoming regulations which tentatively had been identified as containing suspended or remanded Federal regulations, as discussed in "General Background on State Program Approval Process," above. The record remained open for comment until August 8, 1980.

On August 5, 1980, the State provided OSM with a letter responding to the eighteen issues discussed by telephone on July 9, 1980 (Administrative Record No. 220). Those responses are referred to, where appropriate, in the findings under Parts D and E of this notice.

The regional director submitted to the Director of OSM his analysis of the Wyoming program resubmission, together with copies of the transcript of the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record. On August 29, 1980, the regional director recommended to the Director that the Wyoming program be conditionally approved.

On August 21, 1980, OSM published in the **Federal Register** (45 FR 55767–55768) a notice of the availability of the views on the Wyoming program resubmission submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies.

On August 4, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence with the Secretary's conditional approval of the Wyoming program.

On September 3, 1980, the Director recommended to the Secretary that the Wyoming program be conditionally approved. The Secretary accepted that recommendation and conditionally approved the Wyoming program on September 18, 1980. A copy of the letter to Governor Herschler announcing that decision is available for review in the administrative record.

Throughout the Wyoming State program review process, the Secretary and OSM have had frequent contact with the Governor of Wyoming and the staff of the Wyoming Land Quality Division. Discussions of the State program submission and resubmission were held among various State and Federal officials. Minutes or notes of these discussions were placed in the administrative record and made available for public review and comment.

All contacts between officials and staff of the Interior Department and the State of Wyoming have been conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444.54445).

D. Secretary's Findings

In accordance with Section 503(a) of SMCRA, the Secretary finds that Wyoming has the capability to carry out the provisions of SMCRA and to meet its purposes, in the ways and to the extent set forth in Findings 1 through 7 below:

1. The Wyoming Environmental Quality Act (EQA), the regulations adopted thereunder, and the Wyoming Administrative Procedures Act, provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Wyoming in accordance with Section 503(a)(1) of SMCRA;

2. The Wyoming EQA provides sanctions for violations of Wyoming laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of Sections 503(a)(2), 517, 518 and 521 of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Land Quality Division or its inspectors;

3. The Wyoming Land Quality Division has sufficient administrative and technical personnel and sufficient funds to regulate surface coal mining and reclamation operations, in accordance with the requirements of Section 503(a)(3) of SMCRA;

4. Wyoming law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of Sections 506,

507, and 508 of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Wyoming;

5. Wyoming has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA;

6. Wyoming has 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 corresponds to Section 503(a)(6) of SMCRA;

7. Wyoming has enacted regulations consistent with regulations issued pursuant to SMCRA except for those minor inconsistencies discussed below.

As required by Section 503(b)(1)–(3) of SMCRA, 30 USC 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

8. 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 Wyoming program;

9. Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those parts of the Wyoming program being approved which relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 USC 1151–1175), and the Clean Air Act, as amended (42 USC 7401 *et seq.*); and

10. Held a public review meeting in Cheyenne, Wyoming, on September 20, 1979, to discuss the initial Wyoming program submission and its completeness and held public hearings in Cheyenne, Wyoming, on January 7, 1980, on the substance of the initial submission and June 19, 1980, on the substance of the resubmission;

11. In accordance with Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4), the Secretary finds that the State of Wyoming has the legal authority and sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30, below, on the basis of information in the Wyoming program submission, including the side-by-side comparison of the Wyoming law and regulations with SMCRA and 30 CFR Chapter VII, the Wyoming program resubmission, public comments, testimony and written presentations at the public hearings, and other relevant information. Specific references to State rules and more detailed discussions of the "State window" alternatives may be found in Part E.

12. The Wyoming program provides for Wyoming to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII through certain provisions of the State program which, as alternatives to certain Federal regulatory requirements, are in accordance with the applicable portions of SMCRA and are consistent with the regulations. Pursuant to 30 CFR 731.13, The Secretary makes Findings 12.1 through 12.15 below with respect to Wyoming's proposed alternative approaches ("State window" items) to the requirements of 30 CFR Chapter VII.

12.1 Wyoming's alternative approach to 30 CFR 780.23 (description of postmining land use contained in reclamation plans) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.2 Wyoming's alternative approach to 30 CFR 785.14 and Part 824 (special requirements for mountaintop removal operations) is in accordance with the provisions of SMCRA and consistent with 30 CFR Chapter VII.

12.3 Wyoming's alternative approach to 30 CFR 785.15, 785.16, and Part 826 (special provisions for operations on steep slopes) is in accordance with SMCRA and consistent with 30 CFR Chapter VII. See discussion in Part E, Findings 12.3 and 13.S.

12.4 Wyoming's alternative approach to 30 CFR 785.19(c), (d), and (e) (identification of alluvial valley floors and evaluation of the effect that mining on alluvial valley floors has on farming) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.5 Wyoming's alternative approach to 30 CFR 816.22 (identification of topsoil to be removed) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.6 Wyoming's alternative approach to 30 CFR 816.44(d) (requirements for permanent diversions and reconstruction of channels temporarily diverted) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.7 Wyoming's alternative approach to 30 CFR 816.57 (identification of streams for which authorization is necessary to mine within 100 feet) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII, based on clarification of Wyoming's intent to measure aquatic systems, wherever they support fish, provided on August 5, 1980 (Administrative Record No. WY–220). See discussion in Part E, Finding 12.7.

12.8 Wyoming's alternative approach to 30 CFR 816.72 (valley fill requirements) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII.

12.9 Wyoming's alternative approach to 30 CFR 816.73 (head-of-hollow fill requirements) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.10 Wyoming's alternative approach to 30 CFR 816.74 (requirements for durable rock fills) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII.

12.11 Wyoming's alternative approach to 30 CFR 816.104 (restoration of contour where thin overburden exists) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII.

12.12 Wyoming's alternative approach to 30 CFR 816.105 (provisions for restoration of contour where thick overburden exists) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII.

12.13 Wyoming's alternative approach to 30 CFR 816.42(a)(2) and 816.46(u) (removal of sedimentation ponds when revegetation has met the liability period—usually 10 years in Wyoming) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII. The program did not clearly show that baseline water quality data and data comparison techniques will be adequate to ensure accurate and proper decisions by the regulatory authority. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State provided acceptable assurances that the data will be required. See discussion in Part E, Finding 12.13.

12.14 Wyoming's alternative approach to 30 CFR 701.5 and 816.150—816.176 (road classification) is in accordance with the technical requirements of SMCRA.

12.15 Wyoming's alternative approach to exploration activities is addressed in Finding 15.B since it was not presented with the other "State window" alternatives and was not proposed pursuant to 30 CFR 731.13.

13. The Land Quality Division has the authority under Wyoming laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and the Wyoming program includes provisions adequate to do so, except for the minor inconsistencies discussed in Part E, Finding 13.

14. The Land Quality Division has the authority under Wyoming laws and regulations and the Wyoming program includes adequate provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits), except for those minor deficiencies discussed in detail in Part E, Finding 14.

15. The Land Quality Division has 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 Wyoming program includes provisions adequate to do so.

16. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site, consistent with 30 CFR Part 707.

17. The Land Quality Division has the authority, and the Wyoming program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Wyoming, consistent with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement).

18. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (performance bonds), with the exception of the minor deficiency discussed in Part E, Finding 18.

19. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for civil and criminal sanctions for violations of Wyoming law, regulations and conditions of permits and exploration approvals including civil and criminal penalties, in accordance with Section 518 of SMCRA (penalties) and consistent with 30 CFR 845 (civil penalties), including the same or similar procedural requirements.

20. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to issue, modify, terminate and enforce notices of violations, cessation orders and show-cause orders in accordance with Section 521 of SMCRA (enforcement) and consistent with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements.

21. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F (designation of lands unsuitable for mining).

22. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for public participation in the development, revision and enforcement of Wyoming laws and regulations and the Wyoming program, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII, with the exception of the minor deficiencies discussed in Part E, Finding 22.

23. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Land Quality Division consistent with 30 CFR Part 705 (restrictions on financial interests of State employees).

24. The Land Quality Division has the authority under Wyoming laws and the 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.

25. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for small operator assistance consistent with 30 CFR Part 795.

26. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for protection of employees of the Land Quality Division in accordance with the protection afforded Federal employees under Section 704 of SMCRA.

27. Wyoming has the authority under its laws and the Wyoming program provides for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA (review of decisions) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement).

28. The Land Quality Division has the authority under Wyoming laws and the Wyoming 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.

29. The Wyoming EQA and Wyoming Land Quality Rules and Regulations, as currently in effect, contain no provisions which would interfere with or preclude implementation of SMCRA and 30 CFR Chapter VII. The Wyoming Administrative Procedures Act, Wyoming Water Quality Rules and Regulations, Wyoming Air Quality Rules and Regulations, Wyoming Water Laws, Wyoming State Engineer Regulations and Instructions, Department of Environmental Quality Rules of Informational Practices, Wyoming Public Records Law, Wyoming Open Meeting Law and other laws and regulations of Wyoming do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII.

30. The Land Quality Division and other agencies having a role in the program 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.

E. Explanation of the Secretary's Findings

The discussion in this section is based on a review of the Wyoming program resubmission of May 30, 1980, supplemented by comments received on the resubmission and information submitted by the State on August 5, 1980 (Administrative Record No. WY–220). Throughout, the discussion also refers to materials considered by the Secretary in making his February 15, 1980, decision as published in the **Federal Register** on March 31, 1980 (45 FR 20930 *et seq.*). The discussion in Part E of the Secretary's findings of March 31, 1980, was based on a review of the Wyoming program submitted August 15, 1979, and amended October 26, 1979, as well as material Wyoming subsequently made available to the Department, described in Part C of the March 31, 1980, **Federal Register** notice (45 FR 20930 *et seq.*). The program submission and material subsequently added by the State included enacted laws and regulations and various proposed amendments to those laws and regulations. None of the amendments had been enacted at the time of Departmental review. In accordance with 30 CFR 732.11(d), the failure to have all necessary laws and regulations fully enacted required that the Secretary not approve the program in full or conditionally at that time.

Two versions of the Land Quality Rules and Regulations were contained

in Wyoming's initial program submission. After review of these two versions by OSM, other governmental agencies and members of the public, Wyoming discussed a third version of rules. This third version was presented to the Department of the Interior in the form of a "Regulatory Memorandum" (Administrative Record No. WY-99). It was modified after discussions on January 2-5, 1980, between representatives of the Department of the Interior and the State of Wyoming. The modifications were incorporated into the fourth version of the rules, given to the Department of the Interior on January 9, 1980 (Administrative Record No. WY-119).

Because the Land Quality Division proposed to make extensive modifications in its rules, the Secretary disapproved the entire body of rules. Accordingly, a set of fully enacted Land Quality Rules and Regulations was made part of Wyoming's resubmission on May 30, 1980.

The discussion of particular issues in the March 31, 1980, findings (45 FR 20930 *et seq.*) reflected a review of all four versions of rules which were before the Department of the Interior and the public during the period of consideration of Wyoming's initial program submission. Comments by other Federal agencies and the public were based on review of the first two versions of the rules. Analysis and disposition of those comments reflected, where appropriate, later versions of Wyoming's rules. In the discussion of specific findings in the March 31, 1980, notice (45 FR 20930 *et seq.*), references to particular rules were, for the most part, to the January 9, 1980, proposed rules.

Any indication in the Secretary's March 31, 1980, findings (45 FR 20930 *et seq.*) of the adequacy or inadequacy of those portions of Wyoming's initial program submission that were not approved was tentative and subject to modification upon further review by the Department, the public, and other agencies in the program resubmission review process. The discussions below reflect the results of the Department's final review and consideration of public comments on both the program submission and resubmission.

In addition, only sections of the Wyoming EQA which were in accordance with SMCRA and which were fully enacted were approved in the Secretary's February 15, 1980, decision. Discussions of proposed amendments to the EQA were included in the March 31, 1980, findings (45 FR 20930 *et seq.*) as guidance for Wyoming, other government agencies, and the public in the development and review of Wyoming's resubmission. The conclusions expressed with respect to such amendments were not necessarily final.

Part E is divided into two sections. The first section is entitled "Department's Findings." The second section is entitled "Disposition of Comments Received." In the March 31, 1980, notice (45 FR 20930 *et seq.*), the comments of other governmental agencies and the public were integrated with the Department's analysis. To maintain clarity and avoid redundancy, the Department's discussions of the resubmission and comments on the resubmission are now separated, with cross-references provided where necessary.

Where the detailed findings are numerous and complex, they are divided into two general categories. The first category includes those findings on statutes enacted and rules promulgated by Wyoming in close or exact accordance with the Secretary's tentative findings in the March 31, 1980, notice (45 FR 20930 *et seq.*). The basis for the Secretary's tentative findings was discussed under Part E of that notice (45 FR 20936 *et seq.*). The Secretary's tentative findings were compared with the program resubmission to assure that the State had enacted or promulgated the same language that was considered by the Secretary in making the tentative findings and that the resubmission had been subject to an opportunity for review and comment by government agencies and the public.

The Department has evaluated the provisions in the resubmission, assured that the enacted or promulgated language is essentially the same as that considered in the tentative findings, and considered comments by government agencies and the public. Where Wyoming did enact or promulgate the same language and where the Secretary has not changed his tentative finding on the basis of government agency or public comments, the final approval of those provisions is included in this notice. This notice does not, however, repeat the bases upon which the Secretary found these provisions approvable. These may be found in the March 31, 1980, notice (45 FR 20936 *et seq.*) and the finding number is cited below in this notice to facilitate reference to the March 31, 1980, notice.

The second category includes the Secretary's findings for the remaining provisions of the resubmission that differ from the initial submission and from documents described in Part C of this notice that were subsequently submitted. This category includes findings for materials submitted by Wyoming in response to requests for additional information or findings of unacceptability made in the March 31, 1980, notice (45 FR 20930 *et seq.*); findings on provisions where Wyoming enacted or promulgated language different from that which the Secretary tentatively found acceptable in the March 31, 1980, notice; and findings on any new provisions included in the resubmission. Additional analyses of the resubmission of issues which had not been discussed in the March 31, 1980, notice, but which required detailed discussion in these findings, are also included. Findings in the second category generally required more analysis than did those in the first category. The findings under this category are organized by the general finding number followed by a letter. Where applicable, the finding number from the March 31, 1980, notice is also included in the discussion to facilitate reference to discussions in that earlier notice. Unless otherwise noted, all references to the EQA are to that Act as amended by the 1980 Wyoming legislature, and as it appears in Exhibit A.1. of the resubmission.

For Findings 13 (environmental performance standards), 14 (permit system), and 15 (coal exploration), a brief description is provided of the provisions being approved under this category. The description is provided because citations were changed by the State during the process of enacting the statutory provisions and promulgating the regulations.

Department's Findings

Finding 1

The Secretary finds that the Wyoming Environmental Quality Act (EQA), the regulations and guidelines adopted thereunder, the Wyoming Administrative Procedures Act, and the State Engineer's regulations provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Wyoming in accordance with SMCRA, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C and 22.D, below. This finding corresponds to Section 503(a)(1) of SMCRA, 30 U.S.C. 1253(a)(1). An analysis of the issues underlying this finding is found in the detailed discussions of Findings 6 and 12 through 30, below.

Finding 2

The Secretary finds that the Wyoming EQA provides sanctions for violations of Wyoming laws, regulations or conditions of permits concerning surface

coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Land Quality Division or its inspectors. This finding corresponds to Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). An analysis of the issues underlying this finding is found in the detailed discussions of Findings 18, 19 and 20, below.

Finding 3

The Secretary finds that the Land Quality Division has sufficient administrative and technical personnel and sufficient funds to enable Wyoming to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding corresponds to 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 detailed discussion of Finding 30, below.

Finding 4

The Secretary finds that Wyoming law provides 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 Wyoming, subject to the discussions in Findings 14.A and 14.C below. This finding corresponds to 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 detailed discussion of Finding 14, below.

Finding 5

The Secretary finds that Wyoming has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA. This finding corresponds to 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 detailed discussion of Finding 21, below.

Finding 6

The Secretary finds that Wyoming has established, for the purpose of avoiding duplication, a process for coordinating and reviewing permit applications with other governmental agencies. This finding corresponds to Section 503(a)(6) of SMCRA. In addition to the following paragraphs in this finding, discussion of the analysis underlying this finding is found in Findings 13 and 14, below.

Wyoming has identified in its program submission seven State agencies having related responsibilities for elements of permitting and inspection of surface and underground coal mining operations. These are the Land, Air, and Water Quality Divisions of the Department of Environmental Quality, the State Engineer, the Recreation Commission, the Game and Fish Department, and the Wyoming State Inspector of Mines. The related responsibilities are coordinated through five Memoranda of Understanding (MOUs). In these MOUs, the agencies agree to review elements of applications, provide technical assistance to the principal agency (the Land Quality Division, which serves as the "regulatory authority"), and to apply certain environmental protection performance standards to permit applications (Exhibits F–1 through F–5 of resubmission).

The MOUs between the three divisions of the Department of Environmental Quality and the MOU between the Land Quality Division and the State Engineer contain certain standards and require plans to meet certain engineering and environmental requirements. This information is required to be in permit applications for surface (or underground) coal mining operations pursuant to promulgated Rule II 3a(5) of the resubmitted program. A permit can be approved only with this information included; otherwise the requirements of Rule II 3a(5) and W.S. 35–11–406(n)(i) (complete application) would not be met. Once a permit is approved, the permittee must comply with the measures in the application. Thus, the requirements of the Water Quality and Air Quality Divisions, and the requirements of the State Engineer, are enforceable under the provisions of Wyoming's program.

The MOUs divide important functions among the Land, Air, and Water Divisions of the Department of Environmental Quality and provide a strong vehicle for addressing their respective concerns. The MOUs reached with other entities such as the State Engineer and the Game and Fish Department also establish protocols and identify authorities. While coordination will require on-going attention, the Land Quality Division staff has worked under the MOUs successfully and should provide proper coordination. Use of guidelines is discussed further in Finding 14.22 in this notice.

6.1 The MOU between the three divisions of the Department of Environmental Quality (Exhibit F.1) has been resubmitted with some changes. The exhibit was signed by all participants and approved as to form and execution by the Attorney General on April 18, 1980. The changes are in all sections, but principally reflect editorial rather than substantive changes. Exceptions are (1) a change in the Water Quality Division's effluent limits for total suspended solids, (2) additional provisions allowing separate, but conditional, inspections by the various divisions, and (3) identification of W.S. 35–11–437 as the sole enforceable basis for the permit conditions, Article IV, and the Land Quality Division's rules.

The first change is addressed under Finding 13.C (13.14) in this notice, which contains an explanation by the State that the Secretary finds acceptable. The second change in the MOU is acceptable since it minimizes duplicative inspections, and yet allows the regulatory authority to conduct independent inspections. The third change, that of relying on W.S. 35–11–437 as the limiting mechanism to identify the scope of enforcement authority by the Land Quality Division in matters involving other divisions' rules, is logical since that section of the statute contains the enforcement authority for surface coal mining operations.

Accordingly, the Secretary finds the Department of Environmental Quality MOU (Exhibit F–1) to be acceptable.

6.2 The MOU between the Wyoming State Engineer and the Department of Environmental Quality regarding reservoirs (Exhibit F.4) has been modified in the resubmission. The MOU is signed by all parties and was approved by the Wyoming Attorney General as to form and execution on March 4, 1980. The MOU contained in the resubmission is accompanied by an "Appendix A" which is titled "Proposed Regulations for Surface Coal Mining Operations." Thus the MOU contains materials which do not appear to be in effect through the authority of the MOU. Further, the material in "Appendix A" includes requirements previously found by the Department to be inconsistent with SMCRA. (See Finding 13.28.) By letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicated that the Appendix A attached to the MOU is the wrong appendix and that Appendix A attached to the State Engineer's regulations in Volume 5, Exhibit B.9, is the correct appendix. The Appendix A in Exhibit B.9 corrects the deficiencies discussed in Figure 13.28 and is acceptable.

The other changes in the MOU relate to administrative procedures designed to enhance coordination between the two State agencies and are acceptable.

Included with Exhibit F.4. is an MOU between the State Engineer and the Department of Environmental Quality which addresses "wells." This MOU was approved by the Attorney General on May 25, 1980. The resubmission contains only editorial changes and is acceptable.

6.3 The resubmission contains a new Wildlife Guideline (No. 5, exhibit not labeled in the resubmission, but should be Exhibit G.1.e.). Criteria identical to the Federal requirements of 30 CFR 816.97(c) (powerline construction) have been added to Section VI of the guideline; this is briefly discussed in Finding 13.64. Other changes include designation of the study area as including the permit area and the adjacent area, addition of requirements for collection of surface water quality data, reduction of the time period for trapping small mammals, adding walking transect observations to methods of assessing the presence of predators, and addition of a requirement to include wildlife monitoring data in the annual report. Appendices 1 and 2 and the references in the guideline have also been enhanced to improve black-footed ferret surveys and data presentation.

The Secretary finds Guideline No. 5 for wildlife acceptable as consistent with similar Federal requirements. (For further explanation see Finding 12.7, below.)

6.4 The resubmission contains a new Hydrology Guideline (No. 8, Exhibit G.1.g). Important changes to the guideline as resubmitted are (1) the addition of a part describing the hydrologic data to be provided in the annual report, (2) change of term "ground water recharge rates" to "ground water recharge areas," (3) change of terminology in Part IV to include more descriptive geologic and hydrologic terms, (4) recommendation of three-day pump tests and expansion of the description of the pumping tests, (5) specification of water quality analysis including requiring a major cation-major anion balance, (6) requirement for supporting geophysical or lithological logs, (7) addition of water rights information, (8) identification of proposed results of the monitoring program, (9) a discussion of complementary computer modeling, and (10) the addition of Appendix 2 which lists water quality parameters for hydrologic investigations. The Secretary finds this guideline acceptable as consistent with Federal requirements.

6.5 The resubmission contains a new Alluvial Valley Floor Guideline (No. 9, Exhibit G.1.h.). The changes in the resubmitted guideline are (1) modification of the term "adjacent area" to correspond to Rule I 2(3), (2) deletion of the term "agricultural activities," (3) redefinition of the term "alluvial saturated zone" to include hydrologic principles, (4) inclusion of a standard definition of "animal unit," (5) modification of the term "essential hydrologic functions" to correspond to Rule I 2(24), (6) addition of the Rule I 2(48) definition of "natural damage to the quantity or quality of water," (7) addition of the Rule I 2(89) definition of "subirrigation or flood irrigation agricultural activities," (8) expansion of the term "unconsolidated stream laid deposits" to include terrace and flood plain deposits consonant with Rule I 2(101), (9) inclusion of the Rule I 2(104) definition of "undeveloped rangeland," (10) addition of the Rule I 2(105) definition of "upland areas," (11) editing of subirrigation and flood irrigation criteria in Section II, (12) addition of the requirement to map unconsolidated, stream laid deposits, (13) addition of aerial imaginery and diurnal fluctuations of water table as indicators of subirrigation, (14) addition of flood frequency to determinants of the suitability of periodic flood flows for enhanced plant production, (15) modification of the procedures for evaluating artificial flood irrigation and irrigation potential, (16) addition of subirrigation or flood irrigation agricultural activities to the alluvial valley floor identification criteria, (17) reduction in the time period for which changes in ownership/tenancy and management practices are to be provided in the application, (18) deletion of authority to permit landowner/tenant to claim confidentiality for land use and other data, (19) restriction in the use of the "importance to agriculture" formula to agree with Rule III 2d, (20) restriction of the determination of natural drainage to areas important to farming consistent with the district court ruling, (21) addition of a requirement for a cumulative assessment of surface and ground water changes and the effects on the productive capability of off-site alluvial valley floors, (22) requirement to assess the capability to re-establish essential hydrologic functions of off-site affected alluvial valley floors and (23) numerous editorial changes.

The Secretary finds the Alluvial Valley Floor Guideline consistent with 30 CFR 785.19 and that Wyoming has established methods for identifying, evaluating, and protecting alluvial valley floors.

Finding 7

The Secretary finds that Wyoming has enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C, and 22.D, below.

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 Wyoming program. This finding corresponds to Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)). This finding is based upon the facts set forth in the two **Federal Register** notices inviting and announcing public availability of these comments. See 45 FR 10046–10047 and 45 FR 55767–55768.

Finding 9

The Secretary has, through OSM, obtained the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to those parts of the Wyoming program approved on February 15, 1980, and those parts for which this notice announces approval which relate to the air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 CFR 7401 *et seq.*). This finding corresponds to Section 503(b)(2) of SMCRA (30 U.S.C. 1253(b)(2)). The finding is based on the two letters transmitted by the Administrator of EPA to the Secretary. A copy of each letter has been placed in the Administrative Record.

Finding 10

The Secretary, through the OSM regional director for Region V, held a public review meeting in Cheyenne, Wyoming, on September 20, 1979, to discuss the Wyoming program submission and its completeness and held public hearings in Cheyenne, Wyoming, on January 7 and June 19, 1980, on the substance of the Wyoming program submission and resubmission. This finding corresponds to Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

Finding 11

The Secretary finds that the State of Wyoming has the legal authority and has sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII. This finding corresponds to Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

Finding 12

The Secretary finds that the Wyoming program provides for Wyoming to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C, and 22.D below. This finding corresponds to the first half of 30 CFR 732.12(a); it is based on Findings 1 through 11 and 12.1 through 30. Analyses of the issues underlying those findings are found throughout this section.

12.1–12.15 Wyoming proposed in its resubmission a total of fourteen alternative approaches to Federal regulations (termed "State windows") pursuant to 30 CFR 731.13. These are presented in Exhibit G.6 of the resubmission. The Secretary found, in the Federal Register publication of March 31, 1980, that one of the items, relating to mountaintop removal, was acceptable as presented. (See Finding 12.2.)

The resubmission includes two additional "State window" items, one dealing with timing and criteria for removing sedimentation ponds, and the other addressing certain light-use classifications of roads. The resubmission also includes a fifteenth item, a discussion of coal exploration requirements which, while submitted in Exhibit G.6 with the other "State windows," was cited in the resubmission as not being based on 30 CFR 731.13 (the "State window" provisions of the Federal regulations). That particular element of the resubmission is addressed briefly in Finding 12.15. Each of the "State window" items is discussed and the Secretary's findings described in Findings 12.1 through 12.15, below.

12.1 Wyoming has promulgated Rule II 3b(12)(b) to require a discussion of postmining land use only when the proposed postmining land use is different from the premining use. Wyoming chooses to rely on discussions of the existing (premining) land use required by Rules II 2a(1) and II 2a(1)(a) and Rule II 3a(6)(d) which, using the last-cited rule as an example, requires such information as (1) a thorough discussion of major past and present uses of the permit and adjacent areas, (2) an analysis of the capability of the land to support a variety of uses, and (3) any land use classification existing in the permit and adjacent areas.

The lack of exact equivalents in the resubmission to the Federal requirements of 30 CFR 780.23 applicable where there is no change in land use is considered to be an administrative modification that eliminates having to discuss the postmining land use twice: once as the existing land use and a second time as the proposed postmining land use. Duplicative discussion would occur whenever all the pre- and postmining land uses were the same.

Wyoming has also enacted W.S. 35–11–406(b)(xi) and (xii) to require owner consent or order from the Environmental Quality Board in lieu of consent, and promulgated Rule II 3b(12)(iii)(A) to require, where applicable, concurrence of the owner of record with changes in land use. Rule XIII 1a(2)(b) requires sending notices to governmental agencies. Thus, the postmining land use will be subjected to analysis and approved by the regulatory authority coordinated with other affected parties. The Secretary finds Wyoming's alternative provisions for describing postmining land use to be consistent with the Federal requirements of 30 CFR 780.23 in the context of 30 CFR 731.13.

12.2 Wyoming has neither defined mountaintop mining nor promulgated regulations for variances from approximate original contour requirements for mountaintop mining operations. Conditions for mountaintop mining are non-existent in the major known coal resource areas of Wyoming. The Secretary has found this alternative approach consistant with SMCRA and acceptable since the Wyoming program does not provide a variance and is, as a result, more stringent than the Federal permanent regulatory program. Under Section 515(c) of SMCRA, implementation of mountaintop removal provisions is optional, and a State program need not include them.

12.3 Wyoming has enacted W.S. 35–11–103(e)(xxi) to define "steep slope surface coal mining operation" and has promulgated Rule I 2(86) to define steep slopes. The Secretary finds that Wyoming will ban mining on steep slopes until the Wyoming Environmental Quality Council has promulgated rules and regulations establishing steep slope mining performance standards. This is discussed more fully in Findings 13.S (13.126), below.

12.4 Wyoming has promulgated rules that include special permit information requirements and performance requirements for alluvial valley floors (Rules III 2 and V 2, respectively). The alternative rules to the Federal regulations in the State program resubmission use comprehensive terms to summarize the requirements listed in more detail in the Federal regulations. Wyoming has promulgated Rule III 2a(4) to require "such other information that the administrator shall require to identify whether an alluvial valley floor exists within the permit area or adjacent areas and its extent, if any." This permits the regulatory authority to detail the information requirements to a greater degree than exist in Rule III 2, when necessary. This same authority is provided in newly-promulgated Rule III 2b(11) and Rule III 2c(5).

Wyoming has promulgated Rule III 2 with somewhat different language from that used in the original submission. In particular, in Rule III 2a, requiring affirmative demonstration of the premining absence of an alluvial valley floor, the term "alluvial valley floors" apparently has been limited to "alluvial valley floors containing areas of subirrigation or flood irrigation agricultural activities." In Rule III 2a(3) the requirement for written views of the local conservation district regarding flood irrigation potential has become a discretionary element. No explanation of these changes is offered.

These changes have the potential of being important with respect to identification of *potential* alluvial valley floors in that they could eliminate investigations of areas with a potential for flood irrigation. However, the Secretary finds that the State program will comply with the requirements of 30 CFR 785.19(c)(2)(ii) (A) and (B) to identify historical flood irrigation and future flood irrigation potential because Guideline No. 9 of the resubmission requires identification of potential flood irrigated alluvial valley floors (Part II.C.2.b of the guideline). Accordingly, the changes cited above do not result in provisions which are inconsistent with SMCRA and 30 CFR Chapter VII, when the entire body of alluvial valley floor identification provisions in the Wyoming program is considered.

Wyoming has deleted the requirement for water quality data over one year and substituted the requirement for such data to show seasonal variations (Rule III 2b(6)). This change is consistent with the district court's ruling of February 26, 1980, p. 50. See discussion above under "General Background."

In a manner similar to that used in Rule III 2a, Wyoming has added to Rule III 2c the qualifying phrase discussed above regarding subirrigation and flood irrigation and further added the phrase "which are important to farming." Since Rule III 2c(2) addresses only material damage subject to Section 510(b)(5) of SMCRA, this change is also consistent with the district court ruling (*Id.* at 52–53).

Wyoming has added requirements to Rule III 2c for a monitoring plan in accordance with Rule V 2e and, by letter dated August 4, 1980, has clarified its intent to monitor all affected alluvial

valley floors (Administrative Record No. WY-220).

Wyoming modified Rules V 2c and d(1) to apply the criteria of material damage and interruption, discontinuance and preclusion to alluvial valley floors "of importance to farming." This is also in accordance with the district court rulings. Rule V 2d(3) has been added by Wyoming to provide the grandfather clause contained in 30 CFR 785.19(e)(1)(i).

Additional elements of Wyoming's alluvial valley floor provisions are discussed in Finding 13.116.

The Secretary finds, based on the above discussion, that Wyoming's alternative provisions for identifying alluvial valley floors are consistent with the Federal requirements.

12.5 Wyoming has promulgated Rules I 2(79) (defining "soil horizons"), I 2(97) (defining "topsoil"), and IV 2c and IV 3b (performance standards for removing, protecting and replacing soils). Wyoming has promulgated the cited rules to provide for automatic consideration of all soils present at a site as potentially suitable plant growth media rather than initially restricting the analysis to the A horizon as could occur pursuant to 30 CFR 816.22(b). The Wyoming alternative provides the same assurance of suitable plant growth media as contained in 30 CFR 816.22(e). Wyoming has also promulgated Rule IV 3b(1) which requires the A or more organic horizons of topsoil to be segregated from the B and C horizons where such practice would enhance revegetation. This is equivalent to 30 CFR 816.22(d).

Wyoming has proposed the alternatives to take into account the highly variable soil at most Wyoming mine sites. The Secretary finds that these soil protection provisions are consistent with the Federal requirements of 30 CFR 816.22.

The definition of topsoil is also addressed in Findings 13.3, 13.5 and 13.6. Segregation of soil horizons is discussed in Finding 13.4.

12.6 Wyoming has promulgated Rule IV 3e(2)(b) to require that permanent diversions or stream channels be constructed to establish or restore stream characteristics to approximate premining stream channel characteristics and to establish and restore erosionally stable stream channels and flood plains. This is a substitute for the Federal requirements to establish the stream to its naturally meandering slope of an environmentally-acceptable gradient, and to establish or restore a longitudinal profile and cross-section that approximates premining stream channel characteristics (30 CFR 816.44(d)).

The resubmission takes into account that there are numerous variables in stream flow systems and that the topographic and geomorphic changes attendant to mining require careful analysis to achieve proper erosional balances in postmining surface water systems. The Secretary finds that the alternative standards incorporate the Federal requirements to restore a naturally stable channel and flood plain and that the alternative will result in streams and diversions being restored properly, considering topography, soils, and watersheds in the region of the mine.

12.7 Wyoming has promulgated Rule IV 3p(2) to apply the buffer zone concept of 30 CFR 816.57(a) to perennial and intermittent streams as opposed to perennial streams and streams with biological communities meeting the criteria of 30 CFR 816.57(c). Wyoming perceives problems with enforcing a provision based on an assessment of the biological community. Therefore, it has selected, as the criteria for considering buffer zones, the hydrologic definition of those streams that are likely to support aquatic biologic systems to some degree. Thus perennial and intermittent streams would automatically receive close scrutiny regarding the need for buffer zones.

Concern has arisen as to whether the elimination of biological communities as a determinant for buffer zones would weaken protection of the aquatic ecosystem. This is also discussed in Finding 13.39 below. To counter this concern, the Wyoming program contains several provisions to assure protection of the aquatic ecosystem: Rule II 3a(6)(e), which requires studies of fish and their habitats, at the level of detail required after consultation with State and Federal game and fish agencies; Rule II 3b(4), which requires a plan to minimize adverse impacts to fish and related environmental values, including wildlife and fish habitats of high value; the Wildlife Guideline (No. 5), which requires surveys and evaluations of water quality and aquatic (fish) habitat and standard procedures for assessing fish and fish habitat using measurements of the biological community in the same manner as 30 CFR 816.57; and Rule IV 3p(2), which includes the two types of streams supporting biological communities defined in 30 CFR 816.87(c). (See Finding 13.G below.)

The Secretary finds the substitution of intermittent and perennial streams for buffer zone requirements to provide equivalent protection of stream biota, considering the other provisions of the Wyoming program which require definition and protection of the aquatic system and the assurance provided by the State on August 5, 1980. The State gave assurance that premining studies, as described in Guideline 5, will be conducted on streams within or adjacent to the permit area which are expected to be important to fisheries (Administrative Record WY-220). The Secretary assumes that the phrase "important to fisheries" includes streams that support biological communities as defined in 30 CFR 816.57(c), whether or not the streams support fish populations. Based on that assumption, the Secretary finds the State's explanation acceptable.

12.8 Wyoming has promulgated Rule IV 3c(1)(b), which prohibits placement of excess spoil in areas (1) with an overall slope of 20 degrees or (2) in areas of springs, seeps, or drainages. This, excess spoil cannot be placed in an area which would qualify as a "valley fill," "head-of-hollow fill," or "durable rock fill" as defined in 30 CFR 701.5. ("Durable rock fill" is a variant of valley or head-of-hollow fills.) The prohibition of Rule IV 3c(1)(b)(ii) also eliminates the need for underdrains (see Finding 13.46).

Since coal resource areas conducive to surface mining operations in Wyoming are conducted on relatively flat terrain, adequate room exists to place any excess spoil out of drainages and steep slope valleys. As discussed in Finding 12.3 above, Wyoming currently plans to prohibit mining on steep slope areas, thus prohibiting placement of excess spoil in steep slope areas.

The Secretary finds the Wyoming rules will achieve more stringent environmental protection than the Federal regulations, since they prohibit construction of valley fills.

12.9 Wyoming has, as discussed in Finding 12.8 above, prohibited placement of excess spoil in topographic locations which, as a result of steepness, require construction as "head-of-hollow fills" (see 30 CFR 816.73). Thus, the Secretary finds the proposal to prohibit construction of head-of-hollow fills to be acceptable as providing more stringent environmental protection than the Federal regulations.

12.10 As discussed in Findings 12.8 and 12.9 above, Wyoming prohibited placement of excess spoil in "valley fills" or "head-of-hollow fills." "Durable rock fills" permitted by the Federal regulations (30 CFR 816.74) are prohibited in the State program resubmission since these are essentially "valley" or "head-of-hollow" fills containing durable rock and designed to alternative standards. The Secretary

finds the prohibition of durable rock fills by the Wyoming program to be acceptable as providing more stringent environmental protection than the comparable Federal regulations.

12.11 Wyoming has promulgated Rule IV 3a(5) to define "thin overburden" as existing where (1) operations are carried out continuously in the same limited permit area for more than one year and (2) the volume of all available spoil and suitable waste material over the life of the mine is demonstrated not to be sufficient to achieve the approximate original contour. The second part of the definition differs from that of 30 CFR 816.104 in that it does not use a numerical ratio. The alternative language in the Wyoming rule is essentially the same as that in Section 515(b)(3) of SMCRA.

Wyoming considers the single ratio to neglect site-specific considerations where all material should be returned to the mined area to achieve approximate original contour regardless of whether the dimensional criterion of 30 CFR 816.104 is met. The Secretary finds the alternative rule to be consistent with SMCRA and acceptable as an alternative to 30 CFR 816.104 because it requires that all material be returned to the pit regardless of the numercial factor to assure that the land is returned to approximate original contour consistent with the approved postmining land use.

12.12 Wyoming has promulgated Rule IV 3a(6) to apply to situations addressed in 30 CFR 816.105 as "thick overburden." This rule requires that spoil demonstrated to be in excess of that necessary to achieve approximate original contour be disposed of in accordance with the State rule for "excess spoil" (Rule IV 3c(1)). The language of the rule approaches the language of Section 515(b)(3) of SMCRA, but does not use the numerical criterion provided in 30 CFR 816.105.

Wyoming reasons that bulking ratios for spoil are not constant and that natural compaction processes occurring after grading are not well understood. Therefore, Wyoming considers that a standard ratio is not sufficiently flexible to account for geologic variability in the coal resource areas of Wyoming. When evaluating proposed postmining topography on a site-specific basis, Wyoming considers the suitability of the topography for promoting revegetation and hydrologic stability. Evaluations of approximate original contour are based on support of the postmining land use, revegetation, and hydrologic stability. The Secretary assumes that only that spoil which, if placed back on the mined area, would lead to hydrologic instability or revegetation problems or both would be determined to be excess. Based on that assumption, the Secretary finds the alternative rule to be consistent with SMCRA and acceptable as an alternative to 30 CFR 816.105, since it encourages emphasis on achieving hydrologic stability and supporting vegetation when considering postmining topography in the coal resource areas of Wyoming.

12.13 Wyoming has also promulgated Rule IV 3g(1) to require retention of sedimentation ponds or sedimentation control devices until the affected lands have been restored and until the untreated drainage from such lands will not degrade the quality of receiving water. While this was proposed by Wyoming as an alternative to the requirements of 30 CFR 816.42(a)(2) and 816.46(u), the Secretary finds it consistent with the Federal requirements without consideration of the "State window" alternatives procedure. However, even if 30 CFR 816.42(a)(2) and 816.46(u) were interpreted to require retention of sediment ponds throughout the entire period for measuring revegetation success (i.e., 10-years in arid areas like Wyoming), the Wyoming proposal for earlier removal is approved under the "State window" criteria. The need to preserve water and avoid the evaporation loss resulting from sediment ponds in Wyoming justifies pond removal whenever the background level of sediment discharges has been achieved without regard to complete revegetation success. This is also discussed in Finding 13.B (13.13, 13.25), below.

In response to the Secretary's initial finding that the word "restored" in Rule IV 3g(1) was identical in meaning to the term "restored and revegetated," the State clarified its intention to, in fact, not require that the revegetation bond period be terminated prior to removal of sediment control facilities but rather to require that facilities be removed when "disturbed land channels are relatively stable and the monitoring of untreated runoff shows that water quality has been reduced to baseline conditions" (Exhibit G.6, counterpart to 30 CFR 816.46(u) of resubmission). The word "restored" is discussed by Wyoming in the resubmission as meaning that the disturbed area is sufficiently stabilized that runoff is restored to background water quality conditions and to projected flow conditions. Once water quality has returned to baseline levels, it could be reasoned that the revegetated area would, in general, have adequate vegetation to control erosion at premining levels (or "baseline conditions").

Wyoming states, in the resubmission, that "[t]his alternative provision is sought on the basis of local requirements, which necessitate that unnecessary detention and evaporation loss of surface runoff be minimized so as to reduce adverse impacts on senior downstream water rights in an environment where surface runoff is limited and demands for this resource are high."

Wyoming states that baseline conditions will be established prior to drainages being disturbed. This is most important since baseline conditions, both water quality and quantity, are highly variable in surface water streams in Wyoming. Wyoming's rules for gathering baseline surface water information (Rule II 3a(6)(h)(i)) did not appear to be implemented in the Hydrology Guideline (No. 8) to the degree necessary to ensure that adequate baseline information will be obtained to allow a quantitative determination by the regulatory authority that runoff from reclaimed lands meets baseline conditions. (See Section III A of Guideline). The State therefore emphasized that it will require baseline data sufficient to characterize seasonal variation on all drainage that will receive runoff from affected lands (Administrative Record No. WY–220). These data will, of course, have to be statistically valid.

The Secretary finds that Wyoming's proposed alternative is acceptable and should be adequate to enforce the requirement to obtain surface water flow and quality data either from reference basins located in the general area, or from the undisturbed drainages of the permit area, and to show what types of comparisons of data will be (1) feasible and (2) necessary to show that "disturbed lands are relatively stable and the type of monitoring of untreated runoff necessary to show that water quality has been [restored] to baseline conditions." The Secretary finds the alternative to achieve the purposes of, and be consistent with, the pertinent Federal requirements.

12.14 Wyoming includes in Rule I 2(71)(c)(ii) in the resubmission, a definition of "non-constructed light use road" for a class of roads or road segments that do not require blading, cutting, or filling and which would be used by light-duty vehicles, but which would be used for more than six months. Wyoming also includes, in Rule IV 3j(3)(d), performance standards for those light-use roads. The Federal regulations for roads were remanded by the district court. (Opinion of May 16, 1980, at 32–36;

see discussion under "General Background," above.) However, the rules for these "non-constructed light use roads" are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

12.15 Wyoming submitted material describing its program to regulate exploration in Appendix G.6 ("State windows" pursuant to 30 CFR 731.13). However, the explanation indicates the State did not develop its rules for exploration based on the criteria of 30 CFR 731.13. Therefore, this material is discussed under Finding 15 (exploration) rather than under "State windows."

Finding 13

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and regulations to implement, administer, and enforce applicable mining and reclamation requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and that the Wyoming program includes provisions adequate to do so, subject to the discussions in Findings 13.F and 13.P below. This finding is made under 30 CFR 732.15(b)(1).

Wyoming incorporates provisions corresponding to Section 515, 516, 527, 711, and 717 of SMCRA and Subchapter K of 30 CFR Chapter VII in Wyoming Statutes 35–11–103, 401, 402, 404, 406, 407, 411, 415, 428, 429, 430, and 601 and in Wyoming Land Quality Division Rules and Regulations Chapters I, II, III, IV, V, VI, VII, VIII, IX, XXI, XXIII, and other pertinent rules and regulations of other Wyoming State agencies. Volume 1, Part G.8, of the program submission contains a discussion of Wyoming's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised during review of the Wyoming provisions for environmental performance standards follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 13 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which have the same numbers as the tentative findings on the same provisions in the March 31, 1980, notice:

13.1 The State has provided adequate regulations for signs in Rules IV 2c(1)(b), IV 2c(1)(d), IV 3m, IV 2c(3)(c), and VI 1(d) as required by 30 CFR 816.11.

13.2 The State has provided for temporary sealing of drilled holes and/or protective devices in Wyoming Statute 35–11–404 and Rules IV 3n and XV 3a(2)(a) as required by 30 CFR 816.13 through 816.15.

13.3 The State has provided a definition of topsoil in Rule I 2(97) which includes all soil horizons suitable as a plant growth medium. This is also discussed and found acceptable under Finding 12.5, since the definition was proposed as part of a "State window" alternative to 30 CFR 816.22(c).

13.4 Rule IV 3b(1) allows the regulatory authority to require segregation of the A horizon or more organic horizon of the topsoil where such practice would enhance revegetation. This satisfies the requirements of 30 CFR 816.22(d).

13.5 The State has promulgated a series of definitions which result in "topsoil" being more restrictively defined than subsoil. These are discussed under Findings 12.5 and 13.3 and are found acceptable.

13.6 The State has provided adequate distinction between subsoil and spoil and for chemical analyses of subsoil and spoil in Rules IV 2c(3), IV 3a, and IV 3c(1), which regulate spoil handling and separation of spoil, subsoil, and topsoil.

13.7 The State has removed the phrase "in accordance with applicable Federal and State air quality standards" from Rule IV 3o. This makes the rules consistent with 30 CFR 816.21 through 816.24 for topsoil protection and air resource protection under applicable regulations since topsoil will be protected even if quantitative "pollutant level" standards are not violated.

13.8 The State has promulgated a rule requiring scarification prior to topsoiling (IV 3b(2)). This is considered preferable to 30 CFR 816.24(a) in consideration of the soil protection provisions of Wyoming's rules and the characteristics of soils in Wyoming where mixing of undersirable spoils and scarce soils should be avoided where possible.

13.9 See Finding 13.A below.

13.10 The State has required that topsoil information be provided in accordance with the standards of the National Cooperative Soil Survey of the U.S. Department of Agriculture (see Rule II 3a(6)(f)) and thus satisfied the comments of the U.S. Forest Service by requiring a soil survey to be conducted and graded in a manner consistent with the Federal requirements.

13.11 The State has promulgated a definition of "hydrologic balance" which includes short-term and long-term changes (Rules I 2(40)). Thus, when used in combination with Rules IV 3c(3)(a), IV 3f(2), IV 3i, and other rules, authority equivalent to that in 30 CFR 816.41(a) is provided to prevent long-term adverse changes to the hydrologic balance.

13.12 The State has promulgated a series of rules to ensure that acid-forming and toxic-forming materials are selectively placed where necessary to control and minimize water pollution. These rules include IV 3c(3)(a), IV 3c(3)(d), and IV 3a(2). In this manner, the requirements of 30 CFR 816.41(d)(2)(vii) are satisfied.

13.13 See Finding 13.B below.

13.14 See Finding 13.C below.

13.15 The State has promulgated Water Quality Division rules which require a detention time for the 10-year 24-hour event (Rule X 8 and Appendix A). Further, the MOU between divisions of the Department of Environmental Quality in the resubmission includes a requirement to design for a minimum 24-hour theoretical detention time for the 10-year 24-hour event. However, the Federal counterpart, 30 CFR 816.46(c), was remanded by the court. See discussion above under "General Background." The rules and MOU are, however, no less stringent than the performance standards of Sections 515 and 516 of SMCRA.

13.16 Rule IV 3i will require ground water monitoring to determine the extent of disturbance to the hydrologic balance. The State has adequate authority to require additional wells when necessary to determine the extent of disturbance. Thus, Rule IV 3i is consistent with 30 CFR 816.52(a)(3).

13.17 W.S. 35–11–406(n)(iii) will require an approvable plan to affirmatively demonstrate that proposed operations are designed to prevent material damage to the hydrologic balance outside the permit area. Further, the requirements of W.S. 35–11–406(b)(xviii) to minimize disturbance to the prevailing hydrologic balance and Rules II 3b(10) and XXIII 2a(1) require the determination of probable hydrologic consequences of mining. Thus, the State program now satisfies the general requirements of 30 CFR 816.42 through 816.53 for protection of the hydrologic balance. The State has also promulgated Rules IV 3e, IV 3g, IV 3c(3), IV 3h, IV 3f, and IV 3i to be consistent with the varied Federal requirements for protection of the hydrologic balance in all activities.

13.18 The State has developed an MOU between the Water Quality and Land Quality Divisions and has promulgated rules for the Water Quality Division which incorporate effluent

limitations for manganese consistent with 30 CFR 816.42(a)(7) (see Section 7 of Wyoming DEQ MOU and Rule X 4a of Water Quality Division Rules and Regulations). Finding 13.18 has been satisfied by incorporation of manganese. See also Finding 13.C (13.14) for a discussion of the quantitative limits for manganese set in the resubmission and additional clarification provided by the State on August 5, 1980 (Administrative Record No. WY–220).

13.19 Rule I 2(1) defines "acid drainage" in terms of both pH and total alkalinity-acidity consistent with the definition in 30 CFR 701.5.

13.20 The State has promulgated rules including ephemeral streams in the requirements for diversions (see Rules IV 3e(1) and IV 2(e)). Thus, the State program is equivalent to 30 CFR 816.43.

13.21 Rule IV 2f(5) will require that permanent diversions and restored stream channels be designed to be erosionally stable and consistent with the role of the fluvial system. This rule provides the same protection as does 30 CFR 816.44(d)(2). This is also discussed in Findings 12.6 and 13.23.

13.22 See Finding 13.D below.

13.23 See Finding 13.21 above.

13.24 Rule IV 3g(7) includes the following as sediment control measures: limiting the extent of disturbed areas and stabilizing, diverting, treating, or "otherwise" controlling runoff. In combination with other rules, such as IV 3d(3) (mulching) and IV 3a(3) (compacting), the requirements of 30 CFR 816.45(b) are met.

13.25 See Finding 13.B below.

13.26 The State has promulgated Water Quality Division rules requiring computations showing the detention time, to include sediment storage, for the 10-year 24-hour precipitation event (Appendix A to Rule X 8). This requirement is repeated in Section 7 of the DEQ MOU. However, the Federal counterpart, 30 CFR 816.46(c), has been remanded by the court. See discussion above under "General Background." The rules and MOU, however, are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

13.27 The State has promulgated rules requiring that all permanent impoundments meet, at a minimum, the specifications of U.S. Soil Conservation Service Technical Release No. 60 and the SCS Practice Manual No. 378 (Rule IV 3h(2)(f)). Thus, the State requires compliance with Pub. L. 83–566 through such references. The resubmitted State Engineer regulations now also meet the Federal requirement that the crest of the emergency spillway be at least one foot above the crest of the principal spillway (see State Engineer Regulations V 8b(5)). Thus, this portion of the State program is now consistent with 30 CFR 816.46(i).

13.28 The State program resubmission shows that the size of the impoundments requiring special spillway, embankment, barrier, and MSHA specifications was changed from 50 to 20 acre-feet in the Land Quality and State Engineer's rules as required by the Secretary. Thus, the State resubmission is in compliance with 30 CFR 816.46(q) with respect to using the same criteria for more stringent standards. The remaining requirements of 30 CFR 816.46(q) are met by a combination of Rules V 8b(7) and (8) of the State Engineer and Rules IV 3h(2)(f) and IV 3h(2)(e) of the Land Quality Division.

That the requirements of 30 CFR 816.46(t) are assured is included in a statement in the side-by-side analysis which indicates that the "routine inspection" required for the smaller sedimentation ponds by Rule IV 3(h)(2)(d) would be conducted at least quarterly and would be reported annually while larger ponds would be inspected "routinely." The MSHA requirements of 30 CFR 77.216–3 are for inspections each 7 days and these inspections will be required by MSHA in any case. The OSM requirements allow for reduction of inspections of smaller dams to quarterly. The State requirements are considered consistent with Federal requirements in that MSHA inspections are required and all impoundments will be "routinely inspected."

13.29 See Finding 13.E below.

13.30 Rules IV 2c(3)(f), IV 3c(3)(a) and IV 3c(3)(b) ensure proper disposal of spoil that is toxic- or acid-forming or which would prevent adequate reestablishment of vegetation. Thus, the program is consistent with 30 CFR 816.48.

13.31 Rules IV 3h, II 3b(9), II 3b(11), and IV 3h(1), in addition to W.S. 35–11–406(n)(iii), W.S. 41–3–301, 41–3–302, and 35–11–416(b), ensure that water impoundments shall not affect the water of adjacent and surrounding landowners. This is consistent with 30 CFR 816.49(a)(4).

13.32 Rules IV 3c(3)(a) and IV 3c(3)(d) provide controls over acid-forming and toxic materials in terms of ground water pollution in a manner equivalent to the requirements of 30 CFR 816.50(b). These rules are based on W.S. 35–11–406(b)(xviii), which requires a plan to minimize the disturbances to the prevailing hydrologic balance, and W.S. 35–11–406(n)(iii), which requires that permits be approved only if the proposed operations have been designed to prevent material damage to the hydrologic balance outside the mine site.

13.33 Rules II 2b(3)(d), II 3a(5)(a)(ii)(B), and IV 3i, in addition to the Water Quality Division's requirements for monitoring point source discharges, provide an acceptable equivalent to the Federal requirements of 30 CFR 816.52. In addition, Guideline No. 8 provides advice on the design of elements of a hydrologic monitoring program.

13.34 The State has noted that reporting requirements are established in the Water Quality Division's regulations (Chapter X, Section 5), which require reporting at least quarterly. The MOU among the DEQ divisions requires reports such as the NPDES permit report to be furnished to all other appropriate divisions (see Section 10 of MOU). Thus, the requirements of 30 CFR 816.52(b)(iii) will be satisfied.

13.35 Rule IV 3i(1) will require that all hydrologic monitoring be adequate to determine the extent of disturbance to the hydrologic balance and to plan for necessary modifications to the operations. This would include periodic monitoring as required by 30 CFR 816.52(a)(2). Further, Rule II 3b(9) requires a plan to ensure protection of the quantity and quality of, and rights to, surface and ground water. Thus, aquifers will be further protected. Spoil analysis to assess potentials for leaching is required in Rule IV 2c(3)(e). Thus, all requirements of 30 CFR 816.52(a)(2) are met.

13.36 Rule II 3a(5)(iv) incorporates the Wyoming State Engineer's regulations for wells; Rule IV 3n(1) ensures that the transfer of wells does not relieve the mine operator of the responsibility to prevent pollution or the operator's responsibility for capping, sealing, or plugging drill holes during exploration; W.S. 41–3–905 and 41–3–930 require registration of wells and permits for construction of wells.

These rules and statutes provide protection equivalent to that provided by 30 CFR 816.53. W.S. 41–3–930 does exempt small production, non-commercial wells from the State Engineer's permit requirement. Such exempted wells are to be used for stock, household use, or noncommercial irrigation when the area irrigated does not exceed one acre and the flow does not exceed 25 gpm and provided the water right has been correctly filed. However, Rule II 3a(5)(a)(iv) provides the same requirements as 30 CFR 816.53 for removal of water wells, regardless of size.

13.37 Rule IV 3e(3)(c) allows no discharge of surface water into an

underground mine which is more stringent than 30 CFR 816.55, and is therefore acceptable. Rules VII 2a(5) and (b) apply performance standards for hydrologic protection to underground mines. Rule VII 2b(2) requires all underground mining activities to be placed and conducted to prevent or control gravity discharges and that any discharges not violate State or Federal water quality standards. Rule II 3b(11) requires an evaluation of the impact on the hydrologic system for any type of mining. The State does not provide for the water quality "variance" of 30 CFR 817.55(c) for discharges of certain types of wastes.

Discharges from one underground mine to another would have to be evaluated to meet the requirements of Rule II 3b(11), the effluent limits of the Water Quality Division, and Rule IV 3r (MSHA approval of operations within 500 feet of an underground mine), Thus, protection equivalent to that of 30 CFR 817.55 would be afforded. This is also discussed in Finding 13.107.

13.38 Rule IV 3e(2)(c) requires renovation of permanent diversions and streams to approved standards. Similarly, Rule IV 3h(4) requires renovation of all permanent impoundments to approved standards. Thus, the State program resubmission in this regard to equivalent to 30 CFR 816.56.

13.39 See Finding 13.F below.

13.40 Rule IV 3t requires maximum utilization and conservation of the coal resource so as to minimize reaffecting the land. As standard practice, Wyoming requires recovery of rider coal seams wherever possible and requires analysis of mining deeper seams. Thus, the State rules and practice provide the same authority as does 30 CFR 816.59.

13.41 Rule VI 2a requires that properly requested preblasting surveys be conducted by personnel approved by the regulatory authority and that the operator or applicant be responsible for conducting the survey or for having the survey conducted. Rules VI 3a(4) and VI 5a(3) provide for audible warning signals. The State program is consistent with 30 CFR 816.62.

13.42 Rule VI 5a(6) incorporates the Federal permanent program requirements of 30 CFR 816.65(e) for maximum airblast levels.

13.43 Rule VI, performance standards for blasting, is consistent with 30 CFR 816.61 through 816.68.

13.44 Rule VI 5b(5) contains the scaled distance equation required by 30 CFR 816.65(e)(1).

13.45 Rule IV 3c(1)(d)(ii) includes a "long-term static safety factor" of 1.5 for excess spoil piles and is therefore consistent with 30 CFR 816.71(f).

13.46 Rule IV 3c(1)(b)(ii) prohibits placement of excess spoil in areas of springs, seeps, drainages, croplands, or important wildlife habitat. See discussion of prohibition of valley fills, head-of-hollow fills, or durable rock fills in Findings 12.8, 12.9, 12.10.

13.47 Rules IV 3t and XIII 1a(8)(d) restrict the operations to be conducted within 500 feet of an active or abandoned underground mine and require MSHA approval. Rule IV 3t requires minimizing future affects of mining. The State program is thus consistent with 30 CFR 816.79.

13.48 Rule IV 3c(2)(a) prohibits disposal of coal processing wastes in the construction of dams, embankments, or diversion structures. Therefore, the State program is more stringent than the Federal program, and the requirements of 30 CFR 816.91 through 816.93 need not be exactly replicated since coal processing wastes will not be used in dams or embankments. Coal processing wastes are to be disposed of in accordance with excess spoil disposal requirements of the State program plus additional requirements contained in Rule IV 3c(2). Construction of dams and embankments to impound coal processing wastes is regulated by Rule IV 3c(2)(d) of the resubmission. This rule is similar to the requirements of 30 CFR 816.93. However, no coal processing wastes may be used in such a dam or embankment if the structure would be located in a flood plain, channel, or area of seepage. (See Findings 13.50 and 13.51 below and 13.46 above.)

13.49 Rule IV 3c(2)(c)(vii) requires that, if a potential hazard is found to exist at a coal processing waste pile, the regulatory authority shall be immediately notified and that, if no remedial measures can be formulated, the appropriate emergency agencies shall be notified of the hazard to protect the public. The State resubmission is consistent with the requirements of 30 CFR 816.82(b).

13.50 Rule IV 3c(2)(c)(iii) keeps coal processing wastes outside areas of flood plains or seepage. This exclusion is in addition to that of Rule IV 3c(1)(b)(ii) for excess spoils which also applies and prohibits location in areas of springs, seeps, drainages, croplands, or important wildlife habitat. This provides for more stringent controls over placement of coal processing wastes than do the Federal regulations.

13.51 Rule IV 3e(3)(a) controls discharge from coal processing waste dams and embankments (i.e., dams or embankments contructed of native earth materials for the purpose of retaining or supporting coal processing wastes). Discharges are to be controlled to in turn control erosion and minimize disturbance to the hydrologic balance. Further, the State has promulgated rules for sedimentation ponds to control discharges and meet effluent limitations (IV 3g(1)). The State provisions are equivalent to those of 30 CFR 816.83(d).

13.52 Rule IV 3c(2)(c)(i) requires construction of coal processing waste piles in 24-inch layers compacted as necessary to achieve a static safety factor of 1.5 and to prevent spontaneous combustion. The Wyoming rule gives the regulatory authority discretion to set a compaction density minimum of 90 percent of maximum dry density which is required in all cases under 30 CFR 816.85(c)(2).

Wyoming Rule IV 3c(2)(a) prohibits use of coal wastes in the construction of dams, embankments, or diversion structures. Therefore, the provisions of Rule IV 3c(2)(c)(i) apply only to coal waste disposal piles; thus, consideration of protection to the hydrologic balance and public safety is not as critical as that of dams or embankments in determining whether Wyoming's provision is adequate. Rather, consideration of Wyoming's provision is based on the prevention of spontaneous combustion and stability of the piles since the 1.5 static safety factor for stability is required in all cases.

As discussed in Finding 14.120 below, the Secretary is not requiring that the Wyoming program require a pyrite analysis because of the low sulfur content in coal in Wyoming. Pyrite is one primary contributing factor to spontaneous combustion in coal waste piles. (See Administrative Record No. WY-234.) Since the 1.5 static factor is required and the chance of spontaneous combustion is minimal, the Secretary does not believe that it is necessary for Wyoming to achieve the required 90 percent maximum dry density determined by AASHTOT99-74 in all cases. The Secretary assumes, however, that Wyoming will require compaction of coal waste piles to that density or its equivalent in any case where there is a potential for spontaneous combustion or instability.

Rule IV 3c(2)(c)(vii) requires at least quarterly inspections of coal processing waste banks by a registered professional engineer or other qualified person approved by the regulatory authority. Such inspections will facilitate changing density specifications to ensure stability and control of combustion.

The State program resubmission is consistent with 30 CFR 816.85(c), since the appropriate density will be required

wherever necessary to prevent combustion or to achieve mass stability.

13.53 The Secretary found in the March 31, 1980, notice, that the provisions of 30 CFR 816.87 for utilization of burned coal processing wastes were not specifically required in the Wyoming program since coal processing wastes are not now produced in Wyoming and any future piles are to be constructed to prevent combustion. The State has not specifically addressed the Federal requirement for burned coal processing wastes. If such wastes were removed during surface coal mining operations, approval of the regulatory authority would be required to ensure compliance with Wyoming's statutes and rules requiring all mining operations to be planned and approved (W.S. 35–11–401(a)). All coal wastes generated would have to be placed within a permit area. Therefore, their removal would have to be regulated until such time as the performance bond was released. The resubmission remains consistent with the Federal requirements.

13.54 Rule II 3a(5)(a)(iii) requires that a plan for any industrial solid land waste disposal facility be included in the mining and reclamation plan. The State program resubmission contains the DEQ MOU which incorporates Chapter I, Section 11 c of the Land Quality Division's Solid Waste Rules. These rules require approval of coal waste disposal by the Land Quality Division and cover of such material with at least two feet of non-combustible material. Further, no disposal is to take place within 8 feet of any coal outcrop or storage area. The State program submission is consistent with the Federal requirements of 30 CFR 816.89 for disposal of non-coal wastes.

13.55 Rule II 3a(5)(a)(iii) incorporates the requirements of Rule I 11c(1)(c) and (e) of the Solid Waste Rules to apply hydrologic controls in solid waste disposal sites associated with coal mining. Further, Rule II 3b(10) requires an assessment of the probable hydrologic consequences of proposed operations, and W.S. 35–11–406(b)(xviii) requires operations to be conducted to minimize disturbance to the hydrologic balance. The State resubmission is therefore consistent with these specific requirements of 30 CFR 816.89(b).

13.56 Rules IV 3b(3)(c), IV 3c(2)(c)(v), and IV 3o control wind erosion of soils, coal processing wastes, and other disturbed areas. The resubmitted State program includes an MOU between DEQ divisions (Exhibit F.1) which applies to fugitive dust control. However, the Federal counterpart, 30 CFR 816.95, was remanded by the district court to the extent the regulation would control fugitive dust not caused by erosion. See discussion above under "General Background." The rules and MOU are no less stringent than Section 515(b)(4) of SMCRA.

13.57 See Finding 13.56 above.

13.58 See Finding 13.56 above.

13.59 See Finding 13.56 above.

13.60 See Finding 13.56 above.

13.61 See Finding 13.56 above.

13.62 Rule IV 3e(2)(b) requires reestablishment of aquatic habitats and natural riparian vegetation. Rule II 3b(4)(b)(iii) protects or requires reestablishment of habitats of unusually high value for fish and wildlife, such as wetlands. Guideline No. 5 considers aquatic and wildlife habitat. Thus, the State program resubmission is equivalent to 30 CFR 816.97(d)(5).

13.63 Rule II 3b(12)(b)(iii)(h) ensures that wherever postmining land uses are to be changed, approval of measures to prevent or mitigate adverse effects on wildlife or fish will be obtained from appropriate State and Federal fish and wildlife management agencies. Further, Rule IV 3p(1)(f) requires the use of vegetation to enhance interspersion of habitats. The requirements of 30 CFR 816.97(d)(10) and (11) for interspersing wildlife habitat will therefore be enforced by the regulatory authority, under the resubmitted program, as required by State or Federal fish and wildlife management agencies.

13.64 The State program resubmission contains revised Guideline No. 5 for wildlife, which incorporates references to the same two documents incorporated in 30 CFR 816.97(c). (This is also discussed in Finding 6.3) Wyoming has also promulgated Rule II 3b(4)(b)(iii) to protect habitats of high value. Consideration of wildlife in postmining land uses is discussed in Finding 13.63 above. The state program resubmission is consistent with 30 CFR 816.97(c).

13.65 The State has promulgated adequate rules to meet the requirements of 30 CFR 816.97 for protection of fish, wildlife, and related environmental values. Specificity for most wildlife surveys is added in Guideline No. 5 (Wildlife).

13.66 Rule IV 3a(1) requires rough backfilling and grading to follow contour and area strip mining on the time and space schedules identified in 30 CFR 816.101(a)(1) and (3). The State program resubmission therefore is consistent with 30 CFR 816.100 and 816.101(a). Rule IV 1 requires Section 3 of Rule IV to control for surface coal mining operations if a conflict develops between Rules IV 2 and IV 3 for "contemporaneous as practicable" backfilling and grading.

13.67 Rule IV 3a(3) requires backfilling and grading to approximate original contour and Rule I 2(6) defines "approximate original contour" as that configuration which complements the drainage pattern of the surrounding terrain. Thus, the requirements of 30 CFR 816.101(b)(1) to return areas to approximate original contour are met.

13.68 Rule IV 3a(7) requires that all spoil that may result from a permanent impoundment be regraded in accordance with the general backfilling requirements. Thus, such spoil would not automatically be considered excess but would only be considered "excess" if a "thick overburden" existed (see Rule IV 3a(6)). The resubmission is consistent with 30 CFR 816.102.

13.69 Rule IV 3a and, in particular, Rules IV 3a(3) and (4) require backfilling and grading to approximate original contour and elimination of highwalls. Thus, the State has provided authority in rules equivalent to 30 CFR 816.102. The regulation authority is based on W.S. 35–11–415(b)(v) (contouring operations), and the Secretary believes that authority exists to enforce the rules regardless of whether statutes contain the same language. (See Wyoming Attorney General's opinion dated May 19, 1980.) Therefore, the requirements of the Wyoming program rules to backfill and grade to meet approximate original contour requirements, which requirements (and a definition of "approximate original contour") are not contained in Wyoming statutes, have the same authority as the rules would have if the identical language were in the statutes. "Approximate original contour" is suitably defined in Rule I 2(6).

13.70 Rule IV 3a(8) (cut-and-fill terraces) is consistent with the Federal requirements of 30 CFR 816.102(b).

13.71 Rules IV 3a(5) and (6) distinguish between thin and thick overburdens. This is discussed in detail under "State window" Findings 12.11 and 12.12.

13.72 Rule IV 3b(4) requires removal and stabilization of any rills or gullies in excess of 6 inches which are inconsistent with the postmining land use. The resubmission is consistent with and generally more stringent than the 9-inch requirement of 30 CFR 816.106, though the State requirement combines the lesser depth with the allowance for rills and gullies to form under natural non-disruptive conditions where the postmining land use and vegetation are not adversely affected.

13.73 Rule IV 3d(1) requires the operator to establish, on all affected lands, a diverse, permanent vegetative cover consistent with 30 CFR 816.111.

13.74 The State has promulgated a number of rules related to the requirements of 30 CFR 816.112. These include Rules IV 3d and IV 2d. In particular, Rule IV 2d(5) requires field trials to justify more suitable reclamation species. Rule IV 3d(1) requires establishment of species native to the area or which will support the approved postmining land use. Rule IV 3d(2) permits the use of introduced species only to achieve a stabilizing cover for the approved postmining land use. Thus, use of introduced species must be approved based on the demonstrated capability to meet the standards for revegetation.

13.75 Rule IV 3p(1)(f) will ensure that plant species are selected to enhance fish and wildlife habitat consistent with 30 CFR 816.112(c).

13.76 See Finding 13.G below.

13.77 See Finding 13.G below.

13.78 The State has promulgated Rule IV 2d(6) to require sampling at any time a determination of revegetation success is made. Thus, confusion as to whether control areas should be periodically sampled to show trends no longer exists. In fact, such areas will be routinely sampled to show trends and forecast any needs for corrective measures. The resubmission is consistent with 30 CFR 816.116(a).

13.79 See Finding 13.H below.

13.80 Rule IV 2d(6) requires that cover and productivity be at least equal to that existing on the area before mining. Guideline No. 2 provides that information on the statistical significance with which the premining and postmining vegetation communities should be compared. The Wyoming program resubmission provides for determinations of revegetation success in cover and productivity in a manner similar to that of 30 CFR 816.116(b). (See Finding 13.140 for additional discussion.)

13.81 Rule IV 3d(6) includes the 10-year liability period for revegetation success consistent with the Federal requirements for arid and semiarid areas of 30 CFR 816.116(b)(1)(ii). The initiation of the bond liability period is discussed in Findings 13.140, 18.3, and 18.10.

13.82 Rule IV 3d(6)(b) specifies that when the approved postmining land use is to be commercial forest, the standards for measuring success will be established prior to approval of the plan. Thus, no permits approving reforestation may be granted until the State has promulgated rules equivalent to 30 CFR 816.117 and in accordance with State and Department of the Interior procedures under 30 CFR 732.17. It is not expected that any coal mining will occur on commercial forest lands in Wyoming in the near future since most of the commercial forest land is not located in the major coal resource areas.

13.83 Rules IV 2d(5) and IV 3d(2) restrict the use of introduced seed species to those shown to be of superior value through field test plots and, where necessary, to stabilize and control erosion or to achieve the approved postmining land use. As noted in Finding 13.81, Rule IV 3d(6) requires the 10-year bond liability period for revegetation. Thus, the State resubmission is consistent with the requirements of 30 CFR 816.112 and 816.116(b)(ii).

13.84 The Secretary's notice of March 31, 1980, inadvertently skipped the number 13.84 in listing his findings. There is no Finding 13.84.

13.85 See Finding 13.82 above.

13.86 Rule IV 3s requires that, if temporary cessation will extend past 30 days, the operator must submit the equivalent of an annual report (W.S. 35–11–411) to the regulatory authority. The annual report requires an identification of the extent of mining and reclamation operations in acres and the progress of all reclamation work. The report is also to include a revised schedule of operations. Any other information required by the regulatory authority must also be submitted (W.S. 35–11–411(a)(ii)). Thus, the requirements of 30 CFR 816.131 to submit a notice of intent to temporarily suspend operations and to provide other information are fulfilled by the State's requirements.

13.87 Rules IV 2k and IV 21 require removal of structures unless approved as beneficial to the approved postmining land use, and require reclamation to begin within 180 days. Also, Rule IV 3a(1) places time and space constraints on reclamation (backfilling and grading in particular). Thus, in the event of permanent cessation of operations, reclamation must continue under Wyoming's regulatory program. The resubmission is consistent with 30 CFR 816.132.

13.88 See Finding 13.I below.

13.89 Rule II 3b(12)(b)(iii)(H) requires approval of measures to prevent or mitigate adverse effects on wildlife or fish by State and Federal fish and wildlife authorities if the land use is to be changed. The State program submission also included an MOU between the Land Quality Division and the Wyoming Game and Fish Department (Exhibit F.2) which requires the Game and Fish Department to be notified of the need for Land Quality Division (the regulatory authority) assistance in reviewing mining and reclamation plans. Though the time for comments is not specified in the State program as it is in 30 CFR 816.133(c)(8), the State permitting procedures (Rule XIII 1a(2)) and the MOU ensure that Wyoming Game and Fish Department comments will be obtained and that at least 60 days will elapse from receipt of the plan to the time action is taken on it.

The U.S. Fish and Wildlife Service offered consultation services to Wyoming in an undated letter included in the State program submission as Exhibit G.9. The U.S. Fish and Wildlife Service will also have the opportunity to review all plans involving Federal coal lands. This will include most of the coal mines in Wyoming. The Secretary finds the Wyoming provisions adequate in providing the opportunity for agencies with fish and wildlife management responsibilities to review all mining and reclamation plans, including plans proposing changes in land use.

13.90 The State has promulgated a series of rules to provide general provisions for roads consistent with the Federal requirements. However, the Federal counterparts, 30 CFR 816.150–816.176 have been remanded by the district court. See discussion above under "General Background." The Wyoming rules are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

13.91 See Finding 13.90 above.

13.92 See Finding 13.90 above.

13.93 See Finding 13.90 above.

13.94 See Finding 13.90 above.

13.95 See Finding 13.90 above.

13.96 The State has promulgated Rule IV 3g(1) which requires all surface drainage to be passed through a sedimentation pond unless the drainage comes from sediment pond areas themselves, diversion ditch areas themselves, or road disturbances. Therefore, as in 30 CFR 816.42(a)(4), drainage from roads does not always have to pass through sedimentation ponds to be in compliance with the Wyoming program and the Wyoming program is consistent with Federal requirements.

13.97 See Finding 13.90 above.

13.98 See Finding 13.90 above.

13.99 Rule IV 3j(5)(a)(i) requires control of additional contributions of suspended solids to streams or runoff and damage to fish and wildlife using the best technology currently available, and is thus consistent with 30 CFR 816.180 and 30 CFR 816.181 for railroad and other transportation and mine facilities.

13.100 Rule VII 2 provides performance standards for underground mines in addition to those required for surface mines. These Rule VII 2 standards limit backfilling and grading requirements to those in Rule IV 2b

(reestablish the "contour of the land in a manner consistent with the proposed future use of the land") rather than including Rule IV 3a (requiring sealing and backfilling of shafts and adits, and all subsidence features occurring within 5 years of completion of mining to be appropriately reclaimed). The rule also provides for gravity discharge and subsidence controls. The State has promulgated Rule VII 2(a)(5), which incorporates "all applicable performance standards of Rule IV and W.S. 35–11–101, *et seq.*" into the underground mining and reclamation standards. The resubmission has adopted language to correspond to the district court rulings concerning 30 CFR 817.54, 817.101(b)(1), and 817.102 (Opinion of May 16, 1980, at 36–37, and 17–18). The resubmission is consistent with the remaining Federal requirements for the permanent regulatory program.

13.101 Rule VII 2(b)(3) provides the State with authority to prohibit all types of underground mining as necessary to prevent subsidence, and thus is acceptable as more stringent than 30 CFR 817.121(a).

13.102 Rule VII 2b requires that underground mining activities be planned and conducted to prevent material damage caused by subsidence. Further, Wyoming has clarified its intent to require that all perennial streams and impoundments be evaluated on the basis of detailed subsurface information prior to approving mining beneath them (Administrative Record No. WY–220). Thus, the perennial stream and impoundment criteria of 30 CFR 817.126(a) are accounted for, since mining causing an adverse, permanent effect on streams or impoundments would cause material damage to the land surface. Under both the Federal and State requirements, streams or impoundments can be undermined if there will be no material damage (see 30 CFR 817.126(a)). Rule VII 2b also provides controls on mining under parks, cemeteries, public buildings, acquifers, and in urbanized areas in a manner consistent with 30 CFR 817.126.

13.103 Rule II 3a(5) requires listing of MSHA identification numbers and applicable approvals. Rule VII 2(a) refers both to the U.S. Bureau of Mines and to "appropriate Federal and State laws" in the context of sealing shafts and adits. Thus, MSHA requirements must be met in a manner consistent with the Federal requirements since MSHA enforces Federal requirements. Further, Rule IV 3r requires MSHA approval of any operations within 500 feet of an underground mine. This would also apply to all shaft sealing.

13.104 Rules VII 1a, 1b, 2a(5), and 2b(8) incorporate all applicable portions of the surface mining rules (Chapters II, IV, and V) in the underground mining rules. As a result, Rule III is also incorporated (as required by Rule V). Rule VI would apply to any surface blasting. In effect, a comprehensive set of permit requirements and performance standards for underground mines has been promulgated by Wyoming and thus the State resubmission is consistent with 30 CFR Part 817.

13.105 Rule VII 2a(5) (underground mining) incorporates (1) Rule IV 3g, which requires use of sedimentation ponds, (2) Rule IV 3e, which requires use of diversions, (3) Rule IV 3c(3), which requires special handling of acid-forming and toxic-forming materials, and (4) Rule IV 3d which requires revegetation. Rule VII 1c(3) also requires a subsidence control plan and VII 2b(2) requires prevention or control of gravity discharges. Thus, the requirements of 30 CFR 817.41(d) are included in the resubmission. Further, W.S. 35–11–406(b)(xviii) requires a plan to minimize disturbance to the prevailing hydrologic balance, as in 30 CFR 817.41(b).

13.106 Rule IV 3g(7) requires that appropriate sediment control measures be designed, constructed, and maintained using the best control technology available. This rule is incorporated into underground mining requirements through Rule VII 2a(5). The Wyoming program has authority through these rules to specify that sumps be used to control sediment in underground mining operations in a manner consistent with 30 CFR 817.45(h).

13.107 Rules VII 1c(2) and 2b(2) require a plan that demonstrates prevention or control of potential gravity discharges when such discharges might be in excess of State or Federal water quality standards. 30 CFR 817.50(b) requires that effluent limitations be met by such discharges, including the effluent limitations contained in 30 CFR 817.50(b)(1)(i) and 817.50(b)(2)(ii). This was also discussed in Finding 13.37.

13.108 Rule VII 2b(1) requires that underground development wastes be disposed of in compliance with Rule IV 3c, which governs (1) excess spoil, (2) coal processing wastes, and (3) acid-forming and toxic-materials. Thus, requirements for overburden (spoil) from surface mines and underground development wastes are provided consistent with 30 CFR 817.71 and other Federal requirements for hauling and disposing of development wastes and spoils.

13.109 Rule VII 2a(5) incorporates Rule IV 3p and all fish, wildlife and related standards promulgated for surface mining in the underground mining rules, consistent with the requirements of 30 CFR 817.97.

13.110 Rules III 4 and XIII 1a(7) specify permit processing requirements for concurrent surface and underground mining operations. Rule IV 3r requires maintenance of a 500-foot barrier and Rule V 4 requires that a safe vertical distance be maintained between concurrent surface and underground operations. Thus, requirements of 30 CFR Part 818 are met in the resubmission

13.111 Rules IV 3r and V 4 are consistent with 30 CFR 818.15 (a) and (b) in terms of maintaining 500 feet between concurrent surface and underground operations, unless otherwise approved by MSHA.

13.112 See Finding 13.111 above.

13.113 Rule V 5(c) incorporates dimensional specifications for undisturbed areas of coal to be left after auger mining operations are completed, consistent with 30 CFR 819.11(a).

13.114 Rule V 5b provides authority to limit or prohibit auger mining if environmental impacts cannot be prevented or corrected, which is consistent with 30 CFR 819.11(e).

13.115 Rule V 5d requires plugging of auger holes that discharge water containing acid- or toxic-forming material within 72 hours of completion, consistent with 30 CFR 819.11(c)(1).

13.116 Rule V 2 and guideline provide for protection of alluvial valley floors. See Finding 12.4 for a more detailed discussion regarding the manner in which the State program resubmission provides adequate protection for alluvial valley floors.

13.117 W.S. 35–11–103(e)(xviii) provides a definition of "alluvial valley floors" which is essentially identical to that of Section 701(1) of SMCRA and 30 CFR 701.5.

13.118 See Finding 13.J below.

13.119 Rule V 2d incorporates monitoring requirements for operations in or adjacent to alluvial valley floors, which, with the clarification received (Administrative Record Document WY–220) and as discussed in Finding 13.0 (13.118) below, are consistent with 30 CFR 822.14.

13.120 Rule V(1) provides for regulation of operations on prime farmland consistent with 30 CFR Part 823. Wyoming has also promulgated rules equivalent to those incorporated by reference in Part 823 of 30 CFR and has modified its rules to correspond with the modification of the Federal requirements specified in 44 *FR* 77455 (December 15, 1979). These modifications are discussed in Finding 14.69.

13.121 Rule I 2(39) contains a definition of "history of intensive agricultural use." The term is used in Rule II 3a(6)(g)(i) in the context of identifying prime farmland. The term is more detailed than, but consistent with, the Federal definition of "historically used for cropland" (30 CFR 701.5), and is not related to the time of the lease or lease option for surface coal mining as is the Federal term.

13.122 Rule III 1a(5) requires identification of the moist bulk density of major soil horizons for prime farmland but contains no requirements equivalent to 30 CFR 823.14(c) for use of moist bulk density as a criterion for reconstruction (see Rule V 1a(3)(c)). This is an appropriate change since OSM has suspended the moist bulk density standard for soil compaction (44 *FR* 77455, December 31, 1979). Instead, the Wyoming program resubmission requires soil replacement in a manner that avoids excessive compaction, creates pore spaces favorable for rooting zone, minimizes erosion, and restores available water holding capacity consistent with the premining soil condition. This is consistent with the requirements of 30 CFR 823.14(e).

13.123 See Finding 13.K below.

13.124 See Finding 13.L below.

13.125 See Finding 13.M below.

13.126 See Finding 13.N below.

13.127 W.S. 35–11–401(m) prohibits steep slope mining until State program rules are promulgated. See Finding 13.S (13.126) below for a more detailed discussion of this finding.

13.128 W.S. 35–11–103(e)(xx) defines "surface coal mining operations" as including "leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and the loading of coal."

There are no distance limits on the inclusion of coal loading. Therefore, all performance standards and permit application requirements are applied to all processing plants and all coal loading facilities. The State program thus fulfills the requirements of 30 CFR Part 827, and is more stringent in that it applies to coal loading facilities located off the mine site.

Wyoming has two distinct sets of regulations governing in situ operations. One set pertains to *all* in situ operations (Rule XXI 2a) and the other pertains only to in situ coal operations (Rule V 3a(5)). Between the two, all requirements of 30 CFR 785.22 and Part 828 are included in the Wyoming program.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930, *et seq.*). Also included are findings that have undergone more detailed analysis by the Department.

13.A In Finding 13.9, the Secretary suggested that the Wyoming program resubmission should provide for certification of laboratories for soils analyses. The Federal regulations require that soils tests conducted to determine nutrient levels, chemical constituents, and need for soil amendments should be performed by a qualified laboratory using standard methods approved by the regulatory authority (30 CFR 816.25).

The State has responded that it sees no reason to be in the business of certifying laboratories to conduct soils analyses in Wyoming. Wyoming has included, as part of the program submission, two guidelines addressing, in part, soils (Guidelines No. 1 and No. 3) which provide references or directives for conducting analyses of pH, conductivity, saturation percent, texture class, sodium absorption ratios, $CaCO_3$, selenium, boron, nitrate, organic matter, molybdenum, acid base potential, exchangable sodium, lead, phosphorous, potassium, and arsenic. This is in addition to the guidelines' directions on soil sampling, sample preparation, and presentation of field descriptions.

As represented in Wyoming Administrative Record Document No. WY–99, OSM tentatively acccepted the State's position on the need for soils laboratory certification during the public comment period. Reanalysis of the issue indicates that the Wyoming soils guidelines are expanded to show standard methods for all pertinent measurements. With the guidelines, the program will be adequate in terms of obtaining accurate soils data in practice, since methodologies are standardized, thus eliminating the need for laboratory certification. The pertinent elements of Wyoming's program are acceptable.

13.B In Findings 13.13 and 13.25, the Secretary found that the Wyoming equivalent to 30 CFR 816.42(a)(2) was generally consistent with the Federal requirement since the term "restored" was considered equivalent to meeting the revegetation requirements of 30 CFR 816.111–816.117. However, Wyoming stated in its resubmission that, in fact, they would not require retention of sedimentation ponds until the requirements of 30 CFR 816.111–816.117 have been met if untreated runoff from the restored lands, at the time of considering removal of ponds or other facilities, would not degrade receiving waters. This proposal is submitted as a "State window" pursuant to 30 CFR 731.13 and, thus, is discussed in detail in Finding 12.13 which the Secretary finds acceptable.

13.C In Finding 13.14, the Secretary found that Wyoming's proposed use of the term "daily average" for measuring total suspended solids was consistent with 30 CFR 816.42(a)(7). However, in the State program resubmission, the values for total suspended solids, iron and manganese listed under the heading "Instantaneous Maximum" are incompatible with Footnotes 4 and 6 to the Effluent Limitations Table in the Federal regulations. As presented in the submission, all values are too high to meet the Federal requirements. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State explained that the Wyoming provision was consistent with the Federal requirement because "daily maximum" is considered to be a "representative sample." In addition, the standard for "instantaneous maximum" in the Water Quality Division regulation represents one grab sample, but is not a "representative sample." The State confirmed this interpretation with the Environmental Protection Agency (EPA). Based on this explanation, the Wyoming provision is acceptable.

13.D In Finding 13.22, EPA noted that the initial Wyoming program submission did not discuss the necessity of modifying downstream water treatment facilities once a stream channel diversion protecting the facility was removed. The Wyoming program resubmission indicated that water treatment facilities, of the type contemplated by 30 CFR 816.44(c) and EPA, are not found in the permit area and that protection for offsite areas is provided in Rules IV 3e and IV 3g. Under Rule IV 3e(2)(b)(ii), diversions are to be reclaimed in a manner that reestablishes approximate premining stream channel characteristics. Under Rule IV 3g(1), sedimentation ponds are to be retained until the affected lands have been restored. Thus, it is suggested that the stream drainage system will be reestablished so as not to affect downstream water treatment facilities. However, the rules do not require the specific consideration of downstream water treatment facilities.

On the other hand, Wyoming's Rule II 3b(11) requires evaluation of off-site hydrologic effects, and if there are adverse effects on water supplies or water systems, the application must identify alternative sources of water supply. Thus, downstream water treatment facilities must be considered in the regulatory authority's assessment.

The Secretary finds that Wyoming's statutes (e.g., 35–11–406(n)(iii)) and Rule II 3b(11) ensure consideration and protection of downstream water treatment facilities in a manner consistent with 30 CFR 816.44(c).

13.E As discussed in finding 13.29, the State, in its program resubmission, has explained that substitution of the word "lethal" for the word "detrimental" in the State's definition of "toxic materials" (Rule I 2(98)) was based on the objective of establishing stringent, well defined controls for materials that may be introduced into the environment. The State indicated in the resubmission that protection was also given by Rules IV 2c(3)(e), IV 2c(3)(f), and IV 3a(2) and by W. S. 35–11–415(b)(iv). These provisions address identifying spoil as a source of water pollution, disposal of toxic overburden or spoil, minimizing adverse effects on ground water, and covering or disposing of toxic materials constituting a hazard to health and safety or posing a threat of water pollution. The State thus equates detrimental (adverse effect) to terms such as "water pollution," "adverse effect," or "hazardous to health and safety" and believes the word "lethal" sets more stringent controls than does "detrimental."

The Secretary believes that there is a potential for confusion between State and Federal requirements for protection of biota and water uses unless the State assures that "lethal doses" will actually reflect *all* detrimental effects. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State stated its intent to propose an amendment to the regulation defining "toxic materials" which would substitute "detrimental" for "lethal." Until this rule is promulgated, the Secretary cannot find this Wyoming provision consistent with the Federal requirement, but will make promulgation of the regulation a condition of approval of the Wyoming program.

13.F In Finding 13.39 the Secretary found that the Wyoming program submission appeared to have properly documented the elimination of "biological community" from State rule IV 3p(2), which is otherwise equivalent to 30 CFR 816.57(a). Additional questions have arisen during review of the resubmission. The State has promulgated Rule IV 3p(2) and Rule II 3a(6)(e), which require studies of fish, wildlife, and their habitats in coordination with State and Federal fish and wildlife protection agencies, and Rule IV 3p(1), which requires the operator to use, to the extent possible, the best technology currently available, consistent with the approved postmining land use, to protect, restore, and enhance habitats of high value to fish and wildlife. The State has also promulgated Rule II 3b(4), requiring a plan to minimize impacts to fish and high value habitats, and Rule II 3b(12)(b)(iii)(H), which requires postmining land use plans to obtain approval of mitigation measures to protect fish if the land use is to be changed.

Sections I, E, K, and L of Guideline No. 5 describe techniques to be used to measure fish habitat, benthic invertebrates, and periphyton in systems supporting fish. Recognizing that sampling of biological communities is an essential element of fish and aquatic habitat investigations (see, for example, Hynes, H.B.N., 1970, *The Ecology of Running Waters*, pp. 112–271; Reid and Wood, 1976, *Ecology of Inland Waters and Estuaries*, pp. 337–369; Odum, Eugene P., 1971, *Fundamentals of Ecology* (3rd Ed.), pp. 316–320; and Kendeigh, Charles S., 1961, *Animal Ecology*, pp. 42–58, Administrative Record No. WY–224), the Secretary believes that all streams with a potential to support a biological community will be required to be investigated under the requirements of the resubmitted Wyoming State program and that all such streams and bilogical communities will be appropriately protected. As discussed in Finding 12.7, the State provided assurance on August 5, 1980 (Administrative Record No. WY–220), that makes the Wyoming provision consistent with the Federal requirement.

13.G The State deleted Rule IV 3d(6) and the grazing requirement contained therein in response to the district court ruling concerning 30 CFR 816.115 (Opinion of February 26, 1980, at 58–59). The State resubmission is acceptable for indicating how the range and pasture land will be measured, since the vegetation guideline (No. 2, Part 3) requires specified testing methodology for adequacy of reclamation, including adequate cover for soil protection, suitable species composition for forage or shelter, and adequate productivity for forage.

13.H The State program resubmission responded to the Secretary's question in Finding 13.79 regarding the term "reasonably good husbandry practices" used in Rule IV 2d(6) as follows:

> The State regards only those practices which are characteristic of the land practices normally conducted in the region for unmined lands having uses similar to the approved postmining land use to be "reasonably good husbandry practices."

The Secretary finds this consistent with 30 CFR 809.13(b)(3), which was promulgated on August 4, 1980 (45 *FR* 51547–51550).

13.I In Finding 13.88 the Secretary found that Wyoming's use of the language "previous [land] use which was of greatest economic or social value to the community area; or must have a use which is of more economic or social value than all of the other previous uses" to be a more stringent judgment of "higher and better uses" than in 30 CFR 816.133(a)(2). In the resubmission, the State indicated that the postmining land use would be evaluated on the basis of the feasibility of backfilling, grading, reestablishing a hydrologic system, soils protection and capability to revegetate in support of the postmining land use. Wyoming's statement regarding incorporation of determinations of the feasibility of meeting specific reclamation requirements in the course of making findings of "highest previous use" will provide analyses under the State program consistent with those needed to comply with 30 CFR 816.133(a)(2).

13.J In Finding 13.118, the Secretary found that the State program submission did not provide a "grandfather" clause for the protection requirement of "significant" alluvial valley floors for mining operations approved prior to August 3, 1977, as does 30 CFR 822.12(d) and, therefore, was more stringent.

The State has enacted W.S. 35–11–406(n)(v)(B) which replicates the "grandfather" clause exempting certain mines from consideration necessary under Section 510(b)(5) of SMCRA. Thus, the "grandfather" clause of the State program provides the exemption privileges of Section 510(b)(5) of SMCRA pertaining to alluvial valley floors of significance to farming.

State Rule V 2d(3), however, provides that "[m]onitoring *may be* required in accordance with subsection E of this section." (emphasis added) This appears to make the mandatory requirements of 30 CFR 822.14 discretionary in the Wyoming resubmission. The Secretary notes that monitoring must be required for all mines encountering alluvial valley floors.

While the type and extent of monitoring is to be determined by the regulatory authority based on site-specific considerations, some type of monitoring is required. In fact, the Wyoming program requires surface and ground water monitoring in all operations (Rule IV 3i); thus, the apparent exemption in Rule V 2d(3) seems meaningless.

It would appear that Wyoming intended to limit the objectives of

environmental monitoring in accordance with the "grandfather" clause. That is, operations qualifying for the Section 510(b)(5) (of SMCRA) exemption would not be concerned about interruption, discontinuance, or preclusion of farming on "grandfathered" alluvial valley floors (AVF's) and thus would not have to monitor for such effects on those AVFs. However, if the mine were operating in or adjacent to an alluvial valley floor, monitoring would likely be necessary to ensure that essential hydrologic functions were reestablished.

By letter dated August 5, 1980 (Administrative Record No. WY–220), the State provided assurance that Rules III 2b(9) and c(4) require environmental monitoring for all alluvial valley floors, except for those operations that fall within the "grandfather" clause provided by Section 510(b)(5) of SMCRA. The State also assured that it will require monitoring in accordance with the standard that existing operations restore the essential hydrologic functions where mining on or adjacent to alluvial valley floors occurs. This requirement is through Rule V 2e. This assurance makes the program provisions acceptable.

13.K In Finding 13.123 the Secretary found Wyoming's proposed rule for determining revegetation success on prime farmland (Rule V 1b(3)) adequate, provided the State ensures that the reference area used to determine success for prime farmland will be monitored in terms of estimated yields under a high level of management. However, in apparent response to the district court rulings (Opinion of May 16, 1980, at 4–5), the resubmission indicates the State has promulgated Rule V 1b(2) (which requires revegetation success on prime farmlands) to be based on vegetation on non-mined prime farmlands *"under equivalent levels of management."* (Italic added.)

Complicating the analyses is the appearance of language in the side-by-side of State and Federal provisions (page 154) which reports the same rule (V 1b(2)) as defining success in terms of *"capability* of prime farmlands to support premining productivity." The latter proposal is in concert with the court rulings. The regulations that appear to be promulgated in Rule V do not show the change which corresponds to the district court rulings. The side-by-side language is promulgated in Rule XIII 1a(6)(a) ("the postmining land use of prime farmland will be capable of supporting crop yield equivalent to the surrounding non-mined prime farmland under equivalent levels of management.") This provision is in the permit review regulations and will prevail in actions on permit applications. Rule XVI 6a(2)(b)(ii) specifies that bond release will be at the time soil productivity will have returned to non-mined levels consistent with good management practices. It is apparent that actual performance may still be based on estimated yields, as it must to accurately reflect the capability while soil productivity will be a surrogate basis for bond release. The Secretary finds that, until new Federal requirements are promulgated, Rule V 1b(2) shown in the side-by-side analysis which bases performance on the capability of prime farmlands to support premining productivity, and Rule XIII 1a(6)(a) which bases permit approval on capability, are acceptable.

13.L In Finding 13.124 the Secretary found that further clarification was required in order to evaluate the proposed State rules for special bituminous coal mines. Wyoming has provided a discussion and clarification in the resubmission which is evaluated in Finding 13.M below.

13.M In Finding 13.125 the Secretary found that questions remained regarding the State's intended meaning of the term "new special bituminous coal mines." The resubmission explains that Wyoming intends to classify the Kemmerer Coal Company I-U-D mine permit areas as the only *"existing* special bituminous coal mine" (emphasis added) in Wyoming since only that operation can qualify under the State equivalent to 30 CFR 825.11 (Rule VIII 1a(1)(g)) (i.e., only that operation was in existence prior to January 1, 1972). Wyoming intends to allow separate mine pits within this mine, upon adequate showings of compliance with Rule VIII 1a(1).

The critical criteria for determining qualifications as an existing special bituminous coal mine would include the mining of more than one coal seam (Rule VIII 1a(1)(c)) and production of coal since January 1, 1972 (Rule VIII 1a(1)(g)). Thus, anywhere within the total permit area, as that area is specified when a permit is issued under the permanent regulatory program, any multi-seam pits which have been producing coal since January 1, 1972, may qualify as existing special bituminous coal mines.

Wyoming intends to classify other mines as *"new* special bituminous coal mines" (emphasis added) if the mine permit area is located on lands immediately adjacent to the Kemmerer Coal Company's mine permit area. Again, permit areas would be defined in the permit issued pursuant to the permanent regulatory program. The two permit areas that could, in the opinion of the State, contain new special bituminous coal mines are shown to the south and north of the Kemmerer Mine permit area in the map titled "Map No. 1 Special Bituminous Coal Mines," which is contained in the resubmission.

The State indicates, in the resubmission, that the FMC Skull Point operation will be a "new special bituminous coal mine" as could any plan for mining operations in the location of Rocky Mountain Energy Company's Twin Creek Mine (provided all applicable criteria of Rule VIII 1a(2) were met). No other plans are expected to meet the criteria for new special bituminous coal mines, according to the information provided in the resubmission.

In order to reach the conclusion that Section 527 of SMCRA authorizes the State program provisions for special bituminous coal mines as resubmitted, the Secretary has assumed that the term "special bituminous coal mine" refers to an entire mine permit area which may encounter, in one or more locations within that mine, areas of more than one coal seam dipping more than 15 degrees where the operator chooses to mine those seams in one or more separate mine pits which are to remain open to facilitate mining. In other words, the Wyoming program interprets the term "special bituminous coal mine" to apply to the entire mine permit area, which area could include other types of mining in addition to open pit mining.

Once a permit area is designated a special bituminous coal mine, there can be any number of pits within the permit area which may be exempted from backfilling and grading requirements. The provisions of the Wyoming statutes and rules for special bituminous coal mines apply to any eligible pits within the permit area, but *only* to the pits and, under Wyoming's program, the associated spoil piles. And, a *new* special bituminous coal mine need not be immediately adjacent to a pit; rather it must be adjacent to a mine permit area of the entire operation as far as it may extend during successive permit terms.

The Wyoming program further interprets the term "which may be developed," used in Section 527(b) of SMCRA to identify new special bituminous coal mines, to mean "opening of a new mine, continuing the development of an ongoing operation, or redeveloping an area that has been mined in the past." This becomes important in defining the FMC operation as a new special bituminous coal mine since the pit at that mine was opened after 1972 and before 1977.

The Secretary finds that Wyoming properly interprets the term "special bituminous coal mine" to involve a total mine permit area including one or more pits which specifically qualify for exemptions equivalent to those of Section 527 of SMCRA.

The Secretary also finds that the word "develop" is permissibly used by Wyoming in the resubmission to include both continuation of mining and opening of new pits within the mine permit area designated as a new or existing special bituminous coal mine. This finding is based on common definitions of the word "develop" from *Merriam-Websters Third New World International Dictionary*, Unabridged, 1976, p. 618.

The word "develop" means, in a mining engineering sense, "To open up a coal seam * * * as by sinking shafts and driving drifts, as well as installing the requisite equipment."

(*A Dictionary of Mining, Mineral, and Related Terms*, Bureau of Mines, DOI, 1968, Administrative Record No. 231.) The Internal Revenue Service views development of mineral deposits to involve expenditures made after exploration and before mining. The expenditures would be for "driving shafts, tunnels or galleries and similar operations undertaken to make ore accessible for production (26 CFR 1.616-1a, IRS Code, Administrative Record No. 232). Thus, a difference exists, for tax purposes, between exploration, development, and mining.

The Wyoming resubmission concludes that "develop" includes both "development" and "mining." Again, this is important in determining whether the pit of the existing FMC coal mining operation qualifies the entire FMC permit area as a new special bituminous coal mine and whether that pit is eligible for exemptions.

Based on the Secretary's analysis, there is no evidence that the word "developed" used in Section 527 of SMCRA was used in consideration of the more complex definitions peculiar to mining. It is reasonable to assume that the term "developed" was used as defined in Webster's or other commonly recognized dictionaries. Further, the House Report accompanying H.R. 2 (Conference Report No 95-943, July 12, 1977, page 112) states that "State laws, regulations and decisions made by State regulatory authorities are to be protected" in the issuance, by the Secretary, of regulations. Therefore, the State of Wyoming's considerations are to be protected to the degree consistent with SMCRA. Accordingly, the Secretary finds Wyoming's interpretation of the term "developed" to be suitable and in accordance with SMCRA.

The State resubmission may cause some confusion when trying to distinguish, however, between the words "mine" and "pit." The resubmission provides promulgated rules for backfilling and grading of special bituminous coal mines. Rule VIII 3c indicates that pits not covered under VIII 3a above (*existing* special bituminous coal mines) must comply only with backfilling and grading requirements of Rule IV 2b (as opposed to IV 2b and IV 3a). There is a possibility that operators will interpret this to mean that a variance will be given for any pit within the permit area, regardless of whether it qualifies for an exemption.

It is the Secretary's understanding that Wyoming will first classify mine permit areas as "existing" or "new" and then will apply standards for "existing" special bituminous mines only to qualifying pits within the "existing" mines (and likely will find only one such pit). Standards for "new" special bituminous coal mines will be applied to any eligible pits within a "new " mine and any new pits within an "existing" mine.

Wyoming has promulgated Rule VIII 4a, which requires compliance with all other performance standards to the degree they "do not preclude the benefit intended." The Secretary initially determined that this provision was too extensive since Section 527(c) of SMCRA limited the alternative regulations to standards governing "on site handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regrading to the approximate original contour." Thus, all performance standards regarding topsoil, hydrology, wildlife, erosion, revegetation, and certain other performance standards would still apply.

The State has provided evidence that ensures proper compliance with all applicable performance standards and permit requirements (Administrative Record No. WY-220). Wyoming has stated that Section 4 of Chapter VII of the rules applies only if the special bituminous surface coal mine operator affirmatively demonstrates that compliance with a specific performance standard requires utilizing impracticable backfilling and grading, resulting in more stringent standards than described in Chapter VII, Section 3.b. Thus the exemption applies only to backfilling and grading and this portion of the program is consistent with the Federal requirements.

13.N In Finding 13.126, the Secretary found that Wyoming needed to enact a definition of "steep slopes" as well as a ban on mining steep slopes until regulations were prepared. Wyoming has promulgated Rule I 2(86) to define "steep slopes" as any slope of more than 20 degrees or such lesser slopes as may be designated * * *." Wyoming has also promulgated Rule IV 3c(1)(b)(i) to prohibit the placement of excess spoil (i.e., excess of regrading requirements) on an overall slope that exceeds 20 degrees. However, the definition relating to steep slopes within enacted W.S. 35-11-103(e)(xxi) differs in that it defines "steep slope surface coal mining operation" as that occurring on steep slopes generally "exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures." This term, defined in W.S. 35-11-103(e)(xxi), is then used in W.S. 35-11-401(m), which Wyoming has enacted to prohibit mining operations on steep slopes until adequate rules are promulgated.

Under the Wyoming program, Rule IV 3c(1)(b)(i) prevails to prohibit placement of spoil on downslopes exceeding 20 degrees. This is consistent with the special performance standards of 30 CFR 826.12(a)(i) and (d) and thus satisfies the Federal requirements for protecting the environment. In effect, the Wyoming rules do not use the term "steep slope." Rather the rules prohibit excess spoil in steep slope situations. On the other hand, the statute is designed to prohibit steep slope mining gradations themselves, albeit using a different definition of "steep slope." The Secretary finds that Wyoming intends to prohibit steep slope mining until additional rules are promulgated (Exhibit G.6 for sections 785.15 and 826 in resubmission). This issue was also discussed in Finding 12.3.

13.O In Finding 13.142, the Federal requirements for ground water protection in 30 CFR 816.50 are contained in promulgated Rule IV 3c(3)(d) which requires acid or toxic materials used as backfill to be placed to prevent leaching into surface or subsurface waters, and in Rule IV 3a(2) which requires placement of all backfilled materials in a manner which minimizes adverse effects on ground water. These requirements are all reinforced by W.S. 35-11-406(b)(xviii) which requires a plan that minimizes the disturbances to the prevailing hydrologic balance. The State resubmission is consistent with the Federal requirements.

13.P Rule IV 2d(6) will require that a bond be held until the revegetated area

is capable of renewing itself under natural conditions and the productivity is at least equal to that existing prior to mining. The standards of the rule are to be met for two consecutive years. 30 CFR 816.116(b)(1)(ii) requires that the standards be met for "the *last* two consecutive years of the responsibility period." (Italic added.) The State rules do not specify the time during the ten year period that the two years of measurement will take place. An operator could then measure the vegetation at the end of the initial planting and irrigation, when productivity is high, and meet the requirements of the rule and not take into acount decline in cover and productivity that may occur before the end of the bond release period.

Although this difference in the rules could be resolved by an explicit discussion of timing of bond release measurements in Guideline No. 2, a modification to the regulation is preferable. This change has been made a condition of Wyoming program approval.

13.Q Wyoming has promulgated Rule IV 3g(4)(b) to require that one year of sediment storage be designed into ponds. This rule has been changed in response to the district court ruling (May 16, 1980, Opinion, at p. 21). In making the change in the resubmission, Wyoming also eliminated the surface performance standard requirement for removal of stored sediment in 30 CFR 816.42(b). While this oversight in the resubmission does not provide the same language as do the Federal regulations at present, reasonable design of sedimentation ponds under Wyoming's program will automatically require sediment removal. And, in fact, Rule II 3b(9)(b) requires "a plan for sediment removal and disposal."

Removal will occur since, if sediment accumulated in excess of the design amount, a violation of Water Quality Division Rule X, Appendix A, (which requires a "detection time to include storage") would also occur.

The Secretary finds that the current State program provides all necessary requirements for sediment removal necessary to maintain the approved (and safe) pond design in comparison to the Federal regulations currently in effect.

Finding 14

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and regulations and the Wyoming program does include provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits), subject to the discussions in Findings 14.A and 14.C below. This finding is made under 30 CFR 732.15(b)(2).

Wyoming incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Wyoming Statute 35–11–103, 401, 402, 405, 406, 408, 409, 410, 426, 427, 428, 429, 601, 801, and 802, and Wyoming Rules I, II, III, IV, VII, VIII, IX, XIII, and XIV. Part G.1 of the first volume of the program submission contains discussions of the systems for (1) mining permit review and approval, (2) amendments, (3) renewals, (4) revisions, (5) transfers and (6) licenses.

Discussion of significant issues raised during the review of the Wyoming permit provisions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 14 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which have the same numbers as the tentative findings on the same provisions in the March 31, 1980, notice.

14.1 See Finding 14.A below.

14.2 W.S. 35–11–406(n)(i) requires that no permit may be issued unless the application is "accurate and complete." W.S. 35–11–406(j) requires that public notice of a "complete" application be given to correspond with 30 CFR 786.11(a). Thus, an incomplete application must be denied consonant with 30 CFR 786.19(a). The exact meaning of the word "complete" in the Wyoming program is discussed in Finding 14.A (14.1) below.

14.3 The State has promulgated Rule XIII 1a(8)(c) to require the coal mining operation to be conducted in compliance with any other applicable State or Federal law. The State program resubmission also contains MOUs for State agencies with designated responsibilities for implementing other acts (see Finding 6). The rules also contain coordination requirements for the Endangered Species Act and Fish and Wildlife Coordination Act (see Rules II 2a(1)(b)(iv), II 3a(6)(e), II 3b(4), and IV 3p).

The Wyoming State program provides for the identification of historic and archeological resources, which would include sites eligible for listing in the National Register of Historic Places. The survey information required by applicants would be evaluated, under the Wyoming program, by the Wyoming State Historic Preservation Officer pursuant to the MOU developed between Wyoming DEQ and the Wyoming Recreation Commission (Exhibit F.3).

Wyoming requires, under Rule XIII 1a(5), that the applicant provide a plan which would demonstrate the capability to mitigate the adverse impacts of mining on areas prohibited for mining pursuant to Section 522(e) of SMCRA (e.g., including sites *listed* on the National Register).

14.4 Finding 14.4 relates to the cooperative agreement under the Federal lands program. See discussion under "Introduction" above.

14.5 Rule II 2a(1)(b)(iv) requires identification of endangered or threatened plant species on any State or Federal list; Rule II 3a(6)(e) requires coordination of fish and wildlife studies; Rule II 3b(4)(b)(i) requires protection of threatened or endangered wildlife species listed pursuant to 16 U.S.C. 1531 *et seq.;* and rule IV 3p(1)(g) requires a report of threatened endangered species and golden eagles. The State rules are consistent with the Federal requirements to protect threatened and endangered plant and wildlife species and golden eagles. See Finding 14.93 for further discussion.

14.6 The State program resubmission shows that Rules XIII 1a(2)(b) and XVIII 3b(1) require applications and petitions to be disseminated to government agencies. Further, public notices of receipt of these are required by W.S. 35–11–406. Thus, Federal agencies will be notified of the permit application and petition process, and the concerns of the National Park Service expressed during review of the original submission are satisfactorily accounted for.

14.7 Rule XIII 1a(2)(b) requires that public notices be sent to Federal agencies with jurisdiction over, or an interest in, the permit area. Rule II 3a(5)(b) requires information for any other permits or approvals pertinent to the proposed operations. Rule II 3b(1)(b)(iv) requires the location and design for diversions, channels, erosion control, and discharge (among other) facilities. Further, Rule XIII 1a(8)(c) requires that operations be conducted in a manner which prevents violation of other applicable laws and, thus, requires an applicant to have obtained the requisite approvals prior to operations. Thus, the State has ensured that dredge and fill operations will be accounted for

both by notification to the Corps of Engineers and by review by the regulatory authority.

14.8 See Finding 14.B below.

14.9 W.S. 35–11–401(d) provides guidance for continued operations after timely submission of a complete application equivalent to that provided by 30 CFR 771.13(b) and thus is consistent with the Federal allowances for continued operations in the event of administrative delays.

14.10 The State included a guideline (No. 6) in its submission which addresses organization of a permit. In Part III, Section II of the guideline, ranges in scales for maps are specified. The map scales range from 1:4800 to 1:24000. Surface and underground mine maps in mine plans for Federal lands in Wyoming are generally 1:4800 or 1:6000 scale. This observation is based on OSM's analysis of mine plans for Federal lands in Wyoming on file in the Region V OSM offices. The State program, therefore, adequately provides the authority to obtain, and in practice the Wyoming regulatory authority does obtain, maps of proper scale to allow site-specific analyses by the regulatory authority, even through the Wyoming rules do not specify the scale (1:6000 or larger) of maps of the permit area as does 30 CFR 771.23(e)(1).

14.11 Rule II 1b requires information in the application to set forth references to technical material as well as the entities responsible for collecting and analyzing data. Rule II 3a(5)(a)(ii)(B) incorporates the Water Quality Division's standards, which, in turn, specifically incorporates EPA's water quality analytical procedures. The State resubmission is consistent with the requirements of 30 CFR 771.23(c) for identification of preparers of technical data and identification of analytical procedures.

14.12 W.S. 35–11–406(a)(xii) establishes a permit fee not to exceed $2,000, which is consistent with 30 CFR 771.25.

14.13 Rule I 2(3) presumptively limits the "adjacent area" to one-half mile of the proposed permit (mine plan) area unless otherwise specified by the regulatory authority. The Secretary finds this consistent with the Federal requirements, since the limitation will be varied according to the potential adverse effects of the proposed operation and is merely used to provide some quantitative indication of the area to be surveyed as early as possible in the environmental monitoring program. It is recognized that the distance will almost always be greater in some direction from the proposed operations for hydrologic effects of mining.

14.14 Rule II 3a(5) includes the Mine Safety and Health Administration (MSHA) identification number and is, therefore, consistent with 30 CFR 778.13(f).

14.15 Rule II 3a(2)(b) and W.S. 35–11–406(a)(xiv) require a listing of "notices of violation *which resulted in enforcement action* of this act, any law, rule, or regulation of the United States * * * pertaining to air and water environmental protection" (italic added). The Secretary understands that the emphasized language is designed to exclude from the listing notices of violation under present State law which are merely informative and do not necessarily require action by the operator (Administrative Record WY–99). Under this interpretation, the State program resubmission is consistent with 30 CFR 778.14(c).

14.16 Rule II 3a(3) requires right-of-entry statements and documents which clearly explain and support the legal rights claimed by the applicant. W.S. 35–11–406(a)(ii) and (b)(xi) requires a sworn statement as to the legal right and power by legal estate to mine and, if the application was filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner granting permission to enter and mine. The State provisions are consistent with 30 CFR 778.15.

14.17 Finding 14.17 relates to the cooperative agreement under the Federal lands program. See discussion under "Introduction" above.

14.18 See Finding 14.16 above.

14.19 Rule II 2b(1)(b) requires a map showing the yearly progression of mining and reclamation during the life of the mine. Rule II 2b(2) requires a time schedule for each major step in the reclamation plan in order to coordinate the reclamation plan with the mining plan. Thus, the State program is consistent with 30 CFR 778.17(a).

14.20 W.S. 35–11–406(a)(xiii) requires a certification that a public liability insurance policy exists or that there is evidence of meeting other State or Federal self-insurance requirements. Rule XIII 2b requires that the liability insurance be adequate prior to permit approval. The State resubmission is consistent with the requirements of 30 CFR 778.18.

14.21 Rule II 3a(5) requires a list of permits or approvals needed and copies or numbers of permits obtained from DEQ or the State Engineer. Thus, the requirements of 30 CFR 778.19 are met since the number and type of permits are adequate for a "description" and since the actual permits can easily be obtained from other State or Federal agencies once the type and number of the permits are identified.

W.S. 35–11–406(d) requires the applicant to file a copy of the permit application for public inspection at the office of the regulatory authority and in the office of the appropriate county clerk. Rule XIII 1b(1)(b) requires evidence of public notice. The public notice must contain information regarding the location of the plan for review (W.S. 35–11–406(j)). Thus, the requirements of 30 CFR 778.20 for identification of the public review office are also met.

The State cannot, under its program, approve an application unless the applicant has complied with W.S. 35–11–406(a)(xv) (has provided "such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require"). Thus, if any other information is required for the analysis, including information contained in other permits, the application must contain that information.

14.22 See Finding 14.C below.

14.23 Rule II 3a(6)(k) requires hydrologic and geologic information for the adjacent and general areas. Rules II 3a(6)(a), (b), (h), and (j) require geologic and hydrologic data on the permit area and other related areas. Rule XXIII 3a addresses the availability of information. The State program does not use the term "mine plan area." Rather, "permit area" is defined (Rule I 2(56)) to include all operations on the entire life of the mine. W.S. 35–11–406 requires information covering the full extent of proposed operations. W.S. 35–11–405(b) specifies that the permit remains in force until the termination of all mining and reclamation operations. (See W.S. also 35–11–103(e)(xi) for definition of "mining permit" covering *all* operations.) The resubmission is consistent with 30 CFR 779.13 and other geologic and hydrologic requirements of the Federal permanent regulatory program.

14.24 See Finding 14.23 above and promulgated Rule XXIII 3.

14.25 Rules II 32b(10) and XXIII 2 require a determination of the probable hydrologic consequences of the proposed operation on the hydrologic regime and an assessment by the regulatory authority of the probable cumulative hydrologic impacts of all anticipated mining in the general area. These requirements are consistent with 30 CFR 780.21(c) and 786.19(c).

14.26 W.S. 35–11–406(n)(i) and (ii) require the regulatory authority to find in writing that an application is complete and that the proposed reclamation can be achieved. Further,

Rule II 3a(6)(b) requires test borings on core samples of overburden. Under Rule XXIII 2a(2), the regulatory authority must find in writing that the test borings and core samples are adequate to characterize the overburden.

14.27 Rule II 3a(6)(h) includes manganese as a water quality parameter for which base line data must be provided. The State program resubmission is consistent with 30 CFR 779.16(b)(2) in terms of including the requirement for baseline manganese data. This effluent limitation for discharges has also been discussed in Finding 13.c (13.14).

14.28 Rules II 2a(1)(j)(i) (listing of all known adjudicated and appropriated water rights), II 2(1)(j)(ii) (listing of wells), and VII 1a (which incorporates permit requirements for surface mines in the underground mining regulations) provide requirements for descriptions of known uses of water consistent with 30 CFR 779.15(a)(3), 779.16, and 779.17.

14.29 Rules II 2a(1)(c) and (d) require the applicant to obtain precipitation and wind data. The State program does not contain a rule equivalent to 30 CFR 779.18(a)(3) for seasonal temperature data. Rather, the State proposes to depend on published temperature records and general knowledge of seasonal temperature ranges. In view of the fact that specific temperature ranges will be obtained from other sources in the Wyoming program, as required, the Secretary finds the resubmission adequate with respect to 30 CFR 779.18(a)(3).

14.30 Rule II 3a(6)(d)(ii) requires a map of vegetation reference areas and a "delineation" of existing vegetation types within the permit and adjacent areas. The State has submitted a vegetation guideline (No. 2) which requires mapping of vegetation (see the "General Procedures" in that guideline) and a permit organization guideline (No. 6) which specifies map scales (1:4800 to 1:7200) for vegetation maps. Thus, the resubmission is consistent with 30 CFR 779.19 in that vegetation maps will be obtained. See Finding 14.10 for additional discussion of map scales. Vegetation maps should correspond to both soils and mining operations maps.

14.31 Rules II 2a(1)(e) and II 3a(6)(e) require adequate wildlife data in the permit application. The State program resubmission also includes a wildlife guideline (No. 5) which provides additional details for the applicant to follow as "good practice." Rule II 3b(4)(b)(i) requires a plan to minimize adverse impacts to threatened or endangered species (Federal-and State-listed species). However, the Federal counterparts, 30 CFR 779.20 and 780.16, have been remanded by the district court. See discussion under "General Background" above. These rules and the guideline, however, are no less stringent than Section 515(b)(24) of SMCRA.

14.32 Rule II 3a(6)(e) requires consultation with State and Federal fish and wildlife management agencies regarding the extent of pre-mining studies. The submission also contains a letter of agreement to contribute expertise from the U.S. Fish and Wildlife Service (Appendix G.9). An MOU between the Wyoming Game and Fish Department and the Land Quality Division identifies administrative coordination procedures to obtain technical reviews and assistance from the State Game and Fish Department. These provisions, along with other rules of the State program, satisfy the requirements of 30 CFR 731.14(g)(10) (consultations with fish and wildlife authorities). See Finding 14.31 above for analysis in light of the district court order.

14.33 Rule II 3a(6)(d)(iii) requires a description of uses of land preceding mining and thus is consistent with 30 CFR 779.22(b)(5).

14.34 Rule II 3b(12)(b)(iii)(D) includes the requirement that proposals for designation of cropland as a new postmining land use shall be supported with a demonstration of a reasonable likelihood of sustaining the cropland. A firm, written commitment is no longer required. This is consistent with the district court's ruling regarding 30 CFR 816.133(c)(9)(i) (Opinion of February 26, 1980, at 63–63).

Rule XVI 6a addresses schedules of bond releases. The bond release schedule in this rule "may" be recommended by the regulatory authority. However, the maximum amounts to be released and the phases of release are mandatory. The discretion lies only in retaining additional amounts of bond or retaining the bond for longer periods. These provisions are consistent with current Federal requirements.

14.35 Rule II 3a(6)(n) requires, in the application, locations of existing man-made features within the permit area. In Rule II 3b(3)(a), the State program requires a blasting plan showing how compliance with Rule VI is to be achieved. In Rule VI 5a(7)(a), the resubmission shows that blasting may be limited in areas within ½ mile (rather than 1,000 feet) of a dwelling. In Rule VI 5a(7)(b), the 500-foot limitation for certain facilities such as flammable facilities and water lines is stated. The resubmission is consistent with 30 CFR 779.24(d) since the information needed to make a finding of compliance with Rule VI must be contained in the application in order to make the application complete and approvable. However, the 1,000-foot and 500-foot requirements of 30 CFR 816.65(f)(1) and (2) were remanded by the district court (opinion of May 16, 1980, at 26). See discussion under "General Background" above. Rule VI 5a(7) is no less stringent than Sections 515(b)(15) and 522 (e)(5) of SMCRA.

14.36 W.S. 35–11–406(n)(iv) covers Section 522(e) of SMCRA and thus the resubmission is consistent with the requirements of the Federal program for analysis of unsuitability. This is also discussed in Finding 21.

14.37 Rule II 2a(1)(k) requires a "description of any significant" artifacts, fossils, or other articles of cultural, historical, archeological, or paleontological value. Thus, the resubmission is consistent with 30 CFR 779.12(b). (See also Finding 14.3.)

14.38 Rule II 3b(3) requires a blasting plan showing, among other requirements, how the applicant intends to comply with Rule VI. The resubmission is consistent with 30 CFR 780.13.

14.39 Rules II 2b and II 3b require various maps. The resubmissions also contains Guideline No. 6 which identifies maps (and map scales) to be used in permit applications. The requirements of 30 CFR 780.14 are included in the State program. The requirement for map scales was discussed in Finding 14.10.

14.40 W.S. 35–11–406(n) requires written findings and Rule II 3b(1)(b)(iv) allows "typical design" for surface water and ground water hydrologic control methods. Thus, conceptual designs for hydrologic control measures may be permissible, provided a written finding of compliance is supported. The Wyoming regulatory authority will, of course, have to ensure that all applications contain adequate information to support a written technical analysis showing that water flow and water quality will be regularly protected. These designs, combined with the findings required by W.S. 35–11–406(n), make the resubmission consistent with Federal requirements.

14.41 Rules II 2b(1)(b) and II 3b(1)(a) require only a reasonable number of maps. Accordingly, the concerns expressed by Kemmerer Coal Company and discussed in Finding 14.41 in the March 31, 1980, **Federal Register** notice (45 *FR* 20959) have been adequately addressed and the Secretary does not believe that the map requirements under Wyoming's program are inconsistent with SMCRA.

14.42 See Finding 14.31 above.

14.43 Rules II 3b(4) and IV 3p(1) require the operator to show the practicality of enhancing, and incorporate measures to enhance, fish and wildlife values. this requirement is consistent with SMCRA. The district court remanded 30 CFR 780.16(a)(2). See Finding 14.31 above for effect of the remand.

14.44 Rules II 2 and II 3, and in particular II 3b(10), which incorporates Rule XXIII 2, require analysis of the probable cumulative hydrologic impacts of all anticipated mining on the hydrologic regime consistent with 30 CFR 780.21.

14.45 Rules II 2b(3)(a), II 3b(7), and IV 3c(3) require a plan to meet standards for handling and controlling acid-forming and toxic materials consistent with 30 CFR 780.18(b)(7).

14.46 Rules II 3b(10) and XXIII 2a(1) require the assessment of probable hydrologic consequences specified in 30 CFR 780.21(c). Rule II 3a(6)(h) requires baseline data describing seasonal fluctuations of water quantity and quality. The State resubmission is consistent with the Federal requirements for such assessments.

14.47 Rule I 2(46) defines "land use" as specific uses or management-related activities consistent with 30 CFR 701.5.

14.48 The State considers it unnecessary to readdress the postmining land use if it is to be the same as the premining land use (Rule II 3b(12)(b)). As discussed under Finding 12.1, this is considered equivalent to the Federal requirements.

14.49 Rules II 2b(3)(b)(iii) and II 3b(1)(b)(iv) for permanent water impoundments are consistent with the requirements of 30 CFR 780.25(a).

14.50 Rule II 3b(1)(h)(iv) requires the maps and cross sections for diversions as specified in 30 CFR 780.29. Rule II 2b(3)(d) also obtains diversion design information in the permit application. The resubmission is consistent with the Federal requirements.

14.51 Rule II 3a(6)(c)(vi) requires identification of locations where mining is prohibited pursuant to Rule XIII 1a(5), and Rule XIII 1a(5)(c) limits mining in public parks and historic places listed in the National Register of Historic Places. The resubmission is consistent with 30 CFR 780.31.

14.52 Rules VII 1a and VII 1b(1) require baseline information on all environmental characteristics required under 30 CFR 783.11 (except overburden to the extent that the requirement was remanded by the district court decision of May 16, 1980, at 12), for areas disturbed either by surface activities related to an underground mine or by subsidence. The Wyoming information requirements for underground mines are the same as those for surface mines but additionally require information on subsidence and other environmental characteristics sensitive or pertinent to the effects of underground mining. This is consistent with 30 CFR 783.11. See discussion above under "General Background" concerning the decision on Wyoming provisions based on remanded Federal provisions. These rules are no less stringent that Sections 507 and 508 of SMCRA.

14.53 W.S. 35–11–415(b)(xii) requires replacement of the water supply of an owner of interest in "accordance with State water law," in order to mesh with State water law. The Secretary finds this combination of administrative and regulatory responsibilities acceptable and consistent with the permanent Federal regulatory program.

14.54 Rules VII 1c(1), VII 1a, amd VII 1b require a general operations plan consistent with 30 CFR 784.11. Rule VII 1c(1) adds mine development wastes to the list of "facilities" to be discussed. All other requirements are met by the incorporation by reference of Rule II into the underground mining rules. The State resubmission is therefore consistent with the Federal requirements.

14.55 Rules VII 1c(2) and VII 2b(1) provide protection equivalent to 30 CFR 784.14(d) against uncontrolled or polluting gravity discharges. This has been discussed previously in Findings 13.37 and 13.107.

14.56 The State has promulgated rules to require that underground mine waste be disposed of in a manner that ensures stability. Rule VII 1c(1) requires a narrative of mine waste disposal methods. Rules VII 1a and VII 1b apply all pertinent parts of Rule II to underground mining. Rule VII 2a(5) applies Rules IV to underground mining. Rule II 2b(3)(b)(v) requires that backfilling and grading plans demonstrate the adequacy of procedures for assuring stability. Rule IV 3c(1)(d)(iv) requires development wastes (excess spoil) to be disposed of in stable structures, which requires geotechnical analysis. The resubmission is consistent with the requirements of 30 CFR 784.19 for design, operation, maintenance and reclamation of underground development of waste piles.

14.57 Rule VII 1c(3) requires a subsidence control plan which includes "measures to be taken in the mine to reduce the likelihood of subsidence, including backfilling of voids and leaving areas in which no coal is removed" (VII 1c(3)(c)). This includes the pertinent requirements of 30 CFR 784.20(b). The remaining requirements of 30 CFR 784.20(b) are included in Rule VII 1c(3)(d).

14.58 Rules VII 1a(1) and VII lb require descriptions of the land and effects of subsidence in compliance with the similar requirements of 30 CFR 784.20. The Wyoming program does not limit analyses to renewable resource lands and therefore could provide more stringent requirements for the lands that may potentially be affected, if any of these lands were not renewable resource lands. It is likely, however, that all lands laying over underground mine workings are renewable resource lands in terms of vegetation and water supplies (see definition of renewable resource lands in 30 CFR 701.5).

14.59 Rule II 3b(13)(b) contains an exclusion from the requirements for hydrologic monitoring (using wells) if backfilled material is placed pneumatically. This is consistent with the requirements of 30 CFR 784.25(e).

14.60 Rules VII 1b and II 3a(5)(a)(i) require an air quality control plan for underground mining operations consistent with 30 CFR 784.26. Air quality controls are also discussed in Finding 13.56.

14.61 Rule VII defines the special case of surface coal mining operations designated "special bituminous coal mines." This special class of mine is subjected to the same procedural requirements, including a written finding, as are all other types of mines (see Rule VIII 2a which requires the application to contain all information required by the Act). The resubmission is consistent with 30 CFR 785.12 in this regard. Performance standards for special bituminous coal mines are addressed in Finding 13.R (13.125).

14.62 See Finding 14.D below.

14.63 Rule IX 2a requires approval of the Director of OSM for any experimental "variance" or practice consistent with 30 CFR 785.13(d).

14.64 The State did not promulgate rules to provide for an "operator window" or variance from the rules, as originally proposed, based on unusually harsh conditions, since such conditions are not a valid basis for variances. Thus, a potential conflict between the State and Federal requirements did not materialize and the resubmission is consistent with Federal requirements.

14.65 Rule IX 1a(2)(b)(i) implements W.S. 35–11–601(q), which limits experimental practice to that number, area or size required to determine effectiveness, and Rule IX 1a(2)(b)(iv), which imposes special monitoring requirements on experimental practices. The resubmission is consistent with the Federal requirements of 30 CFR 785.13(e)(3) and (e)(5).

14.66 The State has addressed steep slope mining as a "State window" and has prohibited coal mining operations on steep slopes. See discussions in Findings 12.3 and 13.S (13.126).

14.67 Rule I 2(86) defines "steep slope" in a manner consistent with 30 CFR 701.5. The resubmission prohibits placement of excess spoil on an overall slope that exceeds 20 degrees (Rule IV 3c(1)(b)(i)). This was also discussed in Finding 13.S (13.126).

14.68 Rules II 3a(6)(g)(i), III 1b, V 1b(3), and XIII 1a(6)(b) specifically include the Department of Agriculture in prime farmland determinations. Rule II 3a(6)(g)(i) requires that negative determinations regarding prime farmland be conducted according to the Soil Conservation Service regulations (7 CFR 657). Rule III 1b states that the Soil Conservation Service is considered to function as the Secretary of Agriculture's representative in accordance with the Memorandum of Understanding between the State Soil Conservation District and the U.S. Department of Agriculture. Rule V 1b(3) includes the Soil Conservation Service in "Small acreage exclusion" determinations. Rule XIII 1a(6)(b) requires adequate consideration of Soil Conservation Service recommendations on soil reconstruction revisions. The resubmission is consistent with 30 CFR 785.17(c) and 785.17(d)(2). This is also discussed below in Finding 14.114.

14.69 Rule V 2b(3) exempts areas permitted prior to August 3, 1977, from prime farmland reconstruction standards in a manner consistent with Section 510(d)(2) of SMCRA. This is also mentioned in Finding 13.120.

The Wyoming program requires prime farmland information in any case where prime farmland soils exist (Rule II 3a(6)(g)) within the permit area. The Wyoming program also requires compliance with performance standards for all prime farmland except where (1) there are small acreages determined to be uneconomical to mine and (2) "where permits were issued prior to August 3, 1977" (Rule I 28). The permit includes all operations conducted during the "entire life of the operation," and thus the areas exempted should include those involving contiguous operations and normal renewals or revisions of existing "permits" in the Federal program.

The Secretary believes that the State has adequately considered the current Federal requirements and that the State program resubmission is consistent with the Federal requirements.

14.70 As noted in Finding 14.68 above, the State has promulgated rules requiring consultation with the U.S. Soil Conservation Service in matters involving prime farmlands. Thus, the types of soil surveys required (see 30 CFR 785.17(b)(1)) will be subject to USDA review. Further, the State incorporated a soils guideline (No. 1) in its submission. This guideline requires, as good practice, soil surveys in accordance with the National Cooperative Soil Survey (USDA Handbooks 436 and 18). The resubmission is consistent with the requirements of 30 CFR 785.17(b)(1) through the use of the guidelines which are an integral part of the program.

14.71 Rule V 4a requires combined surface and underground mines to comply with the requirements of Rules IV and VII. Rules IV 3c(1) (a) and (b) require off-site storage of spoil ("excess spoil") to be in compliance with the State equivalents of 30 CFR 816.71–816.74. The resubmission is consistent with the requirements of 30 CFR 785.18(c)(7) for off-site storage of spoil.

14.72 Rule XIII 1a(7) ensures that the regulatory authority will make appropriate findings regarding variances for delays in contemporaneous reclamation. W.S. 35–11–406(n) requires the regulatory authority to make findings, regarding permit approvals, in writing. The resubmission is consistent with the appropriate parts of 30 CFR 785.18(d).

14.73 W.S. 35–11–403(a)(ii) empowers the regulatory authority to fix bond amounts. The amount of bonds is established pursuant to Rule XIII 2a(1). The bond amount is to be based on all costs expedient or incidental to proper reclamation. W.S 35–11–410(c) requires the regulatory authority to determine the bond amount for the first year and to receive the bond prior to issuing a license to mine. The State resubmission is consistent with 30 CFR 785.18(d)(8).

14.74 W.S. 35–11–411 requires annual reports on the status of mining and reclamation and which should contain reports on the status of variances. Rule IV 2b requires the operator to report the results of special monitoring in the annual report. The resubmission is consistent with 30 CFR 785.18(e).

14.75 Rule XIII 1a(1) identifies the two criteria that will be used to make alluvial valley floor assessments. These two—unconsolidated, streamlaid material and sufficient water for irrigating—are consistent with the Federal requirements of 30 CFR 785.19.

14.76 Rule III 2b(11) requires "such other information which the administrator shall require to determine the importance of the alluvial valley floor to farming and to characterize the essential hydrologic functions." The State program resubmission incorporates Guideline No. 9 ("Alluvial Valley Floors", which also incorporates OSM's draft Alluvial Valley Floor Technical Guidelines dated August 25, 1978). The guidelines are to be used as indicators of "good faith" compliance with Wyoming's Act. The use of guidelines was discussed in Finding 14.22. The resubmission is consistent with 30 CFR 785.19.

14.77 The State has modified Guideline No. 9 (Alluvial Valley Floors) to require "analysis of anticipated changes to suface waters and ground waters * * * (which) should include consideration of the accumulation (sic) effect * * * and also include an estimation of the potential changes that may occur in productivity, soil conditions and availability of water * * *." Wyoming intends this guidance to provide access to, and to require, when appropriate, the "Crop Salt Tolerance" technique reported by Maas and Hoffman (30 CFR 785.19(e)(3)(i)). This approach is consistent with 30 CFR 785.19(e) (ii) and (iii).

14.78 Rule III 2d was modified to limit the use of the equation $p = 3 + 0.0014 x$ to farms with total production of less than 5,000 animal units (or an equivalent measure of capacity) and to use another criterion of 10 percent of the farm's total agricultural production for larger farms. In view of the district court's remand of 30 CFR 785.19(e)(2), (the Federal definition of "significance on farming"), the Wyoming resubmission provides detail not currently in the Federal regulations. The resubmission is more specific than the current Federal regulations and therefore may, on occasion, be more stringent than the Federal requirements. See discussion above under "General Background" concerning remanded Federal regulations. The rule is, however, consistent with Section 510(b)(5) of SMCRA.

14.79 Rules III 5a (1) and (2) require applications for permits to conduct auger mining to contain appropriate technical information on the coal resource and to determine whether the resources have been depleted or are limited in thickness or extent, and compliance with the environmental protection performance standards of Rule V 5, which provides the necessary additional standards. The resubmission is in compliance with 30 CFR 785.20. The Federal requirement for findings to be in writing (30 CFR 785.20(c)) is fulfilled by W.S. 35–11–406(n).

14.80 W.S. 35–11–103(e)(xx) defines surface coal mining operations to include "leaching or other chemical or physical processing, and the cleaning, concentrating or other processing, preparation * * * or coal." Thus, all

applications involving coal processing and support facilities must comply with Rule II 3b(2) and will thus be within a permit area since all operations affecting lands and water must be within the permit area (see Rule I 2(56) for definition of "permit area"). The Wyoming program does not provide a special permit information category for coal processing facilities as in 30 CFR 785.21, but rather requires the same information through the definition of "surface coal mining operations." This rule also incorporates Rule IV 3k requirements (protection of the environment) into the standards for coal processing facilities.

14.81 See Finding 13.129 above.

14.82 Rule XVII 2d(1)(a) defines "willful violation" as proposed in the initial State program submission. The State has not promulgated a definition of "irreparable damage to the environment," nor was such proposed in the original submission. Rather, the common meaning of the term will be used and this meaning is consistent with the Federal definition in 30 CFR 786.5.

14.83 W.S. 35–11–406(j) requires that public notice of a complete application be given for four consecutive weeks, starting within fifteen days of filing the completed application. Based on Wyoming's resubmission, Wyoming is providing a four week notice of the filing of a "complete application." A "complete application" is defined in W.S. 35–11–103(e)(xxii) to mean an application "acceptable for further review rather than approvable" as in 30 CFR 770.5. W.S. 35–11–406(k) provides 30 days after the last (fourth) publication for filing of comments and is consistent with the Federal requirements. These provisions are consistent with the Federal requirements. See Finding 14.A (14.1) for further discussion of the definition of "complete application."

14.84 Rule XIII 1a(2)(b) requires the regulatory authority to send the public notice required by W.S. 35–11–406(j) to Federal agencies with jurisdiction over, or an interest in, the proposed operation or permit area. This rule is consistent with the requirements of 30 CFR 786.11(c)(1). Further, the resubmission specifically requires consultation in the course of scoping fish, wildlife, and habitat studies with State and Federal fish and wildlife agencies (Rule II 3a(6)(e)), which will involve the U.S. Fish and Wildlife Service (when that agency has jurisdiction).

14.85 Rules XIII 1a(2)(b) and II 3a(5) comply with 30 CFR 786.11(c)(4). The State has also provided MOUs between the Land Quality Division and the Water Quality and Air Quality Divisions of the Department of Environmental Quality, the State Engineer, the Wyoming Recreation Commission and the Wyoming Game and Fish Department. These MOUs further ensure coordination. The MOUs were discussed in Finding 6.

14.86 W.S. 35–11–406(n)(iv) ensures that permits will not be issued in conflict with Section 522(e) of SMCRA (Section 522(e) is incorporated by reference in the Wyoming statutes). Rule XIII 1a(5) reiterates this provision. Rule XIII 1a(5)(a) prohibits mining in national parks. Rule II 3a(5), as noted in Finding 14.85 above, requires consultation with permitting and approving authorities such as those responsible for air and water qulaity, while Rule XIII 1a(2)(b) requires notice to be sent to Federal agencies. The resubmission is consistent with SMCRA requirements for notice and coordination with the National Park Service.

14.87 W.S. 35–11–406(k) does not limit filing of written comments on applications to objections but will accept other comments. The State does not intend the term "file written objections" to prohibit the filing of written comments that may not be objections (Vol. 3A of the resubmission, p. 229). This interpretation satisfies the requirements of 30 CFR 786.12 and 786.13, and is consistent with the Federal requirements.

14.88 W.S. 35–11–406(k) allows 30 days for filing comments (Finding 14.87), and is thus consistent with 30 CFR 786.13(a).

14.89 Rule III 1f, in the Department of Environmental Quality's Rules of Practice and Procedure, involves applicability of the rules to, and maintaining a record of, informal conferences. Rule III 3a (Rules of Practice and Procedure) allows the conference to be held at the locality of the operation or at the State capitol and implies, at a minimum, that the requestor may ask to have the informal conferences held at either location. The Federal requirements mandate holding the conference at the mine site if so requested (30 CFR 786.14(b)(1)). Rule III 3a is logically read to require hearings in the locality of the mine site if requested. The Secretary assumes that if a request were made for the hearing to be held in the locality, the regulatory authority would honor the request and this portion of the State program is consistent with pertinent Federal requirements.

14.90 Chapter I, Section 3, of the Wyoming Rules of Practice and Procedure provides that the applicant or any interested person may obtain a hearing.

14.91 Rule I 2(100) defines "trade secrets" consistent with both 30 CFR 786.15, which specifies confidentiality criteria for permit applications, and 30 CFR 776.17(b) criteria for making available information contained in coal exploration applications.

14.92 See Finding 14.E below.

14.93 See Finding 14.F below.

14.94 Rule II 3(b)(10) requires information supporting a determination of probable hydrologic consequences on the hydrologic regime, as was proposed in the initial submission. The State resubmission is consistent with 30 CFR 786.19(c) and 30 CFR 780.21(c).

14.95 Rule XXIII 2a(1) provides guidance to control the effects of the proposed operation on ground and surface water quality and quantity, and Rule I 2(47) defines "material damage to the hydrologic balance" to mean a "long term or permanent adverse change to the hydrologic regime." Thus, the Wyoming provisions are consistent with 30 CFR 786.19(c), concerning prevention of material damage to the hydrologic balance outside the permit area.

14.96 W.S. 35–11–401(d) requires submission of permanent program permit applications within 2 months, consistent with the Federal requirements. Enacted W.S. 35–11–406(e) requires the regulatory authority to make a determination of completeness within sixty days. This time is generally adequate when only a few plans are submitted at any time. The Secretary need make no finding at this time as to whether this schedule would be appropriate for Federal lands where an environmental impact statement or environmental assessment may be required. This issues is being considered in the context of the rulemaking on Wyoming's proposed permanent program cooperative agreement. See discussion above under "Introduction."

14.97 Rule XIII 1a(4) requires that proposed operations be consistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits. This is consistent with the requirements of 30 CFR 786.19(j) in that it prohibits partitioning of a mine tract into land ownership segments which, while interdependent, are separated to try to circumvent analysis of cumulative effects.

14.98 Rule II 3b(2) requires a description of existing structures and an explanation of whether they meet the requirements of Rule IV (performance standards). There is no specific requirement for reconstruction to meet environmental protection performance standards. Rather Rule II 3b(2) requires that the structures meet the

environmental performance standards of Rule IV, or removal of the structures, or a plan for modifying the structures to meet the standards. The district court opinion that pre-existing structures which meet performance standards shall be exempted from reconstruction design requirements is complied with in that there is no requirement, in the State program, to modify such structures, unless they do not comply with the standards. The resubmission is in compliance with 30 CFR 786.21 and 701.11.

14.99 This finding is contained in the March 31, 1980, notice at 45 FR 20965.

14.100 Rule XIII 1a(2)(b) requires that the notice of decision concerning a permit application be sent to governmental officials in local jurisdictions and to persons who filed comments. The resubmission is consistent with the requirements of 30 CFR 786.23(e).

14.101 W.S. 35–11–401(d) established the time period for filing permit applications as proposed in Administrative Record Documents WY–99 and WY–119. The statute is equivalent to the Federal requirement. The statutory requirement includes the requirement to file within 2 months of State program approval.

14.102 W.S. 35–11–801(a) allows imposition of necessary conditions in approvals of permits, and Rule XIII 1a(8) implements W.S. 35–11–801(a) and requires right of entry as described by W.S. 35–11–109 as another condition of the permits. In Rule XVII 1c the State has limited the number of persons that may accompany an inspector to "a manageable number of members of that group" as proposed in the original submission. (See 30 CFR 786.27(b)(2) for comparison where "private persons" are permitted to accompany the inspector). The resubmission is consistent with 30 CFR 786.27 since the appropriate permit conditions are to be imposed and since large groups of people are not generally expected and, if they occur, can be subdivided into "manageable groups."

14.103 Rule XIII 1a(8)(d) requires, as a permit condition, that the operator take all possible steps to minimize adverse impact to the environment or public health and safety. The resubmission is therefore consistent with 30 CFR 786.29(a).

14.104 Rule XIII 1a(8)(a) requires the permittee to conduct all activities in compliance with a plan; Rules IV 3c(2)(a) and IV 3c(2)(g) require coal processing wastes to be disposed of in a stable, nonpolluting manner; Rule IV 3c(3) establishes standards for handling of acid-forming and toxic materials; and Rule II 3a(5)(a)(iii) requires information on solid waste land disposal facilities. Thus, the resubmission provides control of solids, sludges, filter backwash, or pollutants removed in the course of treatment or control of emissions equivalent to that required by 30 CFR 786.29(b).

14.105 See Finding 14.G below.

14.106 Rule I 2(57) defines "permit transfer" as a change in ownership or control. Therefore, the program encompasses the requirements of 30 CFR 788.19.

14.107 W.S. 35–11–411 requires an annual report for all operations. W.S. 35–11–411(d) requires the regulatory authority to review the report within 60 days. The resubmission is consistent with the Federal requirements of 30 CFR 788.11.

14.108 W.S. 35–11–405(e) requires that successive renewals be given only if the operation is in compliance with applicable laws and regulations. Since such compliance would include compliance with permit terms and conditions (Rule XIII 1a(8)) and performance standards (W.S. 35–11–406(n)(ii)), the resubmission is consistent with 30 CFR 788.16(a).

14.109 Rule XIV 1a ("permit revisions") incorporates the definition given in Rule I 2(70) for "revised mining or reclamation operations" into the term "permit revisions" used in Rule XIV. Rule XIV 2b defines "significant deviations" in the context of identifying when notice and opportunity for public hearing is required (for all types of mining). However, Rule XIV 6a limits permit revisions for coal mines to incidental boundary changes to the 5-year mining area and requires more significant boundary changes to be processed as new permit applications. The resubmission is consistent with 30 CFR 788.12(a).

14.110 Rule XIII 1b requires "all procedural requirements of the Act and the regulations" for review, public participation, and action on applications to apply to permit renewals. Rule XIII 1b(1) specifies that information equivalent to that listed in 30 CFR 788.14(a) must be provided for permit renewals and that applications for renewals be made at least 120 days prior to expiration of the permit term as does 30 CFR 771.21(b)(2). The State's provisions are consistent with those of the Federal program.

14.111 Rule XIII 1b requires that all procedural requirements of the Act apply to permit revisions, amendments, renewals, and transfers. This then requires all findings to be in writing pursuant to W.S. 35–11–406(n) and thus the resubmission is consistent with 30 CFR 788.16(a).

14.112 Rule XIII 1a(5)(d) reiterates the prohibition of 30 CFR 786.19(d)(4) and the requirements of W.S. 35–11–406(n)(iv) that no mining can be approved within 100 feet of the outside right-of-way of any public road (unless other requirements are first met). The necessary information must be in a plan pursuant to Rules II 3a(6)(c)(vi) and III 1a(5)(d). This is consistent with the requirements of 30 CFR 780.33(a).

14.113 W.S. 35–11–406(b)(vi) requires an estimate of the total cost of reclamation, Rule II 2b requires that the information specified in the statute (Section 406(b)) be in the application, and Rule XIII 2a(1) requires that the bond estimate include all costs necessary, expedient, or incidental to proper reclamation. Thus, Wyoming obtains estimates of the cost of reclamation with the application. The information obtained under the Wyoming program is consistent with the requirements of 30 CFR 780.18(b)(2).

14.114 With respect to 30 CFR 785.17(c) and 785.17(d)(2) (consultation with the Secretary of Agriculture on permits and incorporation in the permit of any suggestions made by the Secretary of Agriculture), the submission does not require direct consultation with the Secretary. Rather the program depends on the Soil Conservation Service (SCS) and the local conservation districts that operate under a Memorandum of Understanding between the Secretary and the Governor of the State. Thus, the Secretary is represented by the SCS in discussions on permits involving lands mapped as prime farmlands using the Department of Agriculture's criteria. See also Findings 14.68 and 14.70.

14.115 W.S. 35–11–410(b)(i) requires that an application for a license to mine contain the name and address of the applicant. W.S. 35–11–406(a)(i) requires an application for a permit to contain the name and address of the applicant and managers, partners and executives responsible for operations. These State program requirements are consistent with 30 CFR 786.11(a)(1) for a business address. (The information is required in the plan pursuant to Rule II 2b and the forms used to obtain the "mailing addresses" are contained in Exhibits G.1.j. and G.1.k. of the program submission.)

14.116 35–11–406(j) identifies the notice to be provided, which is equivalent to that required by 30 CFR 786.11(a). All Federal requirements for the notice are outlined in the Wyoming statute. In addition, rule XIII 1a(2) ensures that the notice will contain detailed location information and that the notice is issued prior to taking action

on the submission. The definition of a "complete application," since that precipitates the notice, is discussed in Finding 14.A (14.1). In general, the State definition is adequate for initial notification of the public but is not adequate for identification of an application that satisfies all State requirements for an application as discussed in Finding 14.A.

14.117 Wyoming does not specify, as an approval criterion, that proof must be submitted indicating that all abandoned mine land reclamation fees have been paid as is required by 30 CFR 786.19(h). The Secretary finds this omission unacceptable and makes promulgation of a State requirement a condition of approval of this program.

14.118 Wyoming requires that any "surface coal mining operations" (as completely defined in W.S. 35–11–103(e)(xx)) be permitted prior to conducting operations, through W.S. 35–11–401(a). Specifically, W.S. 35–11–401(a) states that no mining of solid minerals may take place unless the mining is incidental to government highway construction (see W.S. 35–11–401(e)(ii) for highway construction exemptions) conducted in compliance with Wyoming's statutes. W.S. 35–11–401(d) requires all surface coal mining operators to apply for permits as does SMCRA. Wyoming has no exemptions from the requirements of permits for mining as expressed in 30 CFR 700.11. The Wyoming statute applies, by virtue of 35–11–401(a), to coal mined from any location and thus would include coal mined from a coal waste pile (Rule I 2(94)). Since Wyoming has no authority over coal mining on Indian lands, the State program cannot apply to Indian lands even though the program has no counterpart to 30 CFR 700.11(f). Accordingly, the Wyoming program is consistent with 30 CFR 700.11.

14.119 Wyoming requires the information regarding air and water pollution control facilities specified in 30 CFR 780.11(b)(6) to be submitted with a permit application through Rule II 3b(2) (requiring location and plans for all control facilities to be used), Rule II 3b(1)(b)(i) (requiring water treatment and monitoring facilities), and the MOU between Divisions within the Department of Environmental Quality (see Section 4 of MOU requiring descriptions and other information on locations and duration of proposed operations necessary for evaluations). For example, the Air Quality Division must review all information necessary to find compliance with the standards listed in Section 6 of the MOU, in addition to the requirements of the Clear Air Act. The air and water monitoring requirements and standards apply to all types of "surface coal mining operations" as that term is defined in W.S. 35–11–103(e)(xx).

A question arises as to whether air quality monitoring for in-situ operations pursuant to 30 CFR 785.11 is required by Wyoming. In-situ operations must comply with all requirements of the Wyoming statute for surface coal mining operations pursuant to the statute and promulgated Rule V 3a(5). W.S. 35–11–428(a)(i) specifically requires meteorological information for in-situ operations. Thus baseline air quality and meteorological data would be required for in-situ operations, as would air quality monitoring. The Wyoming program is consistent with the Federal requirements in this regard.

14.120 Wyoming requires, through Rule II 2a(1)(f)(iv), analysis of all mineral seams including the rock or mineral type. Wyoming also requires analyses of the coal seam (Rule II 3a(6)(b)(iv) and the lithological characteristics of each coal seam (in addition to the chemical properties of each stratum within the overburden). Acid-forming and toxic materials must be identified in order to comply with the burial or treating requirements of Rule IV 3c(3), and Rule IV 3c(3)(b) requires covering of coal seams. The Wyoming program also contains a guideline for soils and overburden information which specifies information requirements for a complete plan.

The State program does not contain specific requirements for sulfide mineral analyses of the coal as does 30 CFR 77 9.14(b)(1)(v). The Secretary found the lack of specific requirements for pyrite and marcasite analyses in the Montana program to be acceptable based on the low sulfur content of coals in the region. (See 45 FR 21564.) This general lack of acid-forming conditions in most of the western coal resource areas, including Wyoming (Administrative Record No. WY–230, pp. 2–5 and 2–6), complemented by the authority of the regulatory authority to require sulfide analysis when necessary, make the alternative acceptable.

The State of Wyoming does require analyses of plant growth materials to determine acidity, and requires adequate hydrologic measurements to enable a careful and thorough analysis of the potential effect of mining and reclamation on the hydrologic system through the rules cited above. Since the Wyoming coal resource areas are similar to the coal resources of Montana, that is, the sulfur content of the coal is quite low, the Secretary finds that Wyoming has provided adequate capability for the regulatory authority to obtain the necessary information to identify potential acid problems. The resubmission is therefore consistent with the requirements of 30 CFR 779.14(b)(1)(v).

14.121 W.S. 35–11–406(a)(iv) requires an application to contain the names and addresses of surface and mineral owners of lands on the permit area, while 35–11–406(a)(v) requires the names and addresses of surface owners of land contiguous to the permit area. The Wyoming statute does not specifically require similar identification of mineral owners adjacent to the permit areas as does 30 CFR 778.13(e). However, Part I of Guideline No. 6, Organization of Permit Application, requires the information concerning mineral owners adjacent to the permit area. The Secretary finds this acceptable.

Following are the Secretary's findings on all provisions of the resubmission that differ significantly from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et. seq.*). Also included are findings that have undergone more detailed analysis by the Department:

14.A Finding 14.1 the Secretary discusses the fact that Wyoming had prepared a definition of "complete application" in W.S. 35–11–103(e)(xxii). That definition has now been enacted. It specifies that a complete application "contains all the essential and necessary elements and is acceptable for further review for substance and compliance * * *." In comparison to 30 CFR 770.5, which defines a "complete application" as one containing "all information required under the Act * * * and the regulatory program," the statutory definition for the Wyoming program is not as stringent as the Federal definition. The State resubmission also specifies (W.S. 35–11–406(e)) that a period of 60 days will be used to make a first determination of "completeness," as defined in W.S. 35–11–103(e)(xxi). Then a second determination of completeness is scheduled to comply with W.S. 35–11–406(n)(1). For this second determination, the State has indicated that "complete application" will mean "that the application contains all information required by the Act and Land Quality Division regulations." The Secretary finds this language to be consistent with the Federal permanent program requirements.

However, the resubmission did not provide clear evidence that a definition of "complete application" for the

purpose of W.S. 35–11–406(n)(i) and complying with 30 CFR 770.5 was promulgated. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming indicated its intent to promulgate a definition of "complete application" for purposes of W.S. 35–11–406(n)(i). Therefore, the Secretary cannot approve these provisions of the Wyoming program as resubmitted until that rule is fully promulgated. Promulgation of this rule is being made a condition of approval of this program.

14.B In Finding 14.8, the Secretary disagreed with a commenter's suggestion that the permit application requirements only become operational upon "full" approval of the Wyoming program by the Secretary. The Secretary did determine that the operator "should not be required to review and submit applications until it is clear once and for all that the State has a fully approved program." Although the State has not adopted the commentor's suggestion, W.S. 35–11–401(d) requires "final approval" by the Secretary prior to the requirement for new applications. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming stated that "* * * any approval, conditional or otherwise, would be the final, appealable decision by the Secretary." The State goes on to say that a "* * * *final* decision * * * makes the new law on submitting permit applications effective." Therefore, the two month period for filing new permit applications should begin upon the date the conditional approval of the Wyoming program is effective (i.e., the date this notice is published in the **Federal Register**).

14.C As discussed in Finding 14.22, the State has promulgated a series of rules and enacted W.S. 35–11–406(a)(xv) to require environmental information for the permit area and for other areas that may be affected by operations or which are important in making assessments of the effect of proposed operations. Examples of these rules are Rule II 3a(6)(e) (fish and wildlife in those areas identified by the regulatory authority), Rule II 3a(6)(g)(ii) (surface water for the permit and adjacent areas), Rule II 3a(6)(k) (hydrology and geology in the adjacent and general area), and Rule II 3a(6)(l) (alluvial valley floors in the permit or adjacent areas). The requirements of 30 CFR Parts 779 and 780, particularly for hydrologic data adequate to assess compliance with the performance standards of SMCRA, are met by the State's permanent program resubmission.

The State program is further strengthened by the incorporation of seven guidelines in the program resubmission. These guidelines are intended to specify, for most cases, the types of information and the performance required in support of a good-faith effort on the part of an operator. While departures from the guidelines are allowed, the Wyoming resubmission states that "[d]epartures from the guideline requirements are authorized where the agency could support a similar objective from regulatory requirements."

W.S. 35–11–406(a)(xv) requires applications to contain "such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require." It is therefore pertinent that the Wyoming resubmission states (p. 183, in the analysis of findings) "the application is not complete if it does not contain the information required by good faith compliance with the act." The guidelines represent the State regulatory authority's position on what information should be included in an application for good faith compliance with that Act. Thus, "good reasons for a departure must exist or the Department's decision will be subject to challenge on judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Once the guideline information is required by the regulatory authority in the course of reviewing and correcting permit applications, the requirements become part of the approved plan and are further enforceable as part of the plan through W.S. 35–11–415(b)(ii), which requires every operator to conduct activities in compliance with the approved plan. The resubmission states that any private person may object to the lack of use of guidelines requirements on the basis that (1) the regulatory authority acted on an incomplete application, or (2) the proposed reclamation cannot be achieved without use of the guideline requirements. Thus the State intends to use the guidelines to specify the contents of the applications.

By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming submitted a statement dated August 4, 1980, of the Attorney General's position on the enforceability of guidelines. While the State has explained its intent in using the guidelines, the program still does not contain adequate assurance that the guidelines would be enforceable if an operator or other person sought to attack them. Therefore, the Secretary finds that the State should amend the Land Quality Division's regulations to incorporate a rule based on the Attorney General's statement, and makes promulgation of the regulation a condition of approval of this program.

14.D In Finding 14.62 the Secretary found that Rule IX 1a of the State submission inappropriately extended the experimental practice concept to agricultural land, in contrast to the Federal requirement. Rule IX 1a(2)(a) has been promulgated to make Rule IX (variances for surface coal mining operations) applicable only to "a State standard that is more stringent than the corresponding Federal regulation" or "when the proposal promotes experimental practice" or "allowing a postmining land use in an experimental basis" (IX 1a(2)(b)).

Section 711 of SMCRA and 30 CFR 785.13(e)(2)(ii) specify that the only land uses appropriate for experimental practices are "industrial, commercial, residential, or public use (excluding recreational facilities)." Agricultural use is not included in either SMCRA or the Federal regulations. It would appear that the congressional exclusion was purposeful. The Wyoming program resubmission does not limit the land use in Rule IX 1a(2)(b) as do SMCRA and 30 CFR 785.13(e)(2)(ii). However, the appropriate limitation is reflected in W.S. 35–11–601(q). Therefore, variances are limited to land uses identical to the Federal limits.

The Secretary finds Rule IX 1a(2)(b) to be inconsistent with W.S. 35–11–601(q). Application of the land use criteria of Rule IX 1a(2)(b) is approved only as it is stated in W.S. 35–11–601(q). The implication that Rule IX 1a(2)(b) emcompasses agricultural uses is being preempted and superseded as inconsistent with Federal law under the authority of Section 504(g) of SMCRA. In any event, the Director could not approve any practice for an agricultural use, so none would occur.

14.E In Finding 14.92 the Secretary found that the lack of a State counterpart to 30 CFR 786.17(c)(2) (evidence of a good faith effort to comply) did not appear to reduce the degree of environmental protection or opportunity for public participation, but kept the record open for any additional information. Wyoming provided additional analysis in its resubmission.

Wyoming stated (p. 234 of resubmission) that W.S. 35–11–406(n)(vii) requires that no permit be approved unless "any violation has been or is in the process of being corrected to the satisfaction of the authority, department, or agency which has jurisdiction over the violation." This is the language of 30 CFR 786.17(c)(1). Wyoming does not request, in the rules,

a showing of good faith appeals as does 30 CFR 786.17(c)(2). Thus, the Secretary agrees with Wyoming that the resubmission contains requirements which could be considered more stringent in this case than the Federal regulations, since a showing of good faith is subjected to review by the regulatory authority and cannot stand alone.

14.F Rule II 3b(4)(b)(i) requires a plan for minimizing adverse impacts by protecting or enhancing "threatened or endangered species * * * under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.) and their critical habitat." Rule II 3b(12)(b)(iii)(H) requires a complete application to contain "approval of measures to prevent or mitigate adverse effects on wildlife or fish * * * from appropriate State and Federal fish and wildlife management agencies." W.S. 35–11–406(n)(i) requires that the regulatory authority deny approval of a permit if the application is not complete. Therefore, if an application does not contain a plan to minimize adverse impacts, including a plan to protect or enhance threatened or endangered species and their critical habitats (Rule II 3b(4)(b)(i)), the permit cannot be issued. This was discussed in Finding 14.93 and also in Finding 14.5.

The Federal regulations require the regulatory authority to find that the proposed activities "would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their habitat as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)" (see 30 CFR 786.19(o)) prior to issuing a permit. Again, W.S. 35–11–406(n)(i) requires the regulatory authority to deny approval if the plan is not complete. A complete plan must be judged against all applicable elements of Rule II, including the plan for protecting or enhancing threatened or endangered species and their critical habitat.

Since Rule II 3b(4) requires a plan which includes minimizing adverse impacts, it appears to be less stringent than the Federal requirement, which is directed more to prohibition than minimization. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming stated that the provisions of W.S. 35–11–406(n)(i) and Rule II 3b(4) "* * * are the equivalent of the finding in 30 CFR 786.19(o)." The Secretary finds that the Wyoming provisions are as stringent as the requirement in 30 CFR 786.19(o). This finding is based on Wyoming's statement that the State's counterpart provisions are "equivalent," which the Secretary interprets to mean that the State will not issue any permits for mining operations that would affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat, and the State will make an appropriate written finding for each permit application.

14.G In Finding 14.105 the Secretary found that the State should provide evidence that temporary relief from decisions on permit applications is provided in the State program. The State program resubmission has done so. It contains Rule III 3B (Rules of Practice and Procedures), which provides for the Environmental Quality Council to grant temporary relief identical to 30 CFR 787.11(b)(2), and is thus consistent with the Federal requirements.

14.H The Wyoming regulations appear to contain several inconsistencies concerning timing of review of permit renewals. Under Rule XIII 1b, Wyoming requires 120 days to file a permit renewal application. This deadline could be difficult to meet due to the other requirements found in W.S. 35–11–406(f) and Rule XIII 1a. Rule XIII 1a requires the placement of an advertisement in a newspaper once a week for four consecutive weeks (22 days) commencing within 15 days after filing of an application. W.S. 35–11–406(k) requires that the filing of a request for an informal conference be no later than 30 days after the last publication of a newspaper advertisement, and that information on the date, time and location of the hearing be advertised two weeks prior to the hearing. W.S. 35–11–406(p) requires action within 60 days from the close of the hearing. This could add up to over 127 days, which is a longer period than specified by Wyoming. The Secretary assumes that Wyoming plans to reduce the 60-day period allowed for a decision after an informal conference is held in order to meet the specified time period allowed for a decision, rather than limit the public participation opportunities under W.S. 35–11–406(g), 35–11–406(j), 35–11–406(k), and Rule XIII 1a(2). Therefore, the Wyoming provisions are acceptable.

Finding 15

The Secretary finds that the Land Quality Division has 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 Wyoming program includes provisions adequate to do so. This finding is made under 30 CFR 732.15(b)(3).

The Wyoming program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Wyoming Statute 35–11–402 and Wyoming rules Chapters X, XI and IV. Part G.1 of the first volume of the program as resubmitted includes a discussion of the system for exploration license review and approval.

A discussion of significant issues raised in the review of Wyoming's coal exploration provisions follows.

In the March 31, 1980, notice (45 FR 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 15 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which bear the same numbers as the tentative findings on the same subject in the March 31, 1980 notice:

15.1 Rule XI 5k provides for minimizing disturbance to the prevailing hydrologic balance and sediment control in coal exploration activities consistent with 30 CFR 815.15(j).

15.2 Rules XI 5 d and m are consistent with 30 CFR 815.15 (f), (j) and (i) concerning revegetation and facility removal. Rule XI 1b(5) requires coal exploration operations of 250 tons or less to comply with Rule XI 5 when there will be substantial disturbance of the land surface. Rule XI 5 contains the necessary cross-references to other vegetation and sediment control requirements.

15.3 Rule XI 1b(5) does not contain map requirements in coal exploration of 250 tons or less. This is consistent with the district court ruling against requiring a map or evidence of right of entry (Opinion of May 16, 1980, at 54). However, Rule XI 2b(1) for coal exploration hole drilling requires areas to be explored to be shown generally on a 1:24000 map. The exploration drilling rule does not distinguish between operations removing more or less than 250 tons.

15.4 Rule XI 3a requires notices for exploration removing more than 250 tons to be posted in the district office of the regulatory authority, and thus is consistent with 30 CFR 776.12(b).

15.5 Rules I 2(100) and XI 3 are consistent with 30 CFR 776.17(b) concerning confidential information in

that "trade secret" pertains only to certain coal properties or characteristics and privileged communications or financial information relating to competitive rights.

15.6 Rules XI 5m and XI 5k are consistent with 30 CFR 815.15(c)(3)(ii), (f) and (j) concerning facility removal and protection of the hydrologic balance.

15.7 No revision to the State program was required. See Finding 14.3.

15.8 Rule XI 4a(2) provides protection to historic, archeological, or cultural resources consistent with 30 CFR 776.13(b)(3). The rule does not distinguish between "listed sites" and sites "eligible for listing" and thus is not affected by changes made by OSM to delete "eligible for" pursuant to the district court decision (Opinion of February 26, 1980, at 23).

15.10 Rule XI 5 provides for compliance with environmental performance standards consistent with 30 CFR Part 815, which requires application of the performance standards to coal exploration which substantially disturbs the land surface. The requirements of 30 CFR 776.11(b)(6) for a description of environmental protection activities for operations which do not remove more than 250 tons are contained in Rule XI 1b(5).

Following are the Secretary's findings concerning all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above, which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.):*

15.A In Finding 15.9, the Secretary suggested that the definition of coal exploration should be revised to be as inclusive as the Federal definition in 30 CFR 701.5. Wyoming promulgated a new definition in Rule I 2(9) which is consistent with the Federal definition since it includes mapping, geophysical data, and environmental data collection.

15.B Wyoming has promulgated rules to provide less stringent standards for "developmental drilling" operations than for exploration activities. This new element of the program is discussed in Exhibit G.6 of the program submission ("State windows"), but is not proposed as a "State window" according to the discussion. Instead, it is proposed as being no less stringent than the applicable provisions of SMCRA. Rule I 2(18) defines "developmental drilling" as drilling into the lowest coal seam within 500 feet of an active mine pit. Rule I 2(9) exludes developmental drilling from the definition of coal exploration (as well as exploration drilling specifically approved under a permit). Rule II 3b(8) excludes development drilling holes that will be mined through (within one year) from the description of procedures to seal or manage, and rather requires compliance with W.S. 35–11–404 (the rule is mistyped to read 35–11–407). W.S. 35–11–404 requires plugging of artesian flow, sealing with a column of mud if ground water is encountered, capping and backfilling. Rule IV 3n also cites W.S. 35–11–404 for developmental drill holes to be mined through within one year. This rule also requires temporary sealing and use of protective devices, at a minimum, for developmental drill holes.

Developmental drilling comes after exploration and before mining (if mineable coal is found). The bases for the request to allow such drilling under coal standards was that such activity occurs within a developing mine and that notice requirements are not of value and, since the holes will usually be mined through within one year, there is no justification for applying the general abandonment standards. If the drilling exceeds depths equivalent to the deepest coal seam to be mined or extends past 500 feet from the active pit, or is not mined through within one year, or is not included as analyzed in the approved plan, the drilling must be treated as exploratory. Developmental drilling must be described and analyzed to an adequate degree regarding general location, spacing, drilling methods, pollution control methods, data expected to be obtained, and must include measures to comply with W.S. 35–11–404.

The Secretary finds that the concept of developmental drilling requiring less onerous standards is valid, provided the depth, distance, time and plugging (safety and hydrology) constraints are maintained. Thus, the provisions equivalent to portions of 30 CFR 701.5, 780.18(b)(8) and 816.13–816.15 are acceptable.

Finding 16

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes 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 30 CFR 732.15(b)(4).

Provisions corresponding to 30 CFR Part 707 (exemptions for coal extraction incidental to government-financed highway and other construction) are found in Wyoming statute W.S. 35–11–401 and Wyoming regulation Chapter I.

Wyoming has promulgated Rule I 3b(3) to require that information be kept on-site as in 30 CFR 707.12. The regulatory authority can demand proof of the exemption and close the operation if the proof is not supplied.

Finding 17

The Secretary finds that the Land Quality Division has the authority and the Wyoming program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Wyoming consistent with the requirements of Section 517 of SMCRA (inspection and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement). This finding is made pursuant to 30 CFR 732.15(b)(5).

Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring of operations are found in Wyoming regulations Chapters IV and XVII. Volume I, Part G.4, of the program resubmission contains a description of the inspection program to be carried out by the Land Quality Division.

Discussion of significant issues raised in the review of the Wyoming provisions for inspection and monitoring follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 17 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 17.1, 17.3, 17.5, 17.6, 17.8, 17.9, and 17.10.

Following is the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980 notice (45 *FR* 20930 *et seq.*):

17.A In Finding 17.7 the Secretary requested assurance by Wyoming that inspections will be made on an irregular basis, including operations which are open on nights, weekends or holidays. The State has provided this assurance in its comment in the side-by-side to this finding, and the Secretary finds it acceptable.

17.B In Finding 17.4, the Secretary requested that Wyoming provide an explanation that inspectors will conduct

field enforcement for all violations observed. In a letter dated August 5, 1980 (Administrative Record No. WY-220), the State indicates that it will conduct field enforcement for all violations observed. The Secretary finds that inspectors will take all required actions based upon this discussion.

Finding 18

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (performance bonds), subject to the discussion in Finding 18.A below. This finding is made under 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA (performance bonds and insurance) and to Subchapter J of 30 CFR Chapter VII are incorporated in Wyoming statute 35-11-406, 410, 411, 417, 418, 421 and 424 and Wyoming rules Chapters XII, XIII, and XVI. Volume 1, Part G.3, of the program submission contains a narrative describing the reclamation performance bond and liability insurance requirements for the State.

Discussion of significant issues raised in the review of Wyoming's bonding and insurance provisions follows.

In the March 31, 1980, notice (45 FR 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 18 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice:

18.3 Rule IV 3d(6) covers the requirements of 30 CFR 805.13 regarding the period of bond liability. The period of liability is to be initiated at the completion of seeding, fertilizing, irrigation, or other work to ensure revegetation. The State program is consistent with the Federal requirements for the period of liability.

18.8 Rule XVI 4a requires inspections and evaluations of mining and reclamation work within 60 days of receipt of notification, "conditions permitting." This ensures that inspections will be conducted when conditions allow the proper information to be gathered. This is consistent with the Federal requirements of 30 CFR 807.11(d), especially in view of the short growing season in Wyoming.

18.11 Under Rule XVI 6a, the bond is released in three phases as provided for by 30 CFR 807.12(b). Somewhat less bond than the Federal amount is released at each phase under the Wyoming program. The full bond is not released until the 10 year liability period has expired and the revegetation and other commitments are met.

Following is the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.*):

18.A In Findings 18.1, 18.5, 18.6 and 18.7 the Secretary found the Wyoming self-bonding provisions as initially proposed probably inconsistent with 30 CFR 806.11 and requested clarification in the resubmission. Of the differences noted in the initial finding, some remained and some were removed in the resubmission. As adjusted, the Secretary approves the Wyoming self-bonding submission under Section 509(c) of SMCRA as an alternative to the Federal system.

The first difference noted in the initial finding is that the Wyoming regulations do not require the operator to grant the right immediately to attach, without foreclosure, any property given as collateral. The Wyoming provisions still do not authorize such attachment. However, the Wyoming Land Quality regulations in Rule XII 2(a)(11) do provide full authority for the regulatory authority to protect its interest in any collateral.

The second difference noted in the initial finding was that under the Wyoming self-bonding provisions the administrator is given discretion to require proof of a mortgagor's possession and title to real property, whereas no such discretion exists in the Federal regulations. This difference still exists. However, the Wyoming regulations provide full authority for the regulatory authority to ascertain the value of any collateral, which would include ascertaining title and possession.

The third difference noted in the initial finding was that, as initially submitted, the Wyoming self-bonding provisions did not specify a ten year history of business operation as a requirement. Wyoming has changed its regulations to make its self-bonding provisions consistent with the ten year requirement of the Federal provisions. See Wyoming Land Quality Rule XII 2(a)(8).

The initial finding also noted that the Wyoming program did not expressly require the operator to submit a statement listing any notices issued by the Securities and Exchange Commission, or a listing of proceedings alleging failure to comply with any public disclosure or reporting requirements under the Federation securities laws. Wyoming adjusted its self-bonding provisions to make them consistent with this Federal provision. See Rule XII 2(a)(10).

The Federal self-bonding provisions at present impose four basic requirements: (1) indemnity by the operator and agency within the State for service of process, (2) a financial statement showing a ten year history of operation and financial solvency, (3) net worth of at least six times the amount of all self-bonds and (4) 100 percent collateral. The Wyoming self-bonding provisions require (1) and (2) above and *either* (3) *or* (4). See Wyoming Land Quality Rules XII and XIII 2a(3).

The Secretary finds that the Wyoming provisions meet the requirements of Section 509(c) of SMCRA and 30 CFR 806.11(c), which provide that the Secretary may approve as part of a State program an alternative bonding system if it will achieve the objectives and purposes of the bonding provisions of the Act. Such alternatives must provide (1) that should the operator fail to complete reclamation there will be sufficient resources for the regulatory authority to complete the reclamation, and (2) a substantial economic incentive for the permittee to comply with all reclamation provisions

As noted in the State program submission and this notice, the Wyoming coal mining industry is, in all but one or two cases, made up of very large mines owned and operated by the largest coal mining and energy companies in the country. Their history of operation and solvency and their assets are clearly sufficient to meet the tests of the statute and regulations. Even the one or two smaller operations are large by national standards. The substantial requirements of the Wyoming self-bonding provision, coupled with the unusual profile of the Wyoming coal mining industry, makes this alternative approvable in Wyoming.

OSM is currently studying its own self-bonding regulations and the economic and regulatory issues of self-bonding. When the study is completed, OSM expects to initiate a rulemaking to adjust its current self-bonding regulations. After doing so and after

close study with Wyoming of the implementation of this alternative, OSM and the State will review Wyoming's alternative system here approved.

18.B The Secretary found, in Finding 18.2, that the language Wyoming proposed in Rule XIII 2a(1) apparently would be consistent with the requirements of 30 CFR 800.11 concerning the bond amount for land which may reasonably be affected prior to filing a renewal bond. Wyoming promulgated language in Rule XIII 2a(1) that was different from that on which the Secretary made the tentative finding. The promulgated language, however, is consistent with the Federal requirements.

18.C The Secretary made several tentative findings in Finding 18.4. W.S. 35–11–417(c) provides for a minimum bond amount of $10,000 consistent with 30 CFR 805.12; Rule IV 3d(6) provides for a minimum 10–year revegetation bond period consistent with 30 CFR 816.116(b)(1). Rule XVI 2b provides procedures to request bond release consistent with 30 CFR 807.11. In promulgating Rule XVI 3a, Wyoming promulgated language different from the January 9, 1980, draft regulations on which the Secretary based his tentative finding. Rule XVI 3a, as promulgated, deletes all provisions for informal conferences on bond releases. This deletion does not make Rule XVI 3a inconsistent with the Federal requirements since 30 CFR 807.11(e) does not require that informal conferences on bond releases be included in the program.

18.D In Finding 18.9, the Secretary asked Wyoming to provide for citizen access to the mine site for informal conferences on proposed bond releases. These informal conferences are described in 30 CFR 807.11(e) and, as therein described, were remanded by the district court to incorporate, in their entirety, the *informal* conference procedures of Section 513(b) of SMCRA (Opinion of February 26, 1980, at 41–42). As discussed in Finding 18.C above, Wyoming has deleted requirements for an informal conference on proposed bond releases from Rule XVI 2b(8). Since 30 CFR 807.11(e) and Section 519(g) give discretionary authority to grant informal conferences, this is in accordance with SMCRA and consistent with the Federal regulations.

Rule XVI 2b(8) permits requests for hearings on bond deposit releases. Wyoming states in the resubmission that informational proceedings pursuant to Rule III 3a of the Department of Environmental Quality's Rules of Practice and Procedure can be held and, if held, that the regulatory authority will grant mine site access in accordance with the court's directive to include such provisions if informal hearings are held. The only difference between the initial submission and the promulgated language is deletion of the reference to informal conferences.

18.E Rule XVI 6a(3) specifies that, where the approved postmining land use is industrial development or residential, release of the bond or deposit can be made when the operator has successfully completed all surface coal mining and reclamation operations in accordance with the operator's responsibilities under the approved plan. This requirement is designed as Wyoming's counterpart to 30 CFR 807.12(d) which, in part, requires the regulatory authority to retain sufficient bond to complete any additional work which would be required to achieve compliance with the general standards for revegetation "in the event the permittee fails to implement the approved postmining land use plan within the two years required by [30 CFR] 816.116(b)(3)(ii)" (the cited section requires a ground cover of living plants not less than that required to control erosion).

While 30 CFR 816.116(b) has been remanded by the district court (Opinion of February 26, 1980, at 55–56), it was remanded because of the requirement for this extended bond liability period to start when the ground cover equals the approved standard rather than starting immediately after the last year of augmented seeding, fertilizing, irrigation or other work and thus 816.116(b)(3)(ii) should not be affected. Wyoming's modified Rule IV 3d(6) is consistent with section 515(b)(20) of SMCRA. Wyoming's requirements would mean that the provisions of Rule IV 3d(5), to stabilize industrial development or residential land or, if development is delayed for more than two years, revegetation in accordance with Rule II, would have to be implemented immediately after the last year of augmented seeding, fertilizing, irrigation or other work. Thus, the State resubmission is consistent with the present Federal program requirements.

18.F In Finding 18.12, the Secretary found the proposed bond forfeiture provisions to appear adequate. Wyoming enacted the statutory provisions which the Secretary tentatively found adequate in Finding 18.12. The statute citations are different from those in Finding 18.12. The Secretary however, finds that W.S. 35–11–401(e)(vii), W.S. 35–11–406(m)(ix), and W.S. 35–11–421(a), as enacted, are consistent with 30 CFR 808.11, regarding bond forfeiture.

18.G In Finding 18.14 the Secretary requested assurance that funds forfeited will be available for reclamation. This assurance is provided in the "Side-by-Side with the Secretary's Findings" (Volume 3A, p. 293) of the resubmission.

There it is stated that all monies are delivered to an interest-bearing trust and agency account and are used solely for reclamation purposes, since these are "earmarked" accounts. The Wyoming statutory provisions cited in Finding 18.14 were enacted and are consistent with 30 CFR 808.14.

Finding 19

The Secretary finds that the Land Quality Division has the authority and the Wyoming program provides for civil and criminal sanctions for violations of Wyoming law, regulations and criminal penalties consistent with Section 518 of SMCRA (penalties) including the same or similar procedural requirements. This finding is made pursuant to 30 CFR 732.15(b)(7).

Provisions corresponding to Section 518 of SMCRA and to 30 CFR Part 845 are incorporated in W.S. 9–2–505 and 35–11–901 and Wyoming Rule XVII. Part G.5 of Volume I of the Wyoming program submission contains descriptions of the methods and procedures by which the State will enforce the administrative civil and criminal sanctions of State laws and regulations.

Discussion of significant issues raised in the review of Wyoming's provisions for civil and criminal sanctions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 19 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative finding in the March 31, 1980, notice: Findings 19.2, 19.5, and 19.6.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.*):

19.A In Finding 19.3 the Secretary stated that he would review Wyoming's alternative to the civil penalty system in light of the district court's decision. Additionally, the Secretary stated in Finding 19.10 that he would review the information by the State regarding the assessment of civil penalties. The district court, in its second round decision (see discussion in "General Background on State Program Review Process"), indicated that, while Section 518(i) of the Act requires a State to incorporate the penalties, the four criteria, and the procedures explicated in Section 518, the Secretary does not have authority to require States to adopt a system that will result in penalties at least as stringent as those imposed under OSM's point system.

Based on the district court's ruling, the Secretary finds the Wyoming alternative to the penalty point system acceptable.

19.B In Finding 19.4, the Secretary asked Wyoming to make it clear that an operator may be relieved of an abatement requirement only by a granting of temporary relief pursuant to Rule XVII 2f. In the side-by-side, the State makes this point clear, and because of enactment of W.S. 35–11–901(n) and the promulgation of this rule, the Secretary finds that the Wyoming program is consistent with Section 518(h) of SMCRA.

Finding 20

The Secretary finds that the Land Quality Division has the authority under Wyoming laws, and the Wyoming program contains provisions 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 pursuant to 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 Wyoming Statute W.S. 35–11–901 and 35–11–437 and in Wyoming Rules Chapter XVII. Volume I, Part G.5, of the program submission contains a description of the methods and procedures by which the State will enforce the administrative civil and criminal sanctions of State laws and regulations. Volume I, Part G.6, of the program submission contains a discussion of Wyoming's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised in the review of Wyoming's provisions for notices of violation and cessation orders follows:

In the March 31, 1980, notice (45 FR 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 20 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 20.1, 20.3, 20.7, 20.8, 20.9, 20.10, 20.12, 20.14, 20.15, 20.16, 20.18, and 20.19.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930, *et seq.*):

20.A In Finding 20.2, the Secretary asked Wyoming to clarify its provision for immediate issuance of cessation orders. In the side-by-side of Federal and State provisions, the State makes it clear that W.S. 35–11–437(a) and the regulations implementing that statute mandate an immediate issuance of a cessation order in circumstances which are the same as those in Section 521(a)(2) of SMCRA. The Secretary, therefore, finds the Wyoming provision acceptable.

20.B In Finding 20.4, the Secretary stated that W.S. 35–11–437(c) should be changed to replace the term "continued" with the term "affirmed." As enacted, the statute incorporates this change and, therefore, it is clear that the total time for abatement of a violation may not exceed 90 days. The Secretary finds this provision acceptable.

20.C In Finding 20.6, the Secretary states that an Attorney General's memorandum which describes the power of the State Attorney General may be acceptable as consistent with Section 521(c) of SMCRA and 30 CFR 843.19. The Secretary finds that this memorandum reveals that Wyoming has powers which are broader than those of OSM and, therefore, the State program is consistent with Section 521(c) of SMCRA and 30 CFR 843.19.

20.D In Finding 20.11, the Secretary states that he will reexamine Wyoming's provisions for service of notices of violation, cessation orders, and show cause orders upon resubmission of the program. First, the State asserts in the side-by-side that Rule 4 of the Wyoming Rules of Civil Procedure, regarding service, applies to its program. The Secretary finds that this rule, although not exactly the same as 30 CFR 843.14, provides for adequate service and is, therefore, the same or similar to 30 CFR 843.14.

20.E The Secretary notes that the language which he originally considered in Findings 20.16 and 20.19 differs somewhat in its enacted form from that which was proposed. However, the enacted language does satisfy the concerns expressed in these two findings.

The State, however, omits any provision comparable to 30 CFR 843.14(d) by which Wyoming may furnish copies of notices and orders to certain persons. Since the Federal provision is permissive rather than mandatory, the Secretary finds that the State is not required to have such a provision.

20.F Wyoming Rule XVII 2d(1), which defines "willful violation" for purposes of the section of its regulations dealing with suspension or revocation of permits for patterns of violation, provides:

> Willful violation means an act or omission which violates this Act or any regulation, and which is committed or omitted with knowledge or reason to know of its unlawfulness.

The comparable definition in OSM regulations at 30 CFR 843.13(a) is:

> Willful violation means an act or omission which violates the Act, this Chapter, the applicable program * * * committed by a person who intends the result which actually occurs.

The Wyoming definition adds the component "knowledge or reason to know of its unlawfulness."

The Secretary finds these two definitions consistent and determines that the Wyoming definition is a part of a "similiar procedural requirement" within the meaning of Section 521(d) of SMCRA. Under Wyoming law, a person is presumed to know what the law is (*Closson v. Closson*, 215, p. 485, Sup. Ct. Wyom., 1923). Moreover, the permittee and his employees actively engaged in the business of mining have "reason to know" of Wyoming's laws and regulations dealing with coal mining and with the terms of their permit which apply those laws and regulations to the particular mine. The Secretary assumes that these intepretations will prevail in the implementation of the Wyoming program. Because of this assumption, the Secretary finds that the two definitions are consistent.

20.G Section 525(a)(1) of SMCRA provides for administrative review at the request of any person having an interest which is or may be adversely

affected by a notice or order or by any modification, vacation, or termination of such notice or order. The comparable Wyoming provisions are W.S. 35–11–437 (c)(ii) and Chapter XVII. Under the Wyoming language, persons who may be adversely affected by a notice or order may request review. The Wyoming law and rules do not explicitly refer to persons who may be affected by a "modification, vacation or termination of such order."

The Secretary believes that the absence of this specific language does not narrow the circumstances under which any person may request review of an action in connection with a notice or order. The Secretary interprets the language to allow persons who may be adversely affected by any regulatory authority action in connection with a notice or order to apply for review if the permittee could, and that is all the Federal statute and rules require.

Finding 21

The Secretary finds that the Land Quality Division has the authority and the Wyoming Program contains provisions to designate areas as 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 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 W.S. 35–11–406 and 425 and Wyoming Rule XVIII. Volume 1, Part G.11, of the program submission 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 Wyoming's provisions for unsuitability designations follows.

In the March 31, 1980, notice (45 *FR* 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 21 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program submission. The Secretary finds (after considering government agency and public comments) that the language previously considered has been promulgated or enacted and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 21.2, 21.3, 21.8, 21.9, 21.10, 21.11, 21.12, 21.13, 21.14, 21.15, 21.16, 21.17, 21.18.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

21.A In Finding 21.1, the Secretary responded to a comment by the Public Lands Institute concerning inclusion of certain definitions equivalent to definitions in 30 CFR 761.5. In that finding, it was concluded that the terms "occupied dwelling," "public building," public park," and "cemetery" are sufficiently common to not require definition in Wyoming's program.

Wyoming's promulgated regulations for another two of those definitions differ from the language upon which Finding 21.1 was based. Those definitions are for "valid existing rights" (Rule I 2(106) and "public roads" (Rule I 2(63). Both definitions were remanded by the district court (Opinion of February 26, 1980, at 20–23). "Valid existing rights" is defined to include a good faith effort to obtain all permits while "public roads" is defined to require use by and maintenance with government funds. The changes are consistent with the court opinion and with SMCRA. See discussion above under "General Background" concerning remanded regulations.

21.B In Finding 21.4, the Secretary requested that the Wyoming program ensure that notice of a petition will be published in the State register. Wyoming does not have a State register. Rule XVIII 3b(2), however, requires that notice will be placed in the offices of the county clerks of the counties in which the area covered by the petition is located. This is acceptable and consistent with 30 CFR 764.15 (b)(2).

21.C. In Finding 21.5, the Secretary asked that the Wyoming program be revised to assure that governmental agencies and persons with other than a "property" interest be given notice of a public hearing on a petition. Rule XVIII 4b requires the notice to be sent to "all petitioners, intervenors, local, State and Federal agencies which may have an interest in the decision on the petition, and persons identified as having interests affected by the proposed designation or termination." This State rule is consistent with 30 CFR 764.17(b), since those with a "property interest" will be included under these with an "interest."

21.D In Finding 21.7 the Secretary found certain requirements for information to be more burdensome for the petitioner than is required by 30 CFR 764.13(b). In the resubmission the State deleted the requirements for information on persons contributing to the expense of the petition. The other requirements, "a precise description of the boundary of the area covered by the criterion or criteria on which the proposed designation rests, allegations of fact which tend to establish the criterion or criteria * * *, and a specific identification of the sources of supporting evidence on which the allegations of fact rest," in Finding 21.7 were retained in Wyoming Rule XVIII 2b, and three of the above requirements were retained in XVIII 2c. Also in Finding 21.7, the requirement that property interests *known to the petitioner* be identified was tentatively found to be consistent with Federal requirements. The Secretary assumes, therefore, that Wyoming will limit informational requirements to that known by or reasonably available to the petitioner, and thus finds these provisions acceptable.

Finding 22

The Secretary finds that the Land Quality Division has the authority under Wyoming laws, and the Wyoming program provides for public participation in the development, revision and enforcement of Wyoming laws and regulations and the Wyoming program is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII, subject to the discussions in Findings 22.C and 22.D below. This finding is made pursuant to 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements in SMCRA and 30 CFR Chapter VII are included throughout Wyoming State statutes and rules submitted as part of the program. Volume 1, Part G.14, of the program submission describes the procedures to ensure that adequate public participation is provided throughout the development and functioning of the State program. Discussion of significant issues raised in the review of Wyoming's public participation provisions follows.

In the March 31, 1980, notice (45 *FR* 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 22 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in

the following tentative findings in the March 31, 1980, notice: Findings 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.10, 22.11, 22.12, 22.13, 22.14, 22.15, 22.17, and 22.18.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

22.A In Finding 22.1, the Secretary found that Wyoming's provisions for holding informal conferences on permit applications and providing for access to the mine area were not adequate. Rule III 3a of the Rules of Practice and Procedures is consistent with 30 CFR 784.14 concerning informal conferences. Under W.S. 35–11–406(K), an informal conference will be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an informal conference is preferable to a contested case proceeding.

22.B In Finding 22.8, the Secretary found that the Wyoming program did not contain a provision for prompt citizen complaint inspection. The State has enacted W.S. 35–11–701(b), which calls for a prompt citizen complaint inspection and, therefore, is the same or similar to 30 CFR 842.12(d).

22.C In Finding 22.9, the Secretary found that the State had not proposed or promulgated any rules which are consistent with 43 CFR Part 4 regarding the award of attorneys fees. The State has failed in its resubmission to promulgate any such rules. The Secretary finds this omission unacceptable. However, by letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming stated its intent to promulgate such rules. Promulgation of these rules is being made a condition of approval of the Wyoming program.

22.D In Finding 22.16, the Secretary found that the Wyoming provisions concerning citizen intervention in administrative proceedings might not be as broad as under Federal regulations. The Wyoming resubmission contains a proposed change to Chapter II, Section 7 of the Department's Rules of Practice and Procedure, which, if promulgated, would provide rights of intervention as broad as those in 43 CFR Section 4.1110. The State, however, failed to promulgate this rule and the Secretary finds this omission unacceptable. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming has stated its intent to promulgate a rule consistent with 43 CFR 4.1110 concerning intervention. Promulgation of this rule is being made a condition of approval.

Finding 23

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Wyoming Land Quality Division consistent with 30 CFR Part 705 (restrictions on financial interests of State employees). This finding is made under 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA and 30 CFR Part 705 are incorporated in the Wyoming program through Wyoming Personnel Rules PPM 3.01. Volume I, Part G.12, of the program submission describes the procedures by which the Department of Environmental Quality will implement provisions for financial interest control. Discussion of the significant issues raised in the review of Wyoming's conflict of interest provisions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found Wyoming's provisions acceptable subject to review and comment by government agencies and the public. The secretary has reviewed the Wyoming program resubmission, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: 23.1 and 23.2.

Finding 24

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming 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. This finding is made pursuant to 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in W.S. 35–11–415. No regulations are required at this time.

Volume 1, Part G.13, of the program submission contains a description of the cooperative effort between the State Inspector of Mines and the Department of Environmental Quality.

Finding 25

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for small operator assistance consistent with 30 CFR Part 795 (small operator assistance). This finding is made pursuant to 30 CFR 732.15(b)(13).

Provisions granting authority supporting Section 507(c) of SMCRA and 30 CFR Part 795 are incorporated in W.S. 35–11–109 and 110. Volume 1, Part G.16, of the State program submission contains a description of the small operator assistance program within the State.

Discussion of significant issues raised in the review of Wyoming's small operator assistance program follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 25 acceptable subject to promulgation of rules and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative finding in the March 31, 1980, notice: Finding 25.1.

Following is the Secretary's finding on the provision of the resubmission that differed from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

In Finding 25.2, the Secretary requested a clarification of the phrase "qualified personnel," as it is used at Rule XXIII 3b(6) of Wyoming's Land Quality Division regulations, to assure that OSM, the State regulatory authority, and laboratory personnel would logically be included. The State has provided clarification in its comment in the side-by-side to this finding, and the Secretary finds this clarification acceptable.

Finding 26

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program provides similar protection to that afforded Federal employees under Section 704 of SMCRA. This finding is made pursuant to 30 CFR 732.15(b)(14).

Provisions corresponding to Section 704 of SMCRA are incorporated in W.S. 35–11–901. 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.

In Finding 26, published by the Secretary on March 31, 1980, the

Secretary indicated that the enactment of W.S. 35–11–901(m), as proposed, would be acceptable. This statute has been enacted, and the Secretary finds the Wyoming program consistent with Section 704 of SMCRA.

Finding 27

The Secretary finds that Wyoming has the authority under its law and the Wyoming program provides for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA (review of decision) and 30 CFR Chapter VIII, Subchapter L (inspection and enforcement). This finding is made pursuant to 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA and to Subchapter L of 30 CFR Chapter VII are incorporated in W.S. 35–11–406 and 437; Wyoming Rules of Civil Procedure, Rule 27.1; Wyoming Department of Environmental Quality Rules of Practice and Procedure, Chapter 2; Wyoming Administrative Procedures Act, W.S. 9–4–107 and 114; and Wyoming rules Chapters XVII and XVIII. Volume 1, Part G.4, of the program submission contains a description of the administrative and judicial procedures which are available for the review of administrative decisions, actions and refusals to act. Additional provisions are included in Volume 1, Part G.4, of the program submission, which sets out administrative and judicial review of inspection and enforcement actions.

Discussion of significant issues raised in the review of Wyoming's administrative and judicial review provisions follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 27 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Finding 27.1 and 27.2.

The Secretary notes that rather than enacting the language in W.S. 35–11–437(g), discussed in Finding 27.1, the State added the phrase "for other than surface coal mining operations" in enacted W.S. 35–11–701(c), which resolves the concern raised.

Finding 28

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming 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 pursuant to 30 CFR 732.15(b)(16).

Wyoming Rules XIII, XIV, and XVII were promulgated and, as discussed in the March 31, 1980, **Federal Register** notice, provide for notice of applications for permits and notice of inspection and enforcement activities. In addition, the Wyoming Administrative Procedures Act ensures that information is publicly available.

Finding 29

The Secretary finds that the Wyoming laws and regulations and the Wyoming program do not contain provisions which would interfere with or preclude implementation of those in SMCRA and 30 CFR Chapter VII. That finding was made pursuant to 30 CFR 732.15(c). An analysis of that finding is included in the March 31, 1980, **Federal Register** notice (45 FR 20979).

Finding 30

The Secretary finds that the Land Quality Division and other agencies having a role in the program would have sufficient legal, technical and administrative personnel and would have 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 pursuant to 30 CFR 732.15(d).

Volume 1, Parts I and J, contain descriptions of existing and proposed staff, and 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 requirements of SMCRA and the Federal regulations are met. Volume 1, Part L, 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.

Wyoming's Land Quality Division has a staff of 38 full-time persons assigned to regulate coal and other minerals. The coal program consumes approximately 16.34 full-time persons from the division and 6.43 full-time persons from other agencies, i.e., Division of Water Quality, Division of Solid Waste, the Attorney General's Office, Wyoming Fish and Game Department, and the Department of Environmental Quality's Administrative Section.

The Department's analysis of Wyoming's initial program submission reflected a total workload requirement of 21.47 full-time equivalents or person-years to implement the program. Resubmission data provided by Wyoming indicate a total program personnel capacity of 22.77 full-time equivalents or person years, which satisfies total program staffing needs as required by 30 CFR 731.14(e), (f), (i), (j).

Government Agency and Public Comments on the Wyoming Program Resubmission

C.1 The Fish and Wildlife Service (FWS) commented that Wyoming's resubmission failed to define the word "person" in its statute in a manner which would give the FWS status afforded to "persons." This word is clearly defined in the State's revised act (WS 35–11–103) to include "an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility cooperative, municipality, or any other political subdivision of the state, or any interstate body, or any other legal entity." Thus, certainly, the Fish and Wildlife Service is included.

C.2 The Environmental Protection Agency (EPA) notes that Wyoming, in its counterpart to 30 CFR 816.42(a)(7) (see Section 7 of Wyoming DEQ MOU and Rule X 4a of Water Quality Division Rules and Regulations) in its resubmission, has changed its maximum allowable total suspended solids (TSS) effluent limitation from 45 m/l in the original submission to 70 m/l. This change, EPA concludes, makes Wyoming's effluent limitation exceed the legal limitations established by EPA in Title 40.434.22. Wyoming explained these changes in a letter dated August 5, 1980. The explanation is discussed in Finding 13.C.

C.3 It is also noted by EPA that Wyoming, in the resubmission's counterpart to 30 CFR 817.126(a), has changed its regulation as originally submitted so that underground mining activities appear to be permitted beneath or adjacent to any perennial stream regardless of the circumstances. EPA expresses the belief that Wyoming should reinstate its original language which allows such mining *only* if the regulatory authority, on the basis of detailed subsurface information, determines that subsidence will not

cause material damage to streams, water bodies and associated structures.

The Secretary finds that Rule VII 2b(3) promulgated by the State provides authority for protection of all perennial streams and all impoundments consistent with 30 CFR 817.126(a), by requiring that underground mining activities be planned and conducted to prevent subsidence from causing material damage to the land surface (see Finding 13.102).

C.4 The Bureau of Land Management (BLM) was concerned that the size of the staff of the Wyoming Department of Environmental Quality was not sufficient to administer the program in a timely manner. BLM has reviewed the Wyoming resubmission and they now feel that the total staff capability is adequate. A similar conclusion has been reached by the Secretary in Finding 30.

C.5 Concern was expressed by the Fish and Wildlife Service (FWS) that Wyoming, in its analogue to 30 CFR 776.13, fails to clarify whether threatened and endangered species are from the Federal list or a State list.

The resubmission contains Rule II 3b(4)(b)(i), which requires an application, in order to be complete and therefore eligible for approval, to have a plan for minimizing adverse impacts to fish, wildlife and related environmental values within and adjacent to the permit area including "threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and their critical habitat." Thus, it is certain that the Federal list will be consulted. This rule requires that these plans must be adhered to and that the regulatory authority must enforce the protection of species and their critical habitats as identified by the Secretary. The FWS citation of the Wyoming rules could not be verified since the page cited in the resubmission related to special permit application requirements for alluvial valleys floors. Apparently, the FWS meant to cite Rule II 2a(1)(e) (i)–(iii) which does refer to an "endangered species list" of the Wyoming Game and Fish Department (page 20 of the Land Quality Division rules). Thus, both the Federal list and the State list must be consulted. This is also discussed in Finding 14.5.

C.6 The FWS stated that Wyoming's resubmission fails to include requirements of 30 CFR 779.20 and 783.20. Specifically, FWS comments that Wyoming's Guideline No. 5 should be required and should include habitat mapping, that the Federal list of threatened and endangered species should be consulted, that consultation on level of study should be sought in Section 2 a(1), that the vegetative type maps in Guideline No. 2 should be a requirement rather than a guideline, and, lastly, that reference to a surface water map is needed.

The Federal rules referred to by the FWS were remanded in the district court's February 26, 1980, opinion, so the State need not include analogous provisions. However, the court also ruled that the State may include these analogous provisions if they so desire. (Civil Action No. 79–1144, August 15, 1980, (Partial Stay Order of May 16, 1980, Memorandum Decision).)

Wyoming's resubmission does contain promulgated Rule II 3a(6)(e) to ensure that studies of fish and wildlife, and their habitats, are developed in consultation with Federal agencies having related responsibilities. It is certain that the FWS will be consulted. Thus, to reiterate requirements in Guideline No. 5 is not required. Wildlife habitat mapping (Rule II 3b(4)(b)(iii)) and vegetation community mapping (Rule II 3b(4)(a)) all ensure vegetation mapping in a manner reflecting wildlife habitat. Wildlife use of surface water is addressed in Rule II 2a(1)(g)(ii)(B). Thus, rules adequate to address the FWS concerns exist.

Guideline No. 5 represents those efforts the applicant should undertake to make the necessary good faith effort to comply with the State statutes (see discussion under Finding 14.C).

Wyoming has agreed to provide equivalent emphasis on investigations of the aquatic habitat in this guideline (see Findings 12.7 and 13.F (13.39)). The guideline appears to provide useful and professional directives on wildlife surveys including habitat mapping (see Section I A3 for vertebrate fauna). This is discussed in Findings 14.30 and 14.31. The Secretary has not identified reasons for further changes in the State program in this regard, since there is nothing inconsistent with SMCRA in these guidelines.

C.7 The FWS indicates that in its resubmission Wyoming's counterpart to 30 CFR 786.11–786.14 fails to provide for fish and wildlife agency notification.

The Federal requirements to notify general governmental agencies, fish and wildlife and historic preservation agencies (30 CFR 786.11(c)(1)) of receipt of a complete application are covered by Rule XIII 1a(2)(b), which requires that public notice be sent to Federal, State and local governmental agencies "with jurisdiction over or an interest in the proposed operation or permit area." While the FWS is not cited by name, if it has jurisdiction, it must be notified. Further, the MOU between the Land Quality Division and the Wyoming Game and Fish Department (Exhibit F.2. in the resubmission) requires the regulatory authority to notify the Wyoming Game and Fish Department of the need for technical assistance in evaluation of the submission.

Further, the resubmission contains correspondence between the regulatory authority and the FWS (Exhibit G.9) which identifies the area manager as the official contact point for all requests. For all Federal lands in Wyoming, FWS is contacted by OSM and OSM will maintain this procedure. This is also discussed in Finding 14.84. The Secretary believes that proper notification will be given to the FWS.

C.8 Concern was expressed by the FWS that Wyoming's analogue to 30 CFR 786.19 (m) and (o) in its resubmission contains no provision to require approval of measures affecting fish, wildlife, environmental values, and threatened or endangered species as provided in 30 CFR 816.133 or 817.133.

The Federal requirements are for (1) postmining land uses to be approved (30 CFR 786.19(m)) and (2) the regulatory authority to find that the activities would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitat (30 CFR 786.19(o)). The resubmission contains the first requirement for approval of measures to prevent or mitigate adverse effects on wildlife or fish from the appropriate State and Federal fish and wildlife management agencies (Rule II 3b(12)(b)(iii)(H)) if there is to be a change in the postmining land use. The Secretary finds this equivalent to 30 CFR 816.133(c)(8). See discussions in Findings 13.89 and 14.84.

Concerning the second requirement, W.S. 35–11–406(n)(i) requires that a plan be complete to be approvable and the rule (II 3b(4)) requires a plan to show how such species and habitat will be protected. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming has provided assurance that it interprets its provisions to be equivalent to 30 CFR 786.19(o). The Secretary finds this consistent with the Federal provisions. See Finding 14.F.

C.9 The FWS pointed out that Wyoming's regulation IV 2a(2), analogous to 30 CFR 816.97, appears to be weakened by a revision which now allows the administrator to determine what restoration is possible on public as well as private lands.

The FWS cited Rule "IV 2(s)(2)." It is presumed they were referring to Rule IV 2a(2), which does not apply to coal lands by virtue of the conflict with Rule IV 3p, which prevails under Rule IV 1

("For surface coal mining operations, if the requirements of Section 2 and Section 3 conflict, Section 3 shall be controlling."). This has been the source of much confusion to reviewers. The end result is that Section 2 of Rule IV applies to mining other than coal in this case. Thus, the program is not affected by the rule change cited by the FWS and the provision has not been weakened. An ancillary issue is discussed in Finding 13.63.

C.10 The FWS stated that Wyoming's Rules IV 2d(5) and IV 3d(2), analogous to 30 CFR 816.112, are still deficient as they appear in the State's resubmission. The State's analogue, FWS believes, neither encourages nor requires the use of native plant species compatible with the plant and animal species of the region.

The FWS' concerns are eliminated by Rule IV 3p which requires selection of plant species and shrubs to enhance the nutritional and cover aspects of fish and wildlife habitat when such habitat is part of the postmining land use, and Rules IV 2d (4) and (5), which team to generally require native species unless more suitable species are shown, by revegetation test plots, to be of superior value for reclamation purposes (which purposes include self-renewing, diverse, productive, and seasonal variety). This is also discussed in Finding 13.83.

C.11 The FWS comments that Wyoming's Rules IV 3d(6), analogous to 30 CFR 816.116, in its resubmission is deficient. The establishment period to measure revegetative success is shorter in the State regulation than it is in the Federal regulation, FWS notes, and the term "populated density" is undefined.

This is discussed in Findings 13.81 and 13.82. The Secretary found the resubmission adequate with respect to these two requirements.

In its comments FWS notes that Wyoming, in its resubmission, has no analogue to 30 CFR 817.97 regarding the protection of fish and wildlife and related environmental values as applicable to underground mining activities.

This is the complex cross-referencing issue that has been discussed in Finding 13.109. As pointed out there, the resubmission contains Rule VII 2a(5) which applies all requirements of Chapter IV to underground operations, and Rules VII 1 a and b, which apply Rule II to underground operations. The States analogue to 30 CFR 817.97 then becomes Rule IV 3p and other portions of Rules II and IV.

C.12 The U.S. Soil Conservation Service (SCS) was concerned by the apparent obligation of local conservation districts and the SCS to review and comment on the issues which involve prime farmland. The SCS further commented that the program is not clear on how the local conservation districts and the SCS will coordinate on prime farmland determinations. The SCS would like to know how much time will be required to carry out their program obligations.

The Wyoming Department of Environmental Quality (DEQ) must notify the local conservation district and the SCS that written determinations on prime farmland subjects are requested. The local conservation district shall make recommendations, suggestions, or decisions only with input and required concurrence of the SCS. The Memorandum of Understanding between the Secretary of Agriculture and the Governor of Wyoming shall determine the procedure the State and Federal conservationists shall follow in making recommendations, suggestions, or decisions. Findings 14.68 and 14.114 give an explanation of how the Department of Agriculture will be included in specific prime farmland determinations.

In regard to time and workload questions posed by the commentor, OSM can only estimate these at this time. Wyoming regulations include the SCS in four facets of review processes. SCS will be involved in the following:

(1) Negative determinations for prime farmland on pre-application investigations of proposed permit areas;

(2) Review of mineplan applications in prime farmland areas for topsoil handling, revegetation techniques, soil moisture bulk density measurements, pre-mining productivity measurements, etc.;

(3) Small acreage exemptions from prime farmland requirements for uneconomical croplands; and

(4) Soil reconstruction methods or requirements included as stipulations to regular mineplan requirements.

The State program projects five new mineplan reviews for 1980 and three mine plan amendment reviews. For 1981, at least three new mine plan reviews are anticipated by DEQ. OSM Region V has made estimates of man-hours needed for mineplan reviews. Subjects dealing with prime farmland take from two to eight hours with an average of four hours for a mineplan completeness review. A technical and environmental analysis takes from two to seven hours with an average of four hours on prime farmland subjects. These estimates are for prime farmland subjects only, while topsoil and revegetation topics require an average of 132 man-hours for a complete mineplan review and environmental analysis. OSM can furnish a more complete table of man-hour estimates by job function on mineplan review upon request.

C.13 The Public Lands Institute (PLI) noted that Wyoming's Rule XVII 1a(1) in the State's resubmission provides for an inspection of every operation "every month, averaging at least one [complete inspection] quarterly." PLI asserts that Section 517(c) of SMCRA and 30 CFR 840.11 require three partial and one complete inspection quarterly. Wyoming explains in Part G.4 that monthly inspections will be conducted during each month *not* covered by a quarterly inspection. The Secretary finds that Wyoming proposes to conduct the requisite number of complete and partial inspections.

C.14 PLI pointed out that the Secretary has stated that, "[a]n explanation * * * is needed to clarify Wyoming's provision that inspectors will conduct field enforcement and will pursue enforcement actions for all violations observed," but that Wyoming, in its side-by-side comparison, only refers to Part G.5 of the narrative. The narrative, the commenter continues, does not clarify this matter but merely restates the statutory provision requiring issuance of citations when the necessary "determination" is made and does not state that inspectors are required to make that determination in the field. Under W.S. 35–11–437, the issuance of notices of violation and cessation orders is mandatory for violations observed by inspectors. Officials of OSM discussed this issue with Wyoming officials by telephone on July 9, 1980, and were provided an oral assurance by the State (Administrative Record No. WY–211). The PLI asserted that such oral assurance was not acceptable. In a letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicates that it will conduct field enforcement. The Secretary finds this written assurance acceptable. See Finding 17.B

C.15 In their comments, PLI, the Environmental Policy Institute (EPI), and the Powder River Basin Resource Council (PRBRC) stated that the Wyoming regulations do not require all inspections *per se* to be unannounced, but permit advance notice "as the representative deems necessary." PLI asserts that Section 517 of the Act and 30 CFR Part 840 absolutely prohibit advance notice, and that Wyoming cannot deviate from this requirement.

In the March 31, 1980, **Federal Register** notice, in Finding 17.5, the Secretary stated that Wyoming regulations require that all inspections be unannounced. Prior notice is to be given only in special circumstances such as during the annual

inspection when all records are made available for complete review. The Secretary, therefore, finds Wyoming Rule XVII 1a(1) to be acceptable.

C.16 PLI indicated that Wyoming has not met its burden of demonstrating that its civil penalty assessment system meets the requirements of SMCRA 503(a) and 518(i), i.e., the State does not demonstrate that civil penalties will be assessed in the same circumstances they would be assessed under Federal law, nor does it guarantee a level of fines as high as would be assessed under Federal law. PLI asserted that the opinion *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, May 16, 1980), on this matter is incorrect as a matter of law, and that if the decision is reversed, Wyoming will be required to make numerous changes in its civil penalty provisions to meet the requirements of the Act.

The Secretary is convinced that the civil penalty assessment system proposed by Wyoming is consistent with Federal requirements and is acceptable pursuant to the court's decision with which the Secretary is complying (see Finding 19.A).

C.17 It is asserted by PLI that the Wyoming provision for a civil penalty bond, rather than prepayment into escrow, is illegal. The commenter stated that escrow payments are required under Section 518(c) of SMCRA, and pursuant to Section 518(i), the same or similar procedure is required for Wyoming.

The Secretary is convinced that the State's use of a bond, as opposed to placing the amount of the contested penalty in escrow, provides the same degree of certainty that an assessed penalty will eventually be paid by a violator if the State prevails in a contested action. (See Finding 19, above and Finding 19.9 in the March 31, 1980, **Federal Register** notice.)

C.18 PLI expressed concern that Wyoming has combined the discretionary and mandatory show cause orders in 30 CFR 843.13 into one provision, W.S. 35–11–409(c), thereby reducing the range of possible permit suspension and revocation situations. PLI contended that this scheme does not meet the Federal requirement that the State suspension or revocation provision be at least as stringent as the Federal provisions in 30 CFR 843.13 and Section 521(a)(4) of SMCRA.

Wyoming's Rule XVII 2d(2) states that the Director of the Department of Environmental Quality shall explain in writing if he or she fails to issue a show cause order where the director finds that there are violations of the same or related requirements during three or more inspections in any 12-month period. Thus, a presumption is created that the director will find that a pattern of violations exists in such circumstances (See Finding 20.9 in the March 30, 1980, **Federal Register** notice.)

C.19 PLI contended the W.S. 35–11–437(a), which imposes affirmative obligations when "necessary," is not adequate since it does not prescribe when such obligations are necessary as in SMCRA Section 521(a) and 30 CFR Part 843.

The Secretary found in the March 30, 1980, **Federal Register** notice, Finding 20.16, that W.S. 35–11–437(a) and Rules I 2(16) and Rules XVII 2(a) taken together are consistent with Federal requirements because affirmative obligations will be included in a cessation order when they would be required under the Federal standards.

C.20 PLI noted that Wyoming does not provide an automatic right to informal permit conferences, as required by 30 CFR 840.15.

In Finding 22.A, above, the Secretary found that Wyoming's provisions for holding informal conferences on permit applications and for providing access to the mineplan areas are acceptable. Under W.S. 35–11–406(k), an informal conference will be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an informal conference is preferable to a contested case proceeding. Wyoming has promulgated language in Rule III 3a of the Rules of Practice and Procedure which are consistent with 30 CFR 784.14 concerning informal conferences.

C.21 PLI and EPI noted that Wyoming provides for publication of a "notice of intended action" rather than proposed rules. PLI asserted that this scheme is not in accordance with SMCRA 501, which requires proposed rules to be published, and that this practice will interfere with the public's right to comment on proposed regulations.

Wyoming's notice of intended action is in fact similar to proposed rules in that it sets forth the text or substance of the rulemaking. While Wyoming does not publish a document similar to the **Federal Register**, the State publishes a "notice of intended action" in a newspaper of general circulation, and sends copies of such notices to county clerks and individuals who request such mailings for the purpose of public comment. (See Administration Record No. WY–211.) The Secretary finds the Wyoming practice consistent with Section 501 of SMCRA.

C.22 PLI pointed out that under 30 CFR 842.12(a) a citizen has the right to orally request an inspection which is followed by a written statement. Wyoming, however, allows only written complaints, thus allegedly restricting citizen rights and, in the event of an imminent hazard, endangering the public and the environment.

The Secretary finds Wyoming Rule XVII 1b to be consistent with 30 CFR 842.12(as) as further explained in Finding 22.7 in the March 31, 1980, **Federal Register** notice. Both Federal and State processes require a written statement.

C.23 PLI contended that Wyoming provides only for a "prompt" inspection in response to citizen complaints. PLI stated that an outer time limit of 10 days to inspect and 15 days to deny an inspection should be established as required by 30 CFR 842.12(d), to insure that there is no question of what constitutes a "prompt" response.

The Secretary believes that such time limits need not be set for the Wyoming program to be consistent with the Federal requirements, since it is unlikely that a period longer than 10 or 15 days would be deemed a "prompt" response. In any case, "prompt" may be a more stringent test than 10 days.

C.24 PLI noted that 30 CFR 842.15 and SMCRA 517(h)(1) require that the informal review of citizen complaints results in a written determination with an explanation of the underlying reasons, but that Wyoming provides only that the citizen be informed of the "results" of the review.

The Secretary believes that Wyoming Rule XVII 1c will operate in a manner that is consistent with the Federal requirements in that the citizen will be informed of the results of the inspection and may proceed to appeal, if he or she so desires.

C.25 In its comments, PLI noted that the Secretary has stated that Wyoming's failure to provide implementing regulations consistent with 43 CFR 4.1290 *et seq.*, regarding the award of costs and expenses in administrative proceedings, "may create an inconsistency with the Federal requirements." PLI contended that this failure will result in a serious inconsistency and, to obtain approval, a State program not only must authorize the award of fees, as does Section 525(e) of SMCRA, but also must contain provisions similar to those contained in 43 CFR 4.1290 *et seq.* To date, the comment concludes, Wyoming has made no attempt to promulgate rules consistent with the Federal regulation and, thus, has set *no* standards for the award of such fees.

In Finding 22.9 in 45 FR 20930 (March 31, 1980), the Secretary found that the State had not proposed or promulgated any rules which are consistent with 43 CFR Part 4 regarding the award of attorneys fees. The State has failed in its resubmission to promulgate any such rules. The Secretary found this portion of the resubmission unacceptable, and explains that a correction of this deficiency will be a condition of approval. (See Finding 22.C.)

C.26 PLI indicated that the Wyoming citizen suit provision is deficient in several respects. First, under W.S. 35–11–902, the 60 day notice of intent to sue provision applies not only to suits against the State for failure to enforce (as in SMCRA 520(a)(2)) but also to suits for violations (such as SMCRA 520(a)(1)). Under the Federal scheme, notice of intent to sue is required only in the non-enforcement situation (Section 520(b)), and Wyoming cannot restrict access to State court.

The commenter incorrectly stated that the 60 day notice applies only to Section 520(a)(2) under SMCRA. Section 520(b) applies the 60 day notice period to all citizen actions under Section 520(a), with the exception of an imminent threat to health or safety of the plaintiff or an immediate effect on a legal interest of the plaintiff. W.S. 35–11–902(c)(i) parallels the Federal section and is consistent with it.

Second, PLI contended that the State must make it clear that Wyoming's standing provision, "any person having an interest which is or may be adversely affected," is as broadly interpreted as it is under Federal law.

Neither SMCRA nor the Wyoming statute contains a definition of "person having an interest which is or may be adversely affected." The Wyoming regulatory definition in Rule XVIII 1(5) appears to be as broad as OSM's regulatory definition in 30 CFR 700.5.

Third, PLI and EPI noted that Wyoming must make it clear that attorney's fees can be awarded against citizens or citizen groups only if the action is initiated or pursued in bad faith.

The proposed program, W.S. 35–11–902(e), provides for the award of attorney fees. SMCRA is silent on the circumstances under which attorney fees may be assessed against citizens, and the Secretary has no reason to believe that the State will not award attorneys fees consistent with the Federal standards. As discussed in Finding 22.C, promulgation of rules concerning the award of attorneys fees in administrative hearings is being made a condition of this approval.

Fourth, PLI claimed that Wyoming "impermissibly" restricts the operation of its citizen suit provision to the status of Federal law on August 3, 1977, stating that, as the body of Federal law grows, especially with respect to SMCRA 520, States likewise must be able to grow to conform, if their program is not to become less stringent than required and be subject to withdrawal of approval or repeated amendment. Therefore, PLI concludes, the phrase "only to the extent" should be changed to "at least to the extent."

The Secretary is evaluating the Wyoming program on the basis of what the Federal requirements are today. PLI has indicated no change in the law since August 3, 1977, that would make the Wyoming requirement inconsistent with the Federal requirement.

The Secretary will require appropriate changes in the State provisions if such changes are required by Act of Congress or by other developments.

C.27 The PLI and EPI contended that it should be made clear in Rule II 7b of the DEQ Rules of Practice and Procedure that interest in the "outcome" of the proceeding includes an interest in a significant legal determination which may be reached and which might affect the person's ability to protect his interest in subsequent proceedings (43 FR 34378 (August 3, 1978)). PLI also noted that it should be made clear that intervention at less than full party status is permissible only upon request of the person seeking intervention, at least for mandatory intervention. In the March 31, 1980, **Federal Register** notice, the Secretary found this rule did not provide broad enough rights of intervention in administrative proceedings. As discussed in Finding 22.D, promulgation of rules for intervention is being made a condition of this approval.

C.28 Concern was expressed by PLI that Wyoming permits council members to have a financial interest, direct or indirect, in matters before it. Regardless of the Secretary's regulations on conflict of interest, PLI contended that the Secretary cannot approve any State program which, unlike the Federal program, violates the constitutional due process right to an impartial decisionmaker. Council members with any interest whatsoever in the outcome, or even the appearance of any interest, cannot participate, under prevailing constitutional case law, the comment concluded.

In a letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicates that council members with any interest or the appearance of any interest in the outcome of a proceeding cannot participate in such proceeding.

C.29 It is noted by the EPI and PRBRC that in Rule XVII 2e, a cessation order may be mailed to an operator. PRBRC noted that the State is required to deliver such an order immediately by hand to the operator.

The State has indicated in a letter dated August 5, 1980 (Administrative Record No. WY–220) that it will conduct field enforcement. The Secretary finds that Wyoming will immediately hand-deliver such an order as part of its field enforcement. (See Finding 20.A, above.)

C.30 Regarding Rule I 6 of Wyoming's Rules of Practice and Procedure, PRBRC and EPI expressed the opinion that the Environmental Quality Council should not be permitted to charge an interested citizen for the cost of a hearing transcript. Such an expense, it is contended, effectively dissuades the average citizen from exercising his or her constitutional right to petition the government for redress of grievances.

Nothing in SMCRA (Title V) or the regulations (30 CFR Chapters G or L) would require the State to provide copies of hearing transcripts to interested citizens free of charge. The Secretary notes that States are required under 30 CFR 700.14 to make such transcripts available for public inspection, and the cost of a transcript could be covered under W.S. 35–11–902(e) and W.S. 35–11–437(f) regarding the award of costs.

C.31 EPI asserted that the changes in the narrative on public participation, which Wyoming agreed to in its January 15, 1980, memorandum must be formally incorporated into the State program through a detailed description, as required by 30 CFR 731.14(g)(14), and, where appropriate, through regulatory changes.

Wyoming agreed to send copies of proposed statutory and regulatory changes to all interested parties in response to previous public comments (Administrative Record WY–99 and WY–211). Wyoming promulgated rulemaking procedures in its Rules of Practice and Procedure. The Wyoming program provides all of the citizen access required by the Act in the key areas identified in the preamble at 44 FR 14965. The Secretary believes that Wyoming has adequately provided for public participation in the development and revision of the State regulations and the State program and that it is not necessary for the State to provide a detailed description or make regulatory changes.

C.32 EPI contended that Wyoming should be required to publish in the

State register, a notice of the receipt of a complete petition to designate land unsuitable, as required by 30 CFR 764.15(b)(2).

The Secretary finds that the publication of a notice of a petition in the offices of the county clerks of the counties in which the petition is concerned satisfies the Federal requirements of 30 CFR 764.15(b)(2), since the State does not have a State register and all other public notification requirements meet the Federal requirements.

C.33 It is asserted by EPI that, regarding 30 CFR 764.13(b) (designation of lands unsuitable for coal mining), Wyoming still has not provided adequate assurances that the requirement that a petitioner identify specific sources of supporting evidence on which allegations of fact rest are to apply only to the extent known and that it cannot serve as a basis for the rejection of a petition as incomplete. EPI also contended that XVIII 2d(4), requiring the identification of the criterion on which the proposed designation rests, is more burdensome on the petitioner than the Federal requirements.

As noted above in Finding 21.D of this notice, the Secretary finds that the criteria or criterion and supporting evidence to the criteria, would be limited to the information known to the petitioner.

C.34 EPI argued that Wyoming has not presented adequate justification that their enforcement personnel numbers are sufficient to carry out the projected work load under their State program, as required under 30 CFR 731.14(i) and (j).

Wyoming has resubmitted data which indicates a total program personnel capacity of 22.77 full-time employees. The Secretary found on the basis of this resubmitted data that the total program staffing needs as required by 30 CFR 731.14(e), (f), (i), and (j) are met (see Finding 30).

C.35 PRBRC expressed concern with Wyoming's definition of "adjacent area," which the State limits to one-half mile beyond the proposed permit boundaries. PRBRC commented that groundwater hydrology is unlikely to respect a presumptive limitation of one-half mile and contended that the definition is arbitrary and unjustified.

The Secretary has found Wyoming's definition of "adjacent area" in Rule I 2(3) to be consistent with the Federal definition in 30 CFR 701.5. See Finding 14.13, above. The presumptive limit provides some initial indication of the extent of information-gathering activities. The PRBRC is correct that it is unlikely that all groundwater effects will occur only within the one-half mile limit. However, the effects of mining on groundwater will often extend less than one-half mile (e.g., up gradient along the potentiometric surface). In addition, Wyoming has promulgated Rule II 3a(6)(k) to require hydrologic and geologic information for the adjacent and general areas sufficient to assess the probable hydrologic consequences. The Secretary has found (Findings 14.13 and 14.23) the promulgated rules consistent with the Federal requirements.

C.36 The PRBRC noted that Rule II 2a(1)(j)(ii) of the Wyoming resubmission requires a permit applicant to list all existing water wells, including all wells filed with the State Engineer. PRBRC suggested that the State Engineer's records may not be current, and that applicants should be required to undertake serious research into existing local water wells.

The cited rule requires submission of a list of "all existing water wells on the proposed permit area and adjacent area, including all wells filed with the State Engineer's office three miles or less from the proposed permit area." Thus, any wells that may be affected must be inventoried, regardless of whether they are listed in the State Engineer's records. The Secretary believes that the concerns of the PRBRC have been taken into account.

C.37 Referring to the same section of Wyoming's rules, PRBRC commented that surveys of premining water levels should be mandatory, rather than optional, as provided in the Wyoming resubmission. It is essential that a premining data base be established, the comment contended, in order to assess the cumulative effects of coal surface mining on groundwater hydrology.

Again, Rules II 3b(10) and (11) require adequate information to evaluate the hydrologic impacts of the proposed operations. Wyoming's Guideline No. 8 (hydrology), in Section IV A. 2, requires a description of the potentiometric surface which includes premining surveys of water levels wherever the proposed operations may affect groundwater. The surveys are, therefore, mandatory.

C.38 Concern was expressed by the PRBRC regarding the formula used by Wyoming for determining the importance of an alluvial valley floor to farming. PRBRC expressed the belief that this formula, which appears in Wyoming's analogue to 30 CFR 822.12, is difficult for the layman to understand, is capriciously based on ownership, and fails to consider the maximum productive potential of the alluvial valley floor.

The formula represented in Rule III 2d ($P=3.+0.0014x$) is an alternative measure of the significance of an alluvial valley floor and, as such, considers the maximum productive potential of an alluvial valley floor. The formula is used only on small farms, where the total agricultural production or its equivalent is 5000 animal units or less. On these small farms, the total agricultural units of production represent "x" in the formula. The "P" value represents the maximum number of animal units that could be affected by the removal of an alluvial valley floor by mining and still be considered insignificant. In those cases then where mining would adversely affect the productivity of a small farm (i.e., where the "P" value would be exceeded) mining would be prohibited.

The Federal regulation for determining "significance" (30 CFR 785.19(e)(2)) has been remanded by the district court (Opinion of February 26, 1980, at 51–52). Accordingly, there are no Federal minimum standards with which to compare Wyoming's specific test. The court found that the Federal regulations emasculate the statutory exemption of Section 510(b)(5)(A) of SMCRA, specifically, the "small acreage" exemption, and directed the Secretary to allow mining on an alluvial valley floor that results in a negligible impact on the farm's production. The State program allows mining on alluvial valley floors where the above formula shows a negligible impact consistent with Section 510(b)(5)(A) of SMCRA.

The Wyoming provisions for alluvial valley floors are addressed in Findings 12.4 and 13.116. The Secretary has found these provisions consistent with the Federal requirements.

C.39 The PRBRC asserted that a provision should be added to Wyoming's rules and regulations requiring a permit application to include specific plans for the entire coal surface mining facility, including haul roads, loadout facilities, and waste and refuse areas. PRBRC contended that the State appears to have taken the position that all facilities involved in the mining operation must be permitted, but not necessarily at the same time. Requiring an applicant to present all necessary facilities at once would help to eliminate poorly-planned development and its associated disruptions.

Wyoming has defined the term "permit area" to mean the entire area of land and water affected during the "entire life of the operation" (Rule I 2(56)). Thus, all operations included within the defined term "surface coal mining operation" (W.S. 35–11–

103(e)(xx)) are included within the permit area.

C.40 The PRBRC is concerned that mining operations may be permitted without review of the necessary facilities and cites the Ash Creek mine in Wyoming as an example. According to PRBRC, this mine has been inactive for one and one-half years because it was permitted without any transportation facilities.

W.S. 35–11–405(d) requires termination of a permit if permitted operations have not been initiated within 3 years (unless good cause exists). Rule IV 3s requires a complete plan for reclamation if the operation is ceased for more than 30 days. While Rule IV 3a(1)(c) allows additional time for backfilling and grading, additional time is permissible only if it is demonstrated to be necessary on the basis of mining conditions. Thus, while it is not possible to completely ensure that all mining operations continue to completion, the type of problem described by the commenter would have to be resolved to allow reclamation. The Secretary does not believe Wyoming needs to place an additional requirement in its program.

C.41 The Belle Fourche Pipeline Company (BFPC) contended that Wyoming's resubmission does not adequately insulate lawful surface users, such as oil, gas and water wells, oil, gas and coal slurry pipelines, and various other public interest users from possible damage or expense caused by surface mining operations.

In particular, BFPC contends the State program should define "surface owner" to include one with interests such as easements or tenancies in the surface. The Wyoming rules do require that "all operations be conducted so as to minimize disruption of any services provided by facilities located on, under or through the permit area," unless otherwise approved (Rule IV 3k). The Wyoming statutes also provide for surface owner protection (W.S. 35–11–416). W.S. 35–11–406(b)(xiii) requires the operator to avoid endangering property. Rule II 3a(6)(n) requires a complete application to show the location of man-made features such as pipelines, water, oil or gas wells, and public or private rights-of-way or easements.

Neither the Federal regulations nor the Wyoming program defines "surface owner." Although the commenter cited 30 CFR 742.13, that section of the Federal program pertains to Federal lessee protection on Federal lands only and is not required of the State for non-Federal lands.

The Secretary believes that the concerns of the commenter appear properly addressed by the State program and other applicable laws, and that damage to the property interests described by the commmenter will be avoided or compensated for wherever appropriate.

C.42 The Pittson Coal Company disagrees with Finding 14.18 that W.S. 35–11–406(b)(xi) is similar to Section 510(b)(6) of SMCRA. Although W.S. 35–11–406(b)(xi) is different from the Federal statute, it is not inconsistent with Federal program requirements.

Federal law requires consent of the surface owner to the extraction of coal by surface mining methods only if the owner of the mineral estate does not already have that right by conveyance or operation of State law. Wyoming requires consent of the surface owner to the extraction of coal by surface methods *and* that a mining and reclamation plan be approved before the State may issue a permit, if the landowner meets the definition of "resident or agricultural landowner" in W.S. 35–11–406(xi)(A) and (B). In this case, the Wyoming statutes have included a provision that is additional to the Federal requirements.

Section 505(b) of SMCRA states that any State law which provides for more stringent land use and environmental controls and regulation of surface coal mining and reclamation operations than do the provisions of SMCRA shall not be construed to be inconsistent with the Act. The Wyoming requirement that "resident or agricultural landowners" consent to mining operations on their land is a more stringent land use and environmental control. The Secretary, therefore, finds that W.S. 35–11–406(b)(xi)(A) and (B) are not inconsistent with the Federal requirements.

C.43 The Pittson Coal Company further commented that W.S. 35–11–406(b)(xi), which allows certain landowners to veto mining and reclamation plans, would effectively result in depriving the mineral estate owner of his constitutional protection against a taking of his property without just compensation or due process of law.

The statutes of the Environmental Quality Act that the commenter is questioning became effective in Wyoming on July 1, 1973. The issue raised by the commenter is not a direct result of the passage of SMCRA or of the State program review. The Secretary believes that under Section 505(a) of SMCRA the Wyoming provisions are not inconsistent with the provisions of the Federal Act.

C.44 The Pittson Coal Company also requests clarification on parts of W.S. 35–11–406(b)(xi) and (xii). The company questions (a) whether or not W.S. 35–11–406(b)(xi) is subject in all respects to W.S. 35–11–406(b)(xii), (b) whether or not W.S. 35–11–406(b)(xii)(c) imposes a condition that may override new subsection (E), and (c) whether or not subsection (c) also imposes a condition that may override the legal authority which the mineral estate owner has under the conveyance he holds.

The Secretary suggests that the commenter contact the Wyoming Department of Environmental Quality to obtain clarification on the exact function of W.S. 35–11–406. This comment is not pertinent to the Secretary's approval of Wyoming's program. See comment 43.

C.45 Three Wyoming coal operators, Kerr McGee, Sunedco, and Amax, have asked that the Secretary disapprove portions of the Wyoming program containing provisions remanded or suspended in the district court decisions.

The May 16, 1980, memorandum order *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144) required the Secretary to affirmatively disapprove those segments of a State program that incorporate suspended or remanded regulations. On August 15, 1980, the court stayed its decision to allow the Secretary, upon the voluntary request of a State, to approve a State program which incorporates suspended or remanded regulations. The court also clarified that its May 16 memorandum did not affect the validity of provisions in a State program based on State law adopted prior to the SMCRA or provisions adopted by rulemaking proceedings conducted subsequent to the court's ruling. A State may independently adopt a regulation that the court has ruled the Secretary is without power to require.

In a letter dated August 5, 1980 (Administrative Record No. WY–220), the Governor of Wyoming voluntarily requested that the Secretary not disapprove any of the State's regulations on the basis of the decision in *In re: Permanent Surface Mining Regulation Litigation*. Therefore, pursuant to the stay order, the Secretary will not disapprove any of Wyoming's regulations on the basis that they are counterparts to remanded or suspended Federal regulations.

C.46 The Amax Coal Company states that Section 4 of the 1980 amendment to the Wyoming Environmental Quality Act limits the addition of conditions to the final program approval. Additionally, the commenter states that the use of any such conditions could jeopardize the triggering to the permit application process.

The Secretary disagrees with the commenter's analysis of Section 4 of the 1980 amendment to the Wyoming Environmental Quality Act concerning "final" approval of the State program. Governor Herschler stated, in response to OSM comments, that "any approval, conditional or otherwise, would be the final, appealable decision by the Secretary. Under the recently promulgated statutes governing surface coal mining operations, a *final* decision under Pub. L. 95–87 makes the new law on submitting permit applications effective." (Administrative Record No. WY–220). The Secretary has relied upon this interpretation in conditionally approving the Wyoming program.

C.47 Sunedco comments specifically on the State's adoption of the remanded Federal effluent standards that apply to runoff from reclaimed lands released as point source discharges from required sedimentation ponds. The company believes the State's use of these effluent standards for runoff from reclaimed lands is unjustified in light of the lack of current research data and in light of the district court opinion, *In re: Permanent Surface Mining Regulation Litigation* (May 16, 1980, Opinion at pp. 19–20).

Wyoming has, and will continue to use, these effluent limits as long as point source discharges from sediment ponds exist. This procedure is based on W.S. 35–11–301. However, Wyoming has promulgated Rule IV 3g(1), which will effectively make the effluent limitation applicable until baseline water quality is achieved in runoff from revegetated areas. The Secretary is not required to disapprove this State provision (*In re: Permanent surface Mining Reclamation Litigation, Civil Action No. 79–1144, August 15, 1980 (Partial Stay of May 16, 1980 Opinion)).*

F. Secretary's Decision

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with State regulatory authority personnel to duscuss informally how the Act should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them. Alternative State regulatory options, and the "State window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the States to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the State program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each State program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to insure that communication between him and the States remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a State after the close of the public comment period on its program and has been a vital part of the program review process (see 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a State program. Under the Secretary's regulations, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 502(b), and 503(a)(7).

The Act expressly gives the Secretary only two options—to approve or dissapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a State must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through an attorney general's opinion, revised regulations, policy statements, and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow

meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist States in achieving compliance with SMCRA, and not to excuse them from that responsibility.

Conditional Approval

The Wyoming program is in compliance with and has fulfilled all the requirements of SMCRA and in all other respects meets the criteria for approval, except for those deficiencies listed below.

1. Wyoming has failed to promulgate a definition of "complete application" for purposes of its determination in the permit process that all parts of the application are acceptable and the application is ripe for public notice, public comment and final decision. This definition is important because of its relation to the thoroughness and efficiency of the State review. The necessity of adopting such a definition results from procedural aspects of Wyoming's permit system which the Secretary did not impose. Wyoming's failure to adopt the definition was an oversight on its part. While the absence of this definition should be remedied, it is not so major as to require disapproval because the permit process can proceed for 270 days after program approval without the definition. The State has agreed to conduct rulemaking to promulgate such a rule; it would prefer ordinary but will undertake emergency rulemaking to make the rule effective immediately, if necessary.

2. Wyoming Rule I 2(98) defines toxic materials as those having "lethal" effects, while the Federal rule (30 CFR 701.5) uses the test of "detrimental" effects. This definition is important because it forms the basis for special treatment of various materials uncovered during mining. If the material is toxic then it must be kept away from water and ultimately buried rather than left on or near the surface. If the test is "lethal," there is too great a risk to fish and wildlife. While the difference between the tests merits correction, it is not so major as to require disapproval of the program. In most circumstances the results would be the same and the borderline cases in which the definition would make a difference are not likely to occur before the change is made. The State has agreed to promulgate by ordinary rulemaking an amendment to the Wyoming rule which would make it consistent with the Federal rule.

3. The existing Wyoming rules are inconsistent with the Federal regulations allowing intervention and the awarding of attorneys' fees in administrative proceedings. Both of these Federal regulations implement the strong public participation requirements of the Act. Attorneys' fees are specifically provided for in the Act in both administrative and judicial proceedings. However, this deficiency does not require disapproval; it is very unlikely that any circumstances will arise, before the State makes the correction, that will lead to inconsistent results. The State has agreed to undertake an ordinary rulemaking to promulgate an amendment to the Wyoming rule which would make it consistent with the Federal rule and, prior to final promulgation, to the extent possible, to interpret its existing administrative intervention rules to be consistent with the broad right of intervention in the Federal regulations.

4. Wyoming must require permit applicants to compy with certain portions of its permit application guidelines in order for Wyoming's program to be consistent with portions of the Federal Act and regulations. Without the authority to require compliance with its guidelines, the State could not legally insist on certain permit application information necessary, for instance, to identify fully alluvial valley floors and assure the protection of their hydrological function. The State has failed to demonstrate adequately that it may require compliance with its guidelines. While this deficiency should be corrected, it can be corrected by emergency rulemaking prior to the filing of permit applications and the State has agreed to exercise its discretion to obtain the information in the meantime if the need should arise. Wyoming has also agreed to promulgate a regulation by emergency rulemaking that would demonstrate its authority to require the necessary information.

5. The Wyoming provision for release of bonds at the conclusion of reclamation does not require that the revegetation measurements be made during the last two years of the bond period. This is important because revegetation can sometimes be successful immediately after fertilizing and watering but fail several years later when unaided. Thus, if success were measured in the early rather than last two years, bonds might be released despite revegetation failure. While this should be corrected, it is not so major a deficiency as to require disapproval. There is more than ample time to make the adjustment before any revegetation measurement or bond releases occur. The State has agreed to undertake an ordinary rulemaking to make its rule consistent with the Federal requirement that successful revegetation be measured during the two years immediately preceding bond release.

6. Wyoming has failed to require that, prior to approval of a permit, the applicant demonstrate that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid. This is necessary to assure that the applicant has paid the tonnage fees on mined coal to the Abandoned Mine Reclamation Fund.

7. Wyoming has no provision governing judicial granting of temporary relief in accordance with Section 526(c) of SMCRA. Title 30 CFR 732.15(b)(15) provides that a State program may be approved only if it "[p]rovides for administrative and judicial review of State program actions, in accordance with sections 525 and 526 of the Act and subchapter L of this chapter." This omission in the State program may be corrected through rulemaking or through a demonstration that applicable State law is in accordance with Sections 525 and 526 of SMCRA.

Given the nature of these deficiencies and their magnitude in relation to all the provisions of the Wyoming program, the Secretary has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Wyoming program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Wyoming has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Wyoming has agreed, by letter dated September 15, 1980, to correct regulation deficiencies 1, 2, 3, and 5, 6, and 7 within 4 months and deficiency 4 within 30 days.

Accordingly, the Secretary is conditionally approving the Wyoming program. This approval shall terminate

if the seven deficiencies identified are not corrected by the above times.

This approval is effective November 26, 1980. Beginning on that date, the Wyoming Department of Environmental Quality shall be deemed the regulatory authority in Wyoming and all surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Wyoming shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Wyoming the permanent regulatory program consists of the State program approved by the Secretary.

On Federal lands, the permanent regulatory program consists of the Federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740–745. As discussed above under "Introduction," consideration of a Federal/State cooperative agreement for the Federal lands program is the subject of a separate rulemaking.

The Secretary's approval of the Wyoming program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Wyoming may submit a State reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mine reclamation will be reviewed by the Secretary.

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.

The Secretary has determined that this document is not a significant rule under Executive Order 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval.

Dated: November 20, 1980.

Joan M. **Davenport,**

Assistant Secretary of the Interior.

A new Part, 30 CFR Part 950, is adopted to read as follows:

PART 950—WYOMING

Sec.

950.1 Scope.

950.10 State program approval.

950.11 Conditions of State program approval.

Authority: Pub. L. 95–87, Section 503 (30 U.S.C. 1253).

§ 950.1 Scope.

This Part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 950.10 State program approval.

The Wyoming State program, as submitted on August 15, 1979, and resubmitted on May 30, 1980, is approved, effective November 26, 1980. Copies of the approved program are available at:

Wyoming Department of Environmental Quality,
Land Quality Division,
Hathaway Building,
Cheyenne, Wyoming 82002.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 30 East Grinnell Street, Sheridan, Wyoming 82801.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 933 Main Street, Lander, Wyoming 82520.

Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202; telephone: (303) 837–5421.

Office of Surface Mining, Department of the Interior, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

§ 950.11 Terms and conditions of State program approval.

The approval of the State program will terminate unless the following conditions are fulfilled by the dates indicated:

(a) On or before four months after November 26, 1980, Wyoming must assure the Secretary that it is implementing a definition of "complete application" for purposes of W.S. 35–11–406, which is consistent with 30 CFR 770.5.

(b) On or before four months after November 26, 1980, Wyoming must promulgate an amendment to its rule defining toxic materials, to require only a showing of "deterimental" effects, or make other changes in its program to achieve the same result.

(c) On or before four months after November 26, 1980, Wyoming must establish requirements which are consistent with the Federal attorneys' fees and intervention regulation in 43 CFR Part 4.

(d) On or before 30 days after November 26, 1980, Wyoming must make its guidelines as enforceable as its rules.

(e) On or before four months after November 26, 1980, Wyoming must require revegetation productivity measurements in the *last* two consecutive years of the responsibility period, consistent with 30 CFR 816.116(b)(1)(ii).

(f) On or before four months after November 26, 1980, Wyoming must require that applicants for a permit demonstrate that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid.

(g) On or before four months after November 26, 1980, Wyoming must demonstrate that its law and practice is in accordance with Section 526(c) of SMCRA with respect to its judicial grant of temporary relief, or, if it cannot so demonstrate, change its law or regulations to make them in accordance with Section 526(c).

[FR Doc. 80-36780 Filed 11-25-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1680-7]

Approval and Promulgation of Implementation Plans, Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action revises the Federally promulgated Ohio State Implementation Plan for sulfur dioxide as it applies to the Ohio Edison North Avenue Plant in Mahoning County. This emission limitation revision is based upon ambient monitoring and emissions data provided by the Ohio Environmental Protection Agency and submitted to USEPA by the Ohio Edison Company. The ambient monitoring and emissions data demonstrate that the revised emission limitation will ensure the attainment and maintenance of the National Ambient Air Quality Standards.

EFFECTIVE DATE: December 26, 1980.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 886–6039.

SUPPLEMENTARY INFORMATION: On August 27, 1976 (41 FR 36324), the USEPA promulgated regulations establishing a State Implementation Plan (SIP) for the control of sulfur dioxide (SO_2) in Ohio. This final rule will amend that SIP as is applies to the Ohio Edison North Avenue Plant in Mahoning County.

Since the current regulations were promulgated, there has been a substantial reduction in the SO_2 emissions in the Mahoning River Valley (Mahoning and Trumbull Counties) with a significant improvement in the air quality. Consequently, on October 9, 1979 (44 FR 57929), the USEPA redesignated Mahoning and Trumbull Counties as attainment areas for sulfur dioxide.

On March 18, 1980, the Ohio Edison Company requested a revision to the sulfur dioxide plan for its North Avenue steam heating plant in Mahoning County, Ohio. Since the National Ambient Air Quality Standards are currently being protected, Ohio Edison requested a limit that reflects status quo emissions. This request was supported by ambient monitoring and emissions data for the area which were provided by the Ohio Environmental Protection Agency. The data, which compares emissions with air quality data in the years 1974 and 1978, indicates that the reduction in SO_2 ground-level ambient air quality concentrations is commensurate with the reduction in SO_2 emissions. Therefore, the current attainment status of the area will not be threatened by regulating the North Avenue Plant at status quo emissions. Further, the data demonstrates that the 24 hour and annual primary standards are more constraining than the 3 hour secondary standard. Thus, an emission limitation designed to protect the primary standards will also protect the secondary standard.

Section 163 of the Clean Air Act contains specific allowable deterioration increments for increases in ambient sulfur dioxide concentrations in attainment areas. Since the existing SIP is based on a rollback analysis, a screening based on rollback techniques was made to approximate PSD increment consumption. This analysis indicates that the SIP revision will not consume all of the available PSD increment. As discussed below, a modeling analysis was not performed because of source-terrain interaction problems.

On July 25, 1980, USEPA proposed approval of this revision (45 FR 49599). A 30 day public comment period was provided. During the public comment period, one comment was received which addressed several issues. Each issue raised in this comment is addressed below.

1. Coal Consumption

The commentor was concerned about the USEPA's claim that the proposed limit reflects status quo emissions. The commentor argued that to maintain the same SO_2 emission rate, the increase in emission limitation must be offset by a reduction in the amount of coal consumed. The commentor claimed that the only effective way to ensure a reduction in the quantity of fuel burned is by operation below capacity. The commentor maintained that a reduction through a curtailment in the hours of operation is not acceptable, since there could still be periods with the source emitting above current emission levels (e.g., operation at full load using 4.75 lbs/MMBTU coal). Thus, to ensure the same lbs/hr emission level, the increase in the lbs/MMBTU limit should be balanced by a decrease in the MMBTU/hr value.

The USEPA appreciates the commentor's concern but wishes to point out that although the proposed revision constitutes a paper relaxation in SO_2 emissions, it does not represent a change in actual emissions. In other words, the revision seeks to change the allowable emission level to reflect the actual emission level. This can be seen by examining two factors: fuel characteristics and fuel consumption.

The proposed emission limitation is based on monthly average fuel data from 1977, 1978, and 1979. The chosen limit (i.e., 4.75 lbs/MMBTU) reflects the typical percent sulfur and BTU/lb values of the coal burned over this three-year period. Thus, the source is being regulated at their typical status quo fuel characteristics. (Note, even though the limit was based on monthly averages, the limit was evaluated and will be enforced as a 24-hour average value.)

Although the revised regulation does not address coal consumption, the USEPA's analysis of SO_2 emissions and monitoring data considered the maximum annual coal usage in recent years. Recent coal usage figures were used since no increase in consumption is anticipated as a result of this revision. This analysis demonstrated that the NAAQS will be protected at the proposed limit even with the North Avenue Plant burning its maximum actual amount of coal.

A fuel monitoring requirement would serve little purpose in light of the expected maintenance of current coal consumption. Thus, the USEPA feels that it is unnecessary to apply strict monitoring requirements on the amount of coal burned.

2. Interim Enforcement Policy

The commentor questioned how the USEPA's Enforcement Policy for Sulfur Dioxide Emission Limitations in Ohio (published February 11, 1980, 45 FR 9101) affects this emission limitation.

The means of determining compliance with emission limits under the SIP is still a stack test conducted in accordance with 40 CFR Part 60, Appendix A, Method 6. The purpose of the enforcement policy is to focus resources on those sources presenting the greatest environmental threat. The policy represents a screening process for prioritizing cases in need of Federal enforcement action. This enforcement policy is not intended to modify the SO_2 emission limits applicable to any source. Thus, the enforceable emission limit for the North Avenue Plant is 4.75 lbs/MMBTU.

3. Use of Rollback Techniques

The commentor objected to the use of rollback techniques in establishing emission limitations since adequate modeling techniques are available to account for the source-terrain interaction problems in this area.

USEPA disagrees that appropriate reference modeling techniques exist for this area. In developing the original Federal SO_2 SIP for Ohio, an attempt was made to apply the CDM model to Youngstown. An acceptable calibration, however, could not be achieved.

Consequently since no other reference models were determined to be appropriate, dispersion modeling could not be used to set emission limitations in the Youngstown area. In lieu of appropriate modeling methodology, USEPA guidelines permit the use of rollback techniques. Thus, the application of rollback for the North Avenue Plant is approvable, since appropriate reference modeling methodology is not available or applicable.

Based upon the Agency's review of the technical documentation submitted, USEPA has determined that approval of this SIP revision will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards. Therefore, USEPA is revising the emission limitation of the Ohio Edison North Avenue Plant.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improved Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not

subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sec. 110, Clean Air Act as amended (42 U.S.C. 7410))

Dated: November 18, 1980.

Douglas Costle,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart KK—Ohio

1. Section 52.1881 is amended by revising paragraph (b)(40)(iv) as follows:

§ 52.1881 Control Strategy: Sulfur Oxides (sulfur dioxide).

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio

* * * * *

(40) in Mahoning County

* * * * *

(iv) The Ohio Edison Company or any subsequent owner or operator of the North Avenue Steam Plant located in Mahoning County shall not cause or permit the emission of sulfur dioxide from any stack at the North Avenue Steam Plant in excess of 4.75 pounds of sulfur dioxide per million BTU of actual heat input.

* * * * *

[FR Doc. 80-36895 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PH-FRL 1683-1; PP OF2277/R276]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 1-Naphthaleneacetic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the plant growth regulator 1-naphthaleneacetic acid to permit application of either 1-naphthaleneacetic acid or the ethyl ester of 1-naphthaleneacetic acid in or on the raw agricultural commodities apples and pears at 1.0 ppm and olives at 0.1 ppm. Tolerances have previously been established for 1-naphthaleneacetic acid on apples and pears at 1.0 ppm and olives at 0.1 ppm. This regulation was requested by Union Carbide Co. This regulation will permit the use of the ethyl ester of 1-naphthaleneacetic acid in or on apples, pears, and olives.

EFFECTIVE DATE: Effectice on November 26, 1980.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–359, 401 M St. SW., Washington, D.C. 20460 (202–755–2196).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the Federal Register of December 4, 1979 (44 FR 69726) that Union Carbide Co., Inc., 300 Brookside Avenue, Amber, PA 19002, had filed a pesticide petition (OF2277) with the EPA. The petition proposed the establishment of tolerances for residues of the plant regulator 1-naphthaleneacetic acid in or on the raw agricultural commodities apples and pears at 1.0 ppm, and olives at 0.1 ppm resulting from the application of 1-naphthaleneacetic acid or the ethyl ester of 1-naphthaleneacetic acid.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data evaluated included an acute oral LD_{50} rat (1–NAA) with a LD_{50} of 1 milligram (mg)/kilogram(kg); an I.P. LD_{50} (rat) (1–NAA) with a LD_{50} of 100 mg/kg; a 3-generation mouse (methyl ester of 1–NAA) with a no-observable-effect-level (NOEL) of 600 ppm (highest dose); a 90-day rat feeding study (1–NAA) with a NOEL of 100 mg/kg; a 90-day dog feeding (1–NAA) with a NOEL of 10 mg/kg; a 2-year rat feeding study (methyl ester of 1–NAA) with a NOEL of 2,500 ppm; several mutagenicity tests including an Ames test and a dominant lethal assay (all negative); a teratology study (rat) (technical 1–NAA) with a NOEL of 50 mg/kg/day; an eye irritation study (rabbits) (technical ethyl ester of NAA)—washed and unwashed eyes scored 0.0 on the Draize Scale; an acute inhalation LC_{50} study (rats) (technical ethyl ester of NAA) with a LC_{50} of greater than 206.5 mg/liter(1); an acute dermal LD_{50} study (rabbits) (technical ester of NAA) with a LD_{50} greater than 5,000 mg/kg; an acute oral LD_{50} study (rats) (technical ethyl ester of NAA) with a LD_{50} of 3,580 mg/kg; an acute dermal LD_{50} study (rabbits) (formulation) with a LD_{50} greater than 5,000 mg/kg; an eye irritation study (rabbits) (formulation) showing corneal opacity, iritis, and conjunctivitis in washed and unwashed eyes at day 7; an acute inhalation LC_{50} study (rats) (formulation) with a LC_{50} greater than 217.1 mg/l; an acute oral LD_{50} study (rats) (formulation) with a LD_{50} of 5,585 mg/kg; an oncogenicity study (mice) (1–NAA) which was negative at 215 mg/kg; a 90-day feeding (rats) (technical NAA) with a NOEL of 150 mg/kg/day; and a 6-month dog feeding study (NAA technical) which did not show a NOEL.

Data desirable but lacking are a repeat of the 6-month dog study and a teratology study on a second species. These studies are not necessary for this action because the current tolerance is being amended by the inclusion of an additional formulation, the ethyl ester, of 1-naphthaleneacetic acid in the tolerance regulation and new tolerances are not being proposed. The 6-month dog study will be necessary for any new or additional tolerances.

Tolerances have previously been established for 1-naphthaleneacetic acid on apples, pears, and quinces at 1.0 ppm and olives at 0.1 ppm. A tolerance of 0.05 has been established on pineapples resulting from the application of the sodium salt. This regulation permits use of the ethyl ester of 1-naphthaleneacetic acid on apples, pears, and olives. The published tolerances utilize 14.18 percent of the maximum permissible daily intake (MPI). Because no new tolerances are being added, the (MPI) does not change with this action. The allowable daily intake (ADI) of 0.005 mg/kg/day is based on the 90-day feeding study with a 2,000-fold safety factor.

There are no regulatory actions pending against the continued registration of this chemical, and the nature of the residue is adequately understood. An adequate analytical method (liquid chromatography and ultraviolet absorption) is available for enforcement. Since no residues are expected in feed items, it is concluded that no residues are likely to occur in eggs, milk, and meat of livestock. It is concluded that the tolerances will protect the public health. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this regulation may, on or before December 26, 1980, file written objections with the Hearing Clerk, EPA, Rm. M–3708 (A–110), 401 M St. SW., Washington, D.C. 20460. Such objections should be

submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: November 26, 1980.

(Sec. 408(e) 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: November 19, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by revising the introductory text under § 180.155 to read as follows:

§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.

Tolerances are established for residues of the plant growth regulator 1-naphthaleneacetic acid in or on the raw agricultural commodities applies and pears at 1.0 ppm and olives at 0.1 ppm resulting from the application of 1-naphthaleneacetic acid or the ethyl ester of 1-naphthaleneacetic acid.

* * * * *

[FR Doc. 80-36881 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

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40 CFR Part 180

[PP OF2305/R286; PH-FRL 1683-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Nuclear-Polyhedrosis Virus of Heliothis Zea

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the microbial insecticide *Nuclear Polyhedrosis Virus* of *Heliothis zea* in or on all growing crops attacked by larvae of *Heliothis zea* or *Heliothis virescens*, including: beans, corn, lettuce, okra, pepper, sorghum, soybeans, tobacco, and tomatoes. The regulation was requested by Sandoz, Inc. This regulation eliminates the need to establish a maximum permissible level for residues of *Nuclear Polyhedrosis Virus* of *Heliothis zea* of *Heliothis virescens.*

EFFECTIVE DATE: Effective on November 26, 1980.

ADDRESSES: Written objections may be filed with the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-341, 401 M St., SW., Washington, D.C. 20460, (202-755-1150).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of August 5, 1980 (45 FR 51854) that Sandoz, Inc., 480 Camino Del Rio South, San Diego, CA 92108, had filed a pesticide petition (PP OF2305) with EPA. This petition proposed an extension of an exemption from the requirement of tolerance for residues of the *Nuclear Polythedrosis Virus* of *Heliothis zea* or *Heliothis virescens* for use in or on all growing crops including: beans, corn, lettuce, okra, pepper, sorghum, soybeans, tobacco, and tomatoes. No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted or referenced in this petition, as well as related petitions (3F1304, 8F0697, and 8G0697) and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemption from requirement of a tolerance included:

(a) Oral, Subcutaneous and Respiratory Exposure of Rhesus Monkeys to *Heliothis Nuclear Polyhedrosis Virus* (H/NPV) (26 weeks). No adverse effects.

(b) Two-year Mouse Chronic Feeding Study. No carcinogenic potential.

(c) Health monitoring of personnel associated with virus production. No health hazards found; negative clinical and serological data, lack of hypersensitivity, or x-ray examination.

(d) Teratology study in rats. No teratogenesis observed.

(e) Ninety-day studies in rats and dogs exposed to H/NPV by the oral and inhalation routes, and by subcutaneous injection. No adverse effects.

(f) Tissue culture studies. Primary African green monkey kidney cells, human embryo kidney cells, Hela-cells, and WI-38 cells were exposed to H/NPV. No cytopathic effects noted.

(g) Human feeding studies. No adverse effects following feeding H/NPV for a 5-day period.

(h) Toxicity-pathogenicity to mice and guinea pigs exposed to H/NPV by feeding. Free virions were also administered to guinea pigs by the Interperitional route and to mice intravenously and intracerebrally (60-90-day studies). No adverse effects.

(i) Acute rat feeding studies with H/NPV. Feces, urine, blood and stomach content were examined frequently following exposure. No adverse effects.

The *Heliothis* NPV only infects caterpillars of the genus *Heliothis*. Six species of *Heliothis* are known to be susceptible to the H/NPV: *H. Virescens, H. armingera, H. Phoxiphaga, H. punctigera,* and *H. Obtectus,* and *H. zea.*

The NPV of *Heliothis* sp. is the first NPV insecticide to be granted an exemption from the requirement of a tolerance, and consequently was subjected to safety testing to determine the human risk potential in accordance with the testing guidelines for conventional pesticides. The agency will shortly issue proposed guidelines for registering "biorational" pesticides in the United States. These new guidelines will, in most cases, reduce the testing requirements for biorational pesticides in accordance with a tier system of testing. A biorational pesticide which yields a negative toxicity potential and a negative infectivity potential in the first tier of testing, which includes acute oral infectivity, acute dermal infectivity, acute inhalation infectivity, acute intravenous infectivity, primary dermal irritation, hypersensitivity, and cellular immune response studies and tissue culture tests, will be eligible for registration without further testing.

No effect could be detected as a result of administration of NPV except a greater frequency of hyperplasia of lymph nodes in the treated animals (2/6 controls and 13/15 treated animals). Hyperplasia of the spleen was also observed somewhat more frequently in treated animals (2/4 control; 10/13 treated). Lymphoid tissue was analyzed in a bioassay (neonatal larva test) for the presence of NPV but isolation of infectious inclusion bodies did not occur.

No new toxicity data were submitted with the present application. Sandoz, Inc. states that toxicity data presented in 3F1304, 8F0697, and 8G0697 which resulted in the granting of a permanent exemption from tolerance for the NPV of *Heliothis zea* for bollworm and budworm on cotton would be adequate to allow expansion of the tolerance exemption to include all growing crops attacked by larvae of *Heliothis zea* or

Heliothis virescens. Crops included in the proposed expanded tolerance exemption were: beans, corn, lettuce, okra, peppers, sorghum, soybeans, tobacco, and tomatoes.

The toxicity studies previously submitted with 3F1304, 8F0697, and 8G0697, demonstrate the lack of human hazard associated with expansion of the exemption from the requirement of a tolerance for *Heliothis zea* NPV to all growing crops attacked by larvae of *Heliothis zea* of *Heliothis virescens*, including beans, corn, lettuce, okra, pepper, sorghum, soybeans, tobacco, and tomatoes.

Any person adversely affected by this regulation may, on or before December 26, 1980, file written objections with the Hearing Clerk, EPA, 401 M St. SW., Rm. 3708 (A–110), Washington, D.C. 20460. Such objections should be permitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issue for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: November 26, 1980.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: November 19, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart D of 40 CFR Part 180 is amended by revising paragraph (c) under § 180.1027 to read as follows:

§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.

* * * * *

(c) Exemptions from the requirement of a tolerance are established for the residues of the microbial insecticide *nuclear polyhedrosis virus* of *Heliothis zea*, as specified in paragraphs (a) and (b) of this section, in or on all raw agricultural commodities including: corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, tobacco, and tomatoes.

[FR Doc. 80–36880 Filed 11–25–80; 8:45 am]

BILLING CODE 6560–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5777

[I–3823]

Idaho; Withdrawal of Snake River Birds of Prey Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 64,865 acres from operation of the mining laws, but not the mineral leasing laws, and approximately 417,775 acres from operation of the agricultural land laws and State selection statutes, to protect the Snake River Birds of Prey Area in Ada, Canyon, Elmore and Owyhee Counties, Idaho.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION CONTACT:

Dave Almand, Division of Wildlife and Endangered Species, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–6792; or

Guy Baier, Chief, Division of Resources, Idaho State Office, Bureau of Land Management, Room 398, Federal Bldg., 550 West Fort Street, Box 042, Boise, Idaho 83724, (208) 384–1484.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is hereby ordered as follows:

1. Subject to valid existing rights, the essential nesting habitat of the Snake River Birds of Prey Area, as depicted on a map entitled "Snake River Birds of Prey National Conservation Area" dated March 12, 1980, comprising approximately 64,865 acres in Ada, Canyon, Elmore, and Owyhee Counties, Idaho, is withdrawn from location or entry under the Mining Law of 1872, as amended and supplemented (30 U.S.C. 22 et seq.).

2. Subject to valid existing rights, the remaining portions of the Snake River Birds of Prey Area, as depicted on a map entitled "Snake River Birds of Prey National Conservation Area" dated March 12, 1980, comprising approximately 417,775 acres in Ada, Canyon, Elmore, and Owyhee Counties, Idaho, are withdrawn from entry, application, or selection under the Desert Land Act (43 U.S.C. 351 et seq.), the Carey Act (43 U.S.C. 641), the State of Idaho Admissions Act (26 Stat. 215), Revised Statute section 2775, as amended (43 U.S.C. 851), and Revised Statute section 2776 (43 U.S.C. 852).

3. The map referred to in the preceding paragraphs is on file with the aforementioned Bureau of Land Management, Division of Wildlife and Endangered Species, Washington, D.C. 20240; the Bureau of Land Management Idaho State Office, Division of Resources, Boise, Idaho 83724; and with the Bureau of Land Management, Boise District Office, 230 Collins Road, Boise, Idaho 83702.

4. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Cecil D. Andrus,

Secretary of the Interior.

November 21, 1980.

[FR Doc. 80–36860 Filed 11–25–80; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL MARITIME COMMISSION

46 CFR Part 500

Statements of Employment and Financial Interest; Supplementary Statements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations to change the filing date for supplementary statements of employment and financial interest from December 31 of each year to May 15 of the year following the reporting period. Experience has shown that the present deadline of December 31 of each year does not allow enough time for those affected employees to compile last minute data, thus causing delays in the filings. This new date will allow the employees more time to put together this last minute data and thus should obviate the necessity of filing additional statements.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION CONTACT:

Thomas Panebianco, Ethics Counselor, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission's regulations prescribing procedures for statements of employment and financial interests establish at 46 CFR 500.735–33 that annual supplementary statements shall be filed as of December 31 of each year. It has been the experience of the Commission that this filing deadline, which falls on the last day of the reporting period (*i.e.*, the calendar year), has caused a hardship on some employees resulting in inevitable delays in filing the supplementary statements. Some employees require additional time following the reporting period to accumulate the necessary data reflecting their financial holdings as of the final day of the reporting period. Also, employees who file their statements a few weeks prior to December 31, occasionally have to file additional statements for the same period to reflect employment or financial interest changes in the last days of the calendar year. Thus, it is apparent that a filing date some time after the end of the reporting period would be sensible.

The May 15 date has been chosen to coincide with the filing date of Standard Form 278, which is required of certain agency employees under the Ethics in Government Act of 1978 (5 U.S.C. 201). It is the Commission's opinion that identical filing dates will be more convenient for those Commission employees who must file both statements every year.

Therefore, it is ordered that 46 CFR 500.735–33 is amended as follows:

§ 500.735–33 Supplementary Statements.

Changes in, or additions to, employment and financial interests shall be reported in a Supplementary Statement to be filed no later than May 15 of each year, the reporting period being the previous calendar year, except that Special Government Employees shall submit such Supplementary Statements no later than 15 calendar days following any change in, or addition to, their employment and financial interests. If no changes or additions occur, a negative report must nevertheless be filed as of May 15 of each year.

By the Commission November 12, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80–36825 Filed 11–25–80; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74 and 78

[Docket No. 21505; RM–2536; FCC 80–604]

Cable Television Relay Service and Television Auxiliary Broadcast Service; Type Acceptance of Broadcasting Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule (Second Report and Order).

SUMMARY: The FCC has adopted certain rules requiring transmitting equipment used in TV auxiliary broadcast stations be "type accepted" for the first time. (Type acceptance is an equipment authorization issued by the Commission for equipment to be used pursuant to a station authorization.) Equipment is type accepted to certain standards to ensure the efficient use of the radio spectrum. Because the standards adopted are generally a reflection of equipment now being marketed, it is not evisioned that this requirement will be burdensome to any party. Type acceptance for newly manufactured equipment will become effective October 1, 1981.

Also, similar technical standards for transmitting equipment used in the band allocated to TV auxiliary broadcast and Cable Television Relay stations were adopted to minimize the potential to cause harmful interference. In addition, standards were adopted to control the directivity of radiation from transmitting antennas operating in that band.

DATES: Effective Date: December 12, 1980, except for §§ 74.655(e) and 78.107(b)(1) which are effective October 1, 1981; and, § 74.655(f) which is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Melvin Murray, Spectrum Utilization Branch, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653–8168.

In the matter of amendment of Parts 2 and 78 of the Commission's rules and regulations to expand the frequencies available for use by Cable Television Relay Service Stations and, amendment of Parts 74 and 78 of the Commission's rules and regulations to set aside 13.15–13.20 GHz for usage by Television and Cable Television Relay Service Pickup Stations on a co-equal basis, Docket No. 21505, RM–2208; and an inquiry to determine public interest and need to establish similar technical standards for both the Cable Television Relay Service and the Broadcast Auxiliary Service in the 12.7–13.20 GHz band, and, amendment of Subpart F of Part 74 to require type acceptance of equipment used in television auxiliary broadcast stations, RM–2536.

Second Report and Order

Adopted: October 21, 1980.

Released: November 14, 1980.

1. A Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 21505 was adopted by the Commission on December 21, 1977.[1] In that Notice, the Commission proposed expanding the Cable Television Relay Service (CARS) from 12.7–12.95 GHz to 12.7–13.20 GHz with co-equal sharing of the entire band with TV Auxiliary Broadcast Stations (Subpart F of Part 74). This allocation (12.7–13.20 GHz) was adopted May 17, 1979, by the Commission in the First Report and Order in Docket 21505.[2] The Inquiry section of the Notice of Proposed Rule Making and Notice of Inquiry in Docket 21505 requested that the public submit information relative to the merits of establishing like technical standards for both the Cable Television Relay and TV auxiliary Broadcast services. A *Further Notice of Proposed Rule Making*,[3] adopted May 17, 1979, considered comments submitted relative to the *Inquiry* section and proposed type acceptance for transmitters used in Television Auxiliary Broadcast stations operating in bands A, B, and D, pursuant to Section 74.602, and certain technical standards for both Cable Television Relay and Television Auxiliary Broadcast Services. This Second Report and Order accordingly adopts rules which establish similar technical standards for both the Cable Television Relay and TV Auxiliary Broadcast services as well as requires equipment used in Television Auxiliary Broadcast stations (Subpart F of Part 74) to be type accepted.

Frequency Coordination

2. In the *Further Notice* we proposed that all applicants for Cable Television relay and TV auxiliary Broadcast stations undertake frequency coordination by submitting a statement indicating all entities with which the technical proposal was coordinated. The intent of such a proposed rule was to reduce, as much as possible, the likelihood of harmful interference to existing, or proposed facilities.

3. Comments received in response to the *Further Notice* indicate difficulties in coordinating stations in congested areas. In contrast, a group of 24 cable

[1] 43 FR 9500, March 8, 1978.

[2] 44 FR 32377, June 6, 1979.

[3] 44 FR 32420, June 6, 1979.

system operators (hereinafter "Respondents") suggest that frequency coordination procedures as proposed are unnecessary in uncongested, rural areas and would prove burdensome to cable operators. Teleprompter (TPT) recommended that an applicant be required only to submit a statement certifying that there would be no harmful interference with other systems and to set forth the basis for such a determination.

4. In the *Memorandum, Opinion and Order* in this proceeding we indicated that our present rules state that each grant of authorization to operate either a CARS or TV Auxiliary station is subject to the condition that no harmful interference is caused to other CARS or TV Auxiliary stations authorized at the time of such grants. Accordingly, applicants are to cooperate with existing licensees and/or other applicants to coordinate their facilities so that the level of any interference will not be harmful to others. We believe this procedure to be practical. It will ease the burden on both the Commission and the applicants. Consequently, we are not adopting any additional frequency coordination procedure; and we are modifying §§ 74.604 and 78.19 accordingly.

Power Limitations

5. *Fixed stations.* For TV Auxiliary bands A (1990–2500 MHz) and B (6875–7125 MHz), we proposed in this proceeding a limit of 20 watts; for the shared band: TV Auxiliary and CARS (12.7–13.20 GHz) a 5 watt limit was proposed. In an associated paragraph of that proposed rule we indicated that a higher output power, up to fifty (50) watts, would be authorized provided sufficient justification for it was supplied. Several parties submitting comments interpreted this proposal to mean that our intent was to set the limits at 50 watts. However, our intent is that applicants use the least amount of power for reliable communications so as to minimize interference to others; therefore, to discourage the use of higher transmitter output powers, we are deleting this proposal. In cases where permission is sought to operate with a power higher than the limit set out in the Rules, a request for waiver will be entertained.[4] Accordingly, the power limits as proposed for fixed stations are herein adopted. (See §§ 74.636 and 78.101.)

6. *Mobile stations.* For TV Auxiliary bands A and B a 20 watt limit was proposed. A 250 milliwatt limit was proposed for the shared 12.7–13.20 GHz band. In reviewing the licenses of TV Auxiliary Mobile stations now operating in bands A and B, we find that most are operating at levels of 12 watts or less. Since we see no need to raise this level to that proposed, we are accordingly setting the power limit for mobile stations which operate in bands A and B at 12 watts. We received numerous comments on the power limit of 250 milliwatts for the shared 12.7–13.20 GHz band. Only NCTA agreed that the proposed limit is sufficient. All others suggested that the limit be raised. They contend that higher power is necessary to overcome attenuation from operating over long path lengths and frequently from buildings which are used to reflect the signal. Several parties indicated that multi-band operation in already congested bands A and B would be necessary if a higher power limit were not allowed for band D. CBS recommended a power limit of one watt for pickup stations.

7. We concur with the submitted comments and believe that the power limit would be raised from the proposed 250 milliwatt level. We are adopting 1.5 watts (transmitter output power) as the limit for mobile (i.e., pickups) TV auxiliary and CARS transmitters; this limit, we feel, should be sufficient to permit the transmission of signals over path lengths appropriate for mobile operations.

8. For purposes of conforming the technical standards of Part 74 with those of Part 78, several changes were proposed. In § 74.637, entitled *Emission and Bandwidth* the reference level for measuring the attenuation of emissions was proposed to be changed from "decibels below the unmodulated carrier" to "decibels below the mean power of emission." NBC filed the only comment opposing the proposed rule change claiming the existing rules provide a very simple means of measuring the performance of the transmission system on an absolute basis. It contends the alternative proposed by the Commission is dependent upon the type of emission employed and would be quite difficult to apply in practice. NBC states "the existing method works well and there is no valid reason to tamper with it."

9. The method of measurement, as proposed, is not difficult to apply in practice. It is used in measurements of equipment requiring type acceptance under other radio services including CARS. Accordingly, we are changing the reference level to read "the mean power of the emissions" for purpose of conformance.

Frequency Stability

10. It was proposed to upgrade the stability from 0.02% to 0.005% for FM equipment used in CARS. No objections were received; it is accordingly adopted. With respect to Section 74.661(a) which proposed that the licensee maintain the operating frequency of its TV auxiliary broadcast station so that 99 percent of the sideband energy falls within the assigned channel. CBS filed comment contending this measurement may prove impractical. CBS feels that a "more meaningful method would be require all emissions outside of the allocated channel to be consistent with the proposed requirements of § 74.637."

11. Section 74.661(a) requires a measurement to show that the transmitter's occupied bandwidth meets or exceeds the definition set out in § 2.202(a). In contrast, § 74.637 requires a measurement to determine that the transmitter's spectral output is attenuated sufficiently outside the assigned channel. Each measurement is required to accomplish a different objective. The former measurement is to assure that the transmitter's output energy is conformed to a given standard; while the latter is to assure that generated spurious emissions are attenuated to another given standard. These proposed rules are accordingly adopted.

Modulation Limits

12. In § 74.663(a) we proposed to limit negative modulation peaks to 100% for equipment using amplitude modulation. In its comments, NAB pointed out that it is impossible to achieve anything greater than 100 percent negative modulation. We agree that negative modulation cannot exceed 100 percent, which would be zero carrier, or carrier cut off. The proposed rule, however, applies to *peaks* of the modulating signal producing negative modulation. If the modulating signal drives the RF (radio frequency) signal into carrier cutoff, then harmonics are generated which would cause interference to adjacent channels. Since this is an undesirable condition, § 74.663(a) is being adopted as proposed.

13. Regarding proposed § 74.663(b), NAB stated it appeared that this rule was redundant with proposed § 74.637. The former proposed rule required stations using FM transmission to maintain the total excursion of the RF carrier under modulation and the maximum modulation frequency such that the authorized bandwidth is not exceeded in operation. Proposed § 74.637, entitled "Emissions and Emission Limitations", set certain levels

[4] See § 1.3 of the Commission's rules.

for suppression of spurious emissions. We concur that if a transmitter meets or exceeds the standards required by § 74.637, then the requirements proposed in § 74.663(b) are redundant. As suggested then, we have deleted § 74.663(b); similarly, § 78.115(b) also has been deleted.

Antenna Requirements

14. For TV auxiliary broadcast and CARS stations we proposed that the radiation pattern of the corresponding antenna system conform to certain specified limits. In areas of congestion, use of a more directive category "A" antenna would be employed; whereas in other less congested areas, a less directive category "B" antenna would be allowed. No performance standards were proposed for pickup stations except that they employ directional antennas. Also addressed was the matter of periscope antenna systems. We proposed that their radiation characteristic in a horizontal plane meet or exceed standards proposed for conventional antennas. A time period of ten years was proposed after which all such stations would be required to be in compliance.

15. Comment regarding the proposed antenna requirements was received from various broadcast and cable interests. NAB felt that more definite guidelines were needed for applicants to determine whether a particular area is frequency congested or not. We have attempted to resolve this matter by qualifying the proposed rule. A licensed station will be permitted continued usage of a category "B" antenna in any area until an applicant for a new TV auxiliary broadcast or CARS station or another licensee makes a showing indicating that the use of the existing category "B" antenna limits a proposed project because of interference and that the use of a category "A" antenna would remedy the interference thus allowing the project to be realized.

16. CBS and NBC felt that non-standard antennas should be allowed in exceptional cases based on a well-documented showing of need. Both cite as an example the World Trade Center in New York City where separation between the main columns of the buildings' outer walls is 28 inches. This physical restraint accordingly prohibits the use of a category "A" antenna. We agree that in certain circumstances it may not be possible to install the required category antenna. As an exception then to using antenna systems that do not comply with the standards we are adopting herein, we will individually entertain requests for exceptions where the applicant has clearly indicated in detail why an antenna system complying with the required standards cannot be installed and demonstrating that frequency coordination, pursuant to § 74.604 or § 78.19, as appropriate, has been carried out.

17. Regarding pickup stations, the majority of comments requested that non-directional antennas be allowed. It was contended that flexibility to meet the varying exigencies of ENG operations would be impaired if the proposed rule requiring directional antennas were adopted. As examples, the employment of helicopters, blimps and back pack cameras often necessitate the use of omnidirectional antennas. We agree with the comments and are adopting a rule exempting pickup stations from using directional antennas. However, we caution licensees that pickup stations generally operate on a secondary basis; accordingly, they should take measures to protect primary stations from receiving any harmful interference due to their operations.

18. The issue concerning periscope antenna drew much comment. Opposition to the rule proposing that such antennas systems meet or exceed the standards proposed for conventional antennas came primarily from cable television operators. They indicated that rural areas will never have the degree of frequency usage that would require use of a category "A" or "B" antenna. A group of cable operators, hereafter called "Respondents", claim that associated interference problems resulting from a lack of antenna standards could be worked out during the coordination period. Gabriel Electronics, a manufacturer of antennas used in TV auxiliary and CARS supports *in toto* the proposed technical standards. A manufacturer of periscope antenna systems, Microflect, claims its products comply with the proposed technical standards for category "A" antennas. As a compromise, Teleprompter and Viacom have suggested that licensing of new periscope antenna systems be prohibited except upon submission of a specific showing that no frequency congestion exists in the area of proposed use. To protect against future congestion and interference, each authorization permitting use of a periscope antenna could be expressly conditioned to require conversion to a conventional antenna if and when congestion occurs.

19. It is our intention *not* to impose economic burdens upon licensees by adopting standards that require antenna systems that are costly. Our desire is to provide standards now to avert future difficulties resulting from a greater number of licensees operating within the same spectrum space. Accordingly, we are adopting the standards as proposed; but, we are also providing exceptions as suggested in the comments. In particular, under § 74.641(b) and § 78.105(b), requests for use of periscope antenna systems may be approved where a persuasive showing is made that no frequency congestion exists in the area of proposed use. Approvals will be conditioned so as to require use of a standard antenna when an applicant of a new TV auxiliary broadcast or Cable Television Relay station indicates that the use of the existing antenna system will cause interference and the use of a category "A" or "B" antenna will remedy the interference.

Type Acceptance

20. In the Further Notice of Proposed Rule Making we proposed implementation of type acceptance for equipment used in TV auxiliary stations to assure certain technical standards are met. As we pointed out, adherence to the proposed standards would minimize interference to other users and maximize the use of the radio frequency spectrum. In its comments ABC contends that deregulatory licensing policies should be adopted. It explains that ENG operations should be licensed as an overall system rather than on a unit by unit basis. It continues, "For example, an applicant could ask for an authorization permitting five to ten TV pickup units to be activated as circumstances require so long as all equipment has been type accepted. This sensible deregulatory action would help alleviate current backlog problems being experienced in this service and eliminate the unnecessary paper work for licensees". Secondly, it suggests that the Commission allocate sufficient staff resources to handle any increased workload. It states, "Such measures would help assure that new regulations are not accompanied by increased regulatory delays".

21. We are not considering these comments at this time as they do not appear pertinent to the proposal.

22. In its comments, CBS Inc. requested the Commission to grandfather all equipment that would be operational prior to the date on which type acceptance would be required. It also recommended that an elapse of one year be allowed before the requirement for type acceptance becomes effective. "This would allow manufacturers sufficient time in which to file for and receive type acceptance". In the

proposed rules provision was made for the use of non-type accepted equipment by the licensee or its successors or assignees; however, no provision was made for the marketing of such equipment after the rules were to become effective.

23. In reviewing this matter we are choosing not to burden ourselves with the establishment of a grandfather list, as was suggested, but are adopting a procedure that is equitable and should be acceptable to all. Accordingly, to allow manufacturers sufficient time to comply with the new standards herein being adopted, type acceptance requirements will not become effective until October 1, 1981. Non-type accepted equipment which was manufactured and/or marketed before October 1, 1981, may be marketed until October 1, 1985, to permit the depletion of existing inventories. After that date, it may not be further marketed; however, the licensee may continue to use the equipment, as long as it does not cause interference. We feel this change will permit manufacturers sufficient time to deplete existing stock and then to design equipment to comply with the standards being adopted herein. Users are accordingly being allowed about five years to either sell and replace existing equipment with equipment that will be type accepted to the standards herein adopted or continue to use existing equipment subject to the provisions that it does not cause harmful interference due to its failure to comply with the technical standards and that it may not be marketed for reuse under Parts 74 or 78.

24. Also proposed was a rule that would have permitted the immediate use of equipment under Part 74 provided the equipment had been previously type accepted under other part(s) of the Rules. In reviewing this proposal, we envision the possibility that changes in the standards for TV broadcast auxiliary equipment (i.e., Part 74) may be different in the future from those required for equipment used in other services. Accordingly, we have not adopted this rule.

25. However, a manufacturer desiring to acquire type acceptance under Part 74 for equipment previously type accepted under other parts of the Rules need not file a new type acceptance application for inclusion under Subpart F of Part 74 if the equipment meets or exceeds all the technical standards adopted herein and other requirements as appropriate. Instead, FCC Form 731 requesting the addition of Subpart F of Part 74 to their existing grant of type acceptance should be sent to the FCC, Office of Science and Technology, P.O. Box 429, Columbia, Maryland 21045. If upon examination the equipment is found to be in compliance, a new grant of type acceptance which includes Subpart F of Part 74 will be issued.

26. As an exemption to the requirement for type acceptance, pickup stations operating in excess of 250 mW licensed pursuant to applications accepted for filing prior to October 1, 1980, may continue operation subject to periodic renewal. NAB suggested that this "grandfather" provision should also appear under the rule sections entitled "Power limitations". We do not believe that such redundancy is necessary. This provision accordingly appears only under the rule sections entitled "Type acceptance".

27. In its comments NBC recommended that low-powered equipment (i.e., 250 mW or less output power) be exempted from type acceptance requirements for TV auxiliary broadcast bands "A" and "B" just as we proposed a similar exemption for Band "D". We feel this is a reasonable request as we don't expect these lower-power equipments to significantly cause harmful interference; accordingly we have adopted that recommendation herein.

28. In a separate petition for rule making (RM–2536), Fletcher, Heald, Rowell, Kenehan and Hildreth, a communications law firm, requested that equipment used under Subpart F of Part 74 be subject to type acceptance requirements. It contended that administrative requirements would be simplified. Since this proceeding provides for this request, the Petition as filed is herein being granted.

29. Accordingly, pursuant to authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that Parts 74 and 78 are amended as shown in Appendix B. It is further ordered that proceedings in Docket 21505 are terminated.

30. For additional information contact: Mel Murray, Federal Communications Commission, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554. Telephone (202) 653–8168.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

I. The following parties, arranged into three groups for convenience, filed comments in response to the Further Notice of Proposed Rule Making in Docket No. 21505:

A. *Broadcast Interests*

American Broadcasting Companies, Inc. (ABC)
CBS Inc. (CBS)
National Association of Broadcasters (NAB)
National Broadcasting Company, Inc. (NBC)

B. *Cable Interests*

Gabriel Electronics Incorporated
Joint comments—24 parties—(Respondents)
Microflect
National Cable Television Association (NCTA)
Teleprompter Corporation (TPT)
Viacom International Inc.

II. Reply comments in the proceeding were filed by: American Broadcasting Companies, Inc.

Appendix B

Parts 74 and 78 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. Section 74.604 (a) is revised as follows:

§ 74.604 Frequency selection to avoid interference.

(a) Applicants for new television pickup, television STL, television intercity relay and television translator relay stations shall endeavor to select frequency assignments which will be least likely to result in mutual interference with other licensees in the same area since the FCC itself does not undertake frequency coordination. Consideration should be given to the relative locations of receiving points, normal transmission paths, and the nature of the contemplated operation.

* * * * *

2. Section 74.636 is revised to read as follows:

§ 74.636 Power limitations.

Transmitter peak output power shall not be greater than necessary, and in any event, shall not exceed the power listed in the table below;

Band	Power limit	Class of station
A	20 Watts	Fixed.
	12 Watts	Mobile.
B	20 Watts	Fixed.
	12 Watts	Mobile.
D	5 Watts	Fixed.
	1.5 Watts	Mobile.

3. Section 74.637 headnote and text are revised to read as follows:

§ 74.637 Emissions and emission limitations.

(a) TV auxiliary broadcast stations operating on frequencies above 1,000 MHz may be authorized to employ any

type of emission suitable for the transmission of the visual and aural and operational signals as may be permitted under the rules of this subpart. Continuous radiation of the carrier without modulation is permitted provided harmful interference is not caused to other authorized stations.

(b) The channels assigned to TV auxiliary broadcast stations are designated by upper and lower frequency limits. Emissions outside of these frequency limits shall be attenuated as follows:

(1) Any emission appearing on a frequency above the upper channel limit or below the channel limit by between zero and 50% of the assigned channel width shall be attenuated at least 25 dB below the mean power of the emission.

(2) Any emission appearing on a frequency above the upper channel limit or below the channel limit by between 50% and 150% of the assigned channel width shall be attenuated at least 35 dB below the mean power of the emission.

(3) Any emission appearing on a frequency above the upper channel limit or below the lower channel limit by more than 150% of the assigned channel width shall be attenuated at least 43 + 10 $\log_{10}$ (power in watts) dB below the mean power of the emission.

(c) In the event that interference to other stations is caused by emissions outside the authorized channel, the FCC may require greater attenuation than that specified in paragraph (b) of this section.

4. A new § 74.641 is added to read as follows:

§ 74.641 Antenna Systems

(a) For fixed stations operating in Band D the following rules apply:

(1) Fixed TV auxiliary broadcast stations shall use directional antennas that meet the performance standards indicated in the following table. Upon adequate showing of need to serve a larger sector, or more than a single sector, greater beamwidth or multiple antennas may be authorized. Applicants shall request, and authorization for stations in this service will specify the polarization of each transmitted signal.

Antenna Standards

Frequency (in megahertz)	Category	Maximum beam-width to 3 dB (included angle in degrees)	Minimum radiation suppression at angle in degrees from centerline of main beam in decibels—						
			5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12,700 to 13,200	A	1.0	23	28	35	39	41	42	50
	B	2.0	20	25	28	30	32	37	47

NOTE.—Stations in this service must employ an antenna that meets the performance standards for cagetory A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(2) New periscope antenna systems will be authorized upon a certification that the radiation, in a horizontal plane, from an illuminating antenna and reflector combination meets or exceeds the antenna standards of this section. This provision similarly applies to passive repeaters employed to redirect or repeat the signal from a station's directional antenna system.

(3) The choice of receiving antennas is left to the discretion of the licensee. However, licensees will not be protected from interference which results from the use of antennas with poorer performance than identified in the table of this section.

(4) The transmitting antenna system of stations employing maximum equivalent isotropically radiated power exceeding +45 dBW in the frequency band between 12.70 and 12.75 GHz shall be orientated so that the direction of maximum radiation of any antenna shall be at least 1.5° away from the geostationary satellite orbit taking into account the effect of atmospheric refraction.[1]

(5) Pickup stations are not subject to the performance standards herein stated. The provisions of this paragraph are effective for all new applications accepted for filing after October 1, 1981.

(b) Any fixed station licensed pursuant to applications accepted for filing prior to October 1, 1981, may continue to use its existing antenna system, subject to periodic renewal until October 1, 1991. After October 1, 1991, all licensees are to use antenna systems in conformance to the standards of this section. TV auxiliary broadcast stations located in areas subject to frequency congestion are to employ a category A antenna when:

(1) a showing by an applicant of a new TV auxiliary broadcast station or Cable Television Relay Service (CARS) station, which shares the 12.7–13.20 GHz band with TV auxiliary broadcast, indicates that use of a category B antenna limits a proposed project because of interference, and

(2) that use of a category A antenna will remedy the interference thus allowing the project to be realized.

(c) As an exception to the provisions of this Section, the FCC may approve requests for use of periscope antenna systems where a persuasive showing is made that no frequency conflicts exist in the area of proposed use. Such approvals shall be conditioned to a standard antenna as required in paragraph (a) of this section when an applicant of a new TV auxiliary broadcast or Cable Television Relay station indicates that the use of the existing antenna system will cause interference and the use of a category A or B antenna will remedy the interference.

(d) As a further exception to the provision of paragraph (a) of this section, the Commission may approve antenna systems not conforming to the technical standards where a persuasive showing is made that:

(1) indicates in detail why an antenna system complying with the requirements of paragraph (a) of this section cannot be installed, and

(2) includes a statement indicating that frequency coordination as required in § 74.604 (a) was accomplished.

5. A new § 74.655 is added to read as follows:

§ 74.655 Type acceptance.

(a) Type acceptance is *not* required for transmitters used in conjuction with TV pickup stations operating with a peak output power not greater than 250 mW. Pickup stations operating in excess of 250 mW licensed pursuant to applications accepted for filing prior to October 1, 1980, may continue operation subject to periodic renewal. If operation of such equipment causes harmful interference the FCC may, at its

[1] See Chapter I, Article 1, Section III of the (International) Radio Regulations (Geneva, 1959), as amended, for Technical Characteristics Term and Definitions. Additional information and methods for calculating azimuths to be avoided may be found in the following: Report 393, International Radio Consultative Committee (C.C.I.R.); "Geostationary Orbit Avoidance Computer Program, "Report CC-7202, Federal Communications Commission, available from the National Technical Information Service, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(b) The licensee of a TV auxiliary station may replace transmitting equipment with type accepted equipment, without prior FCC approval, provided the proposed changes will not depart from any of the terms of the station or system authorization or the Commission's technical rules governing this service, and also provided that any changes made to type accepted transmitting equipment is in compliance with the provisions of Part 2 of the FCC rules concerning modification to type accepted equipment.

(c) Any manufacturer of a transmitter to be used in this service may apply for type acceptance following the procedure set forth in Part 2 of the FCC Rules.

(d) An applicant for a TV auxiliary broadcast station may also apply for type acceptance for an individual transmitter by following the type acceptance procedure set forth in Part 2 of the FCC Rules and Regulations. Individual transmitters which are type accepted will not normally be included in the FCC's Radio Equipment List.

(e) Type acceptance by the FCC is required for all transmitters first licensed, or marketed as specified in § 2.803 of the FCC Rules, except as provided for in paragraph (a) [Refer to subpart I of Part 2 of the Commission's Rules and Regulation). This paragraph is effective October 1, 1981.

(f) All transmitters marketed for use under this Subpart must be type accepted by the Federal Communications Commission. TV auxiliary broadcast station transmitting equipment authorized to be used pursuant to an application accepted for filing prior to October 1, 1985, may continue to be used by the licensee or its successors or assignees, provided, that if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart, the FCC may, at its discretion require the licensee to take such corrective action as is necessary to eliminate the interference. However, such equipment may *not* be further marketed for reuse under Parts 74 or 78. This paragraph is effective October 1, 1985.

(g) Each instrument of authority which permits operation of a TV auxiliary broadcast station or system using equipment which has not been type accepted will specify the particular transmitting equipment which the licensee is authorized to use.

6. Section 74.661, paragraph (a) is revised to read as follows:

§ 74.661 Frequency tolerance

(a) The licensee of a TV auxiliary broadcast station shall maintain the operating frequency of its station so that 99% of the sideband energy shall fall within the assigned channel.

* * * * *

7. Section 74.663, headnote and text are revised to read as follows:

§ 74.663 Modulation limits.

If amplitude modulation is employed, negative modulation peaks shall not exceed 100%.

8. In § 74.665 paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 74.665 Operator requirements.

* * * * *

(d) TV pickup stations may be operated in accordance with the following:

(1) Stations operating on frequencies in Bands A, B, or D with less than 250 mW, may be operated by any person whom the licensee shall designate. Pursuant to this provision, the designated person shall perform as the licensee's agent and proper operation of the station shall remain the licensee's responsibility.

(2) Television pickup stations operating in Band A, B, or D with nominal transmitter power in excess of 250 mW, may be operated by any person whom the licensee shall designate, provided a person holding a valid radiotelephone first-class or radiotelephone second-class license is on duty at the receiving end of the circuit to supervise operation and immediately institute measures sufficient to assure prompt correction of any condition of improper operation that is observed.

* * * * *

9. A new § 74.669 is added to read as follows:

§ 74.669 Station inspection.

The licensee of each TV auxiliary broadcast station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.19(a) is revised to read as follows:

§ 78.19 Interference.

(a) Applications for CARS stations shall endeavor to select an assignable frequency or frequencies which will be least likely to result in interference to other licensees in the same area since the FCC itself does not undertake frequency coordination.

* * * * *

2. In § 78.101, paragraphs (a) and (b) are revised to read as follows and paragraph (c) is removed.

§ 78.101 Power limitations.

(a) With the exception of pickup stations, transmitter peak output power shall not be greater than necessary, and in no event, shall exceed 5 watts on any channel. For CARS pickup stations, the transmitter peak output power shall not exceed 1.5 watts.

(b) LDS stations shall use for the visual signal-vestigial sideband AM transmission. When vestigial sideband AM transmission is used the peak power of the visual signal on all channels shall be maintained within 2 dB of equality. The mean power of the aural signal on each channel shall not exceed a level of 7 dB below the peak power of the visual signal.

3. In § 78.104, paragraph (b)(1) is revised to read as follows and paragraph (b)(2) is removed and reserved.

§ 78.104 Authorized bandwidth and emission designator.

* * * * *

(b) * * *

(1) The frequency stability of the transmitting equipment to be used will permit compliance with § 78.103(b)(1) and, additionally, will permit 99 percent of the total radiated power to be kept within the frequency limits of the assigned channel.

(2) [Reserved.]

(c) * * *

4. Section 78.105, headnote and text are revised to read as follows:

§ 78.105 Antenna systems.

(a) For fixed stations the following rules apply:

(1) Fixed CARS stations shall use directional antennas that meet performance standards indicated in the following table. Upon adequate showing of need to serve a larger sector, or more than a single sector, greater beamwidth or multiple antennas may be authorized. Applicants shall request and authorization for the stations in this service will specify the polarization of each transmitted signal.

Antenna Standards

Frequency (in megahertz)	Category	Maximum beam-width to 3 dB (included angle in degrees)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels—						
			5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12,700 to 13,200	A	1.0	23	28	35	39	41	42	50
	B	2.0	20	25	28	30	32	37	47

NOTE.—Stations in this service must employ an antenna that meets the performance standards for category A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(2) New periscope antenna systems will be authorized upon a certification that the radiation, in a horizontal plane, from an illuminating antenna and reflector combination meets or exceeds the antenna standards of this section. This provision similarly applies to passive repeaters employed to redirect or repeat the signal from a station's directional antenna system.

(3) The choice of receiving antennas is left to the discretion of the licensee. However, licensees will not be protected from interference which results from the use of antennas with poorer performance than defined in paragraph (a) of this section.

(4) The transmitting antenna system of stations employing maximum equivalent isotropically radiated power exceeding +45 dBW in the frequency band between 12.70 and 12.75 GHz shall be oriented so that the direction of maximum radiation of any antenna shall be at least 1.5° away from the geostationary satellite orbit, taking into account the effect of atmospheric refractions.[1]

(5) Pickup stations are not subject to the performance standards herein stated. The provisions of this paragraph are effective for all new applications accepted for filing after October 1, 1981.

(b) Any fixed station licensed pursuant to applications accepted for filing prior to October 1, 1981, may continue to use its existing antenna system, subject to periodic renewal until October 1, 1991. After October 1, 1991, all licensees are to use antenna systems in conformance to the standards of this Section. CARS stations located in areas subject to frequency congestion are to employ a category A antenna when:

(1) A showing by an applicant of a new CAR service or TV auxiliary broadcast, which shares the 12.7–13.20 GHz band with CARS, indicates that use of a category B antenna limits a proposed project because of interference, and

(2) That use of a category A antenna will remedy the interference thus allowing the project to be realized.

(c) As an exception to the provisins of this Section, the FCC may approve requests for use of periscope antenna systems where a persuasive showing is made that no frequency conflicts exist in the area of proposed use. Such approvals shall be conditioned to require conversion to a standard antenna as required in paragraph (a) of this section when an applicant of a new TV auxiliary broadcast or Cable Television Relay station indicates that the use of the existing antenna system will cause interference and the use of a category A or B antenna will remedy the interference.

(d) As a further exception to the provision of paragraph (a) of this section the Commission may approve antenna systems not conforming to the technical standards where a persuasive showing is made that:

(1) Indicates in detail why an antenna system complying with the requirements of paragraph (a) of this section cannot be installed, and

(2) Includes a statement indicating that frequency coordination as required in § 78.18a was accomplished.

5. In § 78.107, paragraphs (b), (c) and (d) are revised and a new paragraph (e) is added, to read as follows:

§ 78.107 Equipment and installation.

(a) * * *

(b) Applications for new cable television relay stations will not be accepted unless the equipment specified therein has been type accepted for use pursuant to the provisions of this subpart.

(1) All transmitters first licensed or marketed shall comply with technical standards of this subpart. This paragraph (b)(1) is effective October 1, 1981.

(2) Type acceptance is not required for transmitters which have a output power not greater than 250 mW used in a CARS pickup station operating in the 12.7–13.20 GHz band and for transmitters used under a developmental authorization.

(c) Cable television relay station transmitting equipment authorized to be used pursuant to an application accepted for filing prior to October 1, 1981, may continue to be used, provided, that if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(d) The installation of a CARS station shall be made by or under the immediate supervision of a qualified engineer. Any tests or adjustments requiring the radiation of signals and which could result in improper operation shall be conducted by or under the immediate supervision of an operator holding a valid first- or second-class radio-telephone operator license.

(e) Simple repairs such as the replacement of tubes, fuses, or other plug-in components which require no particular skill may be made by an unskilled person. Repairs requiring replacement of attached components or the adjustment of critical circuits or corroborative measurements shall be made only by a person with required knowledge and skill to perform such tasks.

6. In § 78.111 the table is removed and the text is revised to read as follows:

§ 78.111 Frequency tolerance.

(a) Cable television relay stations shall maintain the operating frequency so that 99% of the sideband energy shall fall within the assigned channels.

(b) Cable television relay stations shall maintain the carrier frequency of each authorized transmitter within 0.005% of the operating frequency.

(c) Cable television relay stations that employ vestigial sideband AM transmission shall maintain their operating frequency within 0.0005% of the visual carrier, and the aural carrier shall be 4.5 MHz±1 kHz above the visual carrier frequency.

[1] See Chapter I, Article 1, Section III of the (International) Radio Regulations (Geneva, 1959), as amended, for Technical Characteristics Terms and Definitions. Additional information and methods for calculating azimuths to be avoided may be found in the following: Report 393, International Radio Consultative Committee (C.C.I.R.); "Geostationary Orbit Avoidance Computer Program." Reort CC-7220, Federal Communications Commission, available from the National Technical Information Service, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

§ 78.115 [Amended]

7. In § 78.115 paragraph (b) is removed.

[FR Doc. 80-36781 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 2

[FCC 80-547]

Frequency Allocations and Radio Treaty Matters; Convenient Method for Handling Frequency Assignments for Space Research Earth Stations in a Certain Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule and order.

SUMMARY: Footnote US 111 to the Table of Frequency Allocations allows Government use of a certain frequency band on a secondary basis. It lists nine locations utilized by the National Aeronautics and Space Administration (NASA) space research earth stations for tracking, ranging and telecommand purposes. In addition, it specifies eleven frequencies as being authorized at these locations.

This area of research is a dynamically changing one, resulting in rapid outdating of specific frequencies and locations. New frequencies and locations require constant changes to US 111 through the rule making process. This is time consuming and cumbersome to administer. To achieve a greater measure of Administrative economy, NASA has requested, and the FCC has agreed to, a revision of US 111 to delete the listing of specific frequencies and locations.

EFFECTIVE DATE: November 13, 1980.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eugene J. Cea, Office of Science and Technology, 2025 M Street NW., Washington, D.C. 20554, (202) 653-8177, Room 7328.

Order

Adopted: September 25, 1980.

Released: October 31, 1980.

In the matter of Amendment of Footnote US 111 in Part 2 of the Commission's Rules and Regulations to provide a more convenient method for handling frequency assignments for space research earth stations in the band 1990-2120 MHz.

By the Commission:

1. Footnote US 111 to the Table of Frequency Allocations allows Government use of the band 1990-2120 MHz on a secondary basis. It lists nine locations utilized by the National Aeronautics and Space Administration (NASA) space research earth stations for tracking, ranging and telecommand purposes. In addition, it specifies eleven frequencies in the band 1990-2120 MHz, as well as the band segment 2110-2120 MHz as being authorized at these locations.

2. This area of research is a dynamically changing one, resulting in rapid outdating of specific frequencies and locations. New frequencies and locations require constant changes to US 111 through the rule making process. This is time-consuming and cumbersome to administer. To achieve a greater measure of administrative economy, NASA has requested a revision of US 111 to delete the listing of specific frequencies and locations.

3. NASA concurs that authorizations for specific frequencies and locations will continue to be coordinated with the FCC through the Government's Frequency Assignment Subcommittee mechanism on a case-by-case basis with appropriate conditions applied as necessary. Further, such authorizations shall be secondary to present and future non-Government use of this band and NASA will, if necessary, discontinue transmissions causing interference to licensees.

4. Under the conditions imposed, there should be no adverse present or future impact on non-Government licensees. We, therefore, anticipate no comments in this matter. For these reasons, prior notice and effective date provisions of the Administrative Procedures Act, 5 U.S.C. 533 are found to be unnecessary. Accordingly, pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, IT IS Ordered that, effective November 13, 1980, Footnote US 111 to the Table of Frequency Allocations, § 2.106 of the Commission's Rules, IS Amended as set forth in the Appendix.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 2 of Chapter I of Title 47 of Code of Federal Regulations is amended as follows:

In § 2.106, Footnote US 111 is revised to read as follows:

§ 2.106 [Amended]

* * * * *

US 111 In the band 1990-2120 MHz, Government space research earth stations may be authorized to use specific frequencies at specific locations for earth-to-space transmissions. Such authorizations shall be secondary to non-Government use of this band and subject to such other conditions as may be applied on a case-by-case basis.

[FR Doc. 80-36942 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-73; RM-3263]

FM Broadcast Stations in Central City, Nebr., and Yankton, S. Dak.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns a Class C FM channel to Central City, Nebraska, and substitutes one Class C channel for another at Yankton, South Dakota, in response to a petition filed by Nebraska Rural Radio Association. The station could render significant first and second service to the rural areas in addition to providing Central City with its first fulltime local aural broadcast service.

EFFECTIVE: Date: December 26, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Central City, Nebr., and Yankton, S. Dak.), BC Docket No. 80-73, RM-3263.

Report and Order—Proceeding Terminated

Adopted: November 10, 1980.

Released: November 24, 1980.

1. The Commission has under consideration a *Notice of Proposed Rule Making,* 45 FR 13147, published February 28, 1980, proposing the reassignment of Channel 262 from Yankton, South Dakota, to Central City, Nebraska, and the substitution of Class C FM Channel 226 for Channel 262 at Yankton, in response to a petition filed by Nebraska Rural Radio Association ("petitioner"), licensee of Stations KRVN(AM) and KRVN-FM, Lexington, Nebraska. Petitioner submitted supporting comments reaffirming its intent to apply for the channel, if assigned. Sorenson Broadcasting Corp.,

permittee for a new station on Channel 262 at Yankton, filed comments.

2. Central City (pop. 2,803),[1] seat of Merrick County (pop. 8,751), is located in the east central portion of Nebraska, approximately 168 kilometers (105 miles) west of Omaha. It has no local aural broadcast service.

3. Petitioner asserts that Central City, the county's largest community, showed a population increase of 16.5% from 1960 to 1970, with a projection of continuing growth. It further states that the proposed station would bring first FM service to 8,330 persons, a second FM service to 10,890 persons, a first nighttime aural service to 1,570 persons, and a second nighttime aural service to 7,040 persons.

4. Sorenson Broadcasting Corp. has raised no objection to the proposal provided its permit for Channel 262 is modified to specify Channel 226.

5. We have given careful consideration to the proposal and believe that Channel 262 should be assigned to Central City, and Channel 226 substituted for Channel 262 at Yankton. The Yankton site is restricted 16 kilometers (10 miles) to the south. Although a community the size of Central City is not normally assigned a Class C channel, the proposed assignment would provide substantial first and second service. As stated in the *Notice*, Stanton, Nebraska would be precluded as a result of the assignment of Channel 226 to Yankton. However, since there has been no interest in a station at Stanton, and it receives service from two stations in Norfolk, Nebraska, we believe that that fact should not foreclose a needed first local service to Central City.

6. Accordingly, pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, that effective December 26, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) is amended with respect to the communities listed below:

City	Channel No.
Central City, Nebr.	262
Yankton, S. Dak.	226,281

7. It is further ordered, that effective December 26, 1980, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding permit held by Sorensen Broadcasting Corp. for Channel 262, Yankton, South Dakota, is modified to specify operation on Channel 226 subject to the following:

(a) The permittee shall inform the Commission in writing by no later than December 26, 1980, of its acceptance of this modification;

(b) At least 30 days before operation on Channel 226, the permittee shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 226;

(c) At least 10 days prior to commencing operation on Channel 226, the permittee shall submit the measurement data required of an applicant for an FM broadcast station license; and

(d) The permittee shall not commence operation on Channel 226 without prior Commission authorization.

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

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-36887 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1970 U.S. Census.

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47 CFR Part 73

[BC Docket No. 80-147; RM-3424]

FM Broadcast Station in Manchester, Vt.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 274 to Manchester, Vermont, in response to a petition filed by Northshire Communications, Inc. The station would provide a first local aural broadcast service to Manchester and a first and second FM service to the surrounding area.

EFFECTIVE DATE: December 26, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b) *Table of Assignments*, FM Broadcast Stations (Manchester, Vermont), BC Docket No. 80-147, RM-3424.

Report and Order—Proceeding Terminated

Adopted: November 10, 1980.

Released: November 20, 1980.

1. On April 7, 1980, the Commission adopted a *Notice of Proposed Rule Making*, 45 FR 28774, published April 30, 1980, in response to a petition filed by Northshire Communications, Inc. ("petitioner"), which proposed the assignment of FM Class B Channel 274 to Manchester, Vermont, as that community's first FM assignment. Supporting comments were filed by North County Communications, Inc., in which it stated its intent to apply for the channel, if assigned.

2. Manchester (pop. 2,919)[1] in Bennington County (pop. 29,282), is located approximately 149 kilometers (93 miles) south of Burlington, Vermont. It has no local aural broadcast service.

3. As stated in the *Notice*, a wide area coverage Class B facility would permit expanded FM service to unserved areas by providing a first FM service to 9,235 persons, a second FM service to 50,448 persons and a second nighttime aural service to 9,235 persons.

4. Although a community of this size is not normally assigned a Class B channel, the proposed assignment would provide significant first and second services to a substantial population. Therefore, we believe it would be in the public interest to assign Channel 274 to Manchester, Vermont, as its first FM channel assignment. Although petitioner has not replied to our *Notice*, we do have an expression of interest in the channel from another party.

5. This assignment has been agreed to by Canada as a specially negotiated short-spaced allocation.

6. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the

[1] Population figures are taken from the 1970 U.S. Census.

Commission's rules, it is ordered, that effective December 26, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the community listed below:

City	Channel No.
Manchester, Vt	274

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

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-36868 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 45, No. 230
Wednesday, November 26, 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

Animal and Plant Health Inspection Service

9 CFR Part 95

Wool, Hair, and Bristles; Import Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document would amend certain restrictions applicable to the importation of wool, hair, or bristles taken both from live animals and animals at the time of slaughter. The amendment would permit the unrestricted importation of hair and Bristles removed from live animals when such products are free fom animal manure; it would restrict the importation of wool taken from live animals to wool taken from the upper part of the body of such live animals, and it would permit the importation of wool, hair, and bristles taken from animals that have been slaughtered when such wool, hair and bristles are free from animal manure. This action would be necessary to clarify the regulations and achieve uniform interpretation of the requirements for the entry of such products into the United States. The intended effect of this action would be to revise and clarify the regulations by deleting terms and provisions which are confusing.

DATE: Comments on or before January 26, 1981.

ADDRESS: Written comments to Deputy Administrator, USDA, Aphis, VS, Room 815, Federal Building, 6505, Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. J. C. Davidson, USDA, APHIS, VS, Federal Building, Room 824, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436–8379. A Draft Impact analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Program Services Staff, VS, APHIS, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended; and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 US.C. 111, 134a, 134b, 134c, and 134f), the Animal and Plant Health Inspection Service is considering amending Part 95, Title 9, Code of Federal Regulations. This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant".

The regulations presently in 9 CFR 95.7(b) provide that wool or hair clipped from live animals or pulled wool or hair may be imported without restrictions provided the said wool or hair is reasonably free from animal manure in the form of dung locks or otherwise. Use of the term "reasonably" has caused confusion and lact of uniformity in interpretation of the requirement. To clairfy the intent of the regulation and to eliminate questions as to what constitutes "reasonably," the term "reasonably" would be deleted. Further, to simplify the regulation the terms "clipped" and "pulled" would be changed to "taken," and the phrase "in the form of dung locks or otherwise" would be deleted. Also, the term "bristles" would be added to clarify that hair includes bristles, and the body area from which wool could be taken for unrestricted entry would be specified.

Additionally, section 95.7(b) would be separated into two parts (b) (1) and (2), to reflect the difference in the restrictions on the importation of wool from live animals as opposed to the restrictions on the importation of hair and bristles from live animals. The amendment proposes to modify the regulation so that wool which is clipped from the area of the animal to which manure mormally adheres, i.e., the belly or underparts, may not be imported into the United States without further restriction. It is proposed not to allow wool from the lower part of the body of the live animals to be imported because the wool being nautrally greasy, becomes contaminated with manure when the live animals lie on the ground. It is proposed to require that a certificate be issued by a National Government official having jurisdiction over the health of animals in the country of origin to certify that the wool was only taken from the upper part of the body of the animals. Such certified wool would be subject to inspection at the port of entry to verify compliance with this restriction. Wool found to contain manure would be subject to the handling and treatment provisions of § 95.8 (9 CFR 95.8).

The current entry procedcure on what is called "greasy" ("unscoured") wool from countries declared affected by foot-and-mouth disease or rinderpest is to perform a visual inspection. Any wool which is "reasonably free" of animal manure is allowed to enter. Enforcement problems arise for two reasons: the individual inspector in each case must determine what constitutes a "reasonably free" level, and often the shipments are packaged in such a way that discovery of manure in the wool is quite difficult. Consequently, shipments contaminated by large amounts of manure have been inadvertently permitted entry and appear to constitute an unacceptable risk of introduction of foot-and-mouth disease into the United States. The regulations in 9 CFR 95.7(c) that provide for the importation of wool, hair, or bristles taken from sheep, goats, cattle, or swine when such animals were slaughtered in a specified abattoir and were free from anthrax, foot-and-mouth disease, and rinderpest at the time of slaughter and that a certificate accompany such products certifying that the specified requirements were met would be amended to provide that unrestricted entry would be permitted only if such products are free from animal manure.

The proposed action, restricting imports of wool from upper portions of the body of live animals to which manure does not normally adhere, and to require other wool, hair, and bristles to be free of animal manure would reduce the risk of disease transmission while providing minimum inteference with international trade.

Accordingly, Part 95 Title 9, Code of Federal Regulations, would be amended in the following respects:

1. In § 95.7, paragraph (b), would be revised to read:

§ 95.7 Wool, hair, and bristles; requirements for unrestricted entry.

* * * * *

(b)(1) Hair or bristles taken from live animals may be imported if free from animal manure.

(2) Wool taken from live animals may only be imported when accompanied by an offical certificate issued by a National Government official having jurisdiction over the health of aimals in the country of origin in which the wool originated. The certificate shall show that the wool was only taken from the upper part of the body of the animal (wool known in the trade as "full skirted" or "farm skirted"). Notwithstanding such certifcation, inspection shall be made at the port of entry of all wool imported under the provisions of this Part.

2. Section 95.7[c] would be amended to add the phrase "when such wool, hair or bristles are free from animal manure," in lieu of the phrase "without further restriction" in the 16th line of the section.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 824, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue of the **Federal Register.**

Done at Washington, D.C., this 20th day of November 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-36867 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Petitions for Rulemaking; Issuance of Quarterly Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of quarterly report.

SUMMARY: The Nuclear Regulatory Commission has issued the September 30, 1980, Quarterly Report on Petitions for Rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

ADDRESSES: A copy of this report, designated NRC Petitions for Rulemaking—September 30, 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 this 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, Md., this 19th day of November, 1980.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 80-36749 Filed 11-25-80; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 31

NRC's Jurisdiction Over Persons Using Byproduct, Source and Special Nuclear Material in Offshore Waters Beyond Agreement States' Territorial Waters; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Correction.

SUMMARY: In a **Federal Register** document published on October 30, 1980 (45 FR 71807), the NRC proposed to amend § 31.6 General license to install devices generally licensed in § 31.5. The word "general" was inadvertently used in the first line of proposed text when the word "specific" was intended. This document corrects this error and republishes the proposed text of § 31.6 as it should appear.

FOR FURTHER INFORMATION CONTACT: John D. Philips, Chief, Rules and Records, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7086.

SUPPLEMENTARY INFORMATION: The proposed revision of the introductory text of § 31.6 appearing at 45 FR 71809 (October 30, 1980) as corrected, reads as follows:

§ 31.6 General license to install devices generally licensed in § 31.5.

Any person who holds a specific license issued by an Agreement State authorizing the holder to manufacture, install, or servie a device described in § 31.5 within such Agreement State is hereby granted a general license to install and service such device in any non-Agreement State or in offshore waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf: Provided, that:

* * * * *

Dated at Washington, D.C., this 20th day of November, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-36882 Filed 11-25-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 457

[Docket No. CAS-RM-80-120]

Energy Auditor Training and Certification Grants; Extension of Comment Period for Proposed Rule

AGENCY: Department of Energy.

ACTION: Extension of comment period of proposed rule.

DATES: In response to requests for additional time for review, DOE has extended the comment period to December 8, 1980, 4:30 p.m. e.s.t.

SUMMARY: On October 8, 1980, the Department of Energy published a proposed rulemaking in the **Federal Register.** The rulemaking (45 FR 66970) related to implementing the Energy Auditor Training and Certification Program pursuant to subtitle F of Title V of the Energy Security Act (Pub. L. 96-294). This rulemaking provided for a comment period to end November 24, 1980.

FOR FURTHER INFORMATION CONTACT: James R. Tanck, Acting Director, Building Conservation Services Division, Department of Energy, 1000 Independence Avenue S.W., Room GH-068, Washington, D.C. 20585 (202) 252-9161

Issued in Washington, D.C., November 21, 1980.

Frank DeGeorge,

Principal Deputy Assistant Secretary, Conservation and Solar Energy.

[FR Doc. 80-36958 Filed 11-24-80; 11:10 am]

BILLING CODE 6450-01-M

10 CFR Part 474

[Docket No. CAS-RN-80-202]

Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Equivalent Petroleum-Based Fuel Economy Calculation; Cancellation of Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking for Electric and Hybrid Vehicle Research, Development, and Demonstration Program; cancellation of public hearing.

SUMMARY: The Department of Energy hereby cancels the public hearing on the Equivalent Petroleum-Based Fuel Economy Calculation for the Electric and Hybrid Vehicle Research, Development, and Demonstration Program scheduled for Tuesday, November 25, 1980, in Washington, D.C. The public hearing is cancelled due to lack of public interest in making oral presentations at the hearing.

DATES: As stated in the notice of proposed rulemaking issued on October 30, 1980 (FR 73684, November 6, 1980), written comments on the Equivalent Petroleum-Based Fuel Economy Calculation must be received by the Department by close of business, January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Robert S. Kirk, Electric and Hybrid Vehicles Division, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-8032

Issued in Washington, D.C., November 21, 1980.

Frank DeGeorge,

Principal Deputy Assistant Secretary Conservation and Solar Energy.

[FR Doc. 80-36952 Filed 11-24-80; 11:02 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Colorado-7)]

High-Cost Gas Produced From Tight Formations; Ceiling Prices

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado Oil and Gas Conservation Commission that the Dakota Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 19, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 4, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357.8299 or Victor Zabel, (202) 357-8559.

Issued November 19, 1980.

I. Background

On November 10, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Dakota Formation located in La Plata County, Colorado be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formation lies entirely within La Plata County, Colorado and underlies an area located on the north flank of the San Juan Basin and east of the city of Durango, Colorado. It is bounded on the south by the Southern Ute Indian Reservation boundary line and bounded on the north by the outcrop pattern of the Dakota and Mesaverde Formations. The recommended area contains approximately 118,238 acres, of which 27 percent is Federal, 5 percent State and 68 percent fee. The vertical limit to the top of the Dakota Formation ranges from 7500 to 8000 feet and averages 7600 feet. The vertical limit of the base of the Dakota Formation is defined by the top of the Morrison Formation. The Dakota Formation ranges from approximately 210 to 230 feet in thickness.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-10, convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilizied production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that Rule 317 of the Colorado Oil and Gas Conservation Commission's Rules and Regulations assures that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Dakota Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 19, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado-7), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to

whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than December 4, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding a new subparagraph (20) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(2) through (19) [Reserved]

(20) *Dakota Formation in Colorado*

(i) *Delineation of formation.* The Dakota Formation is found in La Plata County, Colorado. RM79-76 (Colorado-7)

(ii) *Depth.* The Dakota Formation is defined as that formation, the depth to the top of which ranges from 7500 to 8000 feet, and the bottom of which is defined by the top of the Morrison Formation.

[FR Doc. 80-36857 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

18 CFR Part 271

[Docket No. RM 79-76 (Colorado-8)]

High-Cost Gas Produced From Tight Formations; Ceiling Prices

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Colorado Oil and Gas Conservation Commission that the Sanastee Formation and the Dakota Formation each be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 19, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 4, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or Victor Zabel, (202) 357-8559.

Issued: November 19, 1980.

I. Background

On November 10, 1980, the Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Sanastee and Dakota Formations located in La Plata and Archuleta Counties, Colorado each be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that these formations be designated tight formations should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formations lie within La Plata and Archuleta Counties, Colorado in an area which is located on the north flank of the San Juan Basin, southeast of the City of Durango, Colorado, and south of the Southern Ute Indian Reservation boundary line. The recommended area is approximately 62,867 acres, of which 27 percent is Federal, 16 percent Indian, 2 percent state and 55 percent fee. The Sanastee Formation is found at intervals of 7550 to 7700 feet and is approximately 105 to 120 feet thick. The Dakota Formation is found at a depth of approximately 7600 feet and is approximately 210 to 230 feet thick.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-11 convened by Colorado on this matter demonstrates, for each formation, that:

(1) The average *in situ*, gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stablilized production rate, against atmospheric pressure, of wells completed for production from the recommended formations, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formations is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that typical casing design of wells drilled in the area protects fresh water aquifers in the area, as required by the rules and regulations of the Colorado Oil and Gas Conservation Commission.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado, that the Sanastee Formation and Dakota Formation, as described and delineated in Colorado's recommendation as filed with the Commission, each be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 19, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado-8) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concernig the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than December 4, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding new subparagraphs (21) and (22) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(2) through (20) [Reserved].

(21) *Sanastee Formation in Colorado*

(i) *Delineation of formation.* The Sanastee Formation is found in La Plata and Archuleta Counties, Colorado. It is located southeast of the City of Durango, Colorado, and is bounded on the north by the southern boundary of the Southern Ute Indian Reservation. RM79–76 (Colorado–8)

(ii) *Depth.* The Sanastee Formation is defined as that formation occurring within the Mancos shale at intervals from approximately 7500 to 7700 feet.

(22) *Dakota Formation in Colorado*

(i) *Delineation of formation.* The Dakota Formation is found in La Plata and Archuleta Counties, Colorado. It is located southeast of the City of Durango, Colorado, and is bounded on the north by the southern boundary of the Southern Ute Indian reservation. RM79–76 (Colorado-8)

(ii) *Depth.* The Dakota Formation is defined as that formation the depth to the top of which averages approximately 7600 feet and the base of which is defined by the top of the Morrison Formation.

[FR Doc. 80–36858 Filed 11–25–80; 8:45 am]

BILLING CODE 6450–85–M

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18 CFR Part 271

[Docket No. RM79–76 (Colorado–9)]

High-Cost Gas Produced From Tight Fountains; Ceiling Prices

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Colorado Oil and Gas Conservation Commission that the Corcoran Formation and the Cozzette Formation each be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 22, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 5, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or Victor Zabel, (202) 357–8559.

Issued November 20, 1980.

I. Background

On November 10, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Corcoran and Cozzette Formations located in Mesa and Garfield Counties, Colorado be designated as tight formations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Corcoran and Cozzette Formations be designated as tight formations should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formations lie within Mesa and Garfield Counties, Colorado in an area which is located on the southwest flank of the Piceance Basin, northeast of the city of Grand Junction, Colorado. The area, known locally as the Wagon Track Tight Gas Sand area, includes part of the Shire Gulch Field and all of Horseshoe Canyon, Winter Flats and Hancock Gulch Units. The recommended area is approximately 150,176 acres, of which 93 percent is Federal, and 7 percent is fee. The average depth to the producing interval of the Cozzette Formation is 2,478 feet. The Cozzette Formation is approximately 175 feet thick. The Corcoran Formation is found at a depth of approximately 2,673 feet and is approximately 150 feet thick. The Corcoran and Cozzette Formations consist of one or more sandstone benches and have been identified as members of the Mount Garfield Formation of the Mesaverde Group.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information

and testimony presented at a public hearing in Cause No. NG–12, convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that typical casing design of wells drilled in the area protects fresh water aquifers in the area, as required by the rules and regulations of the Colorado Oil and Gas Conservation Commission.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Corcoran Formation and the Cozzette Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as tight formations pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 22, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado–9), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than December 5, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding new subparagraphs (23) and (24) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(5) through (22) [Reserved].

(23) *Cozzette Formation in Colorado*

(i) *Delineation of formation.* The Cozzette Formation is found in Mesa and Garfield Counties, Colorado. It is located northeast of the city of Grand Junction, Colorado, and occupies an area known locally as the Wagon Track Tight Gas Sand area. RM79–76 (Colorado—9)

(ii) *Depth.* The Cozzette Formation is defined as that formation occurring within the Mount Garfield Formation of the Mesaverde Group and which is found at an average measured depth of 2,478 feet.

(24) *Corcoran Formation in Colorado*

(i) *Delineation of formation.* The Corcoran Formation is found in Mesa and Garfield Counties, Colorado. It is located northeast of the city of Grand Junction, Colorado, and occupies an area locally known as the Wagon Track Tight Gas Sand area. RM79–76 (Colorado—9).

(ii) *Depth.* The Corcoran Formation is defined as that formation occurring within the Mount Garfield Formation of the Mesaverde Group and which is found at an average depth of 2,673 feet.

[FR Doc. 80–36859 Filed 11–25–80; 8:45 am]

BILLING CODE 6450–85–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

Personal Declarations and Exemptions

Correction

In FR Doc. 80–33213 appearing on page 70476 in the issue for Friday, October 24, 1980, make the following correction:

On page 70477, in the first column, under "Date", the comments closing period was incorrectly given as "November 23, 1980". It should be given as "December 23, 1980".

BILLING CODE 1505–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 208, 210, 216, 217, 219, 221, 230, 232, 237, and 238

Annuities Under the Railroad Retirement Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rules.

SUMMARY: The Railroad Retirement Board proposes to amend several parts of its regulations concerning annuities under the Railroad Retirement Act. Amendment of the regulations is a part of an on-going project of the Railroad Retirement Board to review, revise and reorganize its regulations. The amendments have been written in plain English in accordance with EO 12044, as amended and should be more usable and understandable.

DATES: Comments must be submitted on or before January 12, 1981.

ADDRESS: Comments should be sent in duplicate to R. F. Butler, Secretary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, where they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Berg or Eloise Sandle, Bureau of Retirement Claims, Railroad Retirement Board, Room 943, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4818 (FTS 387–4818).

SUPPLEMENTARY INFORMATION: In accordance with the Board's report under E.O. 12044, as amended, the Board's Chief Executive Officer

reviewed the proposals to revise and develop regulations on annuity eligibility, applications, evidence, and jurisdiction, and determined that the regulations would not constitute significant regulations under the criteria established in the Board's report. However, in the spirit of E.O. 12044, as amended, the Board has determined to issue the regulations first as proposed rules and allow the public a 60-day period to comment on the proposed rules.

The Board proposes to amend the following regulations:

(1) Regulations on eligibility for annuities to be designated as Part 216;

(2) Regulations on applications for benefits to be designated as Part 217;

(3) Regulations on evidence required for payment of benefits to be designated as Part 219; and

(4) Regulations on determinations of Railroad Retirement Board jurisdiction to pay benefits to be designated as Part 221.

The proposed new Part 216 contains the basic eligibility requirements for the various types of annuities provided under the Railroad Retirement Act of 1974. The proposed amendment to the annuity eligibility regulations is necessary to update the regulations to the requirements imposed under the Railroad Retirement Act of 1974. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. In addition, the proposed Part 216 has been written in plain English in accordance with E.O. 12044, as amended, and the eligibility requirements for the various types of annuities, which under current regulations are spread over several parts, have been consolidated under a single part to make these regulations more usable and understandable.

The proposed Part 217 sets forth and explains the requirements for the filing of applications for benefits under the Railroad Retirement Act of 1974. Substantial changes to the current regulations were made in 217.9(b), to provide that a disability application will not be denied if the claimant becomes disabled before a final decision is made; in § 217.16, to provide for the use of the date an application was mailed as the filing date, if it will prevent the loss of benefits; and in §§ 217.20 and 217.21, to allow a filing date to be established based on a written or verbal statement. In addition, the new part explains when, how, and where to file an application, details how and when an application may be cancelled, and sets forth the reasons why applications may be denied. The proposed amendment to the annuity application regulations is necessary to update the regulations to the requirements imposed under the Railroad Retirement Act of 1974. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. In addition, the proposed Part 217 has been written in plain English in accordance with E.O. 12044, as amended, and the application requirements, which under current regulations are spread over several parts, have been consolidated under a single part to make these regulations more usable and understandable.

The proposed Part 219, Evidence Required for Payment, which would replace the current Part 239, Proofs Required in Support of Claims for Benefits, describes the amount and type of evidence required by the Board for the payment of the different benefits provided under the Railroad Retirement Act of 1974. The proposed amendment to the evidence regulations is necessary to update the regulations to the requirements imposed under the Railroad Retirement Act of 1974. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. In addition, the proposed Part 219 has been written in plain English in accordance with E.O. 12044, as amended, and should be more usable and understandable.

The proposed Part 221, Jurisdiction Determination, is totally new. There is no similar part under current regulations. The proposed part explains the factors involved in deciding whether the Railroad Retirement Board or the Social Security Administration will pay benefits to a railroad employee, and the employee's family, both before and after death. The proposed Part 221 is necessary to administer the Railroad Retirement Act of 1974 and explains in a simple, straightforward manner how determinations on Railroad Retirement Board jurisdiction are made.

Amendment of the above-described regulations is a part of an ongoing project of the Railroad Retirement Board to review, revise and reorganize its regulations. As a result, the proposed new parts were written to be an integral part of the revised and reorganized regulations and may, in certain cases, refer to parts or sections of regulations which are not currently in effect. A substantial part of this regulation project should be completed in calendar year 1981, and therefore, the problems presented by publishing revised parts as they are completed should be largely alleviated by the end of 1981. The Board believes that the minor inconveniences that may arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily usable and understandable regulations.

Title 20, Chapter II, is amended as follows:

PART 208—DISABILITY

§§ 208.1, 208.2, § 208.5, and 208.7 [Removed]

1. Part 208 is amended by (a) revising the title of this part from "Eligibility for An Annuity" to "Disability," and (b) removing §§ 208.1, 208.2, 208.5, and 208.7.

PART 210—[Removed]

2. Part 210 is removed.

3. The current Part 216 is revised to read as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

Subpart A—General

Sec.

216.1 Introduction.
216.2 Definitions.
216.3 Other regulations related to this part.

Subpart B—Employee Annuity

216.5 Who is eligible for an age annuity.
216.6 Who is eligible for a disability annuity.
216.7 What is required for payment.
216.8 What work may affect eligibility.
216.9 Giving up the right to return to work.

Subpart C—Supplemental Annuity

216.11 Introduction.
216.12 Who is entitled to a supplemental annuity.
216.13 Supplemental annuity closing date.
216.14 Relationship between supplemental annuity and other benefits.
216.15 What is a private pension.

Subpart D—Spouse Annuity

216.20 Who is eligible for a spouse annuity.
216.21 What is required for payment.
216.22 Who is the employee's wife or husband.
216.23 When a spouse is living with an employee.
216.24 Contributing to support, defined.
216.25 One-half support, defined.

Subpart E—Surviving Spouse Annuity

216.30 Who is eligible for a surviving spouse annuity.
216.31 What is required for payment.
216.32 Who is the employee's surviving spouse.
216.33 Marriage defined.
216.34 Relationship as wife, husband, widow or widower under state law.
216.35 Deemed marriage.
216.36 "Child in care" when child is living with wife or surviving spouse.
216.37 "Child in care" when child is not living with wife or surviving spouse.
216.38 Disability period for surviving spouse.

Subpart F—Child's Annuity

Sec.
216.45 General.
216.46 Who is eligible for a child's annuity.
216.47 What is required for payment of a child's annuity.
216.48 Who may be reentitled to a child's annuity.
216.49 Child defined.
216.50 Relationship as a child under State law.
216.51 Who is the employee's natural child.
216.52 Who is the employee's legally adopted child.
216.53 Who is the employee's stepchild.
216.54 Who is the employee's grandchild or stepgrandchild.
216.55 Who is the employee's equitably adopted child.
216.56 When a child must be dependent.
216.57 When a natural child is dependent.
216.58 When a legally adopted child is dependent.
216.59 When a stepchild is dependent.
216.60 When a grandchild or stepgrandchild is dependent.
216.61 When a equitably adopted child is dependent.
216.62 When a child is living with an employee.
216.63 When a child is a full-time student.
216.64 When a child is a full-time student during a period of non-attendance.

Subpart G—Parent's Annuity

216.70 Who is eligible for a parent's annuity.
216.71 What is required for payment.
216.72 Who is the employee's parent.

Subpart H—Dual Benefit Windfall

216.80 Introduction.
216.81 Types of windfall benefits.
216.82 When an employee's annuity can be increased for a windfall benefit.
216.83 When a spouse annuity can be increased for a windfull benefit.
216.84 When a surviving spouse annuity can be increased for a windfall benefit.
216.85 Dependency requirement for a windfall benefit as a widower.
216.86 What is needed to be permanently insured under the Social Security Act.

Subpart I—Eligibility for More Than One Annuity

216.90 Employee and spouse or survivor annuity.
216.91 Spouse and survivor annuity.
216.92 Two survivor annuities.

Subpart J—Current Connection With the Railroad Industry

216.95 General.
216.96 When required.
216.97 Regular current connection test.
216.98 Special current connection test.
216.99 What is regular non-railroad employemnt.
216.100 What amount of regular non-railroad employment will break a current connection.
216.101 Regular non-railroad employment that will not break a current connection.

Authority: Sec. 2, Pub. L. 93–445, 88 Stat. 1312–1319 (45 U.S.C. 231a), unless otherwise noted. Subpart J also issued under sec. 1, Pub. L. 93–445, 88 Stat. 1311 (45 U.S.C. 231). Sec. 7, Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f).

Subpart A—General

§ 216.1 Introduction.

This part explains when a person is eligible for a monthly annuity under the Railroad Retirement Act.

(a) *Regular annuity.* A regular monthly annuity is provided for—

(1) An employee who retires because of age or disability;

(2) An employee's wife or husband (spouse); and

(3) The widow, widower, child, or parent of an employee who died.

(b) *Supplemental annuity.* A supplemental annuity is provided for an employee who is entitled to an age or disability annuity.

§ 216.2 Definitions.

As used in this part—

"Apply" means to sign a form or statement that the Railroad Retirement Board accepts as an application for an annuity under the rules set out in Part 217.

"Current Connection" means that the employee was working in or was considered to be working in the railroad industry when he or she became entitled to an annuity or died. An employee has a current connection if he or she meets the conditions described in Subpart J of this part.

"Eligible" means that a person would meet all the requirements for payment of an annuity for a period of time but has not yet applied.

"Entitled" means that a person has applied and has proven his or her right to have the annuity begin.

§ 216.3 Other regulations related to this part.

This part is related to several other parts. Part 217 tells how to apply for an annuity. Part 218 sets the beginning and ending dates of an annuity. Part 219 sets out what evidence is necessary to prove eligibility. Parts 225–228 describe the computation of an annuity. Part 229 tells when and how an employee and spouse annuity can be increased under the social security overall minumum provision.

Subpart B—Employee Annuity

§ 216.5 Who is eligible for an age annuity.

(a) *General.* An employee is eligible for an age annuity if he or she stops all work for pay as described in § 216.8, and is—

(1) Age 65 or older and has completed 10 years of service; or

(2) Age 60 or older and under 65 and has completed 30 years of service; or

(3) Age 62 or older and under 65 and has completed 10 years but less than 30 years of service. This type of annuity is reduced for each month the employee is entitled before he or she becomes 65 years old. The reduction is described in Part 226 of this chapter.

(b) *Change from employee disability to age annuity.* A disability annuity that is paid through the end of the month before the employee becomes 65 years old automatically becomes an age annuity beginning with the month he or she is 65 year old. However, the age annuity cannot be paid until the employee gives up the right to return to work as described in § 216.7.

§ 216.6 Who is eligible for a disability annuity.

The Railroad Retirement Act provides two types of disability annuities. One type is where the employee's disability prevents work in his or her regular railroad occupation. The other type is where the employee's disability prevents work in any regular employment.

(a) *Disabled for work in regular occupation.* An employee is eligible for a disability annuity if he or she is disabled for work in his or her regular occupation, as defined in Part 220 of this chapter, is under age 65, stops all work for pay, has a current connection with the railroad industry, and either—

(1) Has completed 20 years of service; or

(2) Has completed 10 years of service and is 60 years old or older.

(b) *Disabled for work in any regular employment.* An employee is eligible for a disability annuity if he or she is disabled for work in any regular employment, as defined in Part 220 of this chapter, is under 65, stops all work for pay, and has completed 10 years of service.

§ 216.7 What is required for payment.

The following conditions are necessary for payment of an employee annuity:

(a) An eligible employee must apply to be entitled to an annuity.

(b) If the employee applies for an age annuity, he or she must give up the right to return to work before any annuity to which he or she is entitled can be paid.

(c) If the employee applies for a disability annuity, the annuity may be paid without the need to give up the right to return to work. However, the annuity cannot be paid, beginning with the month the annuitant is 65 years old, until the annuitant gives up the right to return to work. The disability annuitant must give up the right to return to work before he or she is 65 years old to permit payment of a supplemental annuity under subpart C of this part or a spouse annuity under subpart D of this part.

The disabled employee can give the Board the authority to give up the right to return to work for him or her when it is required.

§ 216.8 What work may affect eligibility.

Most types of work for pay must be stopped before an employee is eligible for an age or disability annuity, as explained below:

(a) *Work an employee must stop.* Except as shown in paragraph (b) of this section the employee must stop working for—

(1) Any employer under the Railroad Retirement Act; and

(2) Any non-railroad employer.

(b) *Work an employee need not stop.* The employee may continue the following work and still be eligible for an age or disability annuity:

(1) Work for a local lodge or division of a railway organization if the pay is under $25 a month unless the work performed is solely for the purpose of collecting insurance premiums.

(2) Self-employment, as defined in paragraph (c).

(3) Work as an elected public official of the United States, a State, or any political subdivision of a State.

(c) *Self-employment, defined.* Self-employment is work performed in a person's own business, trade, or profession, rather than for an employer. A person is not self-employed, for purposes of this section, if he or she works in an incorporated business. In that case, the corporation is the person's employer. An independent contractor or consultant is considered to be self-employed only if he or she is not supervised by an employer and is not a regular member of the employer's staff. The following factors indicate that a person working as a contractor or consultant may be self-employed:

(1) The person has an office separate from that of an employer.

(2) The person performs similar services for several employers.

(3) The person is free to choose his or her own working hours.

(4) The person performs specific services for a limited time on a particular project.

(5) The person receives payment for a particular project, rather than on a regular basis.

§ 216.9 Giving up the right to return to work.

The employee must give up the right to return to work before an annuity can be paid as explained in § 216.7.

(a) *What return to work rights must be given up.* Except for the type of work shown in § 216.8(b), the employee must give up any seniority or other rights to retun to work for—

(1) Any employer under the Railroad Retirement Act; and

(2) Any non-railroad employer with whom the employee—

(i) Last worked before the annuity beginning date; or

(ii) Has the right to return to work on the annuity beginning date; or

(iii) Stopped working to permit the annuity to begin.

(b) *When the right to return to work ends.* An employee's right to return to work for a railroad or non-railroad employer ends when—

(1) The employer reports to the Board that the employee no longer has that right; or

(2) The employee or an authorized agent of the employee gives the employer an oral or written notice of the employee's wish to give up that right and—

(i) The employee certifies to the Board that the right has been given up;

(ii) The Board notifies the employer of the employee's certification; and

(iii) The employer either confirms the employee's right has been given up or fails to reply within 10 days following the day the Board mailed the notice to the employer; or

(3) An event occurs which under the established rules or practices of the employer automatically ends that right; or

(4) The employer or the employee or both take an action which clearly and positively ends that right; or

(5) The employee never had that right and permanently stops working; or

(6) The Board gives up that right for the employee, having been authorized to do so by the employee; or

(7) The employee dies.

Subpart C—Supplemental Annuity

§ 216.11 Introduction.

A career railroad employee may qualify for a supplemental annuity in addition to the regular employee annuity. Supplemental annuities are paid out of a separate trust fund established through employer taxes. The Board reduces a supplemental annuity if the employee receives a private pension based on contributions from a railroad employer. Supplemental annuities are subject to federal income tax.

§ 216.12 Who is entitled to a supplemental annuity.

An employee is entitled to a supplemental annuity, if he or she—

(a) Does not work past his or her supplemental annuity closing date as shown in § 216.13; and

(b) Is entitled to the payment of an employee annuity under subpart B of this part; and

(c) Has a current connection with the railroad industry when the employee annuity begins; and either

(d) Is age 65 or older, has completed 25 years of service, and the employee annuity begins on or after July 1, 1966; or

(e) Is age 60 or older and under age 65, has completed 30 years of service, and the employee annuity begins on or after July 1, 1974. If that annuity is a disability annuity, the annuitant must give up the right to return to work as shown in §§ 216.7 and 216.9 before any supplemental annuity due him or her can be paid.

§ 216.13 Supplemental annuity closing date.

(a) *General.* An employee's supplemental annuity closing date is the last day the employee can work for a railroad employer and still be entitled to a supplemental annuity. There are two types of closing dates—the regular closing date for most career employees and the special closing date for an employee who did not complete the 25 years of service required to qualify for a supplemental annuity on his or her regular closing date.

(b) *Regular closing date.* If the employee has completed 25 years of railroad service or is eligible for an old-age benefit under section 202(a) of the Social Security Act, the regular closing date is the last day of the month after the month he or she becomes 65 years old. However, various closing dates were established if the employee became 65 years old in or before 1973. If the employee was—

(1) 65 years old in 1973, the closing date was January 31, 1974;

(2) 66 years old in 1973, the closing date was the last day of the month after the month he or she was 66 years old;

(3) 66 years old in 1972, the closing date was January 31, 1973;

(4) 67 years old in 1972, the closing date was the last day of the month after the month he or she was 67 years old;

(5) 67 years old in 1971, the closing date was January 31, 1972;

(6) 68 years old in 1971, the closing date was the last day of the month after the month he or she was 68 years old; or

(7) 68 years old before 1971, the closing date was January 31, 1971.

(c) *Special closing date.* If the employees has completed at least 23 years of service but less than 25 years of service and is not eligible for an old-age benefit under section 202(a) of the Social Security Act on his or her regular closing date, the employee's special closing date is the earliest of the following dates:

(1) The last day of the month before the employee becomes eligible for an old-age benefit under section 202(a) of the Social Security Act; or

(2) The last day of the first month in which the employee has enough months of railroad service to be entitled to a supplemental annuity (see § 216.12).

§ 216.14 Relationship between supplemental annuity and other benefits.

(a) *Employee annuity.* A supplemental annuity that begins after December 31, 1974 does not affect the payment of a regular employee annuity.

(b) *Employer pension.* A supplemental annuity is reduced for any private pension the employee is receiving based on a railroad employer's contributions. The reduction is equal to the amount of the pension based on the employer's contributions, less any amount the private pension is reduced because of the supplemental annuity. The supplemental annuity is not reduced for the amount of a private pension paid for by the employee's contributions. Private pension is defined in § 216.15.

(c) *Spouse or survivor annuity.* The payment of a supplemental annuity does not affect the amount of a spouse or survivor annuity.

(d) *Residual lump sum.* The amount of a supplemental annuity is not deducted from the gross residual lump-sum benefit. See Part 236 of this chapter for an explanation of the residual lump-sum benefit.

§ 216.15 What is a private pension.

The Board determines whether a pension established by a railroad employer is a private pension that will cause a reduction in the employee's supplemental annuity. A private pension is based on a pension plan that—

(a) Is a written plan or arrangement which is communicated to the employees to whom it applies; and

(b) Is established and maintained by a railroad employer for a defined group of employees; and

(c) Provides for the regular payment of benefits to employees under a set formula over a period of years.

Subpart D—Spouse Annuity

§ 216.20 Who is eligible for a spouse annuity.

A person is eligible for a spouse annuity if the person—

(a) Is the wife or husband, as defined in § 216.22, of an employee who is entitled to an annuity under subpart B of this part;

(b) Stops the same type of work for pay that an employee must stop, as described in § 216.8; and

(c) Meets the age requirements. The spouse's age requirement depends upon when the employee's annuity begins and the employee's age, as follows:

(1) If the employee's annuity begins July 1, 1974 or later, the employee has completed 30 years of railroad service and the employee is 60 years old or older, the spouse must be—

(i) 60 years old or older; or

(ii) Less than 60 years old and a wife with the employee's child who is under 18 years old or disabled in her care. "In care" is defined in §§ 216.36 and 216.37. Subpart F of this part tells who is the employee's child.

(2) If the employee's annuity begins January 1, 1975 or later, the employee has completed less than 30 years of railroad service and the employee is 62 years old or older, the spouse must be—

(i) 65 years old or older; or

(ii) Less than 65 years old and a wife with the employee's child who is under 18 years old or disabled in her care; or

(iii) 62 years old or older and under 65. This type of annuity is reduced for each month the spouse is entitled before he or she becomes 65 years old. The reduction is described in Part 226 of this chapter.

(3) If the employee's annuity began before July 1, 1974, or it began in the period after June 30, 1974 and before January 1, 1975, the employee has less than 30 years of railroad service, and the employee is 65 years old or older, the spouse must be—

(i) 65 years old or older; or

(ii) Less than 65 years old and a wife with the employee's child who is under 18 years old or disabled in her care; or

(iii) 62 years old or older and under 65. This type of annuity is reduced for each month the spouse is entitled before he or she becomes 65 years old. The reduction is described in Part 226 of this chapter.

§ 216.21 What is required for payment.

An eligible spouse must—

(a) Apply to be entitled to an annuity; and

(b) Give up the right to return to work as described in § 216.9, in the same manner as if the spouse were an employee, before any annuity to which he or she is entitled can be paid.

§ 216.22 Who is the employee's wife or husband.

An employee's wife or husband is a person who—

(a) Is married to the employee, as described in § 216.33;

(b) Is living with the employee, as defined in § 216.23, on the date the spouse applied for the annuity; and

(c) Has been married to the employee, for at least one year before the date the spouse applied for the annuity; or

(d) Is the natural parent of the employee's child; or

(e) Was entitled to or, if the spouse had applied and been old enough he or she could have been entitled to, an annuity as a surviving spouse, a parent, or a disabled child under this part in the month before he or she married the employee.

§ 216.23 When a spouse is living with an employee.

(a) *General.* A spouse is living with the employee if—

(1) The employee and spouse are members of the same household; or

(2) The employee is contributing to the support of the spouse, as shown in § 216.24; or

(3) The employee is under court order to contribute to the spouse's support.

(b) *Members of the same household.* The employee and spouse are members of the same household if they normally live together as husband and wife in the same home. The employee and spouse are also considered members of the same household when they live apart but they expect to continue living together after a temporary separation. A temporary separation may be caused by military service, working away from home, hospitalization, or imprisonment. A separation of six months or less for any one of the above reasons or a separation of any length because of military service will be considered a temporary separation unless there is evidence that the employee and spouse do not intend to continue living together. A separation for more than six months, for other than military service, will be considered temporary only if these is evidence that the employee and spouse expect to live together in the near future. In general, a separation will not be considered temporary if the employee and spouse reside in different countries.

§ 216.24 Contributing to support, defined.

An employee is contributing to the support of a person if the employee gives some of his or her own cash, goods, or services to help support the person. Support includes food, clothing, housing, routine medical care, and other ordinary items needed for a person's well being. Contributions must be made regularly and must be large enough to meet an important part of a person's ordinary living costs. Benefits the persons receives based on the employee's military service record and spouse benefits under the Railroad Retirement Act are contributions to the person's support. A spouse social security benefit on the employee's earnings record is a contribution toward the spouse's support only if the spouse

met one of the "living with" requirements shown in § 216.23 when the spouse application was filed. The employee's contributions must be made on a regular basis. However, temporary interruptions caused by circumstances beyond the employee's control, such as illness or unemployment, are disregarded unless someone else takes over responsibility for supporting the person on a permanent basis.

§ 216.25 One-half support, defined.

The employee is providing one-half support to a person if the employee makes regular contributions to the person's support and the amount of the contributions is equal to or more than one-half of the person's ordinary living costs. Ordinary living costs are the costs for necessities such as food, clothing, housing, and routine medical care. A contribution may be in cash, goods, or services. The employee is providing one-half support only if he or she has done so for reasonable period of time. Ordinarily a reasonable period is the 12-month period immediately before the time the one-half support requirement must be met, as shown in §§ 216.58–216.60, 216.70, 216.82(c), 216.83(c) and 216.85 of this chapter. A shorter period will be considered reasonable if—

(a) The employee started providing one-half or more of person's support sometime during the 12-month period and intends to continue doing so on a permanent basis; or

(b) The employee provided one-half or more of a person's support for at least 3 months of the 12-month period, and—

(1) The employee had to stop or reduce the amount of the contributions because of circumstances beyond his or her control, such as illness or unemployment; and

(2) No other person took over the responsibility for providing one-half support on a permanent basis.

Subpart E—Surviving Spouse Annuity

§ 216.30 Who is eligible for a surviving spouse annuity.

A person is eligible for a surviving spouse annuity if the person—

(a) Is the widow or widower, as defined in § 216.32, of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Has not remarried; and

(c) Meets one of the following conditions—

(1) Is 60 years old or older;

(2) Is 50 years or older and under 60 years old and he or she has a disability as defined in Part 220 of this chapter that began before the end of the period described in § 216.38. A surviving spouse annuity that is paid on the basis of disability up to the month the annuitant is 60 years old automatically becomes an age annuity beginning with the month he or she is 60 years old;

(3) Is under 65 years old and has "in care" the deceased employee's child who is entitled to an annuity under subpart F of this part because he or she is under 18 years old or is disabled. §§ 216.36 and 216.37 describe when a child is "in care."

§ 216.31 What is required for payment.

An eligible widow or widower must apply to be entitled to an annuity.

§ 216.32 Who is the employee's surviving spouse.

A surviving spouse is the deceased employee's widow or widower who—

(a) Was married to the employee for at least nine months before the day the employee died; or

(b) Was married to the employee less than nine months before the employee died but, at the time of marriage, the employee was reasonably expected to live for nine months, and—

(1) The employee's death was accidental; or

(2) The employee died in the line of duty while he or she was serving on active duty as a member of the armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least nine months; or

(c) Is the natural parent of the employee's child; or

(d) Was married to the employee when either the employee or the surviving spouse legally adopted the other's child or they both legally adopted a child who was then under 18 years old; or

(e) Was, in the month before the month of marriage, entitled to or, if the surviving spouse had applied and been old enough, he or she could have been entitled to—

(1) A widow's, widower's, father's, mother's, wife's, parent's or disabled child's benefit under section 202 of the Social Security Act; or

(2) A widow's, widower's, parent's or disabled child's annuity under this part.

§ 216.33 Marriage defined.

Marriage is a relationship based on—

(a) A "deemed marriage" which may be established as described in § 216.35; or

(b) The laws of the state in which the employee has a permanent home. The employee's permanent home is his or her true and fixed home (legal domicile). It is the place to which a person intends to return whenever he or she is absent. A valid marriage under State law may be established if—

(1) The employee and spouse are married in a civil or religious ceremony; or

(2) The spouse could inherit a wife's, husband's, widow's, or widower's share of the employee's personal property if the employee were to die without leaving a will; or

(3) The employee and spouse live together in a common-law marriage relationship which is recognized under State law.

§ 216.34 Relationship as wife, husband, widow or widower under State law.

To decide a person's relationship as the wife or husband of an employee, the Board applies the laws of the State where the employee had a permanent home when the spouse applied for his or her annuity. To decide a person's relationship as the widow or widower of an employee, the Board applies the laws of the State where the employee had a permanent home when the employee died. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the Board applies the laws of the District of Columbia. See § 216.33(b) for a definition of "permanent home."

§ 216.35 Deemed marriage.

(a) *General.* If a marriage relationship cannot be established under State law, as shown in § 216.33, a person may be eligible for an annuity based on a deemed marriage. A person is deemed to be the wife, husband, widow, or widower of an employee if the person's marriage to the employee would have been valid under State law except for a legal impediment (see paragraph (b) of this section) and all of the following requirements are met:

(1) The person married the employee in a civil or religious ceremony.

(2) The person went through the marriage ceremony in good faith and did not know of the legal impediment at the time of the marriage. Good faith means that the person believes the marriage is legal.

(3) The person was living in the same household with the employee when he or she applied for the spouse annuity or when the employee died. "Living in the same household" is defined in paragraph (c) of this section.

(4) At the time the person applies for his or her annuity, no other person has a relationship under state law, as shown in § 216.33(b), as the employee's wife, husband, widow or widower and is or

has been entitled to an annuity based on that relationship.

(b) *Legal impediment.* A legal impediment means that there was a defect in the procedure followed in the marriage ceremony or that a previous marriage of the employee or spouse had not ended at the time of the ceremony.

(c) *Living in the same household.* A husband and wife are "living in the same household" if they are "members of the same household" as shown in §216.23(b).

§ 216.36 "Child in care" when child is living with wife or surviving spouse.

A child who has been living with a person for at least 30 consecutive days is in that person's care if—

(a) The child is under 18 years old; or

(b) The child is 18 years old or older with a mental disability and the person supervises the child's activities and makes important decisions about the child's needs either alone or with another person; or

(c) The child is 18 years old or older with a physical disability and the person performs personal services for the child. Personal services are such services as dressing, feeding, and managing money, which the child cannot do alone because of a disability; and

(d) The child is not in active military service.

§ 216.37 "Child in care" when child is not living with wife or surviving spouse.

(a) *When child in care.* A child living apart from a person is in that person's care if—

(1) The child lives apart or is expected to live apart from the person for not more than 6 months; or

(2) The child is under 18 years old, the person supervises the child's activities and makes important decisions about his or her needs, and one of the following circumstances applies:

(i) The child is living apart because of school but spends a vacation of at least 30 consecutive days with the person each year, unless some event makes the vacation unreasonable. If the person and the child's other parent are separated, the school must look to the person for decisions about the child's welfare.

(ii) The child is living apart because of the person's employment but the person makes regular and substantial contributions to the child's support. "Contributing to support" is defined in § 216.24.

(iii) The child is living apart because of the child's or the person's physical disability; or

(3) The child is 18 years old or older and is mentally disabled and the person supervises the child's activities, makes important decisions about the child's needs, and helps in the child's upbringing and development.

(b) *Child not in care.* A child living apart from a person is not in the person's care if—

(1) The child is in active military service; or

(2) The child is living with his or her other parent; or

(3) A court order removed the child from the person's custody and control; or

(4) The child is 18 years old or older, does not have a mental disability, and has been living apart or expects to live apart from the person for more than 6 months; or

(5) The person gave the right to custody and control of the child to someone else.

§ 216.38 Disability period for surviving spouse.

A surviving spouse who has a disability as defined in Part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which—

(a) Begins with the later of—

(1) The month in which the employee died; or

(2) The last month the surviving spouse was entitled to an annuity for having the employee's child "in care"; or

(3) The last month the surviving spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of—

(1) The month before the month in which the surviving spouse is 60 years old; or

(2) The last day of the 84th month (7 years) following the month in which the period began.

Subpart F—Child's Annuity

§ 216.45 General.

The Railroad Retirement Act provides an annuity for the child of a deceased employee but not for the child of a living employee. However, the Act does provide that the child of a living employee can establish eligibility for a spouse annuity, or cause an increase in the annuity of an employee and spouse. The eligibility requirements described in this subpart for the annuity of a child of a deceased employee apply also for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a wife under § 216.20 if she has the employee's eligible child "in care"; and

(b) To provide an increase in the employee's annuity under the social security overall minimum provision by including the eligible child. (See Part 229 of this chapter).

§ 216.46 Who is eligible for a child's annuity.

A person is eligible for a child's annuity if the person—

(a) Is a child, as defined in § 216.49, of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in §§ 216.56–216.61; and

(d) Meets one of the following at the time the application is filed—

(1) Is under 18 years old;

(2) Is 18 years old or older and either—

(i) Has a disability as defined in Part 220 of this chapter that began before the child became 22 years old; or

(ii) Is under 22 years old and is a full-time student as defined in § 216.63 and § 216.64; or

(iii) Becomes 22 years old in a month in which he or she is a full-time student and has not completed the requirements for, or received, a degree from a 4-year college or university.

§ 216.47 What is required for payment of a child's annuity.

An eligible child of a deceased employee must apply to be entitled to an annuity.

§ 216.48 Who may be reentitled to a child's annuity.

If a person's entitlement to a child's annuity has ended, the person may be reentitled if he or she has not married and he or she applies to be reentitled. The reentitlement may begin with—

(a) The first month the person is a full-time student if he or she is under 22 years old or is 22 years old and has not completed the requirements for, or received a degree from, a 4-year college or university; or

(b) The first month the person is disabled, if the disability began before he or she became 22 years old; or

(c) The first month the person is under a disability that began before the end of the 84th month after the month in which the previous spouse or child's annuity ended or the person was no longer included as a disabled child under the social security overall minimum (see Part 229 of this chapter) because he or she was no longer disabled.

§ 216.49 Child defined.

As used in this chapter, child means—

(a) The natural or legally adopted child of the employee; or

(b) The stepchild of the employee; or

(c) The grandchild or stepgrandchild of the employee or spouse; or

(d) The equitably adopted child of the employee.

§ 216.50 Relationship as a child under State law.

To decide a person's relationship as the child of an employee, the Board applies the laws of the State in which the employee has a permanent home when the wife applies for a spouse annuity for having the employee's child "in care," when the employee's annuity can be increased under the social secuirty overall minimum provision, or when the employee dies, if the person is applying for a child's annuity. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the Board applies the laws of the District of Columbia. See § 216.33(b) for a definition of "permanent home."

§ 216.51 Who is the employee's natural child.

A person may be eligible as an employees' natural child if one of the following conditions is met:

(a) The child could inherit, under State law, a share of the employee's personal property as the employee's natural child if the employee were to die without leaving a will.

(b) The child's mother or father entered into "a deemed marriage" with the employee, before the child's birth, as described in § 216.35.

(c) The child's mother has not married the employee, but—

(1) The employee has stated in writing that the person is his child; or

(2) A court order states that the employee is the father of the child; or

(3) A court ordered the employee to contribute to the child's support because the employee is the child's father.

(d) The child's mother has not married the employee, but—

(1) The person has acceptable evidence othe than that shown in paragraph (c) of this section, that the employee is his or her father; and

(2) The employee was living with the child or contributing to the child's support, as shown in § 216.62 and § 216.24, when—

(i) The wife applied for her annuity for having the employee's child "in care;" or

(ii) The employee's annuity can be increased under the social security overall minimum provision as explained in Part 229 of this chapter; or

(iii) The employee died, if the person is applying for a child's annuity.

§216.52 Who is the employee's legally adopted child.

A person may be eligible as the employee's child if the employee adopted the child under the State laws which apply, as shown in § 216.50. A child adopted by the surviving spouse after the employee's death is considered the employee's child if—

(a) The child is adopted within two years after the day the employee died;

(b) The employee began proceedings to adopt the child before death; and

(c) The child is living in the employee's household at the time of the employee's death; and

(d) The child is not receiving regular support contributions from any person other than the employee or spouse at the time of the employee's death.

§ 216.53 Who is the employee's stepchild.

A person may be eligible as an employee's stepchild if—

(a) The child's natural or adoptive parent married the employee after the child's birth; and

(b) There is a marriage relationship between the employee and the child's parent as shown in § 216.33; and

(c) The employee and the child's parent were married at least one year before the date the wife applies for her annuity for having the employee's child "in care" or before the date the employee's annuity can be increased under the social security overall minimum provision; or

(d) The employee and the child's parent were married at least nine months before the date the employee died, if the person is applying for a child's annuity. If they were married less than nine months, the conditions described in § 216.32(b) must be met.

§ 216.54 Who is the employee's grandchild or stepgrandchild.

A person may be eligible as the grandchild or stepgrandchild of an employee or of an employee's spouse if the requirements in (a) and either (b) or (c) are met:

(a) The person is the natural child, legally adopted child, or stepchild of the child of an employee or employee's spouse as defined in §§ 216.51–216.53 or in § 216.55.

(b) The person's natural or adoptive parents are deceased or are disabled as defined in section 223(d) of the Social Security Act in the month in which—

(1) The employee, who is entitled to an annuity under subpart B of this part, would be entitled to an age benefit under section 202(a) or a disability benefit under section 223 of the Social Security Act if his or her railroad service were wages under that Act; or

(2) The employee dies; or

(3) The employee's period of disability begins, if he or she is entitled to an annuity and has a period of disability which continues until he or she could be entitled to a social security benefit as described in paragraph (1) of this subsection. "Period of disability" is explained in Part 220 of this chapter.

(c) The person was legally adopted in the United States by the employee's surviving spouse after the employee's death and the child's natural or adoptive parent or stepparent was not living in the employee's household and making regular contributions to the child's support at the time the employee died.

§ 216.55 Who is the employee's equitably adopted child.

A person may be eligible as the equitably adopted child of an employee if the employee had agreed to adopt the child but the adoption did not occur. The agreement to adopt must be recognized under State law so that the child could inherit a share of the employee's personal property as the employee's child if the employee were to die without leaving a will. The State law to be followed is explained in § 216.50.

§ 216.56 When a child must be dependent.

(a) *Employee is alive.* A child must be dependent upon the employee in the month in which—

(1) The wife's annuity as described in § 216.45 (a) begins; or

(2) The employee's annuity can be increased as described in § 216.45(b); or

(3) The employee's period of disability begins or the employee could become entitled to a social security benefit as described in § 216.54(b)(1), if the employee has a period of disability that continues until he or she could become entitled to that benefit.

(b) *Employee is dead.* A child must be dependent upon the employee in the month in which—

(1) The employee dies; or

(2) The employee's period of disability begins or the employee could become entitled to a social security benefit as described in § 216.54(b)(l), if the employee has a period of disability that continues until he or she could become entitled to that benefit or dies.

§ 216.57 When a natural child is dependent.

The employee's natural child, as defined in § 216.51, is considered dependent on the employee at the time shown in § 216.56. However, if the child is legally adopted by another person during the employee's lifetime, the child is considered dependent on the employee only if the employee was

living with the child or contributing to the support of the child at one of the times shown in § 216.56.

§ 216.58 When a legally adopted child is dependent.

(a) *General.*— (1) *During employee's lifetime.* If an employee legally adopts a child before the employee could become entitled to a social security benefit as described in § 216.54 (b)(l), and no other person adopts the child during the employee's lifetime, the child is considered dependent on the employee at the time shown in § 216.56(a). If the employee adopts a child who is not his or her natural child or stephild after the employee could become entitled to a social security benefit, as described in § 216.54(b)(l), the child is considered dependent on the employee only if the requirements in paragraph (b) of this section are met. If another person adopts the child during the employee's lifetime, the child is considered dependent on the employee as shown in § 216.57.

(2) *After employee's death.* If an employee legally adopted a child, including a natural child, stepchild, or grandchild, and no other person adopted the child during the employee's lifetime, the child is considered dependent on the employee at the time shown in § 216.56(b). If a surviving spouse adopted a child after the employee's death, the child is considered dependent on the employee if the requirements in § 216.52 are met. If another person adopted the child during the employee's lifetime, the child is considered dependent on the employee as shown in § 216.57.

(b) *Child adopted after employee could become entitled to a social security benefit.* A child who is not the employee's natural child, stepchild, grandchild or stepgrandchild, and who is adopted by an employee after the employee could become entitled to a social security benefit as described in § 216.54(b)(l), is considered dependent on the employee during the employee's lifetime only if the requirements in items (1), (2), and either (3) or (4) are met:

(1) The child is adopted in the United States.

(2) The child began living with the employee before the child became age 18.

(3) The child is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before—

(i) The employee could become entitled to a social security benefit, as described in § 216.54(b)(1); or

(ii) The employee becomes entitled to a period of disability that continues until he or she could become entitled to a social security benefit as described in § 216.54(b)(1); or

(4) A child born in the one-year period mentioned in item (3) lives with and receives at least one-half of his or her support from the employee for "substantially all" of the period that begins on the date the child is born. "Substantially all" means—

(i) The child is living with and receiving one-half support from the employee when the employee could become entitled to a social security benefit, as described in § 216.54(b)(1), or a period of disability; and

(ii) Any period during which the child was not living with or receiving one-half support from the employee is not more than one-half the period from the child's birth to the employee's date of entitlement or three months, whichever is less.

(c) *Grandchild adopted after employee could become entitled to a social security benefit.* If an employee legally adopts his or her grandchild or the spouse's grandchild after the employee could become entitled to a social security benefit, as described in § 216.54(b)(1), the grandchild is considered dependent on the employee during the employee's lifetime only if the requirements in items (1), (2), and (3) or (4) are met:

(1) The grandchild is adopted in the United States.

(2) The grandchild began living with the employee before the grandchild became age 18.

(3) The grandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before—

(i) The employee's annuity can be increased under the social security overall minimum (see Part 229 of this chapter) by including the grandchild; or

(ii) The employee could become entitled to a social security benefit, as described in § 216.54(b)(1); or

(iii) The employee becomes entitled to a period of disability that continues until he or she could become entitled to a social security benefit, as described in § 216.54(b)(1).

(4) A grandchild born in the one-year period mentioned in item (3) lives with and receives at least one-half of his or her support from the employee for "substantially all" of the period that begins on the date the grandchild is born. "Substantially all" is defined in paragraph (b)(4) of this section.

§ 216.59 When a stepchild is dependent.

An employee's stepchild, as described in § 216.53, is considered dependent on the employee if the stepchild is living with or receiving at least one-half of his or her support from the employee at one of the times shown in § 216.56.

§ 216.60 When a grandchild or stepgrandchild is dependent.

An employee's grandchild, as described in § 216.54 is considered dependent on the employee if the requirements in (a) and (b) or (c) are met:

(a) The grandchild or stepgrandchild began living with the employee before the grandchild or stepgrandchild became age 18.

(b) The grandchild or stepgrandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before—

(1) The employee could become entitled to a social security benefit as described in § 216.54(b)(1); or

(2) The employee dies; or

(3) The employee becomes entitled to a period of disability that lasts until he or she could become entitled to a social security benefit, as described in § 216.54(b)(1), or dies. "Period of disability" is explained in Part 220 of this chapter.

(c) A grandchild or stepgrandchild born in the one-year period mentioned in paragraph (b) lives with and receives at least one-half of his or her support from the employee for "substantially all" of the period that begins on the date the grandchild or stepgrandchild is born. "Substantially all" is defined in § 216.58(b)(4).

§ 216.61 When an equitably adopted child is dependent.

(a) *During employee's lifetime.* An employee's equitably adopted child, as defined in § 216.55, is not considered dependent on the employee during the employee's lifetime if the adoption takes place after the employee could become entitled to a social security benefit, as described in § 216.54(b)(1). If the equitable adoption took place before the employee could become entitled to a social security benefit, the child is considered dependent on the employee if the employee was living with or contributing to the support of the child at one of the times shown in § 216.56.

(b) *After Employee's Death.* An employee's equitably adopted child, as defined in § 216.55 is considered dependent on the employee if the employee was living with or contributing to the support of the child when the employee died.

§ 216.62 When a child is living with an employee.

A child is living with the employee if the child normally lives in the same home with the employee and the employee has parental control and authority over the child's activities. The child is considered to be "living with" the employee while they are living apart if they expect to live together again after a temporary separation. A temporary separation may include the employee's absence because of active military service, working away from home, hospitalization, or imprisonment. However, the employee must have parental control and authority over the child during the period of temporary separation. A child who is in active military service or in prison is not "living with" the employee, since the employee does not have parental control over the child.

§ 216.63 When a child is a full-time student.

A full-time student is a person who is in full-time attendance at an educational institution. A person is not a full-time student if he or she is paid while attending an educational institution by an employer who has requested or required that the person attend the educational institution.

(a) *Full-time attendance, defined.* Full-time school attendance means that a student is enrolled in a non-correspondence course which is considered full-time for day students under the practices and standards of the educational institution. If the student is enrolled in a junior college, college, or university, the course must last at least 13 weeks. If the student is enrolled in any other educational institution, the course must last at least 13 weeks and the student's scheduled rate of attendance must be at least 20 hours a week. A student whose full-time attendence either begins or ends in a month is in full-time attendance for the entire month. A student is in full-time attendence in the month he or she graduates if classes end in the month before graduation. A student is not in full-time attendance after his or her classes end if they end two or more months before the month of graduation.

(b) *Educational institution, defined.* An educational institution is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following requirements:

(1) It is operated or directly supported by the United States, by any State or local government, or by a political subdivision of a State or local government.

(2) It is approved by a State or accredited by a State or nationally-recognized accrediting body. Approval by a State means that a State agency or local governmental unit recognizes a school, college, or university as an eductional institution or approves one or more of the courses offered by a school, college, or university. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. A nationally-recognized accrediting body is one that has been recognized by the U.S. Commissioner of Education.

(3) It is a nonaccredited school, college, or university but its credits are accepted by at least 3 educational institutions that have been accredited by a State or nationally-recognized accrediting body.

§ 216.64 When a child is a full-time student during a period of nonattendance.

A student who has been in full-time attendance at an educational institution is considered a full-time student during a period of non-attendance (including part-time attendance) if—

(a) The period of nonattendance is 4 consecutive months or less; and

(b) The student shows the Board that he or she intends to return or the student does return to full-time attendance at the end of the period; and

(c) The student has not been expelled or suspended from the educational institution.

Subpart G—Parent's Annuity

§ 216.70 Who is eligible for a parent's annuity.

A person is eligible for a parent's annuity if there is no surviving spouse or child who is or who could ever be entitled to an annuity under Subpart E or F of this part and the person—

(a) Is a parent as defined in § 216.72 of a deceased employee who had completed 10 years of railroad service and had a current connnection with the railroad industry when he or she died;

(b) Is 60 years old or older;

(c) Has not married since the employee died; and

(d) Was receiving at least one-half support from the employee when he or she died. One-half support is defined in § 216.25.

§ 216.71 What is required for payment.

An eligible parent must apply to be entitled to an annuity.

§ 216.72 Who is the employee's parent.

An employee's parent is a person who—

(a) Is the natural mother or father, who is considered the employee's parent under the laws of the state where the employee had a permanent home when he or she died; or

(b) Is a person who legally adopted the employee before the employee became 16 years old; or

(c) Is a stepparent who married the employee's natural or adoptive parent before the employee became age 16. The marriage must be valid under the laws of the state where the employee had a permanent home when the employee died. See § 216.33(b) for a definition of permanent home.

Subpart H—Dual Benefit Windfall

Authority: Sec. 3, Pub. L. 93–445, 88 Stat. 1323–1325 (45 U.S.C. 231b). Sec. 4, Pub. L. 93–445, 88 Stat. 1329–1332 (45 U.S.C. 231c). Sec. 7, Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f). Sec. 216.86 also issued under sec. 1, Pub. L. 93–445, 88 Stat. 1311 (45 U.S.C. 231).

§ 216.80 Introduction.

Under the 1937 Railroad Retirement Act, an employee working in employment covered by that Act and the Social Security Act could get the full benefit of both Acts. The 1974 Railroad Retirement Act, which restructured the annuity into several components called tiers, eliminated this advantage, requiring that the first tier (the social security component) be reduced by the full amount of the social security benefit. However, an employee who is insured under the Social Security Act based on earnings before 1975, and meets certain other requirements, is entitled to a dual benefit windfall. This additional amount replaces, to a certain extent, the offset for the social security benefit in the first tier of the annuity. Similar provisions are made for a spouse and surviving spouse. This subpart describes the eligibility requirements for the windfall benefit. Parts 226–228 of this chapter describe how the windfall benefit is computed. Part 218 of this chapter explains when the windfall benefit begins and ends.

§ 216.81 Types of windfall benefits.

(a) *Employee and spouse.* The windfall benefit for an employee or spouse is equivalent to the type of social security benefit it is intended to replace:

(1) *Employee.* An employee windfall benefit is a replacement for:

(i) An old age or disability insurance benefit; or

(ii) A wife, husband, widow or widower insurance benefit.

(2) *Spouse.* A spouse windfall benefit is a replacement for:

(i) An old age or disability insurance benefit; or

(ii) A wife or husband insurance benefit.

(b) *Surviving spouse.* The windfall benefit for a surviving spouse is a guarantee that the surviving spouse will not get less in total benefits under the 1974 Act than he or she would have received under the 1937 Act as a widow or widower who was also entitled to an old age or disability insurance benefit under the Social Security Act.

§ 216.82 When an employee's annuity can be increased for a windfall benefit.

(a) *Old age or disability windfall benefit.* An employee's annuity can be increased for a windfall benefit based on his or her own earnings record if the employee—

(1) Has completed at least 10 years of railroad service before 1975;

(2) Is eligible for an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act as in effect on December 31, 1974;

(3) Meets one of the following conditions:

(i) He or she worked for a railroad employer or as an employee representative in 1974;

(ii) He or she has a current connection with the railroad industry on December 31, 1974 or on the beginning date of his or her annuity; or

(iii) He or she has completed a total of at least 25 years of railroad service before 1975; and

(4) Is permanently insured under the Social Security Act on his or her own earnings record on December 31, 1974, as described in § 216.86; or

(5) Meets the requirements in paragraphs (a) (1) and (2) of this section but does not meet any of the conditions in paragraph (a)(3) and is permanently insured under the Social Security Act on his or her own earnings record on December 31 of the year before 1974 in which the employee last worked in the railroad industry, as described in § 216.86

(b) *Spouse or surviving spouse windfall benefit.* An employee's annuity can be increased for a windfall benefit as the spouse or surviving spouse of another person if the employee—

(1) Has completed at least 10 years of railroad service before 1975;

(2) Is eligible for a benefit as a spouse or surviving spouse under section 202 (b), (c), (e), (f) or (g) of the Social Security Act as in effect on December 31, 1974;

(3) Meets one of the following conditions:

(i) He or she worked for a railroad employer or as an employee representative in 1974;

(ii) He or she has a current connection with the railroad industry on December 31, 1974 or on the beginning date of his or her annuity; or

(iii) He or she has completed a total of at least 25 years of railroad service before 1975; and

(4) Is the spouse or surviving spouse of a person who—

(i) Is permanently insured under the Social Security Act on December 31, 1974, as described in § 216.86; and

(ii) If alive, is entitled to an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act; or

(5) Meets the requirements in paragraphs (b)(1) and (2) of this section but does not meet any of the conditions in paragraph (b) (3) and is the spouse or surviving spouse of a person who—

(i) Is permanently insured under the Social Security Act on December 31 of the year before 1974 in which the employee last worked in the railroad industry, as described in § 216.86; and

(ii) If alive, is entitled to an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act.

(6) Meets the dependency requirement in paragraph (c), if the employee is a male.

(c) *Dependency requirement for a windfall benefit as a husband or widower.* An employee who meets the requirements in paragraph (b) of this section and is the husband or widower of a permanently insured person must also have been receiving one-half of his support from that person at one of the times shown in this paragraph. One-half support is defined in § 216.25. A husband or widower must be eligible for benefits under section 202(c) or (f) of the Social Security Act as in effect on December 31, 1974, to be entitled to a windfall benefit. On that date, the Social Security Act required that a husband or widower must have been receiving one-half of his support from his wife at one of the following points in time:

(1) If she had a period of disability which continued until she became entitled to an old age or disability benefit or until her death—

(i) At the beginning of her period of disability; or

(ii) When she became entitled to an old age or disability benefit; or

(iii) When she died.

(2) If she did not have a period of disability which continued as described in paragraph (c) (1) of this section—

(i) When she became entitled to an old age or disability insurance benefit; or

(ii) When she died.

§ 216.83 When a spouse annuity can be increased for a windfall benefit.

(a) *Old age or disability windfall benefit.* A spouse annuity can be increased for a windfall benefit based on the spouse's own earnings record if—

(1) The employee has completed at least 10 years of railroad service before 1975 and he or she meets one of the following conditions:

(i) He or she worked for a railroad employer or as an employee representative in 1974;

(ii) He or she has a current connection with the railroad industry on December 31, 1974 or on the beginning date of the employee annuity; or

(iii) He or she has completed a total of at least 25 years of railroad service before 1975; and

(2) The spouse—

(i) Is permanently insured under the Social Security Act on his or her own earnings record on December 31, 1974, as described in § 216.86; and

(ii) Is eligible for an age or disability benefit under section 202(a) or 223(a) of the Social Security Act as in effect on December 31, 1974; or

(3) The employee has completed at least 10 years of railroad service before 1975 but does not meet any of the other conditions described in paragraph (a) (1) of this section and the spouse—

(i) Is permanently insured under the Social Security Act on his or her own earnings record on December 31 of the year before 1974 in which the employee last worked for the railroad industry, as described in § 216.86; and

(ii) Is eligible for an age or disability benefit under section 202(a) or 223(a) of the Social Security Act as in effect on December 31, 1974.

(b) *Spouse windfall benefit.* A spouse annuity can be increased for a windfall benefit based on the employee's earnings record if—

(1) The employee's annuity was increased for a windfall benefit under § 216.82(a);

(2) The spouse is 62 years old or older or is a wife with the employee's child who is under 18 years old or disabled in her care; and

(3) The spouse annuity cannot be increased for a windfall benefit under paragraph (a) of this section.

(c) *Dependency requirement for a husband.* A spouse who meets the requirements or paragraph (a) of this section and is the husband of the railroad employee must also have been receiving one-half of his support from the employee, as defined in § 216.25, on the later of—

(1) The beginning date of the spouse annuity; or

(2) The date the husband can become entitled to a windfall benefit based on his own earnings record, as shown in paragraph (a) of this section.

§ 216.84 When a surviving spouse annuity can be increased for a windfall benefit.

A surviving spouse annuity can be increased for a windfall benefit if—

(a) The deceased employee completed at least 10 years of service before 1975; and

(b) The surviving spouse—

(1) Is permanently insured under the Social Security Act on this or her own earnings record on December 31, 1974, as described in § 216.86; and

(2) Is entitled to an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act.

§ 216.85 Dependency requirement for a windfall benefit as a widower.

A surviving spouse who meets the requirements in § 216.84 and is the widower of the deceased employee must also have been receiving one-half of his support from the deceased employee when the employee died or on the beginning date of the employee's annuity. One-half support is defined in § 216.25. A widower must be eligible for an annuity under section 5(a) of the Railroad Retirement Act of 1937, as in effect on December 31, 1974, to be entitled to a windfall benefit. Since a widower who was not receiving one-half of his support from his wife was not eligible for an annuity under the Railroad Retirement Act of 1937, he is not entitled to a windfall benefit.

§ 216.86 What is needed to be permanently insured under the Social Security Act.

"Permanently insured" is similar to "fully insured" under section 214(a) of the Social Security Act. To be permanently insured, a person needs the same social security earnings that he or she would need to be insured under the Social Security Act when or or she becomes 62 years old or dies, whichever is earlier. To be permanently insured as of December 31, 1974, the person must have enough social security earnings through December 31, 1974, to be fully insured under the Social Security Act. To be permanently insured as of December 31 of the year before 1974 in which the employee last worked in the railroad industry, the person must have enough social security earnings through that date to be fully insured under the Social Security Act.

Subpart I—Eligibility for More Than One Annuity

§ 216.90 Employee and spouse or survivor annuity.

Under the 1937 Act, a person receiving an employee annuity who was also entitled to an annuity as a spouse or survivor could receive both annuities. Under section 2(h)(3) of the 1974 Act, if a person is entitled to both an employee annuity and a spouse or survivor annuity, the spouse or survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply if the employee or the person on whose wage record the spouse or survivor benefit is payable worked for a railroad employer or as an employee representative before January 1, 1975.

§ 216.91 Spouse and survivor annuity.

If a person is entitled to both a spouse and survivor (child's or parent's) annuity only the larger of the two annuities will be paid. However, if the person chooses, he or she can receive the smaller of the two annuities.

§ 216.92 Two survivor annuities.

If a person is entitled to two survivor (surviving spouse, child's, or parent's) annuities, only the larger of the two annuities will be paid. However, if the person chooses, he or she can receive the smaller of the two annuities.

Subpart J—Current Connection With the Railroad Industry

§ 216.95 General.

A current connection with the railroad industry is clear in most cases where entitlement or death immediately follows continuous years of railroad employment. However, there are cases in which the employee did not work for a railroad employer for a period of time before entitlement or death. In this situation, a test is provided to determine whether the employee can be considered to have a current connection with the railroad industry.

§ 216.96 When required.

(a) A current connection is required to qualify a person for the following types of railroad retirement benefits:

(1) An employee occupational disability annuity as described in § 216.6(a).

(2) A supplemental annuity, as described in subpart C of this part.

(3) An employee or spouse windfall benefit, as described in §§ 216.82 and 216.83.

(4) A survivor annuity, as described in subparts E, F, and G of this part.

(5) The lump-sum death payment described in Part 235 of this chapter.

(b) A current connection established when an employee's annuity began is effective for—

(1) Any annuity under this part for which the employee later becomes eligible; and

(2) Any survivor annuity under this part or a lump-sum death payment under Part 235 of this chapter.

§ 216.97 Regular current connection test.

An employee has a current connection with the railroad industry if he or she meets one of the following requirements:

(a) The employee works in creditable railroad service in at least 12 of the 30 consecutive months immediately before the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

(b) The employee works in creditable railroad service in at least 12 months in a period of 30 consecutive months and does not work in any regular non-railroad employment in the interval between the month the 30-month period ends and the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

§ 216.98 Special current connection test.

An employee who does not have a current connection under the regular test has a current connection only to qualify a person for a survivor annuity if—

(1) The employee would not be fully or currently insured under section 214 of the Social Security Act if his or her railroad service after 1936 were treated as social security earnings; or

(2) The employee has no quarters of coverage as defined in section 213 of the Social Security Act.

§ 216.99 What is regular non-railroad employment.

Regular non-railroad employment is full- or part-time employment for pay but not any of the following types of employment:

(a) Self-employment.

(b) Temporary work provided as relief by an agency of a Federal, state, or local government.

(c) Service inside or outside the United States, for an employer under the Railroad Retirement Act, even if the employer does not conduct the main part of its business in the United States.

(d) Involuntary military service not creditable under the Railroad Retirement Act.

(e) Employment with the following agencies of the United States Government:

(1) Department of Transportation.
(2) Interstate Commerce Commission.
(3) National Mediation Board.
(4) Railroad Retirement Board.

§ 216.100 What amount of regular non-railroad employment will break a current connection.

The amount of regular non-railroad employment needed to break a current connection depends on when the 30-month period described in § 216.97 ends, as follows:

(a) If the 30-month period ends in the year before or in the same year as the month the annuity begins or the month the employee dies, the current connection is broken if the employee—

(1) Works in each month in the interval after the end of the 30-month period and before the month the annuity begins or the employee dies; or

(2) Works and earns at least $200 in wages in any three months within the interval described in paragraph (a)(1) of this section.

(b) If the 30-month period ends more than a year before the year in which the annuity begins or the employee dies, the current connection is broken if the employee—

(1) Works in any two consecutive years wholly or partially within the interval after the end of the 30-month period and before the month the annuity begins or the employee dies; and

(2) Earns at least $1,000 in wages in any year wholly or partially within the interval described in paragraph (b)(1) of this section, even if that year is not one of the two consecutive years described in paragraph (b)(1) of this section.

§ 216.101 Regular non-railroad employment that will not break a current connection.

Regular non-railroad employment will not break an employee's current connection if it is performed during the 30-month period described in § 216.97(b), in or after the month the annuity begins, or in the month the employee dies.

PART 217—[REDESIGNATED AS PART 230]

4. The current Part 217 is redesignated as Part 230. A new Part 217 is added to read as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

Subpart A—General

Sec.
217.1 Introduction.
217.2 Definitions.
217.3. Need to file an application.

Subpart B—Applications

217.5 When an application is a claim for an annuity or lump sum.
217.6 What is an application filed with the Board.
217.7 Claim filed with the Social Security Administration.
217.8 When one application satisfies the filing requirement for other benefits.
217.9 Effective period of application.
217.10 Application filed after death.
217.11 "Good cause" for delay in filing application or in providing proof of support.

Subpart C—Filing an Application

217.15 Where to file.
217.16 Filing date.
217.17 Who may sign an application.
217.18 When application is not acceptable.
217.19 Representative of the claimant selected after application is filed.
217.20 When a written statement is used to establish the filing date.
217.21 Deterred from filing.

Subpart D—Cancellation of Application

217.25 Who may cancel an application.
217.26 How to cancel an application.
217.27 Effect of cancellation.

Subpart E—Denial of Application

217.30 Reasons for denial of application.
217.31 Applicant's right to appeal denial.

Authority: Sec. 5, Pub. L. 93–445, 88 STAT. 1332 (45 U.S.C. 231d). Sec. 7, Pub. L. 93–445, 88 STAT. 139 (45 U.S.C. 231f).

Subpart A—General

§ 217.1 Introduction.

This part describes how to apply for an annuity or lump-sum payment under this chapter. It contains the rules for the filing and cancellation of an application and the period of time the application is in effect.

§ 217.2 Definitions.

The following definitions are used in this part.

"Applicant" means a person who signs an application for an annuity or lump sum for himself or herself or for some other person.

"Application" refers only to a form described in § 217.6.

"Apply" or "File" means to sign a form or statement that the Railroad Retirement Board accepts as an application.

"Award" means to process a form to make a payment. An annuity is awarded on the date the payment form is processed.

"Claimant" means a person who files for an annuity or lump sum for himself or herself or the person for whom an application is filed.

§ 217.3 Need to file an application.

In addition to meeting other requirements, a person must file an application to become entitled to an annuity or lump sum. Filing an application will—

(a) Permit a formal decision on whether the person is entitled to an annuity or lump sum;

(b) Protect a person's entitlement to an annuity for as many as 12 months before the application is filed; and

(c) Provide the right to appeal if the person is dissatisfied with the decision (see Part 260 of this chapter).

Subpart B—Applications

§ 217.5 When an application is a claim for an annuity or lump sum.

An application is a claim for an annuity or lump sum if it meets all of the following conditions.

(a) It is based on an application form completed and filed with the Board as described in § 217.6;

(b) It is signed by the claimant or by someone described in § 217.17 who can sign the application for the claimant;

(c) It is filed with the Board on or before the date of death of the claimant. (See § 217.10 for limited exceptions.)

§ 217.6 What is an application filed with the Board.

(a) *General.* An application filed with the Board is generally one that is filed on a form set up by the Board for that purpose. See Part 200 of this chapter for a list of application forms.

(b) *Claim filed with the Social Security Administration.* An application filed for benefits under Title II of the Social Security Act on one of the forms set up by the Social Security Administration for that purpose (except an application for a disability insurance benefit that terminated before the employee completed his or her 120th month of creditable railroad service) is also considered an for an annuity or lump sum if it is filed as shown in § 217.7.

(c) *Claim filed with the Veterans Administration.* An application filed with the Veterans Administration on one of its forms for survivor benefits under section 3005 of Title 38, United States Code, is also considered an application for a survivor annuity.

§ 217.7 Claim filed with the Social Security Administration.

(a) *Claim is for life benefits.* An application for life benefits under Title II of the Social Security Act is an application for an annuity if the conditions either in paragraphs (a)(1), (a)(2), and (a)(3) or in paragraph (a)(4) of this section are met:

(1) The application was filed because the applicant did not know he or she was eligible for an annuity under the Railroad Retirement Act. The Board must have or receive evidence indicating why the applicant thought

that he or she lacked eligibility for an annuity.

(2) The claimant would have been entitled to and would currently be entitled to an annuity under subparts B or D of Part 216 of this chapter if the applicant had applied for the annuity on the date the social security application was filed.

(3) The applicant asks the Board in a written statement to consider the application for social security benefits as an application for an employee or spouse annuity.

(4) The application was filed because the employee had less than 10 years of creditable railroad service, and having established entitlement to social security benefits and continued working in railroad service, subsequently acquired 10 years of railroad service.

(b) *Claim is for death benefits.* An application for death benefits under Title II of the Social Security Act is an application for an annuity or lump sum if—

(1) The application is filed based on the death of an employee and the Board has jurisdiction for the payment of survivor benefits based on the compensation record of the deceased employee; and

(2) The claimant is eligible for an annuity or a lump-sum death payment on the date the application is filed.

§ 217.8 When one application satisfies the filing requirement for other benefits.

An annuity application filed with the Board is generally considered as an application for other benefits to which a person is or may be eligible. Therefore a claimant does not need to file another application to be entitled to any of the following types of benefits:

(a) An employee age annuity if—

(1) The employee's application for a disability annuity is formally denied and the employee is eligible for the age annuity on the date the application is filed or on the date the application is denied; or

(2) The employee is entitled to a disability annuity in the month before the month he or she is 65 years old.

(b) An accrued employee or supplemental annuity, or a residual lump sum, if a claimant is eligible for one of these payments when he or she files an application for a survivor annuity or lump-sum payment under this chapter.

(c) A surviving spouse annuity if he or she is entitled to a spouse annuity in the month before the month the employee died.

(d) A child's annuity if the wife of the employee had the child "in care" and was entitled to a spouse annuity in the month before the month the employee died.

(e) A surviving spouse annuity based on age, if the surviving spouse was entitled to a surviving spouse annuity based on disability in the month before the month he or she is 60 years old.

(f) A surviving spouse annuity based on age or disability if a widow, who was receiving an annuity under § 216.30(c)(3) of this chapter because she had the employee's child in her care, is eligible for an age or disability annuity when she no longer has an eligible child in her care.

(g) A spouse annuity based on age if a wife, who was receiving an annuity because she had the employee's child in her care, is eligible for an unreduced age annuity when she no longer has an eligible child in her care.

(h) A surviving spouse annuity under § 216.30(c)(3) of this chapter if during the time the surviving spouse is entitled to an annuity based on disability, he or she has "in care" a child of the deceased employee.

(i) A benefit under Title II of the Social Security Act unless the applicant restricts the application only to an annuity.

§ 217.9 Effective period of application.

(a) *When effective period ends.* The effective period of an application ends on the date of the notice of an initial decision denying the claim. If a timely appeal is made (see Part 260 of this chapter) the effective period of the application ends on the date of the notice of the decision of the referee, on the date of the notice of the final decision of the Board, or when court review of the denial has been completed. After the effective period of an application ends, the person must file a new application for any annuity or lump sum to which the claimant believes he or she is eligible.

(b) *Application filed before claimant is eligible.* (1) *General rule.* Except as shown in paragraph (b)(2) of this section, an application for an annuity must be denied if it is filed with the Board more than three months before the date an annuity can begin.

(2) *Application for disability annuity.* If the Board determines that a claimant for a disability annuity is disabled under Part 220 of this chapter, beginning with a date after the application is filed and before a final decision is made, the application is treated as though it was filed on the date the claimant became disabled. The claimant may be an employee, surviving spouse, or surviving child.

(c) *Application filed after the claimant is eligible.* (1) *Application for lump-sum death payment.* An application for a lump-sum death payment under Part 234 of this chapter must be filed within two years after the death of the employee. This period may be extended under the Soldiers' and Sailors' Civil Relief Act of 1940, or when the applicant can prove "good cause" under § 217.11 of this chapter for not filing within the time limit.

(2) *Application for annuity unpaid at death.* An application for an annuity due but unpaid at death under Part 234 of this chapter must be filed within two years after the death of the person entitled to the annuity. This period may be extended under the Soldiers' and Sailors' Civil Relief Act of 1940, or when the applicant can prove "good cause" under § 217.11 of this chapter for not filing within the time limit.

(3) *Application for residual lump sum.* An application for a residual lump sum under Part 234 of this chapter may be filed at any time after the death of the employee.

§ 217.10 Application filed after death.

The claimant must generally be alive when an application is filed. The following are exceptions to this rule:

(a) A survivor eligible for an annuity or lump sum under this chapter may file an application to establish a period of disability if the employee dies before filing an application for a disability annuity. A period of disabiliy is defined in Part 220 of this chapter. The application must be filed within three months after the month the employee died.

(b) A person who could recieve payment for the estate of a person who paid the burial expenses of the deceased employee may file an application if the person who paid the burial expenses dies before applying for the lump-sum death payment under Part 234 of this chapter. The application must be filed within the two-year period shown in § 217.9(c)(1).

(c) A surviving spouse may file an application for a spouse annuity after the death of the employee if the surviving spouse was eligible for a spouse annuity in the month before the month the employee died.

§ 217.11 "Good cause" for delay in filing application or in providing proof of support.

(a) An applicant has "good cause" for a delay in the filing of an application for a lump-sum death payment or an annuity unpaid at death, as shown in § 217.9(c) (1) and (2), or for a delay in providing proof of support, as shown in § 219.31, if the delay was due to—

(1) Circumstances beyond the applicant's control, such as extended

illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished by the Board; or

(3) Efforts by the applicant to secure evidence without realizing that evidence could be submitted after filing an application or proof of support; or

(4) Unusual or unavoidable circumstances which show that the applicant could not reasonably be expected to have been aware of the need to file an application or proof of support within the set time limit.

(b) An applicant does not have good cause for a delay in filing or providing proof of support if he or she was informed of the need to file or provide proof of support within the set time limit but neglected to do so or decided not to file.

Subpart C—Filing an Application

§ 217.15 Where to file.

(a) *Applicant in U.S. or Canada.* An applicant who lives in the United States or Canada may file an application at any Board office in person or by mail. An applicant may also give the application to any Board field employee who is authorized to receive it at a place other than a Board office.

(b) *Application Outside U.S.* An applicant who lives outside the United States or Canada may file an application at any United States Foreign Service office. An applicant may also send the application to an office of the Board.

§ 217.16 Filing date.

An application filed in a manner and form acceptable to the Board is officially filed with the Board on the earliest of the following dates:

(a) On the date it is received at a Board office.

(b) On the date it is delivered to a field employee of the Board as described in § 217.15.

(c) On the date it is received at any office of the U.S. Foreign Service.

(d) On the date the application was mailed, as shown by the postmark, if using the date it is received will result in the loss or reduction of benefits.

(e) On the date the Social Security Administration considers the application filed, if it is filed with the Social Security Administration or the Veterans Administration.

§ 217.17 Who may sign an application.

An application may be signed according to the following rules:

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must normally sign in his or her own handwriting. However, a parent or a person standing in place of a parent may sign an application for a student under 22 years old. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in item (d).

(b) A claimant who is unable to write must make his or her mark. A Board representative or two other persons must sign as witnesses to a signature by mark.

(c) A claimant's representative, as described in Part 266 of this chapter, must sign the application if the claimant is incompetent (unable to handle his or her own affairs).

(d) A claimant who is a child between the ages of 16 and 18, is competent, as defined in paragraph (a) of this section, has no court appointed representative, and is not in the care of any person, may sign the application.

§ 217.18 When application is not acceptable.

(a) *Not properly signed.* The Board will ask the applicant to prepare a corrected application if—

(1) The original application was signed by someone other than the claimant or a person described in § 217.17; or

(2) The signature has been changed; or

(3) The signature is not readable or does not appear to be authentic.

(b) *Incomplete or not readable.* The Board will ask the applicant to prepare a supplement application with certain items completed if—

(1) Any entries on the application are not readable or appear to be incorrect; or

(2) An important part of the application was not completed.

(c) *Obtaining corrected application.* If an application is not properly signed, the applicant must prepare a new application with a corrected signature. If the Board receives the corrected application within 30 days after the applicant is asked to prepare it, the Board will use the filing date of the original application to pay benefits. If the Board receives the corrected application more than 30 days after the notice to the applicant, the Board will use the filing date of the corrected application to pay benefits.

§ 217.19 Representative of the claimant selected after application is filed.

(a) *Before benefits awarded.* If the Board selects a representative for an incompetent claimant (see Part 266 of this chapter) after an application is filed but before the benefit is awarded, a new benefit application must be filed by the representative. However, benefits will be paid using the filing date of the original benefit application.

(b) *After benefits awarded.* If the Board selects a representative after a monthly annuity was awarded to another person, the representative must apply as a substitute payee on a form specifically designed for that purpose. A new annuity application is not required.

§ 217.20 When a written statement is used to establish the filing date.

(a) *Statement filed with the Board.* A written statement indicating an intent to file a claim for an annuity or lump sum, filed with the Board as provided in §§ 217.15 and 217.16, can establish the filing date of an application. A form set up by the Board to obtain infomation about persons who may be eligible for an annuity or lump sum in a particular case is not by itself considered a written statement for the purpose of this section. The Board will use the filing date of the written statement if all of the following requirements are met:

(1) The statement gives a person's clear and positive intent to claim an annuity or lump sum for himself or herself or for some other person.

(2) The claimant or a person described in § 217.17 signs the statement.

(3) The person who signed the statement files an application with the Board on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application.

(4) The claimant is alive when the application is filed except as provided in § 217.10.

(b) *Statement filed with the Social Security Administration.* A written statement filed with the Social Security Administration can be used to establish the filing date of an application if, assuming the statement were an application, the conditions under § 217.7 are met and—

(1) The statement gives a clear and positive intent to claim benefits under Title II of the Social Security Act;

(2) The claimant or a person described in § 217.17 signs the statement;

(3) The statement is sent to the Board by the Social Security Administration;

(4) The person who signed the statement files an application with the Board on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(5) The claimant is alive when the application is filed except as provided in § 217.10.

§ 217.21 Deterred from filing.

A person who telephones or visits a Board office stating that he or she wishes to file for an annuity or lump sum, but puts off filing because of an action or lack of action by an employee of the Board, can establish a filing date based on that oral notice if the following conditions are met:

(a) The employee of the Board failed to—

(1) Tell the person that it was necessary to file an application on the proper form; or

(2) Tell the person that a written statement could protect the filing date; or

(3) Give the person the proper application form; or

(4) Correctly inform the person of his or her eligibility.

(b) The person files an application on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application.

(c) The claimant is alive when the application is filed except as provided in § 217.10.

Subpart D—Cancellation of Application

§ 217.25 Who may cancel an application.

An application may be cancelled by the claimant or a person described in § 217.17. If the claimant is deceased, the person who is or could be eligible for any annuity accrual under Part 234 of this chapter may cancel the application for the annuity.

§ 217.26 How to cancel an application.

An application may be cancelled under the following conditions:

(a) *Before an annuity is awarded.* The application may be cancelled if—

(1) The applicant files a written request with the Board at a place described in § 217.15 asking that the application be cancelled or stating that he or she wants to withdraw the application.

(2) The claimant is alive on the date the written request is filed or the claimant is deceased and the rights of no person other than the person requesting the cancellation will be adversely affected; and

(3) The applicant files the written request on or before the date the annuity is awarded.

(b) *After an annuity is awarded.* The application may be cancelled if—

(1) The conditions in paragraph (a) (1) and (2) of this section are met;

(2) Any other person who would lose benefits because of the cancellation consents to the cancellation in writing; and

(3) All annuity payments already made based on the application being cancelled are repaid or will be recovered.

§ 217.27 Effect of cancellation.

When a person cancels an application the effect is the same as though an application was never filed. When an employee cancels his or her application, any application filed by the employee's spouse is also cancelled. However, a request to cancel a survivor's application will cancel only the application of the survivor named in the written request. A person who cancels an application may reapply by filing a new application under this part.

Subpart E—Denial of Application

§ 217.30 Reasons for denial of application.

The Board will deny each application filed by or for an employee, spouse or survivor for one or more of the following reasons:

(a) The claimant does not meet the eligibility requirements for an annuity or lump sum under this chapter.

(b) The applicant files an application for other than a disability annuity more than three months before the date on which the eligible person's annuity can begin.

(c) The applicant does not submit the evidence required under this chapter to establish eligibility for an annuity or lump sum.

§ 217.31 Applicant's right to appeal denial.

Each applicant is given the right to appeal the denial of his or her application if he or she does not agree with the Board's decision. The appeals process is explained in Part 260 of this chapter.

5. A new Part 219 is added to read as follows:

PART 219—EVIDENCE REQUIRED FOR PAYMENT

Subpart A—General Evidence Requirements

Sec.

219.1 Introduction.
219.2 Definitions.
219.3 Who is responsible for furnishing evidence.
219.4 When and where to furnish evidence.
219.5 Failure to furnish requested evidence.
219.6 Original records or copies as evidence.
219.7 How the Board decides what is convincing evidence.
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Subpart B—Evidence of Age, Marriage and Death

Sec.

219.10 When evidence of age is required.
219.11 Types of evidence to prove age.
219.12 Evidence to prove death.
219.13 Evidence of presumed death.
219.14 When evidence of marriage is required.
219.15 Evidence of a valid ceremonial marriage.
219.16 Evidence of a common-law marriage.
219.17 Evidence of a deemed valid marriage.
219.18 Evidence that a marriage has ended.

Subpart C—Evidence for Child's and Parent's Benefits

219.20 When evidence of a parent or child relationship is required.
219.21 Evidence of natural parent or child relationship.
219.22 Evidence of stepparent or stepchild relationship.
219.23 Evidence of relationship by legal adoption—parent or child.
219.24 Evidence of relationship by equitable adoption.
219.25 Evidence of relationship of grandchild or stepgrandchild.
219.26 Evidence of a child's dependency.
219.27 Evidence of school attendance for child age 18 or older.

Subpart D—Other Evidence Requirements

219.30 Evidence of "living with".
219.31 Evidence of a parent's support.
219.32 Evidence of a male spouse's or widower's dependency.
219.33 Evidence of having a child in care.
219.34 Evidence of responsibility for, or payment of, burial expenses.
219.35 Evidence of relationship of a person other than a parent or child.
219.36 Evidence of where the employee had a permanent home.
219.37 Evidence of "good cause".

Authority: Sec. 7(b)(1), Pub. L. 93–455 (45 U.S.C. 231f(b)(1)).

Subpart A—General Evidence Requirements

§ 219.1 Introduction.

This part contains the basic rules for the evidence which is required to support a person's claim for monthly or lump-sum benefits under the Railroad Retirement Act as described in Parts 216 and 234 of this chapter and Medicare coverage (see Parts 270–271 of this chapter) under title XVIII of the Social Security Act. Special evidence requirements for disability annuities are found in Part 220 of this chapter.

§ 219.2 Definitions

As used in this subpart—

"Applicant" means the person who signs an application for an annuity or lump sum for himself, herself or for some other person.

"Apply" means to sign a form or statement that the Board accepts as an application.

"Benefits" means any employee annuity, spouse annuity, survivor annuity, or lump-sum payment under the Act.

"Convincing evidence" means one or more pieces of evidence that proves to the satisfaction of the Board that an individual meets a requirement for eligibility. See § 219.7 for the guides the Board uses in deciding whether evidence is convincing.

"Eligible" means a person meets all of the requirements for payment of an annuity, a lump-sum or a benefit under section 202 of the Social Security Act but has not yet applied.

"Entitled" means that a person has applied and has proven his or her rights to benefits.

"Evidence" means any record, document or signed statement that helps to show whether a person is eligible for benefits. It may also be used to establish whether the person is still entitled to benefits.

§ 219.3 Who is responsible for furnishing evidence.

When evidence is required to prove a person's eligibility for, or right to continue to receive, annuity payments, that person or his or her representative (See Part 266 of this chapter) is responsible for obtaining the evidence and submitting it to the Board. An employee of the Board will advise each applicant what is needed and how to get it. If the evidence submitted is a foreign-language record or document, the Board will have it translated. All evidence and documents given to the Board are kept confidential and are not disclosed to anyone but the person who submitted them, except under the rules described in Part 262.16 of this chapter. Section 13 of the Railroad Retirement Act provides criminal penalties for any persons who misrepresent the facts or make false statements to obtain retirement benefits for themselves or someone else.

§ 219.4 When and where to furnish evidence.

When a person applies for benefits, the Board will ask that person for evidence to prove that he or she is eligible for the benefits.

After a person establishes entitlement to an annuity, the Board may ask for evidence to show that the person may continue to be entitled to an annuity or that his or her annuity payments should not be reduced or stopped. See Part 218 of this chapter for a list showing when annuity payments must be reduced or stopped. A person who lives inside the United States shall give his or her evidence to an employee of the Railroad Retirement Board office where the person files the application. Persons who live in an area where there is no Board office or persons who are unable to travel to a Board office may send evidence to the Board office closest to where they live. Persons who live outside the United States may take evidence to the Foreign Service Office closest to where they live, or send it to the headquarters office of the Board.

§ 219.5 Failure to furnish requested evidence.

(a) *Evidence to prove initial eligibility.* Usually the Board will ask a person to furnish specific kinds of evidence or information by a certain date, to prove initial eligibility for benefits. If the evidence or information is not received by that date, the Board may decide that the person is not eligibile for benefits and will deny his or her application. The effects of denying an application are explained in Part 217 of this chapter.

(b) *Evidence to prove continued entitlement.* When a person is already receiving an annuity, a Board employee may ask that person to produce by a certain date information needed to decide whether that person can continue to receive an annuity or whether the annuity should be reduced or stopped. If the information is not received by the date given, the Board may decide that the person is no longer entitled or that his or her annuity should be stopped or reduced under the Act.

(c) *What to do when required evidence will be delayed.* When the required evidence cannot be furnished within the specified time, the person who was asked to give the evidence or information should notify the Board and explain why there will be a delay. If this delay is caused by illness, failure to receive the information from another source, or a similar situation, the person will be given additional time to secure the evidence or information. If the information is not received within a reasonable time, as determined by the Board, the person who was asked to give the evidence or information will be notified of the effect that his or her failure to furnish the evidence or information will have on his or her receiving or continuing to receive benefits.

§ 219.6 Original records or copies as evidence.

(a) *General.* An applicant or an annuitant may be asked to show an original document or record as evidence to prove eligibility or continued entitlement to benefits. A Board employee will make a photocopy or transcript of these original documents or records and return the documents to the person who furnished them. A person may also submit copies of original records that are properly certified and some uncertified birth notifications. These types of records are described below in this section.

(b) *Certified copies of original records.* The Board will accept copies of original records or extracts from records if they are certified as true and exact copies of the original by—

(1) The official custodian of the record;

(2) A Board employee who is authorized to certify copies;

(3) A Veterans Administration employee, if the evidence was given to that agency to obtain veteran benefits;

(4) A Social Security Administration employee, if the evidence was given to that agency to obtain social security benefits;

(5) A United States Consular Officer or employee of the Department of State authorized to certify evidence received outside the United States; or

(6) An employee of a State agency or State Welfare Office authorized to certify copies of original records in the agency's or office's files.

(c) *Uncertified copies of original records.* The Board may accept uncertified photo copies of birth registration notifications as evidence when it is the practice of the local birth registrar to issue them in this manner.

§ 219.7 How the Board decides what is convincing evidence.

When the Board received evidence, a Board employee examines it to see if it is convincing evidence. If it is, no other evidence is needed. In deciding whether the evidence is convincing, the Board employee decides whether—

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information contained in the evidence was given under oath or in the presence of witnesses, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time took place or shortly after;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence, including existing Board records.

§ 219.8 Preferred evidence and other evidence.

When a person submits the type of evidence shown as "preferred" in §§ 219.11(a); 219.12(a)(1) and (a)(2); 219.15(b)(1), (b)(2), and (b)(3); 219.16(b); 219.17(b); 219.18(b); 219.21(a); 219.23(b); 219.24(b); or 219.33(c) of this part, the Board will generally find it is convincing evidence. This means that unless there is information in the Board's records that raises a doubt about the evidence, other evidence to prove the same fact will not be needed. If preferred evidence is not available, the Board will consider any other evidence a person furnishes. If the other evidence consists of several different records or documents which all show the same information, the Board may determine that it is convincing evidence even though it is not "preferred" evidence. If the other evidence is not convincing by itself, the person will be asked to submit additional evidence. If the additional evidence shows the same information, all the evidence considered together may be convincing evidence. When the Board has convincing evidence of the facts that must be proven, or when it is clear that the evidence provided does not prove the necessary facts, the Board will make a formal decision about the applicant's rights to benefits.

Subpart B—Evidence of Age, Marriage, and Death

§ 219.10 When evidence of age is required.

(a) Evidence of age is required when the employee applies for an annuity under the Railroad Retirement Act or for Medicare coverage under title XVIII of the Social Security Act.

(b) Evidence of age is also required from a person who applies for a spouse's annuity, widow's, widower's, parent's or child's annuity under the Railroad Retirement Act, or for Medicare coverage under title XVIII of the Social Security Act.

§ 219.11 Types of evidence to prove age.

(a) *Preferred evidence.* The best type of evidence to prove a person's age is—

(1) A birth certificate or hospital birth record recorded before age 5;

(2) A church record of birth or baptism recorded before age 5; or

(3) Notification of registration of birth made before age 5.

(b) *Other evidence of age.* If an individual cannot obtain "preferred" evidence of age, he or she will be asked to submit other convincing evidence to prove age. The other evidence may be one or more of the following records with the records of highest value listed first; they are.

(1) Physician's or Midwife's birth record;

(2) Bible or other family record;

(3) Naturalization record;

(4) Military record;

(5) Immigration record;

(6) Passport;

(7) Census record or World War I draft registration;

(8) School record;

(9) Vaccination record;

(10) Insurance record;

(11) Labor Union or fraternal record;

(12) Employer's record; or

(13) A statement signed by the individual giving the reason why he or she cannot obtain other convincing evidence of age and the sworn statements of two other persons who have personal knowledge of the age that the individual is trying to prove.

§ 219.12 Evidence to prove death.

(a) *When evidence of the employee's death is required.* Evidence to prove the employee's death is always required for payment of any type of survivor benefit based on the deceased employee's record. See Part 216 for types of survivor benefits payable.

(1) Preferred evidence of death. The best evidence of a person's death is—

(i) A certified copy of or extract from the public record of death, coroner's report of death, or verdict of the coroner's jury of the state or community where death occurred; or a certificate by the custodian of the public record of death; or a certificate or statement of death issued by a local registrar public health official;

(ii) A signed statement of the funeral director, attending physician, or intern of the institution where death occurred;

(iii) A certified copy of, or extract from, an official report or finding of death made by an agency or department of the United States; or

(iv) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department; or a copy of the public record of death in a foreign country.

(2) Other evidence of death. If the "preferred" evidence of death cannot be obtained, the individual who must furnish evidence of death will be asked to explain why and submit other convincing evidence such as sworn statements of two persons who have personal knowledge of the death. These persons must be able to swear to the date, time, place and cause of death.

(b) *When evidence to prove death of other persons is required.* Evidence to prove the death of persons other than the employee is required when—

(1) A person, who is eligible for survivor benefits, dies after the employee;

(2) A residual lump sum (See Part 234 of this chapter) is payable and a person whom the employee named to receive all or part of this benefit dies before the employee; or dies after the employee but before receiving his or her share of the benefit;

(3) The spouse in a joint and survivor annuity election case (See Part 231 of this chapter) dies before the employee; or

(4) Any other case where there is reasonable doubt of the death of—

(i) Any person who, if alive, has priority over the applicant;

(ii) Any spouse whose death is alleged to have ended a previous marriage; or

(iii) Any person whose end of entitlement would increase benefits to other entitled persons.

§ 219.13 Evidence of presumed death.

When a person cannot be proven dead but evidence of death is needed, the Board may presume he or she died at a certain time if the Board receives the following evidence:

(a) A certified copy of, or extract from, an official report or finding by an agency or department of the United States that a mining person is "presumed" to be dead as stated in Federal law (5 U.S.C. 5565). Unless other evidence is submitted showing an actual date of death, the Board will use the date on which the person was reported missing as the date of death.

(b) Signed statements by those in a position to know the facts and other records which show that the person has been absent from his or her residence for no apparent reason and has not been heard from for at least 7 years. If there is no evidence available that he or she is still alive, the Board will use as the date of death either the date he or she left home, the date ending the 7-year period, or some other date depending upon what the evidence shows is the most likely date of death.

(c) When a person has been missing for less than 7 years but may be presumed dead due to drowning or common disaster, (fire, accident, etc.), the Board will ask for signed statements from the applicant and individuals who know the circumstances surrounding the person's disappearance. The best evidence is statements from individuals who witnessed the drowning or saw the missing person at the scene of the accident shortly before it happened.

(d) If the applicant is the employee's grandchild or stepgrandchild but the

evidence does not identify a parent, the grandchild or stepgrandchild's parent will be presumed to have died in the first month in which the employee became entitled to benefits.

§ 219.14 When evidence of marriage is required.

Documentary evidence of marriage is required when an applicant for a monthly annuity, lump-sum death payment, residual lump sum or Medicare coverage, claims to be the wife, husband, widow, widower or stepparent of the employee. An applicant may also be required to submit evidence of another person's marriage when that person's marriage is necessary to determine the applicant's entitlement to benefits under the Railroad Retirement Act. In deciding whether the marriage to the employee is valid or not in a life case, the Board will follow the law of the State where the employee had a permanent home when the applicant filed an application; in a death case, the Board will follow the law of the State where the employee had a permanent home when he died. See § 219.36 for description of permanent home. What evidence will be required depends on whether the employee's marriage was a ceremonial marriage, a commonlaw marriage, or a marriage that can be deemed to be valid.

§ 219.15 Evidence of a valid ceremonial marriage.

(a) *Definition of valid "ceremonial marriage."* A valid "ceremonial marriage" is one that follows procedures set by law in the State or foreign country where the ceremony takes place. These procedures cover who may perform the marriage ceremony, what licenses or witnesses are needed and similar rules. A ceremonial marriage can be one that follows certain tribal Indian custom, Chinese custom or similar traditional procedures.

(b) *Preferred evidence.* Preferred evidence of a ceremonial marriage is—

(1) A copy of the public record of the marriage, certified by the custodian of the record or by a Board employee;

(2) A copy of the church record of the marriage certified by the custodian of the record or by a Board employee; or

(3) The original certificate of marriage.

(c) *Other evidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, the applicant must state why, in writing, and submit either—

(1) A sworn statement of the clergyman or official who performed the marriage ceremony; or

(2) Other convincing evidence such as the sworn statements of two persons who have knowledge of the marriage; preferably eyewitnesses to the marriage ceremony.

§ 219.16 Evidence of a common-law marriage.

(a) *Definition of "common-law marriage."* A "common-law" marriage is one considered valid under the law of certain States even though there was no formal ceremony. It is a marriage based upon an agreement to be married between two persons free to marry, who consider themselves married, and who live together as husband and wife. In some states certain other requirements (as dictated by the laws of the state) must be met.

(b) *Preferred evidence.* Evidence of a common-law marriage must give the reasons why the informant believes that a marriage exists. If the information described in this paragraph is not furnished on a form provided by the Board, it must be submitted in the form of a sworn statement. Preferred evidence of a common-law marriage is one of the following:

(1) If both the husband and wife are alive, each shall sign a statement and get signed statements from one blood relative of each. The statement of another individual may be submitted for each statement the husband or wife is unable to get from a relative. Each signed statement should show that—

(i) The husband and wife have a present agreement to be married and that they believe they are married; and

(ii) The husband and wife present themselves to the public as husband and wife.

(2) If either the husband or wife is dead, the surviving spouse shall sign a statement and get signed statements from two blood relatives of the dead spouse. The surviving spouse's statement should show that he or she and the dead spouse had an agreement that they believed themselves to be married and that they presented themselves to the public as husband and wife. The statments from relatives of the dead spouse should support the surviving spouse's statement.

(3) If both husband and wife are dead, the applicant shall get a signed statement from one blood relative of each dead spouse. Each statement should show that the husband and wife had an agreement that they believed themselves to be married and that they presented themselves to the public as husband and wife.

(4) Statements by relatives and other individuals described in paragraphs (b)(1), (2), (3) of this section are not required when—

(i) The husband and wife entered into a ceremonial marriage which was void because of a legal impediment to the marriage. See § 216.35 for definition of legal impediment;

(ii) After the impediment was removed the husband and wife continued to live together as man and wife until the employee filed an application or one of them died; and

(iii) A valid common-law marriage was established, under the law of the State in which they lived, by their continuing to live together as man and wife.

(c) *Other evidence of common-law marriage.* When preferred evidence of a common-law marriage cannot be obtained, the applicant will be asked to explain why and to furnish other convincing evidence of the marriage.

§ 219.17 Evidence of a deemed valid marriage.

(a) *Definition of "deemed valid marriage."* A "deemed valid marriage" is a ceremonial marriage entered into in good faith which would be valid if a legal impediment did not exist. An applicant may be the deemed spouse or widow or widower only if the applicant lives in the same household and no other person has been or is entitled to benefits as the legal spouse, widow, or widower.

(b) *Preferred evidence.* Preferred evidence of a deemed valid marriage is—

(1) Evidence of the ceremonial marriage as described in § 219.15(b);

(2) If both the employee and spouse are alive, the spouse's signed statement that he or she went through the ceremony in good faith and his or her reasons for believing the marriage was valid; or if the employee is dead, the widow or widower's signed statement that he or she went through the marriage ceremony in good faith and his or her reasons for believing it was valid;

(3) If required to remove a reasonable doubt, the signed statements of other persons who might have information about what the parties knew about any previous marriage or other facts showing whether the parties went through the marriage ceremony in good faith; and

(4) Evidence that the parties were living in the same household, if the employee is alive, when he or she applied for benefits or, if the employee is dead, when he or she died. See § 219.30(c) for the evidence required to demonstrate living in the same household.

(c) *Other evidence of a deemed valid marriage.* If preferred evidence of a deemed valid marriage cannot be obtained, the applicant must explain why and submit other convincing evidence of the marriage.

§ 219.18 Evidence that a marriage has ended.

(a) *When evidence is required.* Evidence of how a previous marriage ended may be required to determine whether a later marriage is valid. If a widow or widower remarried after the employee's death and that marriage was annulled, evidence of the annulment is required.

(b) *Preferred evidence.* Preferred evidence that a marriage has ended is—

(1) A certified copy of the decree of divorce or annulment; or

(2) Evidence of the death (See § 219.12(b)) of a party to the marriage.

(c) *Other evidence that a marriage has ended.* If preferred evidence that the marrige has ended cannot be obtained, the applicant must explain why and submit other convincing evidence that the marriage has ended.

Subpart C—Evidence for Child's and Parent's Benefits

§ 219.20 When evidence of a parent or child relationship is required.

A person who applies for parent's or child's benefits or for Medicare coverage is required to submit evidence of his or her relationship to the deceased employee. A spouse, under age 60, who applies for a spouse annuity because she has a child of the employee in care, is required to submit evidence of the child's relationship to the employee. The evidence the Board will request depends on whether the person is the employee's natural child, adopted child, stepchild, grandchild or stepgrandchild; or whether the person is the employee's natural parent or adopting parent.

§ 219.21 Evidence of natural parent or child relationship.

(a) *Preferred evidence.* If the eligible person is the natural parent of the employee, preferred evidence of the relationship is a copy of the employee's public or religious birth record. If the eligible person is the natural child of the employee, preferred evidence of the relationship is a copy of the child's public or religious birth record.

(b) *Other evidence of parent or child relationship.* When preferred evidence of a parent or child relationship cannot be obtained, the Board may ask the applicant for evidence of the employee's marriage or of the marriage of the employee's parents if that is needed to remove any reasonable doubt of the relationship. To show that a person is the child of the employee the person may be asked for evidence that he or she would be able to inherit the employee's personal property under State law where the employee had a permanent home (See § 219.31). When a spouse applies for benefits because of a child in care, the employee may be asked for a copy of any court order showing that he has been declared to be the natural parent of the child or a court order requiring the employee to contribute to the child's support because the child is his son or daughter.

§ 219.22 Evidence of stepparent or stepchild relationship.

If the eligible person is a stepparent or stepchild of the employee, the Board will ask for the evidence described in § 219.21 or § 219.23 which shows the person's natural or adoptive relationship to the employee's husband, wife, widow or widower. The Board will also ask for evidence of the husband's, wife's, widow's, or widower's marriage to the employee. (See § 219.14–219.17).

§ 219.23 Evidence of relationship by legal adoption—parent or child.

(a) *Definition of legally adopted child.* A child who is legally adopted by the employee under applicable State law is a "child" of the employee. Legal adoption is different from equitable adoption in that the adoption proceedings are completed under applicable State law and are not defective. A child adopted after the employee's death by the widow or widower, under certain conditions is deemed to be the employee's child. (See Part 216 Subpart H of this chapter).

(b) *Preferred evidence.* Preferred evidence of legal adoption is—

(1) A copy of the decree or order of adoption, certified by the custodian of the record;

(2) A photocopy of the decree or order of adoption; or

(3) If the widow or widower adopted the child after the employee's death, the evidence described in paragraph (b)(1) of this section; the widow's or widower's statement as to whether the child was living in the same household with the employee when he or she died (See § 219.30); what support the child was getting from another person or organization; and if the widow or widower had a deemed valid marriage with the employee, and evidence of that marriage (See § 219.17).

(c) *Other evidence of legal adoption.* In some States, the record of adoption is sealed and cannot be obtained without a court order. In this event, the Board will accept as proof of adoption an official notice received by the adopting parents at the time of adoption that the adoption has been completed; or a birth certificate issued as a result of the adoption proceeding.

§ 219.24 Evidence of relationship by equitable adoption.

(a) *Definition.* An equitably adopted child is a child who cannot qualify as a legally adopted child because the adoption proceedings are defective under State law; or a contemplated adoption was never completed. In some states, the law will consider a person to be the child of another if the other person agreed to adopt the child, the natural parents or the person caring for the child agreed to the adoption, the person and the child then lived together as parent and child, and certain other requirements are met.

(b) *Preferred evidence.* If the applicant is a child who had this type of relationship to the employee (or to the employee's wife, widow or husband), as defined in paragraph (a) of this section, the Board will ask for evidence of the agreement if it is in writing. The Board will also ask for written statements from the child's natural parents.

(c) *Other evidence.* If the agreement to adopt was not in writing, the Board will ask for other convincing evidence about the child's relationship to the adopting parents.

§ 219.25 Evidence of relationship of grandchild or stepgrandchild.

If the child is the grandchild or stepgrandchild of the employee, the Board will require the kind of evidence described in §§ 219.21–219.22 that shows the child's relationship to his or her parents and his or her parent's relationship to the employee.

§ 219.26 Evidence of a child's dependency.

(a) *When evidence of a child's dependency is required.* Evidence of a child's dependency on the employee is required when–

(1) The employee is receiving an annuity that can be increased under the Social Security Act Overall Mininum (See Part 229 of this chapter) by including a child, grandchild or a spouse who has a child in her care;

(2) A wife under age 65 applies for a full spouse annuity because she has a child or a grandchild of the employee in her care; or

(3) A child or someone in behalf of a child applies for a child's annuity based on the deceased employee's record.

(b) *When the dependency requirement must be met.* Usually the dependency requirement must be met at the time the employee became disabled or died or at

the time the child's annuity application was filed.

(c) *Natural or adopted child.* If the child is the employee's natural or adopted child the Board may ask for the following evidence:

(1) A signed statement by someone who knows the facts that confirms this relationship and which shows whether the child was legally adopted by someone other than the employee. If the child was adopted by someone else while the employee was alive but the adoption was annulled, the Board may require a certified copy of the annulment decree or other convincing evidence of the annulment.

(2) A signed statement by someone in a position to know showing when and where the child lived with the employee and when and why they may have lived apart; and showing what contributions the employee made to the child's support and how the contributions were made.

(d) *Stepchild.* If the child is the employee's stepchild, the Board may ask for the following evidence:

(1) A signed statement by someone in a position to know showing when and where the child lived with the employee and when and why they may have lived apart.

(2) A signed statement by someone in a position to know showing that the child received at least one-half of his or her support from the employee or the one-year before the employee became entitled to benefits or to a period of disability, (See Part 220 Subpart B of this chapter), died, and the income and support the child received in this period from any other source.

(e) *Grandchild or stepgrandchild.* If the child is the employee's grandchild or stepgrandchild, the Board will ask for evidence described in paragraph (d) of this section showing that the child was living with the employee and receiving at least one-half of his or her support from the employee for the year before the employee became entitled to benefits or to a period of disability (See Part 220 Subpart B of this chapter), or died. The Board will also ask for evidence of the employee's death or disability.

§ 219.27 Evidence of school attendance for child age 18 or older.

If a child age 18 or older, applies for benefits as a student the Board will ask for evidence that the child is attending school. After the child has started his or her school attendance the Board will also ask (twice yearly) for evidence that he or she is continuing to attend school full-time. The child will be asked to submit (on a form furnished by the Board or other form acceptable to the Board) the following evidence:

(a) A signed statement that he or she is attending school full-time and is not being paid by an employer to attend school.

(b) A statement from an official of the school verifying that the child is attending school full-time. The Board will also accept as evidence a letter of acceptance from the school, receipted bill or other evidence show that the child has enrolled or been accepted at that school or is continuing in full-time attendance.

Subpart D—Other Evidence Requirements

§ 219.30 Evidence of "living with."

(a) *Definition of "living with."* A spouse, widow or widower is "living with" the employee if—

(1) He or she and the employee are living in the same household together;

(2) The employee is contributing to the spouse's, widow's or widower's support (see § 216.24 of this chapter); or

(3) The employee is under court order to contribute to the spouse's, widow's or widower's support.

(b) *When evidence of "living with" is required.* Evidence of living with" is required when—

(1) The employee's spouse applies for a spouse's annuity; or

(2) The employee's legal widow or widower applies for a lump-sum death payment or residual lump sum on the basis of that relationship; or the employee's "deemed" widow or widower applies for a widow's or widower's annuity.

(c) *Types of evidence to prove "living with."* The following evidence may be required:

(1) If the employee is alive, both the employee and his or her spouse must sign a statement that they are living together in the same household when the spouse applies for a spouse's annuity.

(2) If the employee is dead, the widow or widower must sign a statement showing whether he or she was living with the employee when the employee died.

(3) If the employee and spouse, widow or widower were temporarily living apart, a signed statement is required explaining where each was living, how long the separation lasted, and the reason for the separation. If more evidence is required to remove any reasonable doubt about this, the Board may ask for signed statements of other persons in a position to know the facts or for other convincing evidence of "living with."

(4) If the employee and spouse, widow or widower were not living in the same household, the Board may ask for evidence that the employee was contributing to or under court order to contribute to the support of his or her spouse, widow or widower. Evidence of contributions or a certified copy of the order for support may be requested. The court order for support must be in effect on the day the spouse applies for a spouse's annuity or if the employee is dead, the day of the employee's death. This type of evidence does not apply for a "deemed" widow or widower (see § 219.17) because he or she must have been living in the same household as the employee.

§ 219.31 Evidence of a parent's support.

If a person applies for a parent's annuity, the Board will ask for evidence to show that the parent received at least one-half support from the employee in the one-year period before the employee died. The Board may also ask the parent for signed statements from other people who know the facts about his or her sources of support. The Board will ask for the following evidence:

(a) The parent's signed statement showing his or her income, any other sources of support, and the amount from each source during the one-year period; and

(b) The parent's signed statement showing his or her expenses during the one-year period.

(c) If the statement described in paragraphs (a) and (b) of this section cannot be obtained, other convincing evidence that the parent received one-half of his or her support from the employee.

§ 219.32 Evidence of a male spouse's or widower's dependence.

In the case of *Kalina* vs. *Railroad Retirement Board,* the Supreme Court ruled that a male spouse or widower need not be dependent on the deceased employee to be eligible for a spouse's or widower's annuity. However, a male spouse or widower must be dependent on the employee to be entitled to a windfall (see § 226.27 of this chapter for description of windfall). The male spouse or widower will be asked for evidence that he was dependent on the employee for at least one-half his support at the time of his annuity beginning date or if earlier the date he became entitled to a windfall or at the time of the employee's death. The Board will ask for the following evidence:

(a) The male spouse's or widower's signed statement showing his income, any other sources of support and the amount from each source.

(b) The male spouse's or widower's signed statement showing his expenses.

(c) If the statement described in paragraphs (a) and (b) of this section cannot be obtained, other convincing evidence that the spouse or widower received one-half support from the employee.

§ 219.33 Evidence of having a child in care.

(a) *Definition.* "Child in care" means that the mother or father exercises parental control and responsibility for the welfare and care of a child under age 18 or a mentally incompetent child age 18 or over or performs personal services for a mentally competent child age 18 or over who is disabled.

(b) *When evidence of having a child in care is required.* A person under age 65 who applies for a spouse's annuity on the basis of caring for a child, or for a mother's or father's annuity as a widow or widower, is required to furnish evidence that he or she has in care an eligible child of the employee as described in §§ 216.36–216.37. What evidence the Board will ask for depends on whether the child is living with the applicant or with someone else.

(c) *Preferred evidence of having a child in care.* Preferred evidence of having a child in care is—

(1) If the child is living with the applicant, the applicant's signed statement showing that the child is living with him or her.

(2) If the child is living with someone else—

(i) The applicant's signed statement showing with whom the child is living and why. The applicant must also show when the child last lived with him or her, how long the separation will last and what care and contributions he or she provides for the child; and

(ii) The signed statement of the person with whom the child is living showing what care the applicant provides and the sources and amounts of support received by the child. If the child is in an institution, an official there should sign the statement. If there is a court order or written agreement showing who has custody of the child, the Board will ask for a copy of this.

(d) *Other evidence.* If the preferred evidence described in paragraph (c)(2)(ii) of this section cannot be obtained, the Board will ask for other convincing evidence that the applicant has the child in care.

§ 219.34 Evidence of responsibility for or payment of burial expenses.

(a) *When evidence of burial expenses is required.* If a person applies for the lump-sum death payment because he or she is responsible for paying the funeral home or burial expenses of the employee or because he or she has paid some or all of these expenses, the Board will ask for evidence of this.

(b) *Type of evidence required.* The Board will ask for the following evidence:

(1) The applicant's signed statement showing—

(i) That he or she accepted responsibility for the funeral home expenses or paid some or all of these expenses or other burial expenses; his or her relationship to the employee; and if not related by blood or marriage, why he or she accepted responsibility for, or paid these expenses;

(ii) Total funeral home expenses and, if necessary, the total of other burial expenses; and if someone else paid part of the expenses, the person's name, address, relationship to the employee and the amount he or she paid;

(iii) The amount of cast or property the applicant expects to receive as repayment for any burial expenses he or she paid; and whether anyone has applied for any burial allowance from the Veterans Administration or other governmental agency for these expenses; and

(iv) If the applicant is owner or official of a funeral home, a signed statement from anyone, other than an employee of the home, who helped make the burial arrangements showing whether he or she accepted responsibility for paying the burial expenses.

(2) Unless the person is applying as an owner or official of a funeral home, a signed statement from the owner or official and, if necessary, from those supplied other burial goods or services which shows—

(i) The name, address, and relationship to the employee of everyone who accepted responsibility for, or paid any part of, the burial expenses; and

(ii) Information which the owner or official of the funeral home and, if necessary, the supplier has about the expenses and payments mentioned in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

§ 219.35 Evidence of relationship of a person other than a parent or child.

When any person other than a child or parent applied for benefits due because of the employee's death or because of the death of a beneficiary, the Board may ask the applicant for evidence of relationship. The type of evidence requested is dependent upon the amount of benefit payable and the applicant's relationship to the decreased employee or beneficiary. If there is more than one person eligible for the benefit, and all eligible persons agree on the relationship of each other eligible person, only one of the persons will be asked to furnish proof of relationship.

§ 219.36 Evidence of where the employee has a permanent home.

(a) *When evidence of the employee's permanent home is required.* The Board may ask for evidence to prove where the employee has a permanent home at the time his or her spouse filed an application or if earlier, the time the employee died if—

(1) The entitled person is applying for benefits as the employee's wife, husband, widow, widower, parent or child; and

(2) The entitled person's relationship to the employee depends upon the laws of the State where the employee has his or her permanent home when his or her wife or husband applied for benefits or when the employee died.

(b) *What evidence is required.* The Board will ask for the following evidence to establish the employee's permanent home.

(1) The eligible person's signed statement showing what the employee considered to be his or her permanent home.

(2) If the statement in paragraph (b)(1) of this section or other evidence of record raises a reasonable doubt in establishing the employee's permanent home, evidence of where the employee paid personal property taxes, or real estate taxes, or income taxes; or voted; or other convincing evidence may be required.

§ 219.37 Evidence of "good cause".

The principle of "good cause" is applied by the Board in determining whether to allow an application which is submitted after the statutory time limits to be acceptable for the lump-sum death payment.

(a) *When evidence of "good cause" is required.* The Board may ask for evidence the applicant had "good cause" for delay as defined in Part 217 of this chapter when the applicant is applying for the lump-sum death payment described in Part 234 of this chapter more than two years after the employee died.

(b) *What evidence is required to establish "good cause".* The Board will ask for the following evidence of "good cause":

(1) The applicant's signed statement explaining why he or she did not submit proof of support or the application for lump-sum death payment within the specified 2-year period.

(2) If the statement in paragraph (b)(1) of this section or other evidence raises a reasonable doubt whether there was good cause, other convincing evidence to establish "good cause".

6. A new Part 221 is added to read as follows:

PART 221—JURISDICTION DETERMINATIONS

Sec.
221.1 Introduction.
221.2 Railroad Retirement Board jurisdiction.
221.3 Social Security Administration jurisdiction.
221.4 When a jurisdiction decision may be reversed.

Authority: Sec. 7(b)(1), Pub. L. 94-547 (45 U.S.C. 231f(b)(1)).

§ 221.1 Introduction.

This part explains the factors involved in deciding whether the Social Security Administration or the Railroad Retirement Board will pay benefits to a railroad employee, and his or her eligible family members, both before and after the employee's death. The agency that has jurisdiction over the payment of benefits also has jurisdiction of the applicant's medicare coverage (see Part 270 of this chapter). The Board is responsible for making this decision.

§ 221.2 Railroad Retirement Board jurisdiction.

(a) *Life cases.* The Board has jurisdiction to pay monthly benefits to each living employee who has completed at least ten years (120 months) of creditable service under the Railroad Retirement Act, and to his or her eligible spouse. Creditable service is described in Part 220 of this chapter.

(b) *Death cases.* The Board has jurisdiction to pay monthly benefits or lump-sum death benefits to eligible survivors of a deceased employee, when the deceased employee has at least ten years (120 months) of service that is creditable under the Railroad Retirement Act and a current connection as described in Part 216 of this chapter. Lump-sum death benefits are described in Part 234 of this chapter. The Board also has jurisdiction to pay any residual benefits that may become payable at the death of an employee. Residual benefits are described in Part 234 of this chapter. The Board retains jurisdiction to pay any residual that may be payable even after jurisdiction has been transferred to the Social Security Administration as described in § 221.3.

§ 221.3 Social Security Administration jurisdiction.

The Board transfers jurisdiction (railroad service and compensation credits earned by the employee which the Social Security Administration considers in determining benefits payable) to the Social Security Administration when—

(a) *Life and death cases.* A living or deceased employee has less than 120 months of service that is creditable under the Railroad Retirement Act; or

(b) *Death cases.* A deceased employee has at least 120 months of service that is creditable under the Railroad Retirement Act (see Part 220 of this chapter) but does not have a current connection with the railroad industry as described in Part 216 of this chapter.

§ 221.4 When a jurisdiction decision may be reversed.

The Board may reverse a jurisdiction decision whenever evidence is received by the Board indicating that the original decision was incorrect.

PART 230—[REDESIGNATED FROM PART 217]

7. Former Part 217 titled Months Annuities Not Payable by Reason of Work is redesignated as Part 230. A new Part 217 titled Application for Annuity or Lump Sum was added (as explained in item 4 above).

PART 232—SPOUSE'S ANNUITIES

Subpart A—[Removed]

§§ 232.201-232.204 [Removed]

8. Part 232 is amended by removing Subpart A and §§ 232.201 through 232.204 of Subpart B.

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

Subparts C and H—[Removed]

§§ 237.401, 237.404, and 237.406-237.410 [Removed]

9. Part 237 is amended by removing Subpart C, §§ 237.401, 237.404, and 237.406 through 237.410 of Subpart D, and Subpart H.

PART 238—RESIDENTIAL LUMP-SUM PAYMENTS

§ 238.5 [Removed]

10. Part 238 is amended by removing § 238.5.

Dated: November 14, 1980.

By Authority of the Board.

R. F. Butler,

Secretary of the Board.

[FR Doc. 80-36931 Filed 11-25-80; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Continued Payment of Disability Benefits to Individuals Under Vocational Rehabilitation Plans; Decision to Develop

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Social Security Administration plans to publish proposed regulations to provide that disability benefits will not be terminated or suspended because a person's physical or mental impairment has ceased if he or she is participating in an approved State vocational rehabilitation program.

These changes will implement a provision of Pub. L. 96-265 (The "Social Security Disability Amendments of 1980") which amends sections 225 and 1631(a) of the Social Security Act to continue benefits after the impairment ceases if the beneficiary is participating in an approved rehabilitation program. The Commissioner of Social Security must determine that participation in the program will increase the likelihood that the person may be permanently removed from the disability benefit rolls.

The changes will require revision to Subparts D, J, and P of Part 404 and Subparts I and N of Part 416 of Title 20 of the Code of Federal Regulations. The Department of Health and Human Services has classified these regulations as policy significant.

FOR FURTHER INFORMATION CONTACT: Russell C. Brown, Social Security Administration, Room 3-C-7 Operations, 6401 Security Boulevard, Baltimore, Maryland 21235 Telephone 301-594-3784.

Dated: November 5, 1980.

William J. Driver,

Commissioner of Social Security.

[FR Doc. 80-36940 Filed 11-25-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340-21]

Personal Privacy and Rights of Individuals Regarding Personal Records; Exemptions

AGENCY: Department of the Army, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Army proposes to delete 2 exemption rules for two systems of records formerly subject to the Privacy Act. It was proposed to delete these two systems of records at 45 FR 75734, November 17, 1980.

DATE: Comments must be received on or before December 16, 1980.

ADDRESS: Comments may be sent to Headquarters, Department of the Army, The Adjutant General's Office, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Christian, telephone: (202) 693-0973.

SUPPLEMENTARY INFORMATION: Department of the Army exemption rules were published in the Federal Register of September 28, 1977 at 42 FR 51502.

§ 505.9b [Amended]

Accordingly, § 505.9b of 32 CFR Part 505 is proposed to be amended by deleting the exemptions for record systems A0508.09 DAPE, entitled FBI Criminal Type Reporting File (42 FR 51507; September 28, 1977) and A0720.04b DAPE, entitled Individual Correctional Treatment Files (42 FR 51511; September 28, 1977).

M. S. Healy,

OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.

November 20, 1980.

[FR Doc. 80-36784 Filed 11-25-80; 8:45 am]

BILLING CODE 3710-08-M

32 CFR Part 505

[Army Reg. 340-21]

Personal Privacy and Rights of Individuals Regarding Their Personal Records

AGENCY: Department of the Army DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Army proposes to amend the regulations pertaining to processing systems of records notices under the Privacy Act of 1974. The proposed amendment is necessary to conform to the current requirements of the Office of Management and Budget and the Department of Defense.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments may be submitted to Headquarters, Department of the Army, The Adjutant General's Office, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Guy B. Oldaker, telephone (area code: 202) 693-0973.

SUPPLEMENTARY INFORMATION: Department of the Army policy and procedures implementing the Privacy Act of 1974 were published in the Federal Register on November 28, 1975 (40 FR 55551) and are contained in 32 CFR Part 505.

Accordingly, it is proposed to revise § 505.5 of 32 CFR to read as follows:

§ 505.5 System of records.

(a) *Section I. General Provisions.* (1) *Standards.* (i) This chapter prescribes general standards for, and restrictions in, the establishment and maintenance of systems of records. It requires the publication of notices in the Federal Register for all systems of records and of advance reports to the Congress and the Office of Management and Budget for those meeting the criteria in Section II. Section 505.6 details instructions for preparing system notices.

(ii) A "system of records", as defined in the Privacy Act, must meet all of the following criteria:

(A) It must consist of "records".

(B) It must be "under the control of" an agency.

(C) It must consist of records that are retrieved by reference to and individual name or some other personal identifier.

(iii) Some systems of records may be exempt from certain provisions of the Act; however, none are automatically exempt. Procedures for claiming exemptions are in § 505.7.

(2) *Retrieval practices.* Whether records are subject to the Act depends on how they are retrieved. To be subject to the Act, the records must be retrieved by use of an individual identifier; it is not enough that a capability or potential for retrieval exists or that retrieval is possible solely because of human memory.

(i) Existing file series shall not be rearranged so as to permit retrieval by name, social security number, or other individual identifier unless a system notice is published in the Federal Register.

(ii) Files may be rearranged, however, so as to prevent retrieval by person identifier and, thus, remove them from the system notice requirements. This procedure shall not be used, however, to circumvent the requirements of the Act by such devices as designating a file by a general overall title (e.g., "reaassignment actions") when, in fact, the documents are retrieved by individual identifiers.

(3) *Relevance and necessity.* Only such personal information as is relevant and necessary to accomplish a purpose or mission required by Federal statute or Executive Order of the President shall be maintained in systems of records. The specific provision of law or Executive Order which provides authority for maintenance of information in each system of records must be identified. Statutory authority, or the regulatory authority derived therefrom, to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient, as opposed to that which is relevant and necessary.

(4) *Standards of accuracy.* Except for certain statistical records which are not used in making a determination about an individual, most records could be used in making a determination about an individual's rights, benefits, or privileges, including employment. To ensure accuracy, information to be included in a system of records should be obtained directly from the individual concerned whenever practicable. All records in systems of records which are used in making any determinations about any individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in any determination.

(5) *First Amendment rights.* No record describing how an individual exercises rights guaranteed by the First Amendment will be maintained unless expressly authorized by Federal statute, by the individual about whom the record pertains, or unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly and to petition.

(6) *System evaluation.* System managers will evaluate information contained in their systems of records for relevance and necessity during the development phase of a new system of records or when an amendment to an existing system is proposed. In addition, system managers will evaluate their existing systems prior to the Annual Report (see § 505.1(k)). This evaluation should consider:

(i) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(ii) Specific adverse consequences of not collecting each category of information.

(iii) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(iv) Length of time the information is needed and, where appropriate, techniques for purging parts of the record.

(v) Financial cost of maintaining the data compared to risk or adverse consequences of not maintaining it.

(vi) Necessity and relevance of the information to the mission. When certain information is no longer required, it should be excised, if feasible. This requirement does not authorize destruction of records which are required to be retained in accordance with disposal authorizations granted under the Federal Records Act of 1950, as amended.

(7) *Government contractors.* When the Army contracts for the operation, use, or maintenance of a system of records to accomplish a function of the Army, such system of records will be deemed to be maintained by the Army and is subject to this regulation and the Defense Acquisition Regulation. Contractors are obligated to comply with the requirements of the Privacy Act in the collection, use, maintenance, and dissemination of information contained in the system of records. The contractor will be required to establish and maintain procedures which ensure that the confidentiality of records is maintained at all times and that information is disclosed only as permitted by the Privacy Act and Army regulations in the 340–21 series. The disclosure of records between the Army and its contractors will not require the consent of the individual to whom the record pertains or the maintenance of a disclosure accounting record. In this regard, disclosure of personal information between the Army and the contractor is considered to be the same as between those officers and employees of the Army who have a need for the records in the performance of their duties.

(8) *Safeguarding personal information in systems of records.* Personal information which is not routinely required to be released under the Freedom of Information Act (see § 505.3(b)(2)) must be safeguarded to preclude unauthorized disclosure and dissemination or misuse. Unauthorized access will be controlled by appropriate administrative, technical, and physical safeguards compatible with the sensitivity of the information. As a minimum, records will be accorded the protection prescribed by AR 340–16. Classified records must be safeguarded as prescribed in AR 380–5. Safeguarding information in automated systems is subject to the risk assessment requirements of Chapter 10 and Appendix L, AR 380–380.

(b) *Section II. Reporting Requirements for New or Altered Systems.* (1) *Narrative report.* The Privacy Act requires that an advance report of a new or altered system, meeting the requirements set forth in paragraph (b)(3) of this section, must be staffed with the Congress and the Office of Management and Budget. This will permit an evaluation of the probable and/or potential effect of such proposal on the privacy and other personal or property rights of individuals. It will also permit evaluation of the disclosure of information relating to such individuals and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(2) *Criteria.* A report is required under the following conditions:

(i) *When a new system of records is proposed.* A new system is one for which no system notice is currently published in the **Federal Register.**

(ii) When an alteration is proposed to an existing published system of records which meets the following criteria:

(A) Increases or changes the number or types of individuals on whom records are maintained. Changes involving the number—rather than the type—of individuals about whom records are maintained need only be reported when that change significantly alters the character or purpose of the system of records; e.g., normal increases attributed to normal population growth patterns need not be reported. On the other hand, when a system which covered only a portion of the workforce is expanded to cover all individuals, a report is required; e.g., a system which covered only a command portion of enlisted members is expanded to cover the entire enlisted force of the Department of the Army. The change would affect the "categories of individuals covered by the system" element of the system notice.

(B) Expands the types or categories of information maintained. For example, expansion of an employee payroll file to include data on education and training must be reported since the purpose of a payroll does not encompass education or training. This change would affect the "categories of records in the system" element of the system notice.

(C) Alters the manner in which the records are organized, indexed, or retrieved so as to change the nature or scope of the records. An example would be the combining of two or more existing systems, or splitting an existing system into two or more different systems such as might occur in a centralization/decentralization of organizational responsibilities; this would require a report.

(D) Alter the purpose(s) for which the information is used. For example: a proposal that military service records currently used for historical purposes, are to be used to make determinations on eligibility for disability benefits, would require a report. A proposal to change or establish a new "routine use" does not necessarily require a report if that use is compatible with the purposes for which the system is maintained; i.e., does not in effect create a new purpose.

(E) Changes the equipment configuration, software, and/or procedures so as to create the potential for either greater or easier access. Examples of such changes would be the conversion of a manual system to an automated one or the addition of a telecommunications capability to a system which did not have one. Another example would be the direct linking into a system by remote terminals of a new category of offices, such as might occur if a field office which had previously accessed a file by calling the headquarters office were to acquire direct terminal access. Software releases, such as operating systems and system utilities that provide for easier access, would require a report if used by applications that process personal information.

(*1*) The addition of an on-line capability to a previously batch-oriented system would require a report.

(*2*) The addition of peripheral devices such as tape drives, disk drives, card readers, printers, and the like to an existing equipment configuration does not constitute an altered system under the Privacy Act so long as the existing security posture is preserved; i.e., no report is required.

(*3*) An equipment configuration that currently has an on-line capability is not subject to the reporting requirement if it satisfies the following criteria:

(*i*) The equipment configuration changes in such a way that its existing security posture is preserved, i.e., the addition of terminals in a closed shop environment.

(*ii*) The addition of terminals does not exceed the capability of the current

operating system and the existing security posture is preserved.

(3) *Content.* (i) The narrative report will consist of (A) transmittal letter, (B) narrative statement, and (C) supporting documentation. It will bear the Reports Control Symbol DD (A&AR) 1379.

(ii) The transmittal letter should include information not appropriate to either the narrative statement or the system notice, i.e., request for waiver (see paragraph (b)(3)(iv)(D) of this section), and be addressed to HQDA (DAAG–AMR–R).

(iii) The narrative statement primarily accomplishes staffing with the Congress and the Office of Management and Budget. It must include the following items:

(A) System Identification and Name: (e.g., A0708.02DAPC Official Military Personnel File);

(B) Responsible Official: (Name, title, and address of official to whom inquiries/comments may be directed);

(C) Purpose(s) of the System: (for new system only), or Nature of the Change(s) Proposed: (for altered system);

(D) Authority for the System: (Cite the specific provision of Federal statute or Executive Order which authorizes or provides a legal basis for maintenance of the information);

(E) Number or estimate of individuals on whom records will be maintained;

(F) Information on First Amendment Activities: (must include basis for maintaining, from Federal statute);

(G) Measures to Assure Information Accuracy: (Describe procedures to insure accuracy, relevance, timeliness, and competeness of the information if the system is to be used to make determinations about the rights, benefits, or entitlements of individuals);

(H) Other Measures to Assure System Security: (Describe administrative, technical, and physical safeguards to protect confidentiality of information against unauthorized access and threat. Automated systems require risk assessment pursuant to AR 380–380 and compliance with the privacy safeguards of Appendix L thereto); and

(I) Relations to State/Local Government Activities: (either source or recipient).

(iv) *Supporting documentation:* Attach the following inclosures:

(A) The proposed new (or altered) system notice prepared in accordance with § 505.6(i).

(B) An advance copy of proposed exemption rules if the System Manager plans to claim exemptions permitted by the Privacy Act for the new or altered system. (This action requires approval of the Secretary of the Army.)

(C) When either computer systems, word processing, or microform systems are used in processing a system of records under the Privacy Act, a brief description must be provided addressing (*1*) the process, (*2*) physical and technical safeguards, (*3*) information storage, and (*4*) data retrievability. At a minimum:

(i) State whether the automation is done in a batch or on-line equipment.

(ii) Describe in general terms the physical safeguards of the computer site and state if a site risk analysis was performed.

(iii) If an on-line system is being described, state whether dial-up or hard wired terminal support the system. Describe the controls used in accessing the system via the terminals, e.g., controlled area, key locks on hard wired terminals, password protection for dail-up terminals, etc.

(iv) State the location where the primary computer media is stored. Generally, computer media is stored at a Data Processing Installation which, in most instances, is not the System Location.

(v) Describe the technical procedures used to protect on-line data from unauthorized disclosures. In cases where Data Base Management Systems and/or retrieval languages are part of a computer system, describe the control procedures for insuring that the information accessed is in conformity with the published system notice, e.g., an ad-hoc query retrieving a record by SSN when SSN was not specified as a retrieval field in the published system notice.

(D) Request for waiver of the 60 day advance notice requirement may be submitted when:

(*1*) a delay of 60 days in establishing the system would not be in the public interest, with detailed justification (*i*) showing how the public interest would be adversely affected if the waiver were not granted (i.e., effect on the public of delaying implementation of the system), and (*ii*) explaining why an earlier notice was not provided; or

(*2*) the system of records was in existence prior to September 27, 1975; failure to provide the required notice was due to administrative oversight; and suspending operation of the system would adversely affect the public interest.

(When such waiver is approved, it has the net effect of waiving only the 30 days required by the Congress and Office of Management and Budget for review; it does not obviate the requirement to publish in the **Federal Register** for 30 days' public comment.)

(v) *Constraints.* Report on a proposed new or altered system of records must be submitted no later that the following dates, whichever is earlier;

(A) Ninety days before any issuance of data collection forms and/or instructions;

(B) Ninety days before entering any personal information into the new or altered system.

(C) Ninety days before any public issuance of a Request for Proposal or an Invitation to Bid for computer and/or communication system. (NOTE: Requests for delegation of procurement authority may be submitted to General Services Administration in accordance with Public Law 89–306 and regulations issued pursuant to that law prior to expiration of the 90 day limitation, but will include language stipulating that the System Manager has reviewed requirements of the Privacy Act for filing a report on a new system and concluded that the report is (is not) applicable to such procurement.)

(vi) *Procedure.* (A) Report of a proposed new or altered system of records must be submitted to The Adjutant General, ATTN: DAAG–AMR–R, at least 90 days before the system is to become operational to permit internal review and coordination, staffing at DOD, and a minimum of 30 days' review by the Congress and Office of Management and Budget.

(B) Following the aforementioned 30 days' review, notice for the new/altered system will be published in the **Federal Register** for 30 days' public comment. Any approved exemption rule which applies to the system will be published concurrently, but in a separate section of the **Federal Register**, first for 30 days' review and comment, and secondly, as a final rule. An exemption may not be invoked until it has been published as a final rule.

(C) New/altered system notices which have been published in the **Federal Register** will be included in subsequent revisions to the AR 340–21 series.

M. S. Healy,

OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 80–36776 Filed 11–25–80; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1682-1]

State and Federal Administrative Orders Revising the Michigan State Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: On December 10, 1979, the State of Michigan submitted to the U.S. Environmental Protection Agency (USEPA) a proposed revision to the Michigan State Implementation Plan (SIP). The revision is a Final Order issued by the Michigan Air Pollution Control Commission (Commission) which extends the compliance date until January 1, 1985 for the Consumers Power Company's B.C. Cobb plant to meet the State of Michigan's sulfur dioxide (SO_2) emission limitations. The purpose of this notice is to invite public comment on USEPA's proposed approval of this revision to the Michigan SIP.

DATE: Written comments must be received by December 26, 1980.

ADDRESS: Please send comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The State Order, supporting materials and public comments received in response to this notice may be inspected and copied (for appropriate charges) during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Cobb Plant is located in Muskegon, Michigan on Muskegon Lake, approximately five miles east of Lake Michigan. Muskegon, Michigan is designated as attaining the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide at 40 CFR Part 81. The Cobb Plant consists of five coal-fired steam electric generating units having a total rating of 510 megawatts. The plant's emissions were discharged through five 76.2 meter (m) stacks until August 1975 when a new 198.2 m stack was constructed for the discharge of the combined emissions from all five units. In September 1978, the Company requested an extension from January 1, 1980 until January 1, 1985 for the B.C. Cobb Plant to meet the SO_2 emission limitation in Michigan Rule 336.1401. For the purpose of demonstrating attainment and maintenance of the SO_2 NAAQS, a good engineering practice (GEP) stack height of 163.1 m was used in the dispersion modeling analysis submitted to USEPA. The GEP stack height was calculated using the formula proposed by USEPA on January 12, 1979 (44 FR 2608).

The Michigan Air Pollution Control Commission (Commission) and the Company entered into a Stipulation for Entry of a Consent Order which was incorporated into a Final Order of the Commission. On December 10, 1979, Michigan submitted the Final Order to the USEPA as a revision to the Michigan SIP.

The proposed SIP revision, Final Order APC No. 6-1979, extends the compliance date for the B.C. Cobb Plant from January 1, 1980 to January 1, 1985 for meeting the sulfur dioxide emission limitations in Tables 41 and 42 of MAPCC Rule 336.1401. Any Order which has been issued to a major source and extends the SIP compliance date for meeting the sulfur dioxide emission limitations must be approved by USEPA before it becomes effective as a SIP revision under the Clean Air Act. The proposed revision allows a five year extension of the compliance date of the Michigan SIP Rule 336.1401 for the five units at the B.C. Cobb Plant.

The Order contains the following provisions:

A. Sulfur Dioxide Emission Limitations:

(1) Beginning on January 1, 1980 and continuing to January 1, 1985 fuel burned at the Cobb Plant shall not:

(a) On an annual average exceed 2.5 percent sulfur content by weight at 12,000 BTU/pound of coal.

(b) Result in sulfur dioxide emissions not greater than 386 tons on any calendar day. This emission limitation is the equivalent of burning coal which averages 3.5 percent sulfur content by weight at 12,000 BTU/pound of coal and 510 megawatts net load for 24 hours.

(c) On a daily average result in emissions of sulfur dioxide not greater than a rate of 7.0 pounds per million BTU heat input.

(2) After January 1, 1985 emissions of sulfur dioxide from the Cobb Plant shall not exceed the levels prescribed in Tables 3 and 4 of Rule 336.49 (Tables 41 and 42 of revised Rule 336.1401, effective January 17, 1980), unless an alternate date for compliance with the levels is established by the Commission.

B. Sulfur Dioxide Control Program:

(1) By January 1, 1980 the Company shall submit to the Commission an acceptable control strategy which shall provide for compliance with Section A(2) of the Order.

(2) If the Company elects to burn low sulfur coal as the method of control, the Company shall by January 1, 1981 and by each January 1 for the following three (3) years:

(a) Notify the Commission that it has under contract or contract option the low sulfur coal necessary to meet the requirements of Section A(2) of the Order; or

(b) Notify the Commission, with acceptable explanation, that adequate quantities of low sulfur coal are available for acquisition for use in the Cobb Plant by January 1, 1985.

(3) If low sulfur coal is chosen as the method of control, the Company shall notify the Commission of the signing of any contracts for such coal within thirty (30) days for their signing.

(4) If the Company elects a control strategy othe than low sulfur coal burning, a report on the method of control (including increments of progress) shall be provided to the Commission by January 1, 1980. If a control strategy other than low sulfur coal burning is submitted, it is the intent of the Company and the Commission to incorporate the elements of the Control strategy into either a new or amended order.

(5) By January 1, 1981 and by each January 1 for the following three (3) years, the Company shall submit to the Commission a report of the Company's progress toward complying with the Order. Any developments which would preclude compliance with any provision of the Order shall be immediately reported in writing to the Commission.

C. monitoring and Data Reporting:

(1) The Company shall operate four (4) ambient sulfur dioxide monitors around the Cobb Plant in such manner and at such locations as reasonably specified by the Chief of the Air Quality Division of the Department of Natural Resources (hereinafter "Staff").

(2) The Company shall perform a weekly sulfur analysis of fuel burned in the Cobb Plant in accordance with the procedures specified in Appendix A.

(3) The Company shall by January 1, 1980 install and place in operation stack gas emission monitor(s) for measuring sulfur dioxide that meets the performance specifications of Appendix B of 40 CFR Part 60 (1977).

(4) The Company shall demonstrate the adequacy of the stack gas sulfur dioxide monitor(s) in accordance with the procedures specified in Appendix B of 40 CFR Part 60 (1977).

(5) For each calendar day during which the stack gas sulfur dioxide monitor(s) has been inoperative for 12 consecutive hours, the Company shall conduct a daily analysis of the coal burned at the Cobb Plant according to the procedures specified in Appendix A. This daily analysis shall be discontinued only after the stack gas sulfur dioxide monitor(s) has operated acceptably for 12 consecutive hours during a calendar day.

(6) The Company shall report to the Staff sulfur dioxide emissions in terms of pounds of sulfur dioxide per million BTU heat input in accordance with the procedures specified in Appendix B of 40 CFR Part 60 (1977).

(7) The Company shall submit to the Staff data from the aforementioned ambient air quality monitors, stack gas monitor(s), and fuel sulfur analysis in such format and at such intervals as reasonably specified.

(8) During the first quarter of 1980 and at approximately 18-month intervals thereafter, the Company shall conduct periodic particulate emission tests for each unit of the Cobb Plant. The tests shall be conducted in accordance with Commission approved procedures.

(9) The monitoring and reporting requirements specified in or pursuant to Subsections C(1) through (8) shall be, upon request of the Company, reviewed by the Commission and modified if the Commission finds such modifications are justified.

The Final Order contained the following appendix:

Appendix A—Fuel Analysis Procedures

1. Weekly Fuel Analysis:

a. A minimum of three equally spaced grab samples of the coal burned at the Cobb Plant shall be taken each calendar day.

b. A weekly composite coal sample shall be prepared for analysis from the grab samples according to ASTM or equivalent methods for each calendar day that the daily fuel analysis is required.

c. The composite coal sample shall be analyzed for sulfur heat (BTU) content according to ASTM or equivalent methods approved by the Chief of the Air Quality Division.

An air quality study was submitted to the USEPA on behalf of Consumers Power Company. The study used non-reference modeling techniques and employed a point source gaussian plume air quality model developed by Consumers Power Company's consultant. The model used in the analysis is not included as a reference model in GUIDELINE ON AIR QUALITY MODELS (EPA 450/2–78–027), April, 1978. Consequently, USEPA performed an air quality modeling analysis to ensure that approval of the variance for B.C. Cobb will not cause or contribute to a violation of the SO_2 National Ambient Air Quality Standards (NAAQS). Based on its analysis employing a reference model (MPTER) with five years of meteorological data (1973–1977), USEPA concluded that the SIP revision for B.C. Cobb will not cause or contribute to a violation of the NAAQS. The State has indicated that it is relying upon fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA.

Under the revised stack height policy, published June 24, 1980 (45 FR 42279), sources seeking credit for raising existing stacks will be required to provide a fluid modeling or field study demonstration that the stack height increase is necessary to avoid excessive concentrations due to downwash, wakes and eddies. Consumers Power did not submit an adequate demonstration that the stack height increase from 76.2m to 198.2m is necessary to avoid aerodynamic downwash at the B.C. Cobb Plant. Therefore, USEPA performed an additional air quality analysis using the 76.2m height of the old stack and the stack design parameters associated with the new stack (198.2m). The modeling analysis demonstrated that no additional stack height credit was necessary to demonstrate attainment of the SO_2 NAAQS. Therefore, fluid modeling is not required to support the revision to the Michigan SIP.

USEPA proposes to approve this revision to the Michigan SIP, and solicits public comment on the revision and on USEPA's proposed approval. All interested persons are invited to submit comments to the address listed in the front of this notice. Public comments received on or before (30 days from date of publication) will be considered in USEPA's final rulemaking. All comments received will be available for inspection at the Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois, 60604. After the public comment period, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the proposed SIP revision. Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations as "specialized." I have reviewed these proposed regulations pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

This proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

Dated: October 31, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80–36898 Filed 11–25–80; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 52

[A–S–FRL 1681–5]

Approval and Promulgation of Implementation Plan: Minnesota

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) today proposes approval of revisions to the Minnesota State Implementation Plan (SIP) for the Twin Cities and Rochester sulfur dioxide nonattainment areas. The State submitted these proposed revisions to USEPA to satisfy the requirements of Part D of the Clean Air Act (Act). The State transmitted the Twin Cities sulfur dioxide plan on May 7, 1980 and amended it on June 17, 1980. The State submitted the Rochester sulfur dioxide plan on July 15, 1980. On August 4, 1980 the State resubmitted both sulfur dioxide plans and the June 17, 1980 submission. A correction to the August 4, 1980 submission was submitted to USEPA on September 4, 1980.

The purpose of today's notice is to discuss the results of USEPA's review of the proposed revisions; to propose approval and to invite public comment.

DATE: Comments on this revision and on the proposed USEPA action on the revisions are due by December 26, 1980.

ADDRESSES: Copies of the proposed SIP revision are available at the following addresses for inspection:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Minnesota Pollution Control Agency, 1935 West County Road B–2, Roseville, Minnesota 55113.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act) as amended, USEPA designated certain areas in each state as not meeting the primary and/or secondary National Ambient Air Quality Standards (NAAQS) for total suspended particulates, sulfur dioxide, carbon monoxide, photochemical oxidants, and nitrogen dioxide.

In Minnesota, Air Quality Control Region 131 and the City of Rochester were designated primary nonattainment areas for sulfur dioxide. Air Quality Control Region 131 (the Twin Cities urban area) contains the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington. There were no designated secondary nonattainment areas and all other portions of the State were designated either better than the NAAQS or unclassifiable.

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its SIP to meet specific requirements for areas designated as nonattainment. Section 172 of the Act specifies these requirements. These SIP revisions must demonstrate attainment of the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions that date may be extended to December 31, 1987 for ozone and/or carbon monoxide. On March 25, 26, and 27, 1980 the State notified the public that adoption of the Twin Cities sulfur dioxide plan would be considered at the Minnesota Pollution Control (MPC) Board's, April 22, 1980 meeting. All interested parties were invited to comment on the plan at that time. On April 22, 1980, after hearing the testimony presented at the meeting, the MPC Board adopted the Twin Cities sulfur dioxide plan. The State submitted the Twin Cities sulfur dioxide plan on May 7, 1980 and amended it on June 17, 1980.

For the Rochester nonattainment area the State, on May 24, 1980, notified the public that adoption of the sulfur dioxide plan would be considered at the MPC Board's June 24, 1980 meeting. All interested parties were invited to comment on the plan at that time. On June 24, 1980, after hearing the testimony presented at the meeting the MPC Board adopted the Rochester sulfur dioxide plan. The State submitted the Rochester sulfur dioxide plan on July 15, 1980. On August 4, 1980, the State resubmitted both sulfur dioxide plans. A correction to the August 4, 1980 submission was submitted to USEPA on September 4, 1980.

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission limitations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new requirements, or if it chooses, challenging the new requirements. In some instances, the present emission control requirements contained in the federally approved SIP are different from the requirements currently being enforced by the State. In these situations, the present federally approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally approved requirements. Failure of a source to meet applicable pre-existing requirements will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new requirements, because of a court order or for any other reason, the pre-existing requirements will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the new requirements and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new requirements. In these situations, the State may exempt a source from compliance with the pre-existing regulations. Any exemptions granted will be reviewed and acted on by USEPA either as part of these promulgated requirements or as a future SIP revision.

The requirements for an approvable SIP are described in a **Federal Register** notice published on April 4, 1979 (44 FR 20372), and are not repeated in this notice. Supplements to the April 4, 1979, notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 59371), September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67182), discussing among other things, additional criteria for SIP approval.

USEPA's proposed rulemaking action may take one of the following three forms: approval, disapproval, or conditional approval. USEPA will conditionally approve the plan if the State proposal contains minor deficiencies, and if the State provides assurances that it will submit corrections on a specified schedule. The schedules must be negotiated between the USEPA Regional Office and the State prior to final rulemaking on these revisions. The negotiated schedules will be announced for public comment in a separate Notice of Proposed Rulemaking. A conditional approval means that the restrictions on new major source construction do not apply unless the State fails to submit the necessary revisions by the scheduled date, or if the revisions are not approved by USEPA.

USEPA solicits comments from all interested parties on both the proposed SIP revisions and the proposed approval of these revisions. Presented below is a brief synopsis of each urban area's plan and USEPA's evaluation and proposed rulemaking action. A more detailed analysis of the plans is available for inspection, upon request, at the USEPA, Region V office.

Nonattainment Area Plan Description

In accordance with section 109 of the Act, USEPA established a primary and a secondary NAAQS for sulfur dioxide. The primary NAAQS is designed to protect public health and the secondary NAAQS is designed to protect the public welfare. A violation of the primary sulfur dioxide NAAQS occurs either: a) when the monitored or modeled annual arithmetic mean concentration of sulfur dioxide exceeds 80 micrograms per cubic meter of air (80 ug/m^3) or b) when the average 24-hour monitored or modeled concentration of sulfur dioxide exceeds 365 ug/m^3 of air, more than once in a calendar year. A violation of the secondary sulfur dioxide NAAQS occurs when the 3-hour average monitored or modeled concentration of sulfur dioxide exceeds, more than once in a calendar year, 1300 ug/m^3.

Based on ambient air quality monitoring conducted in 1976 in the Twin Cities and in the City of Rochester, violations of the primary sulfur dixode NAAQS were detected. Therefore, in the March 3, 1978 **Federal Register** (43 FR 8962), USEPA desigated these two urban areas as nonattainment for sulfur dioxide.

The Clean Air Act requires the State to submit a revised SIP which demonstrates attainment of the primary sulfur dioxide NAAQS by December 31, 1982. The revised SIP must contain a strategy with the specific measures which the State will implement to reduce sulfur dioxide emissions. To determine which measures will be

effective, the State must have an accurate and complete inventory of sulfur dioxide emissions and meteorological and air quality data for the area. With this data, the State can utilize air pollution simulations (dispersion models) and statistical analyses to determine the cause of the original sulfur dioxide problem and to predict the effectiveness of the proposed measures on future air quality.

For the Twin Cities urban area and the City of Rochester, the State performed modeling analyses for the annual, 24-hour and 3-hour averaging time periods. In both areas, the State utilized the Climatological Dispersion Model (CDMQC) to conduct the annual air quality analyses. The CDMQC and Larsen's models were used in the screening analysis for the 3-hour and 24-hour studies to determine areas of expected maximum impact. Refined 3-hour and 24-hour analyses were performed using the urban version of RAM.

For the annual analyses in the Twin Cities area, the base year emissions (1976) and representative meteorological data for the year 1976 were used in CDMQC to obtain a regional mapping of the sulfur dioxide concentrations. The CDMQC results were compared with actual air quality levels in 1976 and adjustments were made to the modeled output results so that the model would more accurately project sulfur dioxide concentrations for the area. Once the base year annual air quality was calculated and the model calibrated for the Twin Cities area, two more air quality analyses were performed. One analysis was performed assuming that all the sources in the area were in compliance with the State's current regulations. Another analysis was performed for the attainment year 1982. This analysis considered the impact of the proposed control strategy and of projected new source growth. For the Rochester area, the same three annual air quality analyses were conducted. The CDMQC model was not calibrated, however, because of the insufficient number of monitors in the area.

For the 24-hour and 3-hour analyses, the State compiled point and area source emissions inventories for both nonattainment areas. These inventories were based on 1976 maximum allowable emissions. The meteorological data used for both areas were hourly surface observations for Minneapolis-St. Paul, Minnesota and upper air data for St. Cloud, Minnesota for the year 1976. Surface meteorological data for Rochester were not available at the time the modeling analysis was performed. With this information and the following modelling procedures, the State performed the 24-hour and 3-hour air quality analyses for the base year.

The modelling procedure for both areas consisted of utilizing the CDMQC with a receptor coverage sufficient to asses air quality impact for all major point sources in these areas. The CDMQC analysis used a 1.0 km receptor grid resolution. Larsen's model was than applied to locate potential short-term hot spots. These hot spots were subsequently analyzed individually using urban RAM in a 5 by 6 km area around each hot spot with 0.5 km receptor grid resolution.

Once the base year analyses were performed for both the 24-hour and 3-hour time periods, two more analyses were conducted for both time periods. One analysis was performed assuming that all the sources in the area were in compliance with the State's current regulations. Another analysis was performed for the attainment year 1982. This last analysis took into consideration the impact of the proposed control strategy and of any new source growth which might occur.

For both areas, the modeled results for all three time periods indicated that compliance with present regulations would not be sufficient to achieve attainment of the sulfur dioxide NAAQS by December 31, 1982. The State projects that attainment of the primary and secondary NAAQS can be achieved in these areas if sulfur dioxide emissions are reduced from a few sources in each area. Specifically, the State projects that attainment can be achieved if the following sources are required to comply with the following emission limitations:

Source	Emission limitation
Twin Cities Urban Area	
1. Northern States Power Company's Inver Hills Generating Plant.	1.1 pounds of sulfur dioxide (S02)/million British Thermal Units (MMBTU).
2. St. Paul Ammonia Products, Division of N-Ren Corporation.	2.0 pounds of S02/MMBTRU.
3. North Star Chemicals, Division of N-Ren Corporation.	(a) Increase stack height 36.58 m. (b) 30 pounds of S02/ton sulfuric acid produced and a limit of 294 tons of sulfuric acid.
4. Koch Refining	Burn low sulfur refinery fuel oil (1.75% sulfur by weight) and a facility-wide emission rate of 32.5 tons of S02/day.
City of Rochester	
1. City of Rochester Public Utility Department (CRPUD).	Boiler 1, 2, 4,—3.2 pounds of S02/MMBTU.
Silver Lake Generating Plant	Boiler 3—2.3 pounds of S02/MMBTU.
2. CRPUD North Broadway Plant.	Coal fired mode—2.3 pounds of S02/MMBTU. Both coal and oil-fired modes available. Load restrictions allow for the equivalent of one coal-fired boiler to be operated at any time.
3. Rochester State Hospital	Oil-fired—2.5 pounds of S02/MMBTU with a load restriction that the equivalent of one of three boilers be operated on residual oil at any given time.
4. Associated Milk Producers, Incorported.	Boilers, 1, 2, 3, or 4—3.0 pounds of S02/MMBTU.

The State performed modeling analyses for each nonattainment area using the revised emission limitations listed above. The modeling analyses demonstrate that these new emission limitations provide a sufficient reduction in sulfur dioxide emissions to ensure attainment of the sulfur dioxide NAAQS by 1982. To ensure that the emission limitations specified above are adhered to and enforceable, the State has issued revised operating permits for these sources under the existing authority of Minnesota Air Pollution Control Regulation.

The State of Minnesota has made an adequate commitment of financial and manpower resources to implement these sulfur dioxide plans. USEPA's review of these plans indicates that attainment of the sulfur dioxide NAAQS will be achieved by December 31, 1982 and that in the interim reasonable further progress will be made to ensure attainment of the NAAQS by this date. USEPA, therefore, proposes to approve these plans as meeting the criteria for an approvable Part D SIP.

It should be noted, however, that sections 172 and 173 of the Act require a program for the review of permits for the construction and operation of new or modified stationary sources wishing to locate in a designated nonattainment area. The State of Minnesota will submit its New Source Review (NSR) program in the near future. At that time USEPA will review the program and propose rulemaking action on it. Until final approval of a NSR program, the Act prohibits the construction of any new or modified stationary source in nonattainment areas.

All interested persons are invited to comment on these revisions to the Minnesota SIP and on USEPA's proposed action. Comments should be submitted to the address listed at the beginning of this notice. Public comments received on or before December 26, 1980, will be considered in USEPA's final rulemaking.

A thirty day public comment period is being provided because USEPA has a

responsibility under the Clean Air Act to take final action as soon as possible after July 1, 1979 on SIP revisions addressing the Part D requirements.

All comments received will be available for inspection at the USEPA Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois, 60604.

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized developmental procedures.

USEPA labels these other regulations "specialized." I have reviewed this regulaiton and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of sections 110 and 172 of the Clean Air Act (42 U.S.C. §§ 7410, 7502).

Dated: October 24, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-36897 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 1681-8]

State and Federal Administrative Orders Revising the Michigan State Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule: Proposed approval of revision.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) proposes to approve a revision to the Michigan State Implementation Plan (SIP). The revision is a Final Order (Order) issued by the Michigan Air Pollution Control Commission (Commission) to the Union Camp Corporation (Company). The Order extends from January 1, 1980 until January 1, 1985 the date by which the Company is required to comply with the sulfur dioxide emission limitations contained in the federally approved Michigan SIP. The purpose of this notice is to invite public comment on USEPA's proposed approval of the Order dated January 3, 1980.

DATE: Written comments must be received by December 26, 1980.

ADDRESSES: Please send comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

The State Order, supporting material and public comments received in response to this notice may be inspected and copied (for appropriate charges) during normal business hours at the above address or State Order and supporting materials available at address below: Michigan Department of Natural Resouces, Air Quality Division, State Secondary Complex, General Office Building, 7150 Harris Drive, P.O. Box 30028, Lansing, Michigan 48909.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: Union Camp Corporation operates a paper mill in Monroe County, Michigan. The Monroe facility is located 35 miles southwest of Detroit, Michigan and 20 miles northeast of Toledo, Ohio. The area is designated as attaining the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). The paper mill produces 300 tons/day of paperboard products and has one 300 MBTU/hr stoker coal-fired boiler.

Under Michigan Air pollution Control commission (Commission) Rule 336.49, approved as part of the Michigan State Implementation Plan on May 31, 1972, and recodified as Rule 336.1401, the source is required to burn coal with a maximum sulfur content of 1.5 percent effective July 1, 1978. On January 8, 1980, the Commission entered into the record a Stipulation for Entry of Consent Order and Final Order APC No. 14-1979. Under the Order, the source was permitted to burn 2.7% sulfur(S) fuel on an annual average and 4.0% S fuel on a daily average between January 1, 1980 and July 1, 1980. Beginning July 1, 1980 until July 1, 1982, Union Camp may burn 2.5% S (annual average) and 4.0% S (daily average) fuel. Beginning July 1, 1982 until January 1, 1985, Union Camp is allowed to burn 2.2% S (annual average) and 3.5 S (daily average) fuel. After January 1, 1985, Union Camp must comply with the existing SIP limitations of 1.5% S in Rule 336.49 (recodified as 336.1401) unless an order granting an additional extension of time or setting a new limitation has been submitted to and approved by USEPA as a SIP revision.

An air quality analysis was performed to demonstrate that the National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) increments will be protected throughout the delayed compliance period (January 1, 1980 to January 1, 1985). The modeling analysis demonstrated that the Union Camp SIP revision will not cause or contribute to a violation of the applicable NAAQS or consume the PSD increment.

The Order contains the following provisions:

A. Sulfur Dioxide Emission Limitations

(1) Beginning on January 1, 1980, and continuing to July 1, 1980, fuel burned at the mill shall not:

(a) On an annual average exceed 2.70 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) On a daily average exceed 4.00 percent sulfur content by weight at 12,000 Btu/pound of coal.

(2) Beginning on July 1, 1980, and continuing to July 1, 1982, fuel burned at the mill shall not:

(a) On an annual average exceed 2.50 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) On a daily average exceed 4.00 percent sulfur content by weight at 12,000 Btu/pound of coal.

(3) Beginning on July 1, 1982, and continuing to January 1, 1985, fuel burned at the mill shall not:

(a) On an annual average exceed 2.20 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) On a daily average exceed 3.50 percent sulfur content by weight at 12,000 Btu/pound of coal.

(4) After January 1, 1985, emissions of sulfur dioxide from the mill shall not exceed the levels prescribed in Tables 3 and 4 of Rule 336.49 (new rule 336.1401) unless an alternate date for compliance with the levels is established by the Commission.

B. Sulfur Dioxide Control Program

(1) If low sulfur coal is chosen as the method of control, the Company shall notify the Commission of the signing of any contracts for such coal within thirty (30) days of their signing.

(2) If the Company elects a control strategy other than low sulfur coal burning, a report on the method of control (including increments of progress) shall be provided to the Commission by January 1, 1983. If a control strategy other than low sulfur coal burning is submitted, it is the intent of the Company and the Commission to incorporate the elements of the control strategy into either a new or amended Order.

(3) By January 1, 1983, and by January 1, 1984, the Company shall submit to the Commission a report of the Company's progress toward complying with the Order. Any developments which would preclude compliance with any provision

of this Order shall be immediately reported in writing to the Commission.

C. Monitoring and Data Reporting

(1) The Company shall operate one (1) ambient sulfur dioxide monitor around the mill in such manner and at such location as reasonably specified by the Chief of the Air Quality Division of the Department of Natural Resources (hereinafter "Staff").

(2) The Company shall perform a daily sulfur analysis of fuel burned in the mill in accordance with the procedures specified in Appendix A. Such daily sulfur analysis of fuel burned in the mill shall continue until such time as the Company has received written approval from Staff that an alternate sampling frequency is acceptable. Such approval shall be based on an acceptable demonstration that the alternate sampling frequency is sufficient to assure that the daily sulfur dioxide emission limitations are being met.

(3) The Company shall submit to the Staff data from the aforementioned ambient air quality monitors and fuel sulfur analysis in such format and at such intervals as reasonably specified.

(4) By January 1, 1980, the Company shall conduct a particulate emission test on the boiler at the mill. The test shall be conducted in accordance with Commission approved procedures.

USEPA has reviewed the Order and concluded that extension of the compliance date for the Union Camp Corporation from January 1, 1980 until January 1, 1985 will not threaten or prevent the attainment and maintenance of the SO_2 NAAQS and PSD increments. In addition, the State has indicated that it is relying on fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA. Therefore, USEPA proposes approval of the Order as a revision to the Michigan SIP.

All interested persons are invited to comment on this revision to the Michigan SIP and on USEPA's proposed action. Comments should be submitted to the address listed in the front of this notice. Public comments received on or before December 26, 1980, will be considered in USEPA's final rulemaking.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures.

USEPA labels proposed regulations as "specialized." I have reviewed these proposed regulations pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

This proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

Dated: October 31, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-36884 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

42 CFR Ch. I

Formula Grants to States for Preventive Health Service Programs

AGENCY: Center for Disease Control, Public Health Service, HHS.

ACTION: Withdrawal of notice of decision to develop regulations.

SUMMARY: The Public Health Service withdraws the Notice of Decision to Develop Regulations, published in the **Federal Register** on May 1, 1979 (44 FR 25476), to cover formula grants for preventive health service programs authorized under Section 315 of the Public Health Service Act. Since there were no funds appropriated for these programs, regulations will not be developed at this time.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis D. Tolsma, Office of the Director, Center for Disease Control, PHS, HHS, Atlanta, Georgia 30333, telephone (404) 329-3243 or FTS: 236-3243.

SUPPLEMENTARY INFORMATION: Section 203 of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626) established a new Section 315 under Title III of the Public Health Service Act. The provisions of this legislation authorized grants to States beginning in the fiscal year which ends September 30, 1980, to assist them in planning for, developing, and providing preventive health service programs designed to prevent or reduce the five leading causes of death.

On May 1, 1979, the Public Health Service proposed to develop regulations (44 FR 25476) to cover grant applications and awards for these grants. However, no funds were appropriated in fiscal year 1980. In addition, the President's fiscal year 1981 revised budget did not include funding for this program. Therefore, the Notice of Decision to Develop Regulations published in the **Federal Register** on May 1, 1979 (44 FR 25476), is withdrawn.

Dated: October 6, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 80-36922 Filed 11-25-80; 8:45 am]

BILLING CODE 4110-86-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-725; RM-3648]

FM Broadcast Station in Los Lunas, New Mexico; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposed the assignment of a Class A FM channel to Los Lunas, New Mexico, in response to a petition filed by Frieda Brasher and Michael, Paul and Perkins Brasher. The proposed channel could provide a first local aural broadcast service to Los Lunas.

DATES: Comments must be filed on or before December 30, 1980, and reply comments on or before January 19, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b) *Table of Assignments* FM Broadcast Stations (Los Lunas, New Mexico), BC Docket No. 80-725, RM-3648.

Adopted: November 10, 1980.

Released: November 24, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Freida Brasher, and Michael, Paul and Perkins Brasher ("petitioners"), proposing the assignment of FM Channel 272A to Los Lunas, New Mexico, as that community's first FM assignment.

(b) The channel can be assigned to Los Lunas in compliance with the minimum distance separation requirements.

(c) Petitioners state they will apply for the channel, if assigned.

[1] Public Notice of the petition was given on May 7, 1980, Report No. 1227.

2. *Community Data*—(a) *Locatoin.* Los Lunas, seat of Valencia County is located approximately 32 kilometers (20 miles) south of Albuquerque, New Mexico.

(b) *Population. Los Lunas—973,*[2] Valencia County—40,539.

(c) *Local Aural Broadcast Service.* None.

3. Petitioners assert that Los Lunas has shown a continued growth pattern since 1970, and estimates its 1978 population at 3,000 persons (taken from a local community profile). Sufficient economic and demographic information with respect to Los Lunas, has been submitted to demonstrate the need for an FM assignment.

4. In view of the fact that the proposed FM channel assignment could provide a first full-time local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to Los Lunas, New Mexico, as follows:

City	Channel No.	
	Present	Proposed
Los Lunas, N. Mex.		272A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before December 30, 1980, and reply comments on or before January 19, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

[2] Population figures are taken from the 1970 U.S. Census.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80–725 RM–3648]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80–36889 Filed 11–25–80; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 1, and 73

[BC Docket No. 80–499; FCC 80–545]

Table of Television Channel Allotments; Correction

AGENCY: Federal Communications Commission.

ACTION: Errata to BC Docket No. 80–499.

SUMMARY: On November 3, 1980, a Notice of Proposed Rulemaking in BC Docket No. 80–499, re Table of Television Channel Allotments, was published in the **Federal Register** at 45 FR 72902. Inadvertently, a portion of Commissioner Abbott Washburn's dissenting statement was omitted. The purpose of this errata is to now publish that statement in its entirety.

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

FOR FURTHER INFORMATION CONTACT: Jim Warwick (202) 632–7116.

William J. Tricarico,

Secretary.

Dissenting Statement of Commissioner Abbott Washburn

Notice of Proposed Rulemaking re: Table of Television Channel Allotments

Adverse Impact on UHF

The executive Summary of the Report of the Comparability Task Force (approved by the Commission on September 18, 1980) speaks of the goal of "a fully competitive and prosperous UHF service". Its closing sentence reads ". . . this goal is now beginning to be achieved. . . ."

In direct contrast, this Notice on page 29 states ". . . UHF is now sufficiently mature and viable to compete directly against VHF. . . ."

The first statement is the correct one. UHF has begun to turn the corner. It should not now be subjected to additional hazards. Many UHF stations are still marginal. UHF channels remain available to be applied for and to be activated.

This rulemaking, in proposing to do away with the minimum mileage separations and substituting so-called "equivalent protection", is an abrupt reversal of the Commission's long-standing policy of bending every effort to assist the development of UHF. With

the issuance of this proposed rulemaking, the continued healthy growth of UHF will be stifled. Entrepreneurs will prefer to opt for the short-spaced "V's". In my judgment we should not now propose such a drastic change of direction.

"Equivalent Protection" Approach Seriously Flawed

The Notice states that "the proposed approach will eliminate much of the uncertainty . . . of the current procedure." In point of fact the opposite will be the case. In place of today's clear-cut mileage separations, the "flexible criteria" here proposed will lead to greater uncertainty. There will be costly arguments in television markets throughout the country as to whether or not specific applications for short-spaced VHF stations will provide the required "equivalent protection". Engineers and lawyers will reap a harvest contesting and defending these applications. Rather than shortening the process, the proceedings resulting from this approach will be as long or longer than those we now have.

Adding to the disruption and uncertaintly is the definition of "equivalent protection". The use of the F(50, 50) and the F(50, 10) curves to define "equivalent protection" in specific instances is a misapplication of the engineering principle underlying the derivation of these curves. In paragraph 91, on page 43, the authors of the Notice recognize this:

> These curves were derived from many measurements on different stations under varying conditions and therefore represent average values; they are intended for allocation purposes and general studies and *will likely prove inaccurate in individual cases that deviate significantly from the norm.* (Emphasis added.)

Statistically, 68 percent of the data points will fall within plus or minus 9 dB of the interference curve. 32% of them will fall more than 9 dB outside of the curve. Thus, in almost one third of the cases the use of the curve to allot a channel produces an unrealistic and unfair result: either penalizing the drop-in station by imposing a power limit that is too low to enable it to serve its market, or allowing too high a power level causing serious interference to the existing station. (In the latter case an exceedingly heavy burden-of-proof rests on the existing station.) The curves, therefore, are neither a fair nor a workable tool. To attempt to so use them can only cause uncertainty and contention.

It is like taking a mean January temperature for 100 U.S. cities of 50° and concluding from this that motorists in Detroit, Duluth and Cheyenne won't need snow tires and chains next winter.

In addition to the unsound use of the curves to predict service or interference in specific situations, the Notice relegates several significant elements to the status of mere "safety factors". For example, in paragraph 104 on page 56 *receiving antenna directivity* is not incorporated into the "equivalent protection" criteria.[1] Likewise in paragraph 111, page 60, *terrain shielding* is relegated to an additional "safety factor" and does not enter into the protection standard. These considerations are of over-riding importance in specific drop-in situations and should be factored into the allotment methodology as such.

A More Accurate Recommended Procedure

In any specific case there are three possible types of propagation paths from the interfering transmitter to the protected receiver. Each of these three paths has distinct characteristics. However, in the derivation of the FCC curves they have necessarily been averaged, which explains the wide variability associated with those curves. The three categories of propagation paths are:

1. Line of sight between the transmitter and the receiver, normally limited to relatively short paths (less than 50–60 miles).

2. Paths with one obstacle where the transmitter and receiver essentially share the same horizon. These paths are normally of an intermediate distance, and in some of the short-spaced stations envisioned here this type of path applies. These one-obstacle paths can either offer shielding or they can result in significant gain over the average values depicted in the FCC curves. Where these paths exhibit gain they are known as knife-edge diffraction paths and this phenomenon was originally described by Bullington.[2] The situation where the knife-edge diffraction results in significant gain can occur in as may as three quarters of a random sample of one-obstacle paths. Furthermore, these knife-edge diffraction paths exhibit a greater stability over time than do other propagation paths. Where this type of transmission is present it would seem risky to rely on the FCC curves alone.

3. Two-obstacle paths exhibit no such gain but only shielding effects. These paths generally occur at greater distances and usually obtain under the present rules where minimum distance separations of 170 miles or more are required.

Additionally, there are certain cases where there is very flat terrain between the interfering transmitter and the protected receiver where the terrain roughness factor described in the FCC rules is slightly positive. Today's Notice of Proposed Rulemaking attempts to treat terrain solely as a "safety factor". this is appropriate only insofar as terrain provides attenuation or shielding. It is not appropriate to consider it solely as a "safety factor" if the terrain shielding factor is positive nor is it appropriate to disregard knife-edge diffraction gain in those single-obstacle paths where it applies.

While I would prefer that each drop-in proposal be supported by its own unique measured data and calculations, I recognize that such a policy might be unduly cumbersome and expensive for the applicant and the Commission. However, I find that the variability in the simplistic use of the average FCC curves, as proposed, entails too much risk of significant interference. Accordingly I would suggest that, as a minimum, consideration be given to augmenting the use of the curves by having the drop-in applicant furnish appropriate path profiles and some minimum amount of measured data. It has been estimated that very minimal supplementary measurements[3] would reduce the variability in the FCC curves from 9 or 10 dB without measurements to around 4 to 6 dB.

For a nominal cost we could thereby obtain significant assurance that the drop-in would not cause widespread interference. I solicit comments on this alternative procedure and would be particularly interested in a precise description of the path-loss measurements that would be required and the benefits to be gained.

Demand For More Vs Not Demonstrated

The Notice perceives an inexorable demand by the public for more TV service facilities. Yet the studies it cites as evidence are flimsy and not on point. The econometric studies, for example, done in 1971, '72, '73, '74, and '76 rely largely on data collected in the '60s. This research utilized mostly cable-TV data,

[1] Notwithstanding the uncertainties highlighted in paragraph 105, page 56, front-to-back ratios of "typical" home rooftop antennas are required to be added to the near impossible showing under the *Carroll* doctrine (see footnote 72 page 31) by those who file in opposition to the drop-in.

[2] K. Bullington, "Radio Propagation Fundamentals," Bell System Technical Journal, vol. 36, no. 3, Fig. 7, AT&T.

[3] For a fuller explanation of how to obtain improved prediction by measurements, see National Bureau of Standards Technical Note No. 102, August 1961.

and the cable systems were almost all in rural areas.

Comsat's 1979 press release announcing its intent to file an application for a direct-to-the-home-broadcast-satellite service is cited in the Notice as evidence of consumer demand. There is, as of now, no evidence whatsoever of public demand for DBS.

There *is*, of course, consumer demand for programming—e.g. commercial-free movies and sports on MDS—but this is quite different from demand for facilities. Unused UHF channels remain available at the Commission. This would not be the case if a shortage of facilities existed. We should wait until existing UHF availabilities have been applied for before short-spacing more VHFs.

[FR Doc. 80-36886 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 21474; RM-1968; RM-2810; RM-2978]

Amendment of Broadcast Equal Opportunity Rules and FCC Form 395; Order Extending Time To File Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: Action taken herein extends time for filing comments and reply comments in response to a Notice of Proposed Rule Making concerning modifications to the FCC's model equal employment opportunity ("EEO") program for broadcast applicants and licensees.

DATE: Comments must be filed on or before October 30, 1980, and reply comments must be filed on or before December 1, 1980.

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

FOR FURTHER INFORMATION CONTACT: Steven A. Bookshester, Broadcast Bureau (202) 653-7586.

SUPPLEMENTARY INFORMATION:

Adopted: October 22, 1980.

Released: October 23, 1980.

By the Chief, Policy and Rules Division:

1. On June 4, 1980, the Commission adoped a *Second Further Notice of Proposed Rule Making* concerning the above-captioned proceeding, FCC 80-328, 45 Fed. Reg. 42729, published June 25, 1980. The dates initially established for filing comments and reply comments were August 25, 1980, and September 25, 1980, respectively.

2. By *Order* released August 15, 1980, 45 Fed. Reg. 56116, published August 22, 1980, the Commission granted the request of the National Association of Broadcasters ("NAB") and extended the filing dates for comments and reply comments to October 24, 1980, and November 24, 1980, respectively. NAB had stated that it intended to conduct a study of the costs of compliance with the Commission's present and proposed EEO requirements, and would also solicit licensees' suggestions as to various EEO alternatives, including those proposed in the *Further Notice*.

3. Presently before the Commission is a motion filed on October 17, 1980, by the Broadcast Financial Management Association ("BFM"), seeking a further extension of time for the filing of comments and reply comments to January 10, 1981, and February 10, 1981, respectively. BFM states that it has authorized an outside consultant to conduct a study to determine specific problem areas which station personnel will encounter with the proposed revisions to the model EEO program and instructions, and additional time is necessary to collect and analyze data for this study.

4. Also before the Commission is a motion filed by NAB on October 21, 1980, requesting an extension for the filing of comments until November 3, 1980, or, in the alternative, October 30, 1980. In support of its motion, NAB states that the raw date from its survey of 300 stations, which was conducted by an outside firm, was not received until the weekend of October 18-19, 1980, and analysis cannot be completed by the present October 24, 1980, deadline.[1]

5. The Commission is of the view that the grant of an extension to October 30, 1980, so that NAB may complete its data analysis, would not unduly delay this proceeding, and would serve the public interest through its possible contribution to the development of a more complete record. On its own motion, the Commission will, concurrently, extend the date for filing reply comments to December 1, 1980, so that all parties may fully respond to the intitial pleadings. Further extensions of time are not contemplated.

6. Additionally, the Commission is not persuaded that the extension of time requested by BFM is warranted. Four months has already been provided for the filing of comments in this proceeding. An additional month remains for the filing of reply comments. We are of the view that the comment period provided, extended as discussed in paragraph 5 above, has been more than adequate, and the public interest would not be served by the further delay of more than two additional months requested by BFM.[2]

7. Accordingly, it is ordered, That the Motion for Extension of Time for filing comments in this proceeding filed by the National Association of Broadcasters is granted in part, to and including October 30, 1980, and is in all other respects denied.

8. It is further ordered, That the date for filing reply comments is hereeby extended to and including December 1, 1980.

9. It is further ordered, That the motion for extension of time filed by the Broadcast Financial Management Association is granted to the extent stated herein and is in all other respects denied.

10. This action is taken pursuant to authority found in Sections 4(i), and 5(d)(1) and 303(r) of the Communications Act of 1934, as amended and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau

[FR Doc. 80-36778 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01

[1] Section 1.46(b) of the Commission's Rules requires that such motions be filed at least seven days prior to the filing date, but permits us to consider late-filed motions such as NAB's when there are extenuating circumstances.

[2] BFM may still avail itself of the December 1, 1980, date for the filing of reply comments. Additionally, should BFM believe this matter of sufficient importance, it may wish to submit late-filed comments with a request for acceptance.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Bluefin Tuna; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of public hearings.

SUMMARY: The National Marine Fisheries Service (NMFS) will hold public hearings for the purpose of public input on amendments to the regulations for the Atlantic bluefin tuna fishery. NMFS is concerned that future longline activities in the Atlantic bluefin tuna fishery may pose a threat to the health of the resource, and compromise the United States' commitments developed within the International Commission for

the Conservation of Atlantic Tunas. Proposed regulations are being developed which will address the problem. These will be published in the **Federal Register** prior to the hearing dates. Copies of the proposed regulations will be available by contacting the Regional Director at the following address: Mr. Allen E. Peterson, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; telephone: (617) 281–3600.

DATES: Written comments on the amendments to the regulations for Atlantic bluefin tuna from members of the public may be submitted no later than December 29, 1980. Individuals or organizations wishing to comment on the amendments also may do so at public hearings to be held as follows:

December 8, 1980—Madiera Beach, Florida;
December 9, 1980—Ft. Pierce, Florida;
December 10, 1980—Corpus Christie, Texas;
December 11, 1980—Kenner, Louisiana;
December 16, 1980—Peabody, Massachusetts; and
December 18, 1980—Newark, New Jersey.

All of the above hearings will start at 7:00 p.m. and end at 9:30 p.m.

ADDRESS: Send comments to: Mr. Allen E. Peterson at the above address.

Public Hearing Locations:

Date and Location

December 8, 1980: City Hall, City of Madiera Beach, Madiera Beach, Florida 33738; Tel: (813) 391–9951.
December 9, 1980: Best Western Executive Inn, 3224 South U.S. 1, Ft. Pierce, Florida 33450; Tel: (305) 465–7000.
December 10, 1980: Texas A&M Research Center, Highway 44, Corpus Christie, Texas 78408; Tel: (512) 265–9201.
December 11, 1980: Best Western Int'l Hotel, 2610 Williams Blvd., Kenner, Louisiana 70062; Tel: (504) 466–1401.
December 16, 1980: Holiday Inn, Route 1, 1 Newbury Street, Peabody, Massachusetts 01960; Tel: (617) 535–4600.
December 18, 1980: Holiday Inn, 160 Holiday Plaza, Newark, New Jersey 07114; Tel: (201) 589–1000.

FOR FURTHER INFORMATION CONTACT: Mr. William Jerome or Mr. Arnet R. Taylor, National Marine Fisheries Service, State Fish Pier, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone: (617) 281–3600.

Dated: November 21, 1980.

Robert K. Crowell,

Deputy Executive, Director National Marine Fisheries Service.

[FR Doc. 80–37042 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 45, No. 230
Wednesday, November 26, 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

Northern California Subcommittee of the Pacific Crest National Scenic Trail Advisory Council; Meeting

The Northern California subcommittee of the Pacific Crest National Scenic Trail Advisory Council Will Meet at 10:00 a.m. on Friday, January 23, 1981. The Meeting location Will Be Room 539, Appraiser's Building, 630 Sansome Street, San Francisco, California.

The purpose of the meeting is to review the alternatives for the pending Pacific Crest National Scenic Trail Comprehensive Plan for acquisition, management, development, and use of the trail. Other policy matters concerning the trail may also be considered.

The meeting will be open to the public. Persons who wish additional information should contact Alan Lamb, Recreation Staff, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 94111. Phone (415) 556–6983.

Dated: November 18, 1980.

Zane G. Smith, Jr.,

Regional Forester, Pacific Southwest Region.

[FR Doc. 80–36876 Filed 11–25–80; 8:45 am]

BILLING CODE 3410–11–M

Office of the Secretary

Meat Import Limitations, First Quarterly Estimate

Pub. L. 88–482, approved August 22, 1964, as amended by the Meat-Import Act of 1979, (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated quantity of meat articles prescribed by Section 2(c) of the Act.

In accordance with the requirements of the Act, the following first quarterly estimates for 1981 are published.

1. The estimated aggregate quantity of meat articles prescribed by Section 2(c) of the Act during the calendar year 1981 is 1,315 million pounds.

2. The estimated aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1981 is 1,458 million pounds.

Done at Washington, D.C. this 24th day of November 1980.

Bob Bergland,

Secretary.

[FR Doc. 80–37058 Filed 11–24–80; 3:13 am]

BILLING CODE 3410–10–M

Soil Conservation Service

Great Plains Conservation Program

AGENCY: Soil Conservation Service (SCS), USDA.

ACTION: Notice of decision to designate additional counties for participation in the Great Plains Conservation Program (GPCP).

SUMMARY: The Chief of the Soil Conservation Service designates 49 counties for participation in the Great Plains Conservation Program (GPCP). The counties are listed in Supplementary Information.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Guy D. McClaskey, SCS, P.O. Box 2890, Washington, D.C. 20013, telephone 202–447–2324.

SUPPLEMENTARY INFORMATION: Under section 16(b)(1) of the Soil Conservation and Domestic Allotment Act, as amended 16 U.S.C. 590p(b)(1), and SCS regulations, 7 CFR Part 631.2, the Chief of SCS, USDA, gives notice that he has designated the following 49 counties for participation in the GPCP effective October 1, 1980:

Montana

Lewis and Clark

Oklahoma

Kay	Cleveland
Noble	Pottawatomie
Logan	Garvin
Payne	Murray
Lincoln	Carter
Oklahoma	Love
McClain	

South Dakota

Marshall	Kingsbury
Day	Miner
Clark	

Texas

Val Verde	Frio
Edwards	Atascosa
Real	Dimmit
Kerr	La Salle
Bandera	McMullen
Kendall	Live Oak
Kinney	Webb
Uvalde	Duval
Medina	Zapata
Bexar	Jim Hogg
Maverick	Starr
Zavala	Hidalgo

Wyoming

Park	Washakie
Big Horn	Fremont
Hot Springs	Sweetwater

The review process established by the Office of Management and Budget in Circular A–95 is not applicable since this action will not have a significant impact on area or community development.

(Catalog of Federal Domestic Assistance Program No. 10.900, Great Plains Conservation Program, Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is not applicable.)

Norman A. Berg,

Chief.

[FR Doc. 80–36892 Filed 11–25–80; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket 38019 and 38961]

Wien Air Alaska, Mainline and Bush Mail Rates Investigation; Intra-Alaska Class Service Mail Rates; Conference

By Orders 80–11–81 and 80–11–82, the Board provided for a preliminary conference of the parties to these

proceedings, as well as other carriers holding certificates to provide intra-Alaska mail service, to be held on December 2, 1980. The Board directed that statements of position and issues be filed on or before November 21.

By letter dated November 14, 1980, counsel for Alaska International Air confirmed a duly authorized extension of the deadline for the referenced statements until November 24, 1980. In the same letter, counsel requested postponement of the conference until December 3, 1980 to accommodate parties travelling from Alaska.

Given the absence of objections, this request is granted. Accordingly, the Bureau of Domestic Aviation will hold a conference in the above referenced matters on December 3, 1980 at 10 a.m. in Room 910, Universal Building, 1825 Connecticut Ave. N.W., Washington, D.C.

Parties should be prepared to discuss revised procedural dates for the submission of data and arguments. Revised dates will be set at the conference.

Parties who have not already served the persons on the attached service list with copies of statements of positions and issues are requested to do so.

The conference will be open to the public, but only parties or Board staff will be permitted to participate. Persons not on the service list who wish to assume party status should contact Mr. Barry Molar (202) 673–5371. The provisions contained in 14 C.F.R. 302.313 and 14 C.F.R. 302.314 will not apply to the conference.

This notice will be published in the **Federal Register.**

Mark S. Kahan,

Assistant Director, Fares, Rates and Tariffs.

Service List for Administrative Conference

Alaska International Air, Inc., Box 60029, Airport Annex, Fairbanks, AK 99706.
Leonard N. Bebchick, Martin, Whitfield, Smith & Bebchick, 1701 Pennsylvanis Ave., N.W., Suite 1102, Washington, D.C. 20006.
Raymond J. Vecci, Vice President, PLanning & Assistant to the President, Alaska Airlines, Inc., Seattle-Tacoma International Airport, Seattle, Washington 98188.
Marshall S. Sinick, Fisher, Gelband and Sinick, Suite 440, 2020 K Street, N.W., Washington, D.C. 20006.
Air North d.b.a. Yukon Air Service, Box 60054, Fairbanks, AK 99701.
Michael J. Roberts, Verner, Liipfert, Bernhard & McPherson, Suite 1100 1660 L Street, N.W., Washington, D.C. 20036.
Kodiak-Western Alaska Airlines, Inc., Mr. Robert L. Hall, P.O. Box 2457, Kodiak, Alaska 99615.
Kodiak-Western Alaska Airlines, Inc., Mr. Jerrold Scoutt, Zuckert, Scoutt & Rasenberger, 888 17th Street, N.W., Washington, D.C. 20006.
Reeve Aleutian Airways, Inc., Mr. R. D. Reeve, 4700 W-International Airport Road, Anchorage, Alaska 99502.
Reeve Aleutian Airways, Inc., Mr. Lee Hydeman, Hydeman, Mason & Goodell, 1220 19th Street, N.W., Washington, D.C. 20036.
Munz Northern Airlines, Inc., P.O. Box 790, Nome, AK 99763.
James J. Flood, President, Wien Air Alaska, Inc., 4100 W. International Airport Road, Anchorage, Alaska 99520.
Theodore I. Seamon, Seamon, Wasko & Ozment, 1211 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036.
Larry Ledlow, President, Western Yukon Air, P.O. Box 131, St. Marys, Alaska 99558.
Edwin O. Bailey, Kirkland and Ellis, 1776 K Street, N.W., Washington, D.C. 20006.
Robert A. Sherr, Room 9417, U.S. Postal Service, Washington, D.C. 20260.

[FR Doc. 80-36912 Filed 11-25-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38803]

Application of Sun Pacific Airlines for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80–11–107, application of Sun Pacific Airlines under Subpart Q for a Certificate of Public Convenience and Necessity for authority between and among San Francisco, Fresno, Bakersfield, Las Vegas, Los Angeles and Ontario (Docket 38803).

SUMMARY: The Board is proposing to grant a certificate of public convenience and necessity to Sun Pacific Airlines to authorize it to provide service in the markets listed in its application, subject to a favorable determination of its fitness (Docket 38865). The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below no later than December 22, 1980, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 38803, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: Objections should be served upon the civic officials and airport managers at San Francisco, Bakersfield, Fresno, Los Angeles, Las Vegas and Ontario; the Governors of California and Nevada; the California Department of Transportation; the California Public Utilities Commission; the Nevada Department of Transportation; Sun Pacific Airlines; Swift Aire Lines; Inland Empire Airlines; Air California; and Gem Investors, d/b/a Golden Gate Airlines.

The complete text of Order 80–11–107 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80–11–107 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 19, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-36911 Filed 11-25-80; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Colorado Advisory Committee; Amendment of Meeting Notice

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Colorado Advisory Committee to the Commission originally scheduled for December 2, 1980, at the St. John's Baptist Rectory, 315 4th Avenue, Longmont, Colorado 80501 (FR Doc. 80–35294) has been changed.

The meeting now will be held on December 2, 1980, beginning at 7:00 p.m., and will end at 10:00 p.m., at 1020 Fifteenth Street, Brooks Towers, Suite 2235, Denver, Colorado 80202. The purpose of the meeting is to listen to concerns about excessive police force, community relations in smaller Northern Colorado towns.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Minoru Yasui, 1150 South Williams, Denver, Colorado 80210, (303) 575–2621 or the Rocky Mountain Regional Office, 1020 Fifteenth Street, Suite 2235, Denver, Colorado, (303) 837–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-36902 Filed 11-25-80; 8:45 am]

BILLING CODE 6335-01-M

District of Columbia Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee will convene at 2 p.m., and will end at 4 p.m., on December 11, 1980, at 2120 L Street NW., Lower Level Conference Room, Washington, D.C. 20037. The purpose of the meeting is to discuss concept papers on project ideas in the areas of equal employment opportunity and equal protection of the laws for Handicapped Americans.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Rev. Ernest Gibson, 1239 Vermont Avenue NW., Washington, D.C. 20005, (202) 638–1077 or the Mid-Atlantic Regional Office, 2120 L Street NW., Suite 510, Washington, D.C., 20037, (202) 254–6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80–36903 Filed 11–25–80; 8:45 am]

BILLING CODE 6335–01–M

Florida Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 4 p.m., and will end at 6 p.m., on December 7, 1980, at the Hotel Everglades (Suite to be designated later), 3rd and Biscayne, Miami, Florida 33132. The purpose of the meeting is a briefing by the Office of General Counsel Staff on the Commission Hearing.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Ted Nichols, University of Miami, Coral Gables, Florida 33124, (305) 284–3064 or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Ave. NE., Atlanta, Georgia 30303, (404) 242–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80–36905 Filed 11–25–80; 8:45 am]

BILLING CODE 6335–01–M

Maine Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 6 p.m., and will end at 8 p.m., on December 17, 1980, at the Maine Teachers Association, 35 Community Drive, Augusta, Maine. The purpose of the meeting is to review the final draft of the annual report on civil rights in Maine; report on the progress of sexual harassment projects and review proposals for new projects on women in nontraditional jobs, rights of the handicapped, domestic violence, and use of Medicaid funds.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Madeleine D. Giguere, 35 Orange Extension, Lewiston, Maine 34240 (207) 780–4100 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 21, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80–36901 Filed 11–25–80; 8:45 am]

BILLING CODE 6335–01–M

Wyoming Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10 a.m., and will end at 12 p.m., on December 6, 1980, at the Federal Building, 100 East B. Street, Room 3116, Casper, Wyoming 82601. The purpose of the meeting is to report on SAC chairs conference in Washington, D.C., and an update on the progress of research into working conditions for women and minorities in mineral extraction industries.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Jamie C. Ring, 520 Parkview Drive, Casper, Wyoming 82601, (307) 237–9504 or the Rocky Mountain Regional Office, 1020 Fifteenth Street, Suite 2235, Denver, Colorado 80202, (303) 837–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80–36904 Filed 11–25–80; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Cuba)

Notice is hereby given that the Department of Commerce is undertaking to determine whether, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), and section 4221 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4221), the Government of Cuba allows substantially reciprocal customs and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted to aircraft of foreign registry under the aforementioned statutes. The basis of this undertaking is a request on behalf of Empresa Consolidada Cubana de Aviacion (Cubana) for a finding of such reciprocity.

The above-cited statutes provide exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies in the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context indicates a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal priviledges" to aircraft of U.S. registry with respect to imports or purchases of such supplies in that country.

Interested parties are invited to submit their views and comments in writing concerning this matter to Mr. Abraham Katz, Assistant Secretary for

International Economic Policy, Room 3830 B, U.S. Department of Commerce, Washington, D.C. 20230. All submissions should be made in five copies and should be received no later than December 23, 1980.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, in the Freedom of Information Records Inspection Facility, International Trade Administration, Room 3102, Department of Commerce, Washington, D.C.

It is suggested that those desiring additional information contact Mr. C. William Johnson, International Services Division, Office of International Finance, Investment and Services, Room 2204, Washington, D.C. 20230, or call area code 202/377–5012.

Abraham Katz,

Assistant Secretary for International Economic Policy.

[FR Doc. 80–36925 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Article

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

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 80–00240. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Klystron Oscillator, Type VRB–2113B. Manufacturer: Varian of Canada, Canada. Intended use of article: The article is intended to be used in radioastronomy investigations which will involve observing the emission of various rotational-state spectral line emissions, including the silicon monoxide line at 43.0 GHz as well as a variety of other known and hypothesized lines in the region between 38.0 and 44.0 GHz. The phenomena to be investigated will include: (a) the distribution of such emission in the sky to determine its association with celestial objects; and (b) its variation with frequency and time to improve the understanding of the physics of the objects and in some cases the mechanism of emission, where such mechanism is not obviously the usual thermal-equilibrium excited-line radiation. Application received by Commissioner of Customs: March 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a center frequency of 87.0 gigahertz. The National Bureau of Standards advises in its memorandum dated September 15, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–36914 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

Sandia National Laboratories; Decision on Application for Duty-Free Entry of Scientific Article

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

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00200. Applicant: Sandia National Laboratories, Kirtland Air Force Base East, P.O. Box 5800, Albuquerque, NM 87185. Article: Image Converter Camera, 790. Manufacturer: John Hadland Photonics Ltd., United Kingdom. Intended use of article: The article is intended to be used for photo-optical measurements necessary for the study of generation of electrical discharges at threshold voltages and threshold ignition of explosive components. Application received by Commissioner of Customs: February 20, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 79–00317 which was denied without prejudice to resubmission on December 17, 1979 for informational deficiencies. The foreign article provides up to 50 frames per event. The National Bureau of Standards advises in its memorandum dated June 5, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–36913 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

San Diego State University; Decision on Application for Duty-Free Entry of Scientific Article

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

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00250. Applicant: San Diego State University, Dept. of Civil Engineering, San Diego, CA 92182. Article: Geonor Consolidometer. Manufacturer: Geornor, Norway.

Intended use of article: The article is intended to be used in accomplishing required laboratory experiments in the courses: CE–462 (Soil Mechanics), CE–463 (Soil Mechanics Laboratory), CE–562 (Applied Soil Mechanics and Foundation Engineering), CE–579 (Highway Materials), CE–797 (Research). Application received by Commissioner of Customs: March 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved: No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a combination wide range (up to 1000 kilograms) loading frame and consolidometer. The National Bureau of Standards advises in its memorandum dated August 26, 1980 that (1) the combination of capabilities of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign aritcle, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–36915 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

San Diego Veteran's Medical Center; Decision on Application for Duty-Free Entry of Scientific Article

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

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00206. Applicant: San Diego Veteran's Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161. Article: Nanoliter Microperfusion Pump. Manufacturer: Wolfgang Hampel, West Germany. Intended use of article: The article is intended to be used for the investigation of tubulo-glomerular feedback in the kidney. Some studies will be performed on early proximal tubular reabsorption in tubules in the Munich-Wista rat kidney *in vivo*. Other studies examine the effect of distal tubular flow and fluid composition on proximal tubules. Application received by commissioner of Customs: February 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides perfusion rates in the zero to 50 nanoliters per minute range. the Department of Health and Human Services advises in its memorandum dated June 25, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel.

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–36916 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

Bethesda Hospital & Deaconess Association; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 80–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m., and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 80–00249. Applicant: Bethesda Hospital & Deaconess Association, 619 Oak Street, Cincinnati, Ohio 45206. Article: Octoson Multiple Transducer Echoscope. Manufacturer: Ausonics Ltd., Australia. Intended use of article: The article is intended to be used to expand both the technique and anatomical range of diagnostic ultrasonic imaging of breast, testicles, children's head, abdomen, thyroid, and heart. The article will also be used to enhance educational programs for trainees in the Radiology Department. Application received by Commissioner of Customs: March 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufacturered in the United States.

Reasons: The foreign article is equipped with eight transducers which provide a large field of view and compound scanning. The Department of Health and Human Services advises in its memorandum dated August 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–36919 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

Duke University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review

between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80-00207. Applicant: Duke University, Durham, North Carolina 27710. Article: Replicator Head, 60 Well. Manufacturer: Biotec Aktiengesellschaft, Switzerland. Intended use of article: The article is intended to be used for precurosor analysis of immune cells. Application received by Commissioner of Customs: February 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article replicates simultaneously sixty small volume samples of less than 25 microliters. The Department of Health and Human Services advises in its memorandum dated July 17, 1980 that (1) the capability of the foreign described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-36917 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

Research Foundation of CUNY; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80-00182. Applicant: Research Foundation of CUNY, Department of Psychology, Queens College of CUNY, Flushing, New York 11367. Article: Anomaloscope. Manufacturer: The Rayner Optical Co. Ltd., United Kingdom. Intended use of article: The article is intended to be used for research on certain types of colorblind subjects, in order to discern the type of cone mechanisms (present in the normal subject, but absent in some colorblind subjects) which interact with rods. Application received by Commissioner of Customs: February 6, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capabilities for reproducibly testing, detecting, and quantitatively assessing color vision and night blindness defects. The Department of Health and Human Services advises in its memorandum dated June 25, 1980 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-36921 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

San Diego State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80-00241. Applicant: San Diego State University, Systems Ecology Research Group, San Diego, CA 92182. Article: Infrared Gas Analyzer (CO_2), ADC Type 225 Mk II. Manufacturer: Analytical Development Co., United Kingdom. Intended use of article: The article is intended to be used for studies of photosynthesis of higher plants in mediterranean ecosystems. Experiments will include CO_2 exchange of laboratory and in situ Chapparal plants, under varied regimes of soil and air temperature, light water availability, and nutrient concentration. Application received by Commissioner of Customs: March 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foregin article has single gas calibration and an accuracy of $\pm$ 1% full scale reading when operated on the irregular frequency of a portable generator (60$\pm$3 Hertz). The Department of Health and Human Services advises in its memorandum dated August 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Program Staff.

[FR Doc. 80-36918 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

University of California, Berkeley; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c)

of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80–00248. Applicant: University of California, Berkeley, Purchasing Department, 2405 Bowditch Street, Berkeley, California 94720. Article: Excimer Laser, Model TE–861 and Accessories. Manufacturer: Lumonics Ltd., Canada. Intended use of article: The article is intended to be used to study a variety of organic molecules in the gas phase, liquid phase, solid state and chemi-sorbed or physi-sorbed on surfaces. The objective is to unveil new chemical and physical properties of material and to develop novel laser devices. This system will allow innovative long shots and high risk experiments to be performed in an efficeint way. Application Received by Commissioner of Customs: March 24, 1980.

Comments: No comments have been received with respect to this application.

Decison: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a maximum pulse energy per pulse of 250 milijoules and a high repetition rate of 75 hertz, both using krypton fluoride. The National Bureau of Standards advises in its memorandum dated August 27, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

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

Frank Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–36920 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

National Bureau of Standards

Federal Information Processing Standards 60–1, 61, 62, 63; Editorial Changes

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform automatic data processing standards. On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098–10101) announcing that the Secretary of Commerce had approved three input/output (I/O) Federal Information Processing Standards (FIPS): (1) I/O Channel Interface, (2) Channel Level Power Control Interface, and (3) Operational Specifications for Magnetic Tape Subsystems, designated Federal Information Processing Standards Publication (FIPS PUB) 60 (which has been redesignated as 60–1), FIPS PUB 61, and FIPS PUB 62, respectively. On August 27, 1979, notice was given in the **Federal Register** (44 FR 50078–50079) announcing that the Secretary had approved a fourth I/O channel level interface standard, Operational Specifications for Rotating Mass Storage Subsystems, designated FIPS PUB 63.

These standards were the subject of corrections and revisions announced in the **Federal Register** on August 27, 1979 (44 FR 50079–50080), August 31, 1979 (44 FR 51294) and December 3, 1979 (44 FR 69317). An interim revision of FIPS PUBS 60–1 through 63 regarding verification procedures and guidance concerning technical interface implementation approaches was announced in the **Federal Register** on June 25, 1980 (45 FR 42783–42784).

Now it has been determined that FIPS PUBS 60–1, 61, 62, and 63 require several editorial changes.

A. The following editorial changes are made to FIPS PUBS 60–1:

Page 2 insert the following new paragraph after 4th paragraph: Regulations concerning the specific use of this standard in Federal procurement will be issued by the General Services Administration to be a part of the Federal Property Management Regulations.

Page 18, 6th full paragraph: Delete "or 'address in' " after " 'select in' " and change " 'operation in'," after "and" to " 'operational in' ,."

Page 21, last paragraph, third line: Change "48" before the word signal to "72."

Page 26, first paragraph designated as paragraph 2, 6th line: Change "with" to "within" after the word "address."

Page 30, paragraph 2.5.3: Delete last sentence. Substitute in its place: "Any status (except zero status presented in response to a command other than test I/O) presented by a control unit in any interface sequence (except the control-unit-busy sequence) may be stacked."

Page 40, second paragraph of paragraph 2.8.3.2: Delete the second line in the paragraph, and substitute in its place: "control unit power is off and electrical bypassing is effective. For control units, the internal resistence."

Page 46, following the first paragraph of paragraph 3.3.1: Insert "The receiver should not be damaged by:"

Page 50, bottom row of pin assignment diagram: Reverse the two diagrams so that "Control Unit in Connector 3 ('B' Style)" appears in the right-hand column with "B" group, and "Channel/Control Unit out Connector 3 ('A' Style)" appears in the left-hand column with the "A" group.

B. The following editorial changes are made to FIPS PUB 61:

Page 11, Figure 3: In left-hand column of figure 3: Change "System Power-On Contracts" to "System Power-On Contacts."

Page 17, Figure 8: Change ".345" to ".395" in the Typical Single Circuit Receptacle Housing group.

C. The following editorial changes are made to FIPS PUB 62:

Page 10, Figure 2: The top portion of the right-hand box at the top of the figure should read: "Channel Switch 1"

Page 11, paragraph 1.5.4: Delete "as specified by document ANSI X3B1/556–1972, entitled Magnetic Tape for Information Interchange"

Page 21, paragraph 3.1, Bit 4 entry: Delete second sentence under Interpretation column and substitute the following new sentence in its place: "Channel End is set in ending status for burst commands (e.g., Read, Write, and Sense) and in initial status for motion control and non-motion control commands (e.g., Rewind, Backspace Block, and Mode Set)."

D. The following editorial change is made to FIPS PUB 63:

Page 43, paragraph 3.2.2, line 4: Change "0, 2 and 3" to "1, 2 and 3." Line 6: Change "1, 4, 5 and 6," to "0, 4, 5 and 6,."

Questions regarding these editorial changes should be addressed to Steve A. Recicar, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: November 20, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-36820 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of addition and deletions of systems of records.

SUMMARY: The Department of the Army proposes to amend its inventory of systems notices by adding 1 and deleting 2 systems of records subject to the Privacy Act of 1974. The system being added relates to grievances filed by Army employees under part 771 of regulations issued by the Office of Personnel Management (OPM). The case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original correspondence and exhibits. The system also includes files and records of internal grievance and arbitration systems established through negotiations with recognized labor organizations. Records are to be maintained in the servicing civilian personnel office for each Army installation or activity.

EFFECTIVE DATE: 1 December 1980.

ADDRESS: Mr. Richard S. Christian, The Adjutant General's Office (DAAG-AMR-R), 1000 Independence Avenue, SW, Washington, DC 20310; telephone 202/693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army has been advised by the Office of Management and Budget that OPM plans to delete, effective January 1, 1981, the Government-wide system "OPM/GOVT-2, Grievance Records" because it has been decided that such records would be more appropriately maintained in individual agency systems of records. Information called for in the system set forth below duplicates the information in the OPM system. Thus, the proposed Army system is not a new system of records and no report thereon is necessary. The OPM system was published in the **Federal Register** of May 29, 1979 (44 FR 30884), and was amended by a notice published in the **Federal Register** of October 26, 1979 (44 FR 61708).

Department of the Army systems of records have been published in the following editions of the **Federal Register:**

FR Doc. 79-37052 (44 FR 73729) December 17, 1979
FR Doc. 80-594 (45 FR 1658) January 8, 1980
FR Doc. 80-3891 (45 FR 8399) February 7, 1980
FR Doc. 80-7515 (45 FR 15736) March 11, 1980
FR Doc. 80-9633 (45 FR 20992) March 31, 1980
FR Doc. 80-10014 (45 FR 21673) April 2, 1980
FR Doc. 80-150501-M (45 FR 26117) April 17, 1980
FR Doc. 80-13708 (45 FR 29390) May 2, 1980
FR Doc. 80-18501 (45 FR 41478) June 19, 1980
FR Doc. 80-20779 (45 FR 46842) July 11, 1980
FR Doc. 80-21847 (45 FR 48936) July 22, 1980
FR Doc. 80-29170 (45 FR 62875) September 22, 1980
FR Doc. 80-32460 (45 FR 68996) October 17, 1980
FR Doc. 80-33133 (45 FR 70298) October 23, 1980
FR Doc. 80-34706 (45 FR 73728) November 6, 1980
FR Doc. 80-35825 (45 FR 75734) November 17, 1980

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

November 19, 1980.

Addition

AO812.03DAPE

SYSTEM NAME:

812.03 Grievance Records

SYSTEM LOCATION:

Records are located in the servicing civilian personnel offices for each Army activity or installation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees of the Department of the Army who have submitted grievances in accordance with part 771 of the regulations of the office of Personnel Management (5 CFR 771) or through a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to grievances filed by Army employees under part 771 of regulations issued by the Office of Personnel Management. The case file contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decisions, and related correspondence and exhibits. The system includes files and records of internal grievance and arbitration systems established through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218, E.O. 10987, 3 CFR 1959-1963 Comp., p. 519, agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be 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 agency becomes aware of an indication of a violation of 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 issuing 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 the requesting 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 dislcose 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 (General Services Administration) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. By the Department of the Army or by the Office of Personnel Management in the production 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 inference.

h. 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.

i. 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.

j. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS FOR THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By the names of the individuals on whom the records are maintained. (Records may also be filed by bargaining unit.)

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are destroyed 7 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Civilian Personnel, Office of the Deputy Chief of Staff for Personnel, Room 2C–681, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances by provided a copy of the record under the grievance process. They may, however, contact the Army personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing the case and kind of action taken.

d. Organization and activity where employed at time grievance was initiated.

RECORDS ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, and individual may request access to the official copy of the grievance filed by contacting the personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organization and activity where employed at time grievance was initiated.

Individuals requesting access must also follow the Privacy Act regulations of the Office of Personnel Management regarding access to records and verification of identity (5 CFR 297.203 or 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the Army's ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact their servicing civilian personnel office. Individuals must furnish the following information for their records to be located and identified.

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organization and activity where employed at time grievance was initiated.

Individuals requesting amendment must also follow the Privacy Act regulations of the Office of Personnel Management regarding amendment to the records and verification of identity (5 CFR 297.208 and 297.201).

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 officials of the Department of the Army.

d. From related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Deletions

AO807.09aDAPE

System name:

807.09 Grievances and Appeals Under Negotiated Grievance Procedures (44 FR 73912), December 17, 1979.

Reason:

Records are described in system of records AO812.03DAPE, being added herein.

AO812.04DAPE

System name:

812.04 NAF Complaint, Appeal & Grievance Case Files (44 FR 73917), December 17, 1979.

Reason:

Records are described in system of records AO812.03DAPE, being added herein.

[FR Doc. 80–36775 Filed 11–25–80; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Deletion of Systems of Records

AGENCY: Department of the Navy (DON).

ACTION: Notice of deletion to systems of records.

SUMMARY: The Department of the Navy is deleting two systems of records which were formerly subject to the Privacy Act of 1974.

DATES: The systems are deleted as of December 26, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B1P), Department of the Navy, The Pentagon, Washington, D.C. 20350, telephone: 202–694–2004.

SUPPLEMENTARY INFORMATION: The Navy systems of records notices as prescribed by the Privacy Act of 1974, Title 5, U.S.C., Section 552a (P.L. 93–579) have been published in the **Federal Register** as follows:

FR Doc 79–36400 (44 FR 67703) November 27, 1979

FR Doc 79–36798 (44 FR 68947) November 30, 1979

FR Doc 79-37052 (44 FR 74553) December 17, 1979
FR Doc 80-6599 (45 FR 13794) March 3, 1980
FR Doc 80-14965 (45 FR 32037) May 15, 1980
FR Doc 80-15427 (45 FR 33679) May 20, 1980
FR Doc 80-17286 (45 FR 38099) June 6, 1980
FR Doc 80-19603 (45 FR 43841) June 30, 1980
FR Doc 80-20317 (45 FR 43938) July 8, 1980
FR Doc 80-23111 (45 FR 50851) July 31, 1980
FR Doc 80-24237 (45 FR 53508) August 12, 1980
FR Doc 80-26396 (45 FR 57514) August 28, 1980
FR Doc 80-26960 (45 FR 58651) September 4, 1980
FR Doc 80-27976 (45 FR 59938) September 11, 1980
FR Doc 80-29172 (45 FR 62876) September 22, 1980
FR Doc 80-29774 (45 FR 63898) September 26, 1980
FR Doc 80-33134 (45 FR 70301) October 23, 1980

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

November 20, 1980.

Deletions

N00015.ONI53-1A

System name:

Status of Downed Naval Aviation Personnel, Southeast Asia Operations (44 FR 74579) December 17, 1980.

Reason:

This system has been discontinued.

N62932 COMSYSTOSHOPRE

System name:

Commissary Store Monetary Allowance Records (44 FR 74633) December 17, 1980.

Reason:

This system has been discontinued.

[FR Doc. 80-36773 Filed 11-25-80; 8:45 am]

BILLING CODE 3810-71-M

Department of the Navy

U.S. Marine Corps

Privacy Act of 1974; Deletion and Amendments to Systems of Records

AGENCY: Department of the Navy (U.S. Marine Corps).

ACTION: Notice of deletion and amendments to systems of records.

SUMMARY: The U.S. Marine Corps proposes to delete one and amend four systems of records subject to the Privacy Act of 1974. The specific changes to the systems being amended are set forth below, followed by the system published in its entirety, as amended.

DATES: The system shall be amended as proposed without further notice on December 26, 1980 unless comments are received on or before December 26, 1980 which result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, 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 79-37052 (44 FR 74495) December 17, 1979
FR Doc 80-4470 (45 FR 9316) February 19, 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
FR Doc 80-32461 (45 FR 69280) October 20, 1980

The proposed amendments 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.

November 19, 1980.

Deletion

MMN00024

System name:

Absentee Processing File (44 FR 74543) December 17, 1979.

Reason:

This system has been incorporated into system MMN00001 appearing in this edition.

Amendment

MMN00001

System name:

Deserter Inquiry File (44 FR 74530) December 17, 1979.

Changes:

System name:

Delete the entire entry and substitute: "Absentee Processing and Deserter Inquiry File."

System location:

Delete the entire entry and substitute: "Primary System—Absentee and Deserter Section, Manpower Plans and Policy Division, Manpower Department (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

Decentralized Segments—U.S. Marine Corps commands to which the absentee or deserter is assigned for duty or administration of official records. See the organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Mailing Addresses."

Categories of individuals covered by the system:

At the end of the paragraph, delete the words "within the last 90 days."

Categories of records in the system:

Delete the entire entry and substitute: "File contains personal identification data, parent command, notations of arrests, nature and dispositions of criminal charges, and other pertinent information which is necessary to monitor, control and identify absentees and deserters."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In the first paragraph, delete the words "Manpower Plans and Policy Division" and add the following before the beginning of the paragraph:

"Internal:

Headquarters, U.S. Marine Corps, Marine Corps commands, activities, and organizations—To coordinate the identification, apprehension and return of Marine absentees and deserters in accordance with current regulations."

Delete paragraph four in its entirety. Add the following as the second paragraph under internal users: "The Department of Defense (DOD)—To coordinate with other components of DOD as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control."

Add the following word before the beginning of the second paragraph: *"External:"*

Delete the last paragraph in its entirety.

Storage:

Delete the entire entry and substitute the following: "Records are stored on magnetic tapes and disks, microform, and file folders."

Retrievability:

Delete the entire entry and substitute the following: "Records may be accessed by name and social security number."

Retention and disposal:

Delete the entire entry and substitute the following: "Records vary in the period of time retained. Records on magnetic tapes and disks are destroyed by erasing after disposition of the individual's case. Paper records are maintained only as long as necessary to transfer information to the official personnel record, then they are destroyed."

Record access procedures:

Delete the second paragraph in its entirety and substitute the following: "Written requests for information should contain full name of the individual, date and place of birth, social security number and signature.

System manager(s) and address:

Add after the phrase "The Commandant of the Marine Corps" the words "(Code MP)".

Systems exempted from certain provisions of the act:

Delete the entire entry and substitute the word: "None."

MMN00022

System name:

Vehicle Control System

Changes:

Categories of records in the system:

Delete the entire entry and substitute: "File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration, auto license plate information, and personal history data required for vehicle registration and identification. File also contains notations of traffic violations, citations, suspensions, application for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle accidents, information on student driver training, and identification for parking control."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute the following:

"Internal:

Headquarters, U.S. Marine Corps, Marine Corps commands, activities and organizations—For car pool locator service, vehicle registration, parking control, insurance information, verification and identification of vehicles. Records on official government drivers relating to their ability to operate a motor vehicle are used to manage a safe and responsive motor transport organization. Certain information is used to conduct accident prevention programs, revoke or suspend government motor vehicle permits and in disciplinary proceedings.

Department of Defense—By officials and employees of DOD in the performance of their official duties relating to vehicle control.

External:

Federal, state and local government agencies—By officials and employees to assist in the official execution of their duties when disclosure of such records is warranted."

Safeguards:

Delete the entire entry and substitute: "Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards."

Retention and disposal:

Delete the entire entry and substitute: "Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes are erased."

Notification procedures:

Delete the entry and substitute: "Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification."

Record access procedures:

Delete the entire entry and substitute: "Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification."

MMN00023

System name:

Prisoner Records (44 FR 74543) December 17, 1979

Changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add the following to the beginning of the first paragraph:

"Internal:

Headquarters, U.S. Marine Corps, Marine Corps commands, activities, and organizations—"

Delete paragraph three in its entirety. Add the following as the second paragraph under internal users: "Department of Defense and its components—By officials and employees of the Department of Defense in the performance of their official duties."

Add the following word before the beginning of the second paragraph: *"External:"*

Safeguards:

Delete the entire entry and substitute "Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards."

Retention and disposal:

Delete the entire entry and substitute: "Records are maintained at varying lengths of time. Paper records are destroyed at the end of the appropriate retention period and magnetic tapes are erased."

Notification procedures:

Delete the entry and substitute: "Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification."

Record access procedures:

Delete the entry and substitute: "Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification."

MFD00003

System name:

Joint Uniform Pay Military System/ Manpower Management System

(JUMPS/MMS) (45 FR 58647) September 4, 1980

Changes:

Categories of individuals covered by the system:

Add the following to the end of the sentence ". . . certain civilians and other service personnel who have attended formal Marine Corps schools."

Categories of records in the system:

Add the following to the end of the last sentence: ". . . promotional data."

Routine uses of records maintained in the system, including catagories of users and the purpose of such uses:

Add the following word before the beginning of the first paragraph: *"Internal:"*

Add the following word before the beginning of the third paragraph: *"External:"*

Retention and disposal:

Delete the first sentence and substitute: "Magnetic records are maintained on all military personnel and certain civilians while they are in service or employed by the service and for a period of 6 months after separation.

Add the following words to the end of the second sentence: ". . . then they are destroyed."

Record source categories:

After the word "individual" delete the word "Marine".

MMN00001

SYSTEM NAME:

Absentee Processing and Deserter Inquiry File

SYSTEM LOCATION:

Primary System: Absentee and Deserter Section, Manpower Plans and Policy Division, Manpower Department (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

Decentralized Segments—U.S. Marine Corps commands to which the absentee or deserter is assigned for duty or administration of official records. See the organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Mailing Addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps absentees and deserters; Marines in hands of civil authorities, foreign and domestic; Marines who fail to comply with orders to new duty stations; suspected and convicted absentees and deserters who have returned to military control.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personal identification data, parent command, notation of arrests, nature and dispositions of criminal charges, and other pertinent information which is necessary to monitor, control and identify absentees and deserters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal:

Headquarters, U.S. Marine Corps, Marine Corps commands, avtivities, and organizations—To coordinate the identification, apprehension and return of Marine absentees and deserters in accordance with current regulations. To record and monitor deserter/absentee cases entered into the National Crime Information Center's Wanted Persons File; to monitor and assign absentees upon their return to military control, to ensure that absentees are formally charged in accordance with the Uniform Code of Military Justice prior to expiration of the Statute of Limitations; to monitor Marine absentees and deserters believed to be located in foreign countries; to monitor Marines who have failed to comply with permanent change of station (PCS) orders or orders to travel and report without escort; to ensure correspondence pertaining to absentees and deserters received by the Marine Corps is processed in a timely manner; to ensure that appropriate action is taken within the Manpower Management System to join or drop absentees to desertion; to provide periodic management reports concerning absentees and deserters as directed by higher authority.

The Department of Defense (DOD)—To coordinate with other components of DOD as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control.

External:

Comptroller General of the U.S.—To respond to the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to Marine Corps Manpower Management Programs.

The Attorney General of the U.S.—To coordinate with the Attorney General or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice as carried out as the legal representative of the Executive Branch.

Civilian Law Enforcement Agencies—To coordinate with appropriate federal, state, and local law enforcement agencies as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control.

Courts—To respond to court orders in connection with matters before a court.

Congress of the U.S.—To respond to inquiries of the Senate or the House of Representatives of the United States or any committee or subcommittee thereof or any joint committee or joint subcommittee of the Congress on matters within their jurisdiction as may be requested of the Marine Corps.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes and disks, microform, and in file folders.

RETRIEVABILITY:

Records may be accessed by name and social security number.

SAFEGUARDS:

Building employs security guards. Computer terminals and records are located in areas accessible only to authorized personnel that are properly screened, cleared and trained. Use of terminals requires knowledge of passwords.

RETENTION AND DISPOSAL:

Records vary in the period of time retained. Records on magnetic tapes and disks are destroyed by erasing after disposition of the individual's case. Paper records are maintained only as long as necessary to transfer information to the official personnel record, then they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

NOTIFICATION PROCEDURE:

Information may be obtained from: The Commandant of the Marine Corps (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380, Telephone: Area Code (202) 694–2927.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: The Commandant of the Marine Corps (Code MP), Headquarters,

U.S. Marine Corps, Federal Office Builiding 2, Washington, D.C. 20380.

Written requests for information should contain the full name of the individual, date and place of birth, social security number and signature.

For personal visits, the individual should be able to provide military identification card, driver's license or other type of identification bearing picture or signature or by providing verbal data sufficient to ensure that the individual is the subject of the inquiry.

CONTESTING RECORD PROCEDURES:

The rules for contesting contents and appealing initial determination may be obtained from the Commandant of the Marine Corps (Code JA), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the Marine Corps Military Personnel Records; from the individual's commanding officer, officer-in-charge, federal, state and local law enforcement agencies, lawyers, judges, Members of Congress, relatives of the individual and private citizens, the Veterans' Administration and the individuals themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

Vehicle Control System.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have motor vehicles, boats, or trailers registered at a particular Naval installation on either a permanent or temporary basis.

All individuals who apply for a Government Motor Vehicle Operator's license.

All individuals who possess a Government Motor Vehicle Operator's license with authority to operate government motor vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration, auto license plate information, and perrsonal historyu data required for vehicle registration and identification. File also contains notations of traffic violations, citations, suspensions, applications for Government Vehicle Operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for government motor vehicle operator's permit, record of government motor vehicle and other vehcile accidents, information on students driver training and identification for parking control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal:

Headquarters, U.S. Marine Corps, Marine Corps commands, activities and organizations—For car pool locator service, vehicle registration, parking control, insurance information, verification and identification of vehicles. Records on official government drivers relating to their ability to operate a motor vehicle are use to manage a safe and responsive motor transport organization. Certain information is used to conduct accident prevention programs, revoke or suspend government motor vehicle permits and in disciplinary proceedings.

Department of Defense—By officials and employees of DOD in the performance of their official duties relating to vehicle control.

External:

Federal, state and local government agencies—By officials and employees to assist in the official execution of their duties when disclosure of such records is warranted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tapes.

RETRIEVABILITY:

Name, social security number, case number, organization, decal number, state license plate number, vehicle description.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards.

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

MMN00023

SYSTEM NAME:

Prisoner Records.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel who are confined in a detailed, adjudged or sentenced status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in the Manpower Management System data base, personal history to include civilian and military legal status, confinement progress reports and medical related information. Such other records as: Prisoner Conduct Record, Prisoner Confinement and Release Order, Prisoners Request for Restoration or Clemency, Prisoner Waiver of

Restoration or Clemency, Court-martial Progress Report, Prisoner Identification Badge, Prisoner Data Card, Work and Training Report, Mail and Visiting List, Segregation Data Card, Prisoner Refusal to Eat Report, Prisoner Initial Contact Sheet, Prisoner Personal History, Prisoner Spot Evaluation Report, Counselor Continuation Sheet, Disciplinary Report, Prisoner Request Form, Prisoner Request for Funds Form, Prisoner Request for Pastoral Counseling, Prisoner Visiting Officer Form, Telephone and/or Visit Authorization Form, Receipt for Deposit Form, Prisoner Credit Chit, Prisoner Identification Form, Clothing/Health and Comfort Inventory Form, Work Program Request, Library Card, Psychiatric Evaluation and Medical Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal:

Headquarters, U.S. Marine Corps, Marine Corps commands, activities, and organizations—To provide an all inclusive file on each individual prisoner, to assist facility staff evaluation of personnel, to assign prisoners to programs, to assign custodial classification, to provide psychiatric and medical treatment, to provide a proper mixture of individual and group counseling in the preparation of the prisoner for further military service, or to prepare him for his future adjustment to civilian life. Routinely used by local correctional personnel in the day-to-day management of prisoners within established programs, by medical personnel, local commanders and higher headquarters in the management and implementation of correctional programs.

Department of Defense and its components—By officials and employees of the Department in the performance of their official duties.

External:

Congress of the U.S.—By the Senate or House of Representatives of the U.S. or any committee or subcommittee thereof 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 the performance of the duties of the General Accounting Office relating to the Marine Corps.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tapes.

RETRIEVABILITY:

Name, social security number, case number, organization.

SAFEGUARDS:

Records are maintained in area accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards.

RETENTION AND DISPOSAL:

Records are maintained at varying lengths of time. Paper records are destroyed at the end of the appropriate retention period and magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

MFD0003

SYSTEM NAME:

Joint Uniform Military Pay System/ Manpower Management System (JUMPS/MMS)

SYSTEM LOCATION:

Primary System—Marine Corps Central Design and Programming Activity, 1500 East 95th Street, Kansas City, Missouri 64131; Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Decentralized Segments—There are nine Satellite/Command Data Processing Installations (SDPI/CDPI) which maintain files with similar records at the following locations: SDPI 02, Marine Corps Base, Camp Lejeune, NC 28542; SDPI 03, Marine Corps Base, Camp Pendleton, CA 92055; SDPI 06, FMF Pacific, FPO San Francisco, CA 96610; SDPI 09, Headquarters U.S. Marine Corps, Washington, D.C. 20380; SDPI 11, Marine Corps Recruit Depot, Parris Island, SC 29905; SDPI 15, Marine Corps Recruit Depot, San Diego, CA 92140; SDPI 17, Marine Corps Base, Quantico, VA 22134; SDPI 27, Marine Corps Base, Camp S. D. Butler, FPO Seattle, WA 98773; First Marine Brigade, FPO San Francisco, CA 96615; SDPI 16, Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps military personnel on active duty for 31 days or longer, certain civilians and other service personnel who have attended formal Marine Corps schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personnel and pay data which includes: Name, grade, SSN, date of birth, citizenship, marital status, home of record, dependents information, record of emergency data, enlistment contract or officer acceptance form information, duty status, population group, sex, ethnic group, duty station/ personnel assignment and unit information, security investigation, military pay record data such as information contained on the Leave and Earnings Statement which may include base pay/allowances/allotments/bond authorization, health care coverage, special pay and bonus data, Federal and State Withholding/Income Tax Data, Federal Indemnity Compensation Act Tax Withholding Data, Serviceman's Group Life Insurance Deductions, leave account, wage and tax summaries, separation document code, test scores/ information, language proficiency, military/civilian/off-duty education, training information, awards, combat tour information, aviation/pilot/flying time data, lineal precedence number, limited duty officer/warrant officer footnotes, TAD data, power of attorney, moral code, conduct and proficiency

marks, years in service, promotional data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 and 37, U.S. Code Section 5031 and 5201.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Internal:

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.

External:

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 or Congress or subcommittee or 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.

The American Red Cross and the Navy Relief Society—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 members 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).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic records and disks, punch cards, computer printouts, microform, file folders, and other documents.

RETRIEVABILITY:

The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Computerized and conventional indices are required to retrieve individual records from the system. Normally, all types of records are retrieved by Social Security Number and name.

SAFEGUARDS:

Building management employs security guards; building is locked nights and holidays. Authorized personnel may enter and leave the building during nonworking hours but must sign in and out. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Access to personal information is limited to authorized personnel with a need-to-know. Access is restricted to specific applications programs, records, and files to which personnel have a specific and recorded need-to-know. On line data sets (both tape and disk) pertaining to personal information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed.

RETENTION AND DISPOSAL:

Magnetic records are maintained on all military personnel and certain civilians while they are in service, or employed by the service and for a period of 6 months after separation. Paper and film records are maintained for a period of 10 years after the final transaction, then they are destroyed. End calendar and fiscal year "snapshots" of the MMS data base are maintained indefinitely in magnetic form at headquarters, U.S. Marine Corps.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps, Codes FD/MP, Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

NOTIFICATION PROCEDURE:

Requests from individuals for information concerning pay related matters should be addressed to the Commandant of the Marine Corps (Code FD). Requests from individuals for information concerning personnel matters should be addressed to the Commandant of the Marine Corps (Code MP).

Requesting individual must supply full name and Social Security Number. 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.

RECORD ACCESS PROCEDURES:

Information on JUMPS may be obtained from the member's local disbursing officer. Information on MMS may be obtained for 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

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Recruiting offices, disbursing offices, administrative offices, and the individual Marine are the prinicpal sources of the information contained in the JUMPS/MMS record for that person.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-36774 Filed 11-25-80; 8:45am]

BILLING CODE 3810-71-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Force Enhancement Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on December 10–11, 1980, from 8:00 a.m. to 5:00 p.m. each day, at 2000 N. Beauregard St., Alexandria, VA. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of cover and deception systems and procedures and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander Catherine Z. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone (703) 756–1205.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

November 24, 1980.

[FR Doc. 80-36955 Filed 11-24-80; 11:16 am]

BILLING CODE 3810-71-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education; Closing Date for Transmittal of Applications for Fiscal Year 1981

AGENCY: Department of Education.

ACTION: Change in Closing Date for Transmittal of Applications for Fiscal Year 1981.

SUMMARY: Two closing dates are extended for the Fund for the Improvement of Postsecondary Education Program. These program announcements were contained in the "Direct Grant Program Application Notices for Fiscal Year 1980," published in the **Federal Register** on October 7, 1981 (45 FR 66564—66618). The New closing dates are as follows:

84.116D Fund for the Improvement of Postsecondary Education. New Closing Date—December 2, 1980.

84.116K Fund for the Improvement of Postsecondary Education. New Closing Date—January 21, 1981.

Applicants should refer to the **Federal Register** announcement on October 7 for the necessary information to apply.

FOR FURTHER INFORMATION CONTACT: For 84.116D, Diana Hayman (202) 245–8091; for 84.116K, Lynn De Meester (202) 245–8091.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-36746 Filed 11-25-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Hazardous Wastes Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Hazardous Wastes Task Group of the Committee on Environmental Conservation will meet in December 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 Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the avilability and costs of petroleum products and natural gas. 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 Hazardous Wastes Task Group meeting follows:

The Hazardous Wastes Task Group will hold its first meeting on Wednesday, December 3, 1980, starting at 1:00 p.m., in the Conference Room of the National Petroleum Council, 1625 K Street, N.W., Washington, D.C.

The tentative agenda for the meeting follows:

1. Review Task Group assignment from the NPC Committee on Environmental Conservation.
2. Discuss Task Group study approach and individual assignments.
3. Discuss Task Group Schedule.
4. Discuss any other matters pertinent to the overall assignment of the Hazardous Wastes Task Group.

The meeting is open to the public. The Chairman of the Hazardous Wastes Task Group 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 Hazardous Wastes 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 L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance of the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE–190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 20, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development & Operations, Resource Applications.

November 20, 1980.

[FR Doc. 80-36930 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Action on Consent Order With the Gulf Oil Corporation

AGENCY: Department of Energy.

ACTION: Adoption of Proposed Consent Order as final.

SUMMARY: The Office of Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it has adopted the Consent Order with the Gulf Oil Corporation, executed on November 21, 1979, and published in 45 FR 6158, January 25, 1980.

As required by the regulation cited above, OSC has solicited comments on the Consent Order for a period of not less than 30 days following publication of the notice cited above. No comments were received. OSC has determined that the Consent Order should be made final without modification. The Consent

Order is effective as an order at the Department of Energy (DOE) on November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Sampath, Esq. Department of Energy, OSC, 1421 Cherry Street, Philadelphia, PA 19102.

Copies of the Consent Order may be obtained by written request at the freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave. SW., Room 6A152.

Issued in Washington, D.C. on the 16th day of June, 1980.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 80-36929 Filed 11-26-80; 8:45 am]

BILLING CODE 6450-01-M

Compliance With the National Environmental Policy Act; Final Guidelines

AGENCY: Department of Energy.

ACTION: Adoption of special procedures for major system acquisition projects involving the competitive procurement process.

SUMMARY: The Department of Energy (DOE) hereby adopts the special procedures for major system acquisition projects involving the competitive procurement of a site and/or process as previously proposed in its final guidelines for compliance with the National Environmental Policy Act (NEPA). The procedures are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Room 4G-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Room 6D-033, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6947

SUPPLEMENTARY INFORMATION: .

The DOE published its final guidelines for compliance with NEPA in the **Federal Register** on March 28, 1980 (45FR 20694). In the final guidelines DOE specifically requested public comment on Paragraph B.3.(c)(2), which was added and published as interim procedures to provide for NEPA compliance for major system acquistion projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. The special procedures provide for compliance with NEPA to the fullest extent possible.

The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

A 30-day period was established for public comment on the special procedures which are reprinted below. No written comments were received during the public comment period and accordingly, DOE hereby adopts the interim special procedures as final.

Issued in Washington, D.C. on November 19, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

DOE NEPA Guidelines Paragraph B.3.(c)(2)

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval or projects, by the approval of disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) * * *

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to that reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and anlyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to Comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential, or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly-available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection

statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500–1508 and in advance of a go/no-go decision.

[FR Doc. 80-36815 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the supply of 438.55 grams of uranium, enriched to 2.38% in U–235, to be used as standard reference material by the Japan Nuclear Fuel Company, Ltd.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S–JA–288 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-36818 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of .55 grams of natural uranium and .55 grams of thorium to the CEA, France for use as standard reference materials.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S–EU–669 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteeen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Nuclear and Technical Programs.

[FR Doc. 80-36819 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 80–CERT–037]

National Steel Corp., Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On October 21, 1980, National Steel Corporation (National Steel), Weirton Steel Division, Three Springs Drive, Weirton, West Virginia 26062, filed an application with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 for recertification of an eligible use of 3,000 Mcf of natural gas per day, which is estimated to displace approximately 600,000 gallons (14,286 barrels) of No. 6 fuel oil (1.4 percent sulfur) per month at National Steel's Weirton Steel Division located in Weirton, West Virginia. The eligible seller of the natural gas is David S. Towner Enterprises and the gas will be transported by the Columbia Gas Transmission Corporation. Notice of that application was published in the **Federal Register** (45 FR 73730, November 6, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On June 21, 1979, National Steel received the original certification (ERA Docket No. 79–CERT–003) of an eligible use of natural gas for use at the Weirton facility for a period of one year. The original certificate expired on June 20, 1980, but the applicant did not file for recertification until October 21, 1980.

The ERA has carefully reviewed National Steel's application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that National Steel's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information including a copy of the application, transmittal letter, and the actual recertification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG–55, 2000 M Street NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 20, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-36816 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Peterson Petroleum, 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 on potential claims against the refunds deposited in an escrow action established pursuant to the Consent Order.

DATE: Effective date: October 27, 1980.

COMMENTS BY: December 26, 1980.

ADDRESS: Send comments to: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620–6706.

FOR FURTHER INFORMATION CONTACT: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620–6706.

SUPPLEMENTARY INFORMATION: On October 27, 1980, the Office of Enforcement of the ERA executed a Consent Order with Peterson Petroleum, Inc. 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

Peterson Petroleum, Inc. (Peterson), with its home offices located in Hudson, New York, is a firm engaged in the resale of motor gasoline and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 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 Peterson, the Office of Enforcement of the ERA, and Peterson entered into a Consent Order, the significant terms of which are as follows:

1. During the period May 1, 1979 through June 30, 1979 (audit period), Peterson allegedly overcharged its wholesale class of purchaser in the resale of motor gasoline.

2. It is alleged that Peterson incorrectly computed its maximum legal selling price in its sales of motor gasoline to the classes of purchaser listed above during the audit period. As a result, Peterson charged prices in excess of those permitted under 10 CFR 212.93(a).

3. This Consent Order constitutes neither an admission by Peterson that it has violated the Mandatory Petroleum Price Regulations nor a finding by ERA that Peterson has violated such regulations.

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, Peterson 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 $32,816.16.

In order to accomplish the refund of overcharges, Peterson will issue, during the refund period, certified checks made payable to the United States Department of Energy and 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 Peterson refund amount 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 either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. 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 Peterson 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 205.299I(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 Peterson refund amounts 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 this 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 Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001. You may obtain a free copy of this Consent Order by writing to the same address or by calling (212) 620-6706.

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 Peterson Petroleum, Inc. Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on (30 days from publication). 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 Philadelphia, Pennsylvania on the 3d day of November 1980.

Edward Momorella,

Northeast District Manager of Enforcement.

[FR Doc. 80-36817 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

[Rate Order No. APA-4]

Eklutna Project; Order Confirming and Approving an Extension of Power Rates on an Interim Basis

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of extension of power rates on an interim basis—Eklutna Project, Alaska.

SUMMARY: Notice is given of a Rate Order, No. APA-4, of the Assistant Secretary for Resource Applications, extending power rates on an interim basis for power marketed by the Alaska Power Administration from the Eklutna Project, Alaska.

FOR FURTHER INFORMATION CONTACT:

James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, Room 3349, 12th and Pennsylvania Avenue, NW, Washington, D.C. 20461 (202) 633-8338.

Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, Department of Energy, P.O. Box 50, Juneau, Alaska 99802 (907) 586-7405.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The same delegation order delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation.

Pursuant to the delegation order, on December 4, 1979, the Assistant Secretary issued Rate Order No. APA-2 (44 FR 70861 December 10, 1979) confirming and approving on an interim basis, effective January 1, 1980, Rate Schedules A-F8 and A-N7 for power marketed by the Alaska Power Administration from the Eklutna Project. The rates are to remain in effect for a period of 12 months unless the period is

extended or until the FERC confirms and approves them, or substitute rates, on a final basis. The rates were submitted to the FERC for confirmation and approval on a final basis on December 4, 1979.

The FERC has not yet acted on the rates, and the purpose of Rate Order No. APA–4 is to extend the power rates for another 12 months (through December 31, 1981) unless further extended or until the FERC confirms and approves them, or substitute rates, on a final basis.

Issued in Washington, D.C., November 20, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Assistant Secretary for Resource Applications, Department of Energy

In the Matter of: Alaska Power Administration—Eklutna Project Power Rates; Rate Order No. APA–4.

Order Confirming and Approving an Extension of Power Rates on an Interim Basis

November 20, 1980.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565, the functions of the Secretary of the Interior and the Federal Power Commission under the Eklutna Project Act of July 31, 1950, 64 Stat. 382, as amended were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary.

Background

Pursuant to Delegation Order No. 0204–33, on December 4, 1979, the Assistant Secretary for Resource Applications issued Rate Order No. APA–2 (44 FR 70861, December 10, 1979) confirming and approving on an interim basis, effective January 1, 1980, Rate Schedules A–F8 and A–N7 for power marketed by the Alaska Power Administration's Eklutna Project. The rate order stated that the rates "* * * shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the FERC confirms and approves them, or substitute rates, on a final basis." The rate schedules were submitted to the FERC for confirmation and approval on a final basis by the Assistant Secretary's letter of December 4, 1979.

Discussion

Inasmuch as the Federal Energy Regulatory Commission is not expected to complete its confirmation and approval of the Eklutna Project power rate by December 31, 1980, a further extension of the interim rate is necessary.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective January 1, 1981, an extension of existing Rate Schedules A–F8 and A–N7. These rates shall remain in effect through December 31, 1981, unless extended, or until the FERC confirms and approves them, or substitute rates, on a final basis.

Issued in Washington, D.C., November 20, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Eklutna Project, Alaska—Schedule A–F8

Schedule of Rates for Wholesale Firm Power Service

Effective: January 1, 1980.

Available: In the area served by the Eklutna Project, Alaska.

Applicable: To wholesale power customers for general power service.

Character and Conditions of Service: Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate:

Capacity Charge: None.

Energy Charge: All energy at 12.5 mills per kilowatt-hour.

Minimum Annual Capacity Charge: None.

Billing Demand: Not applicable.

Adjustments For Transformer Losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

For Power Factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 90 percent lagging and 90 percent leading.

For Auxiliary Power Service: Auxiliary power supplies may be used in conjunction with the service hereunder if the parties hereto, prior to the Contractor's utilization of any such auxiliary power supply, have entered into a written operating agreement defining the procedure by which the amount of power and energy supplied by the United States will be determined.

Eklutna Project, Alaska—Schedule A–N7

Schedule of Rates for Nonfirm Service

Effective: January 1, 1980.

Available: In the area served by the Eklutna Project, Alaska.

Applicable: To firm power customers normally maintaining generating facilities or other sources of energy sufficient to supply their requirements.

Character and Conditions of Service: Alternating current, sixty cycles, three-phase, delivered and metered at points of delivery and voltage to be determined by the Alaska Power Administration.

Monthly Rate:

Demand Charge: None.

Energy Charge: 6.0 mills per kilowatt-hour for all energy under this schedule.

Minimum Bill: None.

Adjustments For Character and Conditions of Service: None.

For Transformer Losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[FR Doc. 80–36928 Filed 11–25–80; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Review of Commission Decisional Process; Meeting

November 20, 1980.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given that the Subcommittee on Review of the Commission Decisional Process of the Advisory Committee on Revision of Rules of Practice and Procedure will meet Thursday, December 4, 1980, from 2:00 p.m. to 5:00 p.m., at the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Room 9306, Washington, D.C.

The purpose of the meeting is to discuss alternative means by which the Commission may permit natural gas pipelines, local distribution companies, and end-users of natural gas to buy and sell surplus entitlements of natural gas.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Division of Public Information, Room 1000, 825 N. Capitol Street NE., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays. In

addition, any person may purchase a copy of the transcript from the reporter.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36794 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3523]

Atlantic Power Development Corp.; Application for Preliminary Permit

November 19, 1980.

Take notice that Atlantic Power Development Corporation (Applicant) filed on October 2, 1980, and application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3523 to be known as the Monongahela Lock and Dam No. 8 Hydroelectric Project located on the Monongahela River in Fayette County., Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas F. Nolan IV, Attorney at Law, 401 C Street N.E., Washington D.C. 20002. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing Corps of Engineers' Monongahela River Lock and Dam No. 8 and would consist of a powerhouse with one or more generating units having a total rated capacity of 5,900 kW, and a transmission line. The project would be capable of generating up to 33,100 MWh annually saving the equivalent of 55,000 barrels of oil.

Purpose of Project—Energy generated at the project would be sold to the local electric public utility.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $88,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). AS competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before January 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", OR "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3523. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36800 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3521]

Atlantic Power Development Corp.; Application for Preliminary Permit

November 19, 1980.

Take notice that Atlantic Power Development Corporation (Applicant) filed on October 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3521 to be known as the Monongahela Lock and Dam No. 7 Hydroelectric Project located on the Monongahela River in Fayette County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas F. Nolan IV, Attorney at Law, 401 C Street NE., Washington, D.C. 20002. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing Corps of Engineers' Monongahela River Lock and Dam No. 7 and associated reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 8,200 kW, and a transmission line. The Applicant estimates that the average annual energy output would be 46,000 MWh annually, saving the equivalent of 76,000 barrels of oil.

Purpose of Project—Energy generated at the project would be sold to the local public utility.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $95,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rule of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comment does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to file Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3521. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36801 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER79-370]

Consolidated Edison Company of New York, Inc.; Order Accepting Rates for Filing, Granting Waiver of Notice Requirements, Granting Waiver of Regulations and Allowing Intervention

Issued November 19, 1980.

On September 26, 1980, Consolidated Edison Company of New York (Con Ed) completed its filing of two proposed supplements to its Transmission Agreement with the Power Authority of the State of New York (PASNY) for the transmission of power to PASNY retail customers located in Con Ed's service area.[1] The proposed transmission charges would increase revenues for a twelve month period ending March 31, 1980 by approximately $5.2 million (20%). Con Ed has requested waiver of the notice requirements to permit an effective date of April 24, 1979 for its Supplement No. 5 and July 21, 1979 for its Supplement No. 6 to correspond with the effective dates approved by the New York Public Service Commission for Con Ed's retail rates for the PASNY customers. Con Ed has also requested waiver of provisions of Section 35.13 of the Commission's regulations to allow Con Ed to submit a Period I study employing cost of service data based on calendar year 1977.

Notice of the filing was issued on May 21, 1979, with protests or petitions to intervene due on or before June 11, 1979. On June 11, 1979, PASNY filed a petition to intervene. In support of its petition, PASNY states that the proposed rates will be passed on directly to its retail customers and that its interests in this docket are not adequately represented by any other party. PASNY has not requested a hearing.

Background

Con Ed originally submitted for filing in the instant docket one supplement to its Transmission Agreement with PASNY on May 15, 1979. Con Ed requested in the filing that the Commission waive its regulations which required the company to file a case-in-chief, noting that the proposed rates represented PASNY's proportionate share of a retail rate increase granted to Con Ed by the New York Public Service Commission. Con Ed's proposed rate schedules contained rates that consisted of the company's charges to PASNY's retail customers without any breakdown between charges for transmission (jurisdictional) services and distribution and metering (non-jurisdictional) services. By letter dated July 18, 1979, the Secretary informed Con Ed that its submittal was deficient with respect to Sections 35.1 and 35.13 of the Commission's regulations and directed Con Ed to submit appropriate case-in-chief materials along with rate schedules that clearly and specifically set forth the company's jurisdictional transmission charges. On November 19, 1979, Con Ed was informed by the Director of the Office of Electric Power Regulations that its May 15, 1979 submittal remained deficient and was directed to comply with the July 18, 1979

[1] Con Ed's filing was originally submitted by the company on May 15, 1979 and found to be deficient, as discussed below.

letter order of the Commission within fifteen days. Con Ed did not comply within fifteen days. Instead, on December 3, 1979, Con Ed filed a letter requesting the Commission to reconsider its submittal and again requested waiver of the regulations. At a March 12, 1980 Commission meeting, the Commission, in considering Con Ed's motion for reconsideration, requested its staff to meet with representatives of Con Ed in the hope that efforts could be made to resolve the problems relating to Con Ed's submittals. Conferences and discussions were subsequently held between the Commission Staff and Con Ed. The instant submittal containing the revised rate form is the result of these conferences and discussions.

The problems which the Commission has been faced with as a result of Con Ed's filing are not new to this Commission. In Docket No. ER77–52, Con Ed's proposed rate schedules were accepted for filing by letter order. However, the letter order provided that Con Ed was to file transmission rates to PASNY derived from a specific cost-of-service study within six months, in compliance with Section 35.13 of the Commission's regulations. in Docket Nos. ER78–6 and ER78–365, Con Ed also failed to file in compliance with the Commission's regulations. The filing in Docket No. ER78–6 was rejected while the filing in Docket No. ER78–365 was twice made deficient for failure to comply with the regulations.

Discussion

Con Ed has proposed a wheeling charge of $1.763/kW or .494 cents/kWh under its Supplement No. 5 and $1.778/kW or .498 cents/kWh under Supplement No. 6. The rate design allows Con Ed to bill on either a kW or kWh basis depending on available metering. The Commission's review of Con Ed's filing in this case indicates that the rates proposed by the company for jurisdictional service would not result in excess revenues. The Commission will therefore accept the rates for filing as ordered below. The Commission will also grant Con Ed's request for waiver of the notice requirements as well as the applicable provisions of Section 35.13 of the regulations. Such waivers will be granted, however, with the clear understanding that Con Ed will submit its future filings in a manner which clearly and specifically sets forth the rates for service to PASNY subject to the Commission's jurisdiction in compliance with the Commission's regulations.

Prior to the instant revised submittal, Con Ed's filings have patently failed to provide the information necessary for the Commission staff to perform an adequate evaluation of the Con Ed's jurisdictional rates to PASNY. Even in the present filing, the Commission has waived its regulations in several respects in consideration of the unusual situation involved in the Con Ed/PASNY service arrangement and the regulatory burdens as would follow from insistence on full compliance with our filing requirements. It is understood that information adequate to our task will be provided with respect to future filings, recognizing that similar waivers may be proper to future filings, and might be granted upon appropriate application by Con Ed at the time of such filing.

The Commission orders:

(A) Waiver of the notice requirements of § 35.3 of the Commission's regulations is hereby granted.

(B) Con Ed's submittal is hereby accepted for filing with Supplement No. 5 to become effective as of April 24, 1979 and Supplement No. 6 to become effective July 21, 1979, as requested.

(C) Waiver of the filing requirements under section 35.13 is hereby granted.

(D) PASNY's petition to intervene is granted.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36802 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Project Nos. 5, 2776]

Montana Power Co. and Confederated Salish and Kootenai Tribes of the Flathead Reservation; Competing Applications for New Major License for Constructed Project

November 18, 1980.

Take notice that the Montana Power Company (MPC) filed on June 1, 1976, and the Confederated Salish and Kootenai Tribes (Tribes) of the Flathead Reservation filed on June 2, 1976, competing applications for a new major license [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)–825(r)] for the constructed Kerr Project, located on the Flathead River in Flathead and Lake Counties, Montana. FERC Project No. 5 has been assigned to MPC's Application while FERC Project No. 2776 has been assigned to the Tribes Application. The original license for Project No. 5 expired on May 22, 1980. The license for Kerr Project No. 5 is currently operating under an annual license. Correspondence concerning MPC's application should be directed to: Mr. J. A. McElwain, President, the Montana Power Company, 40 East Broadway, Butte, Montana 59701, with copies to Lee S. Sherline, Leighton & Sherline, Suite 406, 1701 K Street, NW., Washington, D.C. 20006. Correspondence concerning the Tribes' application should be directed to: Richard Anthony Baenen, Esquire, Wilkinson, Cragun & Baker, 1735 New York Avenue, NW., Washington, D.C. 20006, with copies to Major Fred J. Houk, Jr., Tribal Secretary, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Dixon, Montana 59831.

Project Description—The Kerr Project consists of: (1) a 204-foot high by 381-foot long concrete arch dam with 14 overflow spillway sections each 21 feet long and 27 feet high; (2) Flathead Lake, a natural lake, with storage capacity of 1.2 million acre-feet between elevations 2883 feet and 2893 feet; (3) two intake structures; (4) three 23-foot diameter concrete lined horseshoe power tunnels, each about 800 feet long; (5) serving a powerhouse containing three Francis-type turbine-generating units each rated at 60 Mw; (6) a substation, which is an extension of the powerhouse, containing the main power transformers; (7) three 1,500-foot long, 115-kV transmission lines connecting the powerhouse to the Kerr switchyard (Kerr switchyard is a part of MPC's interconnected transmission system); and (8) appurtenant facilities.

Available recreation activities at the project include hunting, fishing, camping, hiking, boating, swimming, and winter sports. Several private, commercial, and public facilities are available at the project. A park and a scenic overlook is provided, at the project, by MPC. Neither MPC nor the Tribes proposed to construct additional recreational facilities at the project.

Accoridng to MPC's application: (1) the project output is incorporated into MPC's transmission distribution system for use within its service area; (2) the estimated net investment in the project is $17.1 million as of May 22, 1980, which is less that its estimate of fair value of $76.4 million; (3) the estimated severence damages in the event of takeover by the United States is $350 million; (4) the taxes paid by the company for the fiscal year 1975–76 amounted to $543,000. According to the Tribes' application the use of the power generated by the project would be the same if the Tribes were to receive the license for the Kerr Project. The Tribes state that they would operate wholly in the State of Montana.

Competing Applications—Anyone desiring to file a competing application

must submit to the Commission, on or before January 26, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 26, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c),)*as amended* 44 *Fed. Reg.* 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (*as amended,* 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petitions to intervene must be filed on or before January 26, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington D.C. 20426. The application is on file with the Commssion and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36796 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3468]

Pacific Northwest Generating Co.; Application for Preliminary Permit

November 19, 1980.

Take notice that Pacific Northwest Generating Company (Applicant) filed on September 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3468 to be known as Owyhee Tunnel No. 1 Project located on the Owyhee River in Malheur County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David E. Piper, Pacific Northwest Generating Company, 8383 N.E. Sandy Blvd., Portland, Oregon 97220. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) construction of a new intake structure at the existing intake for Tunnel No. 1; (2) an underground powerhouse with a rated capacity of 8.0 MW; (3) a 200-foot long tailrace tunnel discharging into the existing Tunnel No. 1; and (4) a transmission line extending to an existing substation near the right abutment of Owyhee Dam.

The Applicant estimates that the average annual energy output would be 23,600 MWh.

Purpose of Project—Power produced by the project would be used to meet the needs of the Pacific Northwest Generating Company's members.

Proposed Scope and Cost of Studies under Permit—Applicant would undertake a study of the technical, environmental, economic, and financial feasibility of the project. If the project is determined to be feasible, a preliminary design and environmental study would be conducted to allow Applicant to prepare and file an application for license. The cost of the feasibility study is estimated at $75,300.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3468. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washsington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory application, application, or petition to intervene must also be served upon each

representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36805 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3467]

Pacific Northwest Generating Co.; Application for Preliminary Permit

November 19, 1980.

Take notice that Pacific Northwest Generating Company (Applicant) filed on September 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3467 to be known as Owyhee Dam Project located on the Owyhee River in Malheur County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David E. Piper, Pacific Northwest Generating Company, 8383 N.E. Sandy Blvd., Portland, Oregon 97220. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) replacing one or two of the needle valves on the dam with gate valves; (2) a 130-foot long steel penstock; (3) a powerhouse at the toe of the dam with a rated capacity of 5.5 MW; and (4) a transmission line extending to an existing substation near the right abutment of the dam.

Purpose of Project—Power produced by the project would be used to meet the needs of the Pacific Northwest Generating Company's members.

Proposed Scope and Cost of Studies Under Permit—Applicant would undertake a study of the technical, environmental, economic, and financial feasibility of the project. If the project is determined to be feasible, a preliminary design and environmental study would be conducted to allow Applicant to prepare and file an application for license. The cost of the feasibility study is estimated at $61,300.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for perliminary permit for Project No. 3467. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street., NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36806 Filed 11-24-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CI81-22-000]

Southern Union Gathering Co.; Petition for Declaratory Order

November 19, 1980.

Take notice that on October 20, 1980, Southern Union Gathering Company (Petitioner), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CI81-22-000 a petition pursuant to Section 16 of the Natural Gas Act and § 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for an order declaring that Petitioner's exchanges of natural gas constitute field gathering operations and are thus exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that it participates in exchange arrangements of natural gas on a gas-for-gas basis with Northwest Pipe Line Corporation (Northwest) under an agreement dated December 1, 1976, and with El Paso Natural Gas Company (El Paso) under an agreement dated May 1, 1975. It is stated that the exchanges are at the wellhead with imbalance volumes to be corrected by deliveries at points of interconnection of the companys' gathering systems. It is stated that Petitioner operated under an agreement with El Paso dated January 1, 1962, but that on January 31, 1974, pursuant to an order by the U.S. District Court for the District of Colorado, Northwest acquired from El Paso title to

certain gathering facilities in the San Juan Basin of New Mexico and Colorado. Petitioner asserts that the 1976 agreement with Northwest was essentially a continuation of the prior exchange with El Paso except that a sales arrangement for imbalances was dropped.

It is stated that in Docket Nos. CP78–116, *et al.*, Northwest obtained a certificate of public convenience and necessity for its participation in the 1976 exchange agreement with Petitioner. Believing itself aggrieved by the orders which asserted jurisdiction over the agreement, Petitioner states, it filed a petition for review with the U.S. Court of Appeals for the Fifth Circuit in *Southern Union Gathering Company* v. *Federal Energy Regulatory Commission*, No. 79–3051. It is stated that the case is now in abeyance pending this petition for a declaratory order.

Petitioner states that the purpose in filing the petition is to determine Petitioner's responsibility for obtaining authorization from the Commission for the exchange of gas with Northwest and El Paso. Furthermore, Petitioner states that due to El Paso's uncertainty as to the jurisdictional nature of that agreement the imbalance of the El Paso-Petitioner gas exchange progressively worsens. Petitioner, therefore, requests a declaratory order stating that both exchange agreements constitute field gathering operations and are therefore exempt from the Commission's jurisdiction.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 17, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36807 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-9-000]

Texas Gas Transmission Corp.; Informal Settlement Conference Regarding Curtailment Plan

November 20, 1980.

Take notice that an informal conference in the above captioned Docket will be held on December 3, 1980, at 2 p.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. All parties should be prepared to discuss the technical aspects and possible settlement of the proposal noticed in the **Federal Register** on October 7, 1980 (45 FR 68445–6). All persons are invited to attend; however, mere attendance and/or participation in this conference will not serve to make such persons formal parties to this proceeding. Copies of this notice are also being served on all parties to the former Texas Gas curtailment proceeding, Docket No. RP72–64.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36808 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 19, 1980.

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION								
*THE MAURICE L BROWN COMPANY					RECEIVED: 11/03/80 JA: KS			
8104594	K 80-0076	1505520365	103		S W MAUNE #4	HUGOTON	109,5	KANSAS-NEBRASKA NATU
LOUISIANA OFFICE OF CONSERVATION								
*BASS ENTERPRISES PRODUCTION CO					RECEIVED: 11/03/80 JA: LA			
8104776	80-3774	1711122421	102		CV DAVIS RB SUP CUNTINL FOREST #1	MIDDLEFORK	73,0	UNITED GAS PIPELINE
*CARMET OIL INC					RECEIVED: 11/03/80 JA: LA			
8104745	80-3741	1703121207	103		BOISE SOUTHERN #2	GRAND CANE	0,0	LOUISIANA INTRASTATE
8104746	80-3742	1703121282	103		BOISE SOUTHERN #3	GRAND CANE	0,0	LOUISIANA INTRASTATE
*CEKA GAS CORP					RECEIVED: 11/03/80 JA: LA			
8104788	80-3788	1711122001	108		HSC NO 6	MONROE	5,4	INTERNATIONAL MINERA
*DANIEL OIL COMPANY					RECEIVED: 11/03/80 JA: LA			
8104763	80-3760	1710922287	103		C L & F #3 SERIAL #168631	BAYOU PENCHANT FIELD	270,0	TENNESSEE GAS PIPELI
8104762	80-3759	1710922288	103		C L & F #4 SERIAL #16832	BAYOU PENCHANT FIELD	270,0	TENNESSEE GAS PIPELI
*GEORGE R SCHURMAN					RECEIVED: 11/03/80 JA: LA			
8104759	80-3756	1703121209	103		HUNTER #2	SPIDER	72,0	LOUISIANA INTRASTATE
8104760	80-3757	1703121337	103		HUNTER #3	SPIDER	110,0	LOUISIANA INTRASTATE
*GULF OIL CORPORATION					RECEIVED: 11/03/80 JA: LA			
8104720	80-3716	1707522486	103		QUARANTINE BAY SL 195 QQ #287	QUARANTINE BAY	730,0	UNITED GAS PIPELINE
*8104723	80-3719	1707522573	103		S L 192 PP NO 139	WEST BAY	67,5	TEXAS EASTERN TRANSM
*8104724	80-3720	1707522651	103		SL 192 PP NO 140-D	WEST BAY	135,0	TEXAS EASTERN TRANSM
*HARVEY BROYLES					RECEIVED: 11/03/80 JA: LA			
8104744	80-3740	1701320415	103		SLI RA SUB T A LOE EST #3-D	BEAR CREEK	300,0	SOUTHERN NATURAL GAS
*KERR-MCGEE CORPORATION					RECEIVED: 11/03/80 JA: LA			
8104778	80-3778	1772620198	103		BRS 20 6900 RA SU S L 2000 NO 58-D	BRETON SOUND BLOCK 20	8,0	SOUTHERN NATURAL GAS
8104777	80-3777	1772620186	103		BRS 20 6900 RASU SL 2000 NO 53-D	BRETON SOUND BLOCK 20	4,0	SOUTHERN NATURAL GAS
*M T HERBST					RECEIVED: 11/03/80 JA: LA			
8104722	80-3718	1707321052	108		WEST VIRGINIA #1	MONROE GAS ROCK	3,5	CITY OF MONROE
8104721	80-3717	1707320870	108		WEST VIRGINIA #2	MONROE GAS ROCK	0,6	CITY OF MONROE
*MARATHON OIL COMPANY					RECEIVED: 11/03/80 JA: LA			
8104753	80-3750	1711900802	108		CVSU SUNRAY MCCOOK & HIBBLER #2	COTTON VALLEY	3,0	UNITED GAS PIPE LINE
*MARSHALL EXPLORATION INC					RECEIVED: 11/03/80 JA: LA			
8104769	80-3767	1703120905	108		FBG RA SU 110 SANDERS #1	LOGANSPORT	13,0	TENNESSEE GAS PIPELI
8104772	80-3770	1703120893	108		FBG RA SU 131 MARY WALLACE #1	LOGANSPORT	6,0	TENNESSEE GAS PIPELI
8104771	80-3769	1703120898	108		FBG RA SU 132 WALLACE #1	LOGANSPORT	9,0	TENNESSEE GAS PIPELI
8104770	80-3768	1703120899	108		FBG RA SU 145 KATIE ROBINSON #1	LOGANSPORT	10,0	TENNESSEE GAS PIPELI
8104768	80-3766	1703120810	108		FBG RA SU 68 MRS TATE YARBROUGH #1	LOGANSPORT	22,0	TENNESSEE GAS PIPELI
*MID LOUISIANA GAS COMPANY					RECEIVED: 11/03/80 JA: LA			
8104752	80-3749	1711121921	103		MLGC FEE GAS NO 809	MONROE FIELD	11,8	
8104787	80-3787	1711122535	103		MLGC FEE GAS NO 907	MONROE FIELD	36,0	

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104786	80-3786	1711122537	103		MLGC FEE GAS NO 909	MONROE FIELD	32,4	
8104785	80-3785	1711122568	103		MLGC FEE GAS NO 923	MONROE FIELD	36,7	
8104784	80-3784	1711122569	103		MLGC FEE GAS NO 924	MONROE FIELD	36,4	
8104783	80-3783	1711122571	103		MLGC FEE GAS NO 926	MONROE FIELD	108,0	
8104782	80-3782	1711122584	103		MLGC FEE GAS NO 927	MONROE FIELD	51,1	
8104781	80-3781	1711122585	103		MLGC FEE GAS NO 928	MONROE FIELD	30,9	
8104780	81-3780	1711122587	103		MLGC FEE GAS NO 930	MONROE FIELD	87,8	
-MOBIL EXPLORATION INC					RECEIVED: 11/03/80 JA: LA			
8104719	80-2834	1702321486	102		FREMEAUX NO 1	CAMERON CANAL FIELD	0,0	
-NIP N' TUCK MINERALS INC					RECEIVED: 11/03/80 JA: LA			
8104767	80-3765	1706721559	103		PIPES #9	MONROE GAS FIELD	80,0	LOUISIANA GAS SERVIC
-PLACID OIL COMPANY					RECEIVED: 11/03/80 JA: LA			
8104761	80-3758	1701320377	103		VUG BODCAW NO 4	LUCKY	200,0	TEXAS EASTERN TRANSM
-RELIANCE TR-JV					RECEIVED: 11/03/80 JA: LA			
8104748	80-3745	1711122288	103		E JOHNSON #2	MONROE	30,0	TEXAS GAS TRANSMISSI
8104756	80-3753	1711122158	108		H D GREEN #1	MONROE GAS FIELD	12,8	TEXAS GAS TRANSMISSI
8104757	80-3754	1711122224	108		H D GREEN #3	MONROE GAS FIELD	5,5	TEXAS GAS TRANSMISSI
8104749	80-3746	1711122669	103		J D TAYLOR #2	MONROE	40,0	TEXAS GAS TRANSMISSI
8104751	80-3748	1711122611	103		J D TAYLOR #3	MONROE GAS FIELD	40,0	TEXAS GAS TRANSMISSI
8104750	80-3747	1711122227	103		J D TAYLOR #5	MONROE	40,0	TEXAS GAS TRANSMISSI
8104765	80-3763	1711122190	103		OLINKRAFT #11	MONROE	30,0	TEXAS GAS TRANSMISSI
8104766	80-3764	1711122191	103		OLINKRAFT #12	MONROE	30,0	TEXAS GAS TRANSMISSI
8104764	80-3762	1711122192	103		OLINKRAFT #13	MONROE	30,0	TEXAS GAS TRANSMISSI
8104790	80-3744	1711122705	103		R L EDWARDS #3	MONROE	40,0	TEXAS GAS TRANSMISSI
8104747	80-3743	1711122617	103		T BAKER #1	MONROE	30,0	TEXAS GAS TRANSMISSI
-ROY M TEEL					RECEIVED: 11/03/80 JA: LA			
8104755	80-3752	1711120823	108		EXXON 29-7	MONROE GAS ROCK FIELD	25,4	LOUISIANA POWER & LI
-SAWYER DRILLING & SERVICE INC					RECEIVED: 11/03/80 JA: LA			
8104754	80-3751	1703121187	103		MOSS RA SU DD YOUNG #1	BETHANY-LONGSTREET	400,0	LOUISIANA INTRASTATE
-SHELL OIL CO					RECEIVED: 11/03/80 JA: LA			
8104779	80-3779	1772120313	103		SPB 27 M6 RA SU SL 1012 NO 292	SOUTH PASS BLOCK 27	55,0	TENNESSEE GAS PIPELI
-TENNECO OIL COMPANY					RECEIVED: 11/03/80 JA: LA			
8104743	80-3739	1701320419	103		E F LESTER NO 1	LAKE BISTINEAU	250,0	
-TEXACO INC					RECEIVED: 11/03/80 JA: LA			
*8104732	80-3728	1710922156	102		CI LWR 15000 R010 SU SL 188 691	CAILLOU ISLAND	109,0	KAISER ALUMINUM & CH
*8104775	80-3773	1710922273	102		CI LWR 15000 R010 SU SL 188 695	CAILLOU ISLAND	115,0	KAISER ALUMINUM & CH
*8104726	80-3722	1710921949	107		LB LM-2 SU LB U-39 24	LAKE BARRE	10,0	HOOKER CHEMICALS & P
*8104739	80-3735	1705120507	103		LFT NVUR RIGOLETS C F CO 161	LAFITTE	50,0	KAISER ALUMINUM & CH
*8104741	80-3737	1700720251	103		P R NORMAN ET AL B-9	GRAND BAYOU	2555,0	KAISER ALUMINUM & CH
*8104740	80-3736	1710922065	103		SL 2703 33	CAILLOU ISLAND	25,0	KAISER ALUMINUM & CH
*8104727	80-3723	1710922213	103		SL 301 TERREBONNE BAY 354	CAILLOU ISLAND	155,0	KAISER ALUMINUM & CH
*8104737	80-3733	1705721395	103		SL 378 CATFISH LAKE 111	GOLDEN MEADOW	1,0	KAISER ALUMINUM & CH
8104725	80-3721	1709920789	103		ST MARTIN PARISH SCH BD 20	PLUMB BOB	7,0	UNITED GAS PIPE LINE
*8104731	80-3727	1710922001	103		VU-3 BSE U-3 53	BAY ST ELAINE	5,0	KAISER ALUMINUM & CH
*8104730	80-3726	1710921981	103		VU-7 BSE U-7 30	BAY ST ELAINE	1,0	KAISER ALUMINUM & CH
*8104728	80-3724	1710922029	103		VU-7 BSE U-7 32	BAY ST ELAINE	1100,0	KAISER ALUMINUM & CH
*8104729	80-3725	1710922068	103		VU-8 BSE U-8 14	BAY ST ELAINE	1500,0	KAISER ALUMINUM & CH
*8104734	80-3730	1710922141	103		VUF LP U-6 38	LAKE PELTO	50,0	KAISER ALUMINUM & CH
*8104742	80-3738	1710921969	103		VUG LP U-7 40	LAKE PELTO	15,0	KAISER ALUMINUM & CH
*8104735	80-3731	1710922000	103		VUG LP U-7 43	LAKE PELTO	30,0	KAISER ALUMINUM & CH
8104758	80-3755	1710922170	103		VUM DGL U-13 99	DOG LAKE	10,0	TEXAS GAS TRANSMISSI
*8104738	80-3734	1710922057	103		VUM LP U-13 68	LAKE PELTO	1385,0	KAISER ALUMINUM & CH

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
*8104733	80-3729	1710921942	103		16B R832 VUA LP U-7 38	LAKE PELTO	5,0	KAISER ALUMINUM & CH
*8104736	80-3732	1710921999	103		17 R832 VUA LP U-6 36	LAKE PELTO	50,0	KAISER ALUMINUM & CH
-UNION OIL COMPANY OF CALIF					RECEIVED: 11/03/80 JA: LA			
8104789	80-3789	1710922300	103		LL&E B NO 49	LAKE HATCH	150,0	COLUMBIA GAS TRANSMI
-VIKING RESOURCES					RECEIVED: 11/03/80 JA: LA			
8104774	80-3772	1707321467	103		SPADES NO 1	MONROE	27,0	PETRO-LEWIS FUNDS IN
8104773	80-3771	1707322155	103		SPADES NO 3	MONROE	31,0	PETRO-LEWIS FUNDS IN
NORTH DAKOTA GEOLOGICAL SURVEY								
-NORTHWEST EXPLORATION COMPANY					RECEIVED: 11/03/80 JA: ND			
8104591	296	3310500861	102		PEDERSON NO 1	TEMPLE BAY	114,0	AMINOIL USA
8104592	288	3310500813	102		RYE #1	WILD CAT RED RIVER	182,0	AMINOIL USA INC
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS								
-AMERADA HESS CORPORATION					RECEIVED: 11/05/80 JA: NM			
8104832		3002526535	103		STATE L GAS COMM #3	EUMONT	156,0	NORTHERN NATURAL GAS
8104833		3002526548	103		STATE WE B #6	EUMONT	93,0	EL PASO NATURAL GAS
8104831		3002526549	103		STATE WE F #4	EUMONT	377,0	EL PASO NATURAL GAS
-EL PASO NATURAL GAS COMPANY					RECEIVED: 11/05/80 JA: NM			
8104835		3003922311	103		RINCON UNIT #21A	BLANCO MESAVERDE	70,0	EL PASO NATURAL GAS
8104829		3003922065	103		SAN JUAN 29-7 UNIT #31A	BLANCO MESAVERDE	220,0	EL PASO NATURAL GAS
-ELLIOTT A RIGGS					RECEIVED: 11/04/80 JA: NM			
8104813		3004500000	108		#1 MARTIN	AZTEC FRUITLAND	14,9	EL PASO NATURAL GAS
-GETTY OIL COMPANY					RECEIVED: 11/05/80 JA: NM			
8104834		3002526825	103		STATE AP NO 1	VACUUM ABO REEF	97,0	PHILLIPS PETROLEUM C
-SUPRON ENERGY CORPORATION					RECEIVED: 11/05/80 JA: NM			
8104836		3004523943	103		PAYNE 3-A	BASIN DAKOTA	336,0	SOUTHERN UNION GAS C
8104837		3004523943	103		PAYNE 3-A	BLANCO MESAVERDE	517,0	SOUTHERN UNION GAS C
-UNION TEXAS PETROLEUM					RECEIVED: 11/03/80 JA: NM			
8104593		3004522366	103		MADDOX COM NO 1-A	BLANCO MESAVERDE	182,0	EL PASO NATURAL GAS
-YATES PETROLEUM CORPORATION					RECEIVED: 11/05/80 JA: NM			
8104830		3001523304	103		SRC KZ STATE #7	PENASCO DRAW SA YESO (AS	0,0	TRANSWESTERN PIPELIN
OKLAHOMA CORPORATION COMMISSION								
-BOBBY J DARNELL					RECEIVED: 11/04/80 JA: OK			
*8104792	06040	3507322170	103		HUDSON #1	SOONER TREND	25,0	EXXON CORP
8104793	06039	3508321064	103		LULU WILLIAMS #1	WEST LAWRIE	37,0	EASON OIL CO
-EL PASO NATURAL GAS COMPANY					RECEIVED: 11/04/80 JA: OK			
8104809	08987	3514920064	107		MELVIN #1	ELK CITY SPRINGER	5475,0	EL PASO NATURAL GAS
-MARSHALL OIL CORP					RECEIVED: 11/04/80 JA: OK			
8104798	06034	3513721797	103		ELLISON #1	STAGE STAND	73,0	ARKANSAS LOUISIANA G
-OMNI OIL & GAS INC					RECEIVED: 11/04/80 JA: OK			
8104811	05934	3507322390	103		MURPHY 1 NO 1	SOONER TREND	182,5	CITIES SERVICE GAS C
-PHILLIPS PETROLEUM COMPANY					RECEIVED: 11/04/80 JA: OK			
8104812	05744	3513900000	108		LES #1	OKLAHOMA HUGOTON	20,0	PANHANDLE EASTERN PI
8104807	06015	3501721371	103		MCCARTHY B #1	N CONCHO	0,0	PANHANDLE EASTERN
8104808	06072	3501721355	102		MCCARTHY C #1	N CONCHO	0,0	PANHANDLE EASTERN
8104806	06016	3501721366	103		MCCARTHY D #1	N CONCHO	0,0	PANHANDLE EASTERN
8104805	06017	3501730012	103		SCHROEDER B #1	N CONCHO	0,0	PANHANDLE EASTERN

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104804	06019	3501721312	103		WIEWEL B #1	N CONCHO	0,0	PANHANDLE EASTERN PI
•SHAR-ALAN OIL CO			RECEIVED: 11/04/80 JA: OK					
8104794	06038	3507322282	103		CUPPS #2	SOONER TREND	134,0	PHILLIPS PETROLEUM C
•SOUTHLAND ROYALTY CO			RECEIVED: 11/04/80 JA: OK					
8104796	06036	3515120977	102		MARIE #1-11	FREEDOM 7L	75,0	PANHANDLE EASTERN PI
•SOUTHPORT EXPLORATION INC			RECEIVED: 11/04/80 JA: OK					
8104795	06037	3509321679	103		E MONGOLD NO 1-1	ORION	55,0	PHILLIPS PETROLEUM C
8104797	06035	3505920883	103		NIGHSWUNGER NO 1-34	SELMAN	0,0	MICHIGAN-WISCONSIN P
•SUN OIL COMPANY (DELAWARE)			RECEIVED: 11/04/80 JA: OK					
8104801	05972	3501900000	108		RICKETTS NO 4	SHO-VEL-TUM	1,0	MOBIL OIL CORP
8104803	05968	3513700000	108		TOM BRYANT NO 1	SHO-VEL-TUM	11,0	MOBIL OIL CORP
•TENNECO OIL COMPANY			RECEIVED: 11/04/80 JA: OK					
8104802	02663	3508336667	108		E COLUMBIA OSWEGO LIME UT #12-2	COLUMBIA EAST	3,0	EASON OIL CO
8104799	02668	3507336127	108		E COLUMBIA OSWEGO LIME UT #2-1	COLUMBIA EAST	3,0	EASON OIL CO
8104800	02667	3507336132	108		E COLUMBIA OSWEGO LIME UT #8-2	COLUMBIA EAST	3,0	EASON OIL CO
•UNIVERSAL RESOURCES CORPORATION			RECEIVED: 11/04/80 JA: OK					
8104791	03041	3501120482	108		GOFORTH #1-30	OKEENE NORTHWEST	18,0	DELHI GAS PIPELINE C
•WALTER A KELLY JR			RECEIVED: 11/04/80 JA: OK					
8104810	05474	3511900000	103		OLIVE EAGLES (CASSIE SNELL) #5	SEC 29-19N-5E NORTH MARC	4,4	COLORADO GAS COMPRES

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UTAH DIVISION OF OIL,GAS, & MINING

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•TEXAS OIL & GAS CORP			RECEIVED: 11/03/80 JA: UT					
8104590	K-128-1	4301930634	103		TEXAS PACIFIC STATE #1	WILDCAT	365,0	NORTHWEST PIPELINE C
•TEXAS OIL & GAS CORP			RECEIVED: 11/04/80 JA: UT					
8104814		4301930670	103		TEXAS PACIFIC STATE #2	SAN ARROYO	456,0	NORTHWEST PIPELINE C

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VIRGINIA DEPARTMENT OF LABOR & INDUSTRY

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•TEXAS INTERNATIONAL PET CORP			RECEIVED: 11/03/80 JA: VA					
8104586		4502720259	103		ISLAND CREEK #1	KEEN MOUNTAIN	30,0	
8104587		4502720275	103		ISLAND CREEK #10	KEEN MOUNTAIN FIELD	73,0	
8104585		4502720280	103		ISLAND CREEK #14	KEEN MOUNTAIN FIELD	23,0	
8104589		4502720261	103		ISLAND CREEK #3	KEEN MOUNTAIN	71,0	
8104588		4502720269	103		ISLAND CREEK #6	KEEN MOUNTAIN	0,0	

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WEST VIRGINIA DEPARTMENT OF MINES

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•ALLEGHENY & WESTERN ENERGY CORP			RECEIVED: 11/03/80 JA: WV					
8104596		4703501508	108		ROBERT L PARSONS FARM #1	WASHINGTON	10,0	COLUMBIA GAS TRANSMI
8104600		4703501509	108		ROBERT L PARSONS FARM #2	WASHINGTON	10,0	COLUMBIA GAS TRANSMI
8104598		4703501503	108		WENDELL O CASTO FARM #2	WASHINGTON DISTRICT	5,0	COLUMBIA GAS TRANSMI
8104597		4703501504	108		WENDELL O CASTO FARM #3	WASHINGTON DISTRICT	5,0	COLUMBIA GAS TRANSMI
8104599		4703501501	108		WENDELL O CASTO FARM #4	WASHINGTON DISTRICT	5,0	COLUMBIA GAS TRANSMI
•ALLEGHENY LAND & MINERAL COMPANY			RECEIVED: 11/03/80 JA: WV					
8104652		4709701901	103		A-781	WASHINGTON	0,0	CONSOLIDATED GAS SUP
•APPALACHIAN EXPLORATION & DEVEL INC			RECEIVED: 11/03/80 JA: WV					
8104700		4701501201	108		CARPER DORSEY #1	PLEASANT	11,0	CABOT CORP
8104662		4701900406	102		ELI DEWS #1	MT COVE	36,0	EQUITABLE GAS CO
8104649		4707900911	108		G W SMITH #2	UNION	15,8	CABOT CORP
8104699		4701900344	108		GOAD GAS UNIT #2	MT COVE	20,0	EQUITABLE GAS CO
8104698		4707900862	108		MCLEAN HEIRS A-7	UNION	19,0	CABOT CORP
8104622		4708100394	108		PINEY COKING COAL A-49	SLAB FORK	18,9	CABOT CORP

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104636		4708100399	108		PINEY COKING COAL A-50	SLAB FORK	18,9	CABOT CORP
8104635		4708100400	108		PINEY COKING COAL A-51	SLAB FORK	18,9	CABOT CORP
8104630		4708100397	108		PINEY COKING COAL A-63	SLAB FORK	18,9	CABOT CORP
8104650		4707900869	108		PUTNAM LAND COMPANY B-6	UNION	18,9	CABOT CORP
8104701		4701900311	108		STANLEY O FOX #1	MT COVE	12,0	EQUITABLE GAS CO
-BAILEY GAS CO					RECEIVED: 11/03/80 JA: WV			
8104661		4709920993	108		BAILEY GAS CO #1	SOUTHERN WEST VIRGINIA	1,0	GAS SUPPLY CORP
-BLANKENSHIP GAS CO					RECEIVED: 11/03/80 JA: WV			
8104660		4709921452	108		BLANKENSHIP GAS CO #1	SOUTHERN WEST VIRGINIA	14,0	GAS SUPPLY CORP
-CITIES SERVICE COMPANY					RECEIVED: 11/03/80 JA: WV			
8104619		4708100161	108		DICKINSON A-4	CLEARFORK	2,4	COLUMBIA GAS TRANSMI
8104618		4708100176	108		DICKINSON A-7	CLEARFORK	5,2	COLUMBIA GAS TRANSMI
8104637		4708100125	108		DICKINSON C-1	CLEARFORK	5,3	COLUMBIA GAS TRANSMI
8104634		4703902099	108		HARDY A NEWBURG #25	DAVIS CREEK	13,5	COLUMBIA GAS TRANS C
8104633		4708100053	108		ROWLAND LAND CO A-10	CLEARFORK	2,6	COLUMBIA GAS TRANSMI
8104632		4708100069	108		ROWLAND LAND CO A-14	CLEARFORK	6,6	COLUMBIA GAS TRANSMI
8104621		4708100123	108		ROWLAND LAND CO A-21	CLEARFORK	13,2	COLUMBIA GAS TRANSMI
8104620		4708100128	108		ROWLAND LAND CO A-22	CLEARFORK	6,5	COLUMBIA GAS TRANSMI
8104617		4708100185	108		ROWLAND LAND CO A-30	CLEARFORK	8,3	COLUMBIA GAS TRANSMI
8104631		4708100189	108		ROWLAND LAND CO A-31	CLEARFORK	3,3	COLUMBIA GAS TRANSMI
-COLUMBIA GAS TRANSMISSION CORP					RECEIVED: 11/03/80 JA: WV			
8104653		4705900880	108		CENTRAL TRUST CO 820300	WEST VIRGINIA FIELD AREA	16,0	
8104696		4700500058	108		HORSE CREEK L & M 805274	WEST VIRGINIA FIELD AREA	3,6	
-CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 11/03/80 JA: WV			
8104614		4703301200	108		C M LANG 12312	WEST VIRGINIA OTHER A857	21,0	GENERAL SYSTEM PURCH
8104613		4704501018	108		CHARLESTON NATIONAL BANK 12511	PINEVILLE FIELD AREA A59	21,0	GENERAL SYSTEM PURCH
8104612		4704700706	108		CONSOLIDATED COAL CO 12377	PINEVILLE A59442	7,0	GENERAL SYSTEM PURCH
8104694		4709100103	108		JOHN M GRIMES 11839	W VA OTHER A 83772	6,0	GENERAL SYSTEM PURCH
8104615		4702102920	108		LOMAN-PEARCY 12352	WEST VIRGINIA OTHER A857	9,0	GENERAL SYSTEM PURCH
8104611		4705500062	108		POCAHONTAS LAND CORP 12366	PINEVILLE A59442	2,0	GENERAL SYSTEM PURCH
8104616		4700501070	108		SIDNEY WHITE 12421	WEST VIRGINIA OTHER A857	2,0	GENERAL SYSTEM PURCH
-DAMSON OIL CORPORATION					RECEIVED: 10/27/80 JA: WV			
8104595		4701500800	108		ELK RIVER #17		20,2	EQUITABLE GAS CO
-EARL STEWART					RECEIVED: 11/03/80 JA: WV			
8104642		4708503524	108		HARRIS #3	TURTLE RUN	1,7	CARNEGIE NATURAL GAS
8104651		4708503526	108		HARRIS #4	TURTLE RUN	1,7	CARNEGIE NATURAL GAS
8104645		4708503535	108		KUHN #3	TURTLE RUN	1,3	CARNEGIE NATURAL GAS
8104643		4708503530	108		PRUNTY #1	TURTLE RUN	0,6	CARNEGIE NATURAL GAS
8104644		4708503532	108		PRUNTY #2	TURTLE RUN	5,0	CARNEGIE NATURAL GAS
8104646		4708503595	108		PRUNTY #3	TURTLE RUN	0,6	CARNEGIE NATURAL GAS
-ENERGEX CORP					RECEIVED: 11/03/80 JA: WV			
8104602		4710700490	108		FRANCES CARTER #1	FRANCES CARTER TRACT	0,0	CONSOLIDATED GAS SUP
8104601		4710700718	108		FRANCES CARTER #2	FRANCES CARTER TRACT	0,0	CONSOLIDTED GAS SUPP
-GIL CO W VA O & G JT VENT					RECEIVED: 11/03/80 JA: WV			
8104695		4702102534	108		CONALLY 25	RICH BOTTOM	2,1	CONSOLIDATED GAS COR
-JAMES F SCOTT					RECEIVED: 11/03/80 JA: WV			
8104641		4703301085	108		B BROWN (8-219)	COAL DISTRICT	16,0	CONSOLIDATED GAS SUP
-N G & K E BUSCH					RECEIVED: 11/03/80 JA: WV			
8104638		4710520273	108		M RICHTER NO 17	BURNING SPRINGS DISTRICT	0,5	PENNZOIL CO
-N G & K E BUSCH DBA RICHTER OIL CO					RECEIVED: 11/03/80 JA: WV			
8104608		4710520339	108		M RICHTER NO 8	BURNING SPRINGS DISTRICT	0,5	PENNZOIL CO
-ONE MILE GAS CO					RECEIVED: 11/03/80 JA: WV			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104697		4704320304	108		L R SWEETLAND #2	SHERIDAN DISTRICT	6,0	PENNZOIL CO
*PATRICK H CUNNINGHAM			RECEIVED: 11/03/80 JA: WV					
8104640		4703301712	108		JOHN HUSTEAD #1	EAGLE	20,0	CONSOLIDATED GAS SUP
*PENNZOIL COMPANY			RECEIVED: 11/03/80 JA: WV					
8104676		4708703035	108		CHAMBERS HEIRS #10	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104679		4708703033	108		CHAMBERS HEIRS #11	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104680		4708703049	108		CHAMBERS HEIRS #12	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104681		4708703036	108		CHAMBERS HEIRS #13	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104677		4708703052	108		CHAMBERS HEIRS #3	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104678		4708702994	108		CHAMBERS HEIRS #6	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104682		4708703030	108		DAVID SIMMONS #10	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104683		4708702988	108		DAVID SIMMONS #12	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104684		4708703053	108		DAVID SIMMONS #14	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104685		4708703048	108		DAVID SIMMONS #15	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104686		4708703045	108		DAVID SIMMONS #17	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104687		4708703031	108		DAVID SIMMONS #23	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104688		4708702986	108		DAVID SIMMONS #24	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104689		4708702746	108		DAVID SIMMONS #8	SMITHFIELD	1,6	CONSOLIDATED GAS SUP
8104691		4702101283	108		F S WILT #6	TANNER	1,8	CONSOLIDATED GAS SUP
8104639		4702102084	108		F S WILT #7	TANNER	2,1	CONSOLIDATED GAS SUP
8104629		4702102165	108		FRED WILT #8	TANNER	2,1	CONSOLIDATED GAS SUP
8104625		4702103290	108		G C FISHER #1	TANNER	2,0	CONSOLIDATED GAS SUP
8104692		4702100013	108		GAINER-URPMAN #1	TANNER	2,9	CONSOLIDATED GAS SUP
8104626		4702101847	108		GAINER-URPMAN #2	TANNER	2,9	CONSOLIDATED GAS SUP
8104690		4702101850	108		GAINER-URPMAN #3	TANNER	2,9	CONSOLIDATED GAS SUP
8104623		4702103401	108		H A GAINER #1	TANNER	1,1	CONSOLIDATED GAS SUP
8104665		4703301765	108		HALL & WHITE #1	WOLF SUMMIT	0,3	CONSOLIDATED GAS SUP
8104624		4702103312	108		I N HARDMAN #2	TANNER	4,7	CONSOLIDATED GAS SUP
8104628		4702102193	108		O W GUMM #1	TANNER	16,1	CONSOLIDATED GAS SUP
8104627		4702103247	108		W F WEAVER #1	TANNER	0,8	CONSOLIDATED GAS SUP
8104664		4704500180	108		YAWKEY-FREEMAN #104	YAWKEY-FREEMAN	16,5	CONSOLIDATED GAS SUP
8104663		4704500161	108		YAWKEY-FREEMAN #98	YAWKEY-FREEMAN	18,2	CONSOLIDATED GAS SUP
*R & B PETROLEUM INC			RECEIVED: 11/03/80 JA: WV					
8104610		4700100883	108		E HATHAWAY #1	VALLEY	14,2	PETRO-LEWIS FUNDS IN
8104607		4700100885	108		E HATHAWAY #2	VALLEY	14,2	PETRO-LEWIS FUNDS IN
8104609		4700100886	108		E HATHAWAY #3	VALLEY	14,2	PETRO-LEWIS FUNDS IN
*ROCKWELL PETROLEUM COMPANY			RECEIVED: 11/03/80 JA: WV					
8104648		4701702303	108		WEBBER #1	TOMS FORK	8,0	COLUMBIA GAS TRANSMI
*SOUTHEASTERN GAS COMPANY			RECEIVED: 11/03/80 JA: WV					
8104647		4704302400	108		LEE SANSOM #15	SHERIDAN	1,5	PENNZOIL CO
*SPARTAN GAS CO			RECEIVED: 11/03/80 JA: WV					
8104693		4707900920	108		ESTAL BURNS 1-8-198	CURRY	7,0	PENNZOIL CO
*SPARTAN GAS COMPANY			RECEIVED: 11/03/80 JA: WV					
8104702		4701120600	108		SYLVIA SOWARDS 1-8-199	GRANT	9,0	PENNZOIL CO
*SQUAW OIL CO			RECEIVED: 11/03/80 JA: WV					
*8104659		4708501568	108		LAURA CUNNINGHAM #1		2,3	HOPE NATURAL GAS CO
*UNION DRILLING INC			RECEIVED: 11/03/80 JA: WV					
8104673		4709701474	108		CLUADE M WINEMILLER #1 - 1299	BANKS DISTRICT	21,0	COLUMBIA GAS TRANS C
8104668		4709701726	108		D F HUFFMAN #1 - 1353	BANKS DISTRICT	17,8	COLUMBIA GAS TRANS C
8104674		4709701769	108		EXANNA P BUTCHER #1 - 1409	BANKS DISTRICT	5,4	COLUMBIA GAS TRANS C
8104666		4709701768	108		EXANNA P BUTCHER #1 - 1410	MEADE DISTRICT	11,5	COLUMBIA GAS TRANS C
8104655		4709701818	108		GLEN & JANIS MARSH #1 - 1433	MEADE DISTRICT	20,3	COLUMBIA GAS TRANS C

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104658		4709701778	108	GLENN HADDIX #1 - 1415	BANKS DISTRICT	11,3	COLUMBIA GAS TRANS C
8104654		4709701819	108	HANIFAN & GEORGE #1 - 1439	WASHINGTON DISTRICT	21,4	COLUMBIA GAS TRANS C
8104656		4709701817	108	J B & NINA MARSH #1 - 1432	MEADE DISTRICT	12,4	COLUMBIA GAS TRANS C
8104671		4709701643	108	MILDRED C POTTER #2 - 1366	MEADE DISTRICT	17,5	COLUMBIA GAS TRANS C
8104672		4709701478	108	MYRTLE M WARNER #1 - 1297	MEADE DISTRICT	20,0	COLUMBIA GAS TRANS C
8104675		4709701770	108	PAUL & JUANITA WINANS #1 - 1407	UNION DISTRICT	12,2	COLUMBIA GAS TRANS C
8104667		4709701728	108	R F NESBITT #1 - 1398	UNION DISTRICT	7,5	COLUMBIA GAS TRANS C
8104657		4709701815	108	R S SMALLRIDGE #1 - 1434	BANKS DISTRICT	12,6	COLUMBIA GAS TRANS C
8104670		4709701653	108	RUTH Y HALL #1 - 1369	MEADE DISTRICT	19,0	COLUMBIA GAS TRANS C
8104669		4709701722	108	S C RUSMISELL #2 - 1392	UNION DISTRICT	15,0	COLUMBIA GAS TRANS C
-W & J OIL AND GAS PRODUCERS				RECEIVED: 11/03/80 JA: WY			
8104606		4702101746	108	C O RADCLIFF #1	TROY FIELD	2,5	EQUITABLE GAS CO
8104605		4702101705	108	E B YOUNG #1	TROY FIELD	4,0	CONSOLIDATED GAS SUP
8104603		4702101583	108	VIDA WINCE NO 1	TROY FIELD	1,0	CONSOLIDATED GAS SUP
8104604		4702101676	108	VIDA WINCE NO 2	TROY FIELD	1,0	CONSOLIDATED GAS SUP
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WYOMING OIL & GAS CONSERVATION COMMISSION							
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-AMOCO PRODUCTION CO				RECEIVED: 11/04/80 JA: WY			
8104815	NG 131-80	4902320291	103	CHAMPLIN 149 AMOCO D #1	BRUFF	250,0	CITIES SERVICE GAS C
8104816	NG 132-80	4903721226	102	CHAMPLIN 285 AMOCO D #1	FABIAN DITCH	350,0	CITIES SERVICE GAS C
8104820	NG-136-80	4904120228	102	CLARENCE LOWHAM #1	YELLOW CREEK	800,0	MOUNTAIN FUEL SUPPLY
8104821	NG 137-80	4904120267	102	RYCKMAN CREEK UNIT #27	RYCKMAN CREEK	82,0	NORTHWEST PIPELINE C
-BELCO PETROLEUM CORPORATION				RECEIVED: 11/04/80 JA: WY			
8104828	NG 144-80	4903520552	103	ELBU 27-32	EAST LA BARGE	222,0	NORTHWEST PIPELINE C
-CITIES SERVICE COMPANY				RECEIVED: 11/04/80 JA: WY			
8104819	NG 135-80	4900525489	102	CHRISTENSEN F-1	PUMPKIN BUTTES	10,0	
-DAVIS OIL COMPANY				RECEIVED: 11/04/80 JA: WY			
8104824	NG 141-80	4900921620	102	#1 BABE		9,6	PHILLIPS PETROLEUM C
8104826	NG-143-80	4900921593	102	#2 M E	WILDCAT	23,2	PHILLIPS PETROLEUM C
8104817	NG 133-80	4900921584	102	EBERSPECHER #3		145,0	PHILLIPS PETROLEUM C
8104827	NG 145-80	4900921596	102	MORTON SCOTT #1	SCOTT FIELD	8,2	PHILLIPS PETROLEUM C
8104825	NG-142-80	4900921487	102	MORTONS #1	WILDAT	14,6	PHILLIPS PETROLEUM C
8104818	NG-134-80	4900720525	102	WINDY HILL #1	FILMORE	123,6	PANHANDLE EASTERN PI
-MARATHON OIL COMPANY				RECEIVED: 11/04/80 JA: WY			
8104823	NG 139-80	4900720458	102	STANDARD DRAW #3-16	STANDARD DRAW	0,0	
8104822	NG 138-80	4903721422	102	WAMSUTTER UNIT A #10	WAMSUTTER	483,0	COLORADO INTERSTATE
**********							
** U,S, GEOLOGICAL SURVEY - CASPER,WY							
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-SHELL OIL CO				RECEIVED: 11/03/80 JA: MT 5			
8104713	M 32-0	2508321262	102	USA 11X-12	CRANE	60,5	MONTANA DAKOTA UTILI
-TRICENTROL UNITED STATES INC				RECEIVED: 11/03/80 JA: MT 5			
8104714	M-167-0	2500521881	108	US 13-4-T26N-R19E	SHERARD UNIT	15,0	NORTHERN NATURAL GAS
8104704	M152-0	2500522115	103	US 27-6-T31N-R18E	TIGER RIDGE UNIT	190,0	NORTHERN NATURAL GAS
-BROWNLIE WALLACE ARMSTRONG & BANDER				RECEIVED: 11/03/80 JA: ND 5			
8104717	ND 178-0	3305300985	102	ALLEN-FEDERAL #2-41	MONDAK	7,5	MONTANA DAKOTA UTILI
8104718	ND 179-0	3305300936	102	FEDERAL #11-44	MONDAK	7,5	MONTANA DAKOTA UTILI
-JOSEPH J C PAINE AND ASSOCIATES				RECEIVED: 11/03/80 JA: ND 5			
8104711	ND 87-0	3301100278	103	FEDERAL #1-10	LITTLE MISSOURI	1,7	MONTANA DAKOTA UTILI
8104712	ND 86-0	3301100239	102	FEDERAL #2-23	LITTLE MISSOURI	11,0	MONTANA DAKOTA UTILI
-TENNECO OIL COMPANY				RECEIVED: 11/03/80 JA: ND 5			

JD NO	JA DKT	API NO	SEC	D	WELL NAME				FIELD NAME	PROD	PURCHASER
8104708	ND 129-0	3300700401	102		BENJAMIN USA 1-18				BIG STICK	155,0	WESTERN GAS PROCESSU
8104710	ND 96-0	3300700345	102		STUART USA #1-31				WILDCAT	128,0	WESTERN GAS PROCESSU
-DAVIS OIL COMPANY					RECEIVED: 11/03/80	JA: WY	5				
8104716	W 160-0	4900920246	103		BLACKJACK UNIT #3				WILDCAT	10,9	PANHANDLE EASTERN PI
-PACIFIC TRANSMISSION SUPPLY COMPANY					RECEIVED: 11/03/80	JA: WY	5				
8104706	W 158-0	4900720491	102		PTS 3-10 FEDERAL				ECHO SPRINGS	100,0	PACIFIC GAS AND ELEC
8104705	W 157-0	4900720461	102		PTS 3-18A FEDERAL				ECHO SPRINGS	1000,0	PACIFIC GAS AND ELEC
8104709	W-175-0	4903721358	102		PTS 3-24A FEDERAL				SIBERIA RIDGE	80,0	
-TEXACO INC					RECEIVED: 11/03/80	JA: WY	5				
8104707	W 114-0	4903721482	103		GOVERNMENT R M DONLEY (NCT-1) #1				BRUFF	803,0	MOUNTAIN FUEL SUPPLY
8104715	W-163-0	4903721510	107		TABLE ROCK UNIT NO 43				TABLE ROCK	1500,0	COLORADO INTERSTATE
-UNION OIL COMPANY OF CALIF					RECEIVED: 11/03/80	JA: WY	5				
*8104703	W-154-0	4900525284	103		JAYSON UNIT #3-10				MILIGHT	140,0	MCCULLOCH GAS PRUCES

OTHER PURCHASERS VOLUME NO 1320

8104659	HOPE NATURAL GAS CO
8104703	PHILLIPS PETROLEUM CO
8104723	UNITED GAS P L CO
8104724	UNITED GAS P L CO
8104726	AMERICAN CYANAMID CO
8104727	AMERICAN CYANAMID CO
8104728	AMERICAN CYANAMID CO
8104729	AMERICAN CYANAMID CO
8104730	AMERICAN CYANAMID CO
8104731	AMERICAN CYANAMID CO
8104732	AMERICAN CYANAMID CO
8104733	AMERICAN CYANAMID CO
8104734	AMERICAN CYANAMID CO
8104735	AMERICAN CYANAMID CO
8104736	AMERICAN CYANAMID CO
8104737	AMERICAN CYANAMID CO
8104738	AMERICAN CYANAMID CO
8104739	AMERICAN CYANAMID CO
8104740	AMERICAN CYANAMID CO
8104741	AMERICAN CYANAMID CO
8104742	AMERICAN CYANAMID CO
8104775	AMERICAN CYANAMID CO
8104792	PANHANDLE EASTERN

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 11, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36797 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 19, 1980.

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
**** CALIFORNIA DEPARTMENT OF CONSERVATION ****								
-BUTTES RESOURCES CO					RECEIVED: 11/07/80 JA: CA			
8104894	AO-6-0014	0401120136	102		POUNDSTONE 19-1	GRIMES GAS FIELD	182.5	PACIFIC GAS & ELECTR
-COASTAL OIL & GAS CORP					RECEIVED: 11/07/80 JA: CA			
8104893	AO-6-0018	0401120126	102		ARBUCKLE ROAD #1	GRIMES FIELD	1181.0	PACIFIC GAS & ELECTR
-MCFARLAND ENERGY INC					RECEIVED: 11/07/80 JA: CA			
8104892	AO-6-0019	0406720137	102		POPPY RIDGE #1	POPPY RIDGE FIELD	200.0	
8104896	AO-6-0020	0406720149	102		POPPY RIDGE #2	POPPY RIDGE FIELD	100.0	
-MCOR OIL & GAS CORP					RECEIVED: 11/07/80 JA: CA			
8104897	AO-6-0016	0409520378	102		HASTINGS RANCH #1-22	LINDSEY SLOUGH PROSPECT	767.0	PACIFIC GAS & ELECTR
8104898	AO-6-0015	0409520390	102		MCCULLOCH NO 1-21 HASTINGS RANCH	LINDSEY SLOUGH PROSPECT	2737.0	PACIFIC GAS & ELECTR
8104895	AO-6-0017	0409520395	102		MCCULLOCH NO 2-21 HASTINGS RANCH	LINDSEY SLOUGH PROSPECT	2190.0	PACIFIC GAS AND ELEC
**** NEW MEXICO DEPARTMENT OF ENERGY & MINERALS ****								
-ADAMS EXPLORATION CO					RECEIVED: 11/06/80 JA: NM			
8104862		3001523036	103		ANN COM #1	MALAGA MORROW (GAS)	190.0	EL PASO NATURAL GAS
-AMOCO PRODUCTION CO					RECEIVED: 11/06/80 JA: NM			
*8104873		3002526713	103		GRIZZELL B #4	UND DRINKARD	60.0	GETTY OIL CO
*8104883		3002526338	103		MCQUATTERS #4	HARDY DRINKARD	35.7	GETTY OIL CO
*8104884		3002526531	103		MCQUATTERS #5	HARDY BLINEBRY	20.1	GETTY OIL CO
*8104885		3002526531	103		MCQUATTERS #5	HARDY DRINKARD	3.6	GETTY OIL CO
*8104874		3002526109	103		STATE C TRACT 11 #9	HARDY DRINKARD	12.8	GETTY OIL CO
8104882		3001523202	103		STATE IC COM #1	UND MORROW	622.0	EL PASO NATURAL GAS
8104881		3001523349	103		STATE IL COM #1	WILDCAT MORROW	207.0	EL PASO NATURAL GAS
8104875		3001523198	103		STATE 1E COM #1	UND MORROW	950.0	EL PASO NATURAL GAS
-ARCO OIL AND GAS COMPANY					RECEIVED: 11/06/80 JA: NM			
8104876		3002526882	103		FREDERICK M CURRY WN NO 4	LANGLIE MATTIX 7 RIVERS	55.0	EL PASO NATURAL GAS
8104878		3002526527	103		W F HANAGAN NO 5	JALMAT	3.0	EL PASO NATURAL GAS
-DEPCO INC					RECEIVED: 11/06/80 JA: NM			
8104887		3000500000	103		MESA STATE COM #1	CROW FLATS	21.9	
-EL PASO NATURAL GAS COMPANY					RECEIVED: 11/06/80 JA: NM			
8104869		3003922065	103		SAN JUAN 29-7 UNIT #31A	BASIN DAKOTA	100.0	EL PASO NATURAL GAS
-ENSERCH EXPLORATION INC					RECEIVED: 11/06/80 JA: NM			
8104871		3000560675	103		J G O'BRIEN NO 1	WILDCAT	216.0	
-GETTY OIL COMPANY					RECEIVED: 11/06/80 JA: NM			
8104866		3002512432	108		HOBBS A WELL NO 6	JUSTIS BLINEBRY AND JUST	8.0	EL PASO NATURAL GAS
8104889		3004100000	108		HOBBS T NO 12	CHAVEROO SAN ANDRES	1.0	CITIES SERVICE CO
8104865		3002509363	108		J M MATKINS WELL NO 1	LANGLIE-MATTIX	6.7	PHILLIPS PETROLEUM C
8104891		3002500000	108		LOVINGTON SAN ANDRES NO 10	LOVINGTON SAN ANDRES	1.0	PHILLIPS PETROLEUM
8104868		3002510676	108		SKELLY PENROSE B UNIT WELL NO 57	LANGLIE-MATTIX	1.6	GETTY OIL CO

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104867		3002510541	108		SKELLY PENROSE B UNIT WELL NO 9	LANGLIE-MATTIX	2,6	GETTY OIL CO
8104890		3002500000	108		STATE P UNIT WELL NO 6	LOVINGTON PADDOCK	3,0	PHILLIPS PETROLEUM C
-HIXON DEVELOPMENT COMPANY					RECEIVED: 11/06/80 JA: NM			
8104863		3004524323	103		SAM JACKSON STATE COM WELL NO 1	WAW-FRUITLAND-PC	22,7	EL PASO NATURAL GAS
8104886		3004524224	103		VIRGINIA STATE WELL NO 3	WAW-FRUITLAND-PC	2,6	EL PASO NATURAL GAS
-MADDOX ENERGY CORPORATION					RECEIVED: 11/06/80 JA: NM			
8104870		3001500000	103		SPENCER COM	ATOKA PENN	73,0	TRANSWESTERN PIPELIN
-MARALO INC					RECEIVED: 11/06/80 JA: NM			
8104877		3002500000	103		MARALO 16 STATE #10	SIOUX TANSILL YATES	11,0	EL PASO NATURAL GAS
-NORTHWEST PIPELINE CORPORATION					RECEIVED: 11/03/80 JA: NM			
*8104861		3004523539	103		MADDOX #1A PC	BLANCO PICTURED CLIFF	22,0	EL PASO NATURAL GAS
-NORTHWEST PIPELINE CORPORATION					RECEIVED: 11/06/80 JA: NM			
*8104864		3004523539	103		MADDOX #1A MV	BLANCO MESAVERDE	190,0	EL PASO NATURAL GAS
-PENNZOIL COMPANY					RECEIVED: 11/06/80 JA: NM			
8104888		3001500000	108		MOORE COM #1 CA SW 810	SOUTH CARLSBAD	14,0	EL PASO NATURAL GAS
-PHILLIPS PETROLEUM COMPANY					RECEIVED: 11/06/80 JA: NM			
8104872		3002526758	103		LEAMEX NO 25	UNDESIGNATED LEAMEX (NOL	55,0	EL PASO NATURAL GAS
-WESTERN RESERVES OIL COMPANY					RECEIVED: 11/03/80 JA: NM			
8104860		3000500000	103		WESTERN HOLLY 32 STATE NO 2	TOM-TOM (SAN ANDRES)	10,0	TRANSWESTERN PIPELIN
-YATES PETROLEUM CORPORATION					RECEIVED: 11/06/80 JA: NM			
8104879		3001523409	103		NORTH MILLMAN UNIT NO 2	SOUTH MILLMAN MORROW	0,0	TRANSWESTERN PIPELIN
8104880		3001523353	103		RIO PENASCO KD COM NO 2	BOYD MORROW	0,0	TRANSWESTERN PIPELIN
**********								
OHIO DEPARTMENT OF NATURAL RESOURCES								
**********								
-APPALACHIAN PETROLEUM CORP					RECEIVED: 11/07/80 JA: OH			
8104945		3416725247	103		RODGERS ET AL #1	ADAMS	3,5	COLUMBIA GAS TRANSMI
-BELDEN & BLAKE & CO 74					RECEIVED: 11/07/80 JA: OH			
8104956		3415123330	103		M & J PRINCEHORN 1-960	TUSCARAWAS	36,5	
-BELDEN & BLAKE CO L P NO 75					RECEIVED: 11/07/80 JA: OH			
8104957		3415123318	103		J & D GLICK COMM #1-992	TUSCARAWAS	36,5	
8104958		3415123300	103		W & M KAYLOR COMM #2-993	SUGARCREEK	36,5	
-BERRESFORD ENTERPRISES INC					RECEIVED: 11/07/80 JA: OH			
8104946		3416725207	103		HAINES #1	WATERFORD	6,0	
8104949		3416725060	103		MILDRED EPLER #1	ADAMS	6,0	
8104948		3416725154	103		MILDRED EPLER #2	ADAMS	6,0	
8104947		3416725205	103		PAUL DIETZ #1	WATERFORD	6,0	
8104953		3416723810	103		WILLIAM BONAR #1	DUNHAM	3,0	
-BROILCO INC					RECEIVED: 11/07/80 JA: OH			
8104925		3410322219	103		PEEBLES #2	HINCKLEY	20,0	
-BUCKEYE CRUDE EXPLORATION INC					RECEIVED: 11/07/80 JA: OH			
8104943		3416725725	103		OLLIE WAGNER #3	ADAMS	21,9	
8104942		3416725730	103		OLLIE WAGNER #4	ADAMS	20,1	
-BUCKHORN OIL COMPANY INC					RECEIVED: 11/07/80 JA: OH			
8104913		3407522616	103		TAYLOR #2	KILLBUCK	20,0	COLUMBIA GAS TRANSMI
-CHESTNUT MEADOWS DEVELOPMENT CO					RECEIVED: 11/07/80 JA: OH			
8104924		3410322218	103		CHESTNUT MEADOWS #3	WADSWORTH	2,0	EAST OHIO GAS CO
-EDLICO INC					RECEIVED: 11/07/80 JA: OH			
8104920		3408923833	103		YOUNG #1	EDEN	20,0	COLUMBIA GAS TRANSMI
-FORAKER PRODUCING COMPANY INC					RECEIVED: 11/07/80 JA: OH			
8104929		3411925335	103		C MOORE #4	NEWTON	8,0	
-GASEARCH INC					RECEIVED: 11/07/80 JA: OH			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104955		3415521446	103		HAGOOD UNIT #2	VIENNA	20,0	
*HILLTOP DEVELOPMENT CORP					RECEIVED: 11/07/80 JA: OH			
8104922		3408923877	103		#2 LICKING VALLEY SCHOOL BOARD	MADISON	14,0	NATIONAL GAS & OIL C
*INLAND DRILLING CO INC					RECEIVED: 11/07/80 JA: OH			
8104902		3400721458	103		BALL #1	CHERRY VALLEY	0,5	
8104941		3413321980	103		CLAPP-STROUP UNIT #1	NELSON	1,1	
8104940		3413321979	103		CLAPP-ZUVAR #1	NELSON	1,1	
8104965		3413322159	103		DAVIES #1	NELSON	1,1	
8104899		3400721032	103		HARGAS #1	NEW LYME	0,5	
8104966		3413322080	103		KLINE UNIT #1	FREEDOM	1,1	
8104939		3413321896	103		LEE #3	FREEDOM	0,1	
8104961		3413322354	103		LENTZ #1	FREEDOM	107,4	
8104964		3413322146	103		MCCOY #1	NELSON	1,1	
8104967		3413322060	103		VINE-SEMAN #2	NELSON	1,1	
*JIMMY HAMILTON GAS & OIL					RECEIVED: 11/07/80 JA: OH			
8104950		3416705044	103		ELMER HEARN WELL NO 144	LUDLOW	15,0	COLUMBIA GAS TRANSMI
8104952		3416704885	103		HAZEL EDWARDS WELL NO 138	LUDLOW	22,5	COLUMBIA GAS TRANSMI
8104926		3411121910	103		MARY CLINE WELL NO 140	WASHINGTON	15,0	COLUMBIA GAS TRANSMI
8104951		3416704886	103		WILBUR RINARD WELL NO 136	LUDLOW	45,0	COLUMBIA GAS TRANSMI
*JOHN C MASON					RECEIVED: 11/07/80 JA: OH			
8104915		3407522703	103		ANDY & MARY ERB #4	MECHANIC	30,0	COLUMBIA GAS TRANS C
8104914		3407522702	103		ANDY & MARY ERB #5	MECHANIC	30,0	COLUMBIA GAS TRANS C
*L & M PETROLEUM					RECEIVED: 11/07/80 JA: OH			
8104944		3416725659	103		ALBERT PEPPEL #1	LIBERTY	12,8	COLUMBIA GAS TRANSMI
*MERIT OIL & GAS CO					RECEIVED: 11/07/80 JA: OH			
8104919		3408322650	103		KENNETH & MARJORIE SWENDAL #4	BROWN	6,0	
8104918		3408322649	103		KENNETH E & MARJORIE SWENDAL #5	BROWN	6,0	
8104916		3408322647	103		KENNETH SWENDAL #1	BROWN	4,0	
8104917		3408322648	103		STANTON & HARRIETT SAPP #1	BROWN	3,6	
*NEWPORT OIL & GAS CO LTD					RECEIVED: 11/07/80 JA: OH			
8104923		3410322028	103		MOURAD #1	GRANGER	25,0	COLUMBIA GAS TRANSMI
*ONEAL PRODUCTIONS INC					RECEIVED: 11/07/80 JA: OH			
8104927		3411521903	103		ADKINS #1	WINDSOR	82,0	COLUMBIA GAS TRANSMI
*PARTNERS OIL COMPANY					RECEIVED: 11/07/80 JA: OH			
8104911		3405922740	103		BROWN #1-80A	WESTLAND	20,0	EAST OHIO GAS CO
8104904		3405921831	103		ENOCHS #1-80A	KNOX	20,0	COLUMBIA GAS TRANSMI
8104921		3408923862	103		MCKEE #2-80A	BOWLING GREEN	20,0	COLUMBIA GAS TRANSMI
8104938		3412724783	103		WINEGARDNER #2-80A	THORN	20,0	NATIONAL GAS & OIL C
*PETROLEUM ENERGY DEVELOPMENT CORP					RECEIVED: 11/07/80 JA: OH			
8104903		3403124064	103		ALBERT R HAINES #2	TIVERTON	30,0	
8104930		3411925380	103		JOHN REVENNUAGH #1	RICH HILL	30,0	
*POI ENERGY INC					RECEIVED: 11/07/80 JA: OH			
8104900		3400721401	103		ROTH JEFFERSON #1	COLEBROOK	30,0	EAST OHIO GAS CO
8104901		3400721402	103		ROTH JEFFERSON #2	COLEBROOK	30,0	EAST OHIO GAS CO
*RAY C CHUTE					RECEIVED: 11/07/80 JA: OH			
8104912		3407322312	103		HAROLD & EDNA KNAPP #1	GREEN	0,3	COLUMBIA GAS TRANSMI
*RICHARD C POLING					RECEIVED: 11/07/80 JA: OH			
8104931		3411925394	103		KIRKBRIDE #1	NEWTON	5,0	
*TEMPLE OIL & GAS CO					RECEIVED: 11/07/80 JA: OH			
8104928		3411522088	103		WILLIAM GOUDE #3	YORK	10,0	
*THE CARTER JONES LUMBER CO					RECEIVED: 11/07/80 JA: OH			
8104937		3412122394	103		D PARRISH UNIT #3	OLIVE TOWNSHIP	15,0	
*TOWNER PETROLEUM CO					RECEIVED: 11/07/80 JA: OH			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104907		3405922074	108		APPERSON G-13		1,5	COLUMBIA GAS
8104936		3412122077	108		C HILL PPG-61		3,0	JONES & LAUGHLIN STE
8104910		3405922495	108		DEAN #1 PPG-42		11,0	JONES & LAUGHLIN STE
8104933		3412121757	108		J CROCK #1 G-6		6,0	EAST OHIO GAS CO
8104909		3405922226	108		JOHNSON W-35		4,0	WIERTON STEEL CO
8104935		3412121811	108		L BATES #1 OM-4		0,4	EAST OHIO GAS CO
8104934		3412121801	108		PARRY #1 B-2		5,0	EAST OHIO GAS CO
8104906		3405922070	108		SECREST G-12		8,7	COLUMBIA GAS
8104905		3405922032	108		SMITH PPG-6		2,0	PPG INDUSTRIES INC
8104932		3412121603	108		W PRYOR #1		4,0	EAST OHIO GAS CO
8104908		3405922076	108		YONTZ G-18		6,5	COLUMBIA GAS
*VIKING RESOURCES CORP					RECEIVED: 11/07/80 JA: OH			
8104960		3415123283	103		GRIMES/ZELLER UNIT #1	WASHINGTON	30,0	
8104959		3415123284	103		GRIMES/ZELLER UNIT #2	WASHINGTON	30,0	
8104963		3413322336	103		SULLIVAN UNIT #1	DEERFIELD	30,0	
8104962		3413322337	103		SULLIVAN UNIT #2	DEERFIELD	30,0	
*WILLIAM N TIPKA					RECEIVED: 11/07/80 JA: OH			
8104954		3415723531	103		P DEBOER #1 WELL	WASHINGTON	20,0	EAST OHIO GAS CO

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OKLAHOMA CORPORATION COMMISSION

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*ANDOVER OIL COMPANY					RECEIVED: 11/06/80 JA: OK			
8104840	06082	3501721113	103		JENSEN #2-1	WILDCAT	185,0	DELMI GAS PIPELINE C
*APACHE CORPORATION					RECEIVED: 11/06/80 JA: OK			
8104841	06082	3512920444	102		MERRICK #4-31		730,0	MICHIGAN-WISCONSIN P
*BEARD OIL COMPANY					RECEIVED: 11/06/80 JA: OK			
8104858	06078	3511921054	103		BENTLEY #1	SOUTHEAST PARADISE	75,0	CITIES SERVICE GAS C
*BOBBY J DARNELL					RECEIVED: 11/06/80 JA: OK			
8104859	06079	3508321037	103		DUNSMORE #3	SOUTH MULHALL	13,0	EASON OIL CO
*CHASE EXPLORATION CORP					RECEIVED: 11/06/80 JA: OK			
*8104842	06063	3507121281	103		BERRIE 2-8		11,2	CITIES SERVICE GAS C
*8104843	06062	3507121271	103		BRANDON 1-3		32,8	CITIES SERVICE GAS C
*8104844	06061	3507121895	103		BRAZELTON 1-29		54,0	CITIES SERVICE GAS C
*8104845	06060	3507121167	103		HAHN #1-14		12,2	CITIES SERVICE GAS C
*DALCO PETROLEUM INC					RECEIVED: 11/06/80 JA: OK			
8104846	06044	3507322275	103		HOFFMAN #1	SOONER TREND	91,2	DALCO PETROLEUM US L
*KAISER-FRANCIS OIL COMPANY					RECEIVED: 11/06/80 JA: OK			
8104857	06074	3515120199	108		GASKILL #1	TEAGARDEN	4,0	PANHANDLE EASTERN PI
*KERR-MCGEE CORPORATION					RECEIVED: 11/06/80 JA: OK			
8104838	06168	3512120649	102		LEE SCOTT 1-31		0,0	
*L & T OIL & GAS INC					RECEIVED: 11/06/80 JA: OK			
8104856	05694	3510320894	103		CAMPBELL 34 NO 1	ORLAND	365,0	AMINOIL USA INC
8104855	05693	3507322258	103		FOX 31 NO 1	SOONER TREND	36,5	PHILLIPS PETROLEUM
8104847	05696	3507322241	103		FRANK 29 NO 1	SOONER TREND	36,5	PHILLIPS PETROLEUM C
8104853	05691	3507322241	103		HILL 28 NO 1	SOONER TREND	36,5	PHILLIPS PETROLEUM
8104852	05690	3507322202	103		KING 14 NO 1	SOONER TREND	18,3	PHILLIPS PETROLEUM
8104848	05695	3507322415	103		VILHAUER 4 NO 1	SOONER TREND	182,5	CITIES SERVICE GAS C
8104854	05692	3507322240	103		YOUNG 21	SOONER TREND	73,0	PHILLIPS PETROLEUM
*L G WILLIAMS OIL COMPANY INC					RECEIVED: 11/06/80 JA: OK			
*8104849	08988	3512920471	107		BESSIRE #29-1	W REYDON	0,0	MICHIGAN WISCON PIPE
*NOVA ENERGY CORPORATION					RECEIVED: 11/06/80 JA: OK			
8104839	06164	3505120869	102		S W TRUST #1-22	S E MINCO	0,0	DELMI GAS PIPELINE C
*TEEL PRODUCTION CO					RECEIVED: 11/06/80 JA: OK			

BILLING CODE 6450-85-C

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8104850	01355	3512100000	108		FEARS #4	WIRTH	2,8	PUBLIC SERVICE CO
8104851	01356	3512100000	108		FEARS #5	WIRTH	3,6	PUBLIC SERVICE CO

OTHER PURCHASERS VOLUME NO 1321

8104842	CHASE GATHERING SYSTEMS, INC.
8104843	CHASE GATHERING SYSTEMS INC
8104844	CHASE GATHERING SYSTEMS INC
8104845	CHASE GATHERING SYSTEMS INC
8104849	EL PASO NATURAL GAS COMPANY
8104861	NORTHWEST P L CORP
8104864	NORTHWEST P L CORP
8104873	EL PASO NATURAL GAS CO
8104874	EL PASO NATURAL GAS CO
8104883	EL PASO NATURAL GAS CO
8104884	EL PASO NATURAL GAS CO
8104885	EL PASO NATURAL GAS CO

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 11, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to those determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36798 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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*ADOBE OIL & GAS CORPORATION				RECEIVED: 11/10/80 JA: PA				
8104986	5831	3706521992	103	ALVIN E NOLPH #1	CORSICA	29,0		
8104992	5837	3706522005	103	FORD A COOPER #1	WARSAW	21,0		
8104985	5830	3712921580	103	FRANK R RANDOLPH #1	SALTSBURG	36,0		
8104970	3879	3712921440	103	FREDERICK S TRUXAL #1	UNITY	36,0		
8104991	5836	3706521991	103	HARRY J MITCHELL #1	REYNOLDSVILLE	36,0		
8104984	5829	3706522013	103	HERMAN E FROST #1	MCCALMONT	36,0		
8104988	5833	3712921582	103	JAMES R CUNNINGHAM #1	SALTSBURG	36,0		
8104989	5834	3712921453	103	RONALD S YUVAN #1	IRWIN	36,0		
8104987	5832	3706324873	103	VERA WALACH #1	MCINTYRE	36,0		
8104990	5835	3706521826	103	WARREN R REYNOLDS #1	REYNOLDSVILLE	36,0		
*BOYD & SHRIVER				RECEIVED: 11/10/80 JA: PA				
8105002	5850	3706500000	108	150-REITZ	ROSE	1,0	NATIONAL FUEL GAS SU	
8105001	5849	3706500000	108	153-REITZ	ROSE	1,0	NATIONAL FUEL GAS SU	
8105000	5848	3706500000	108	156-REITZ	ROSE	1,2	NATIONAL FUEL GAS SU	
8104999	5847	3706500000	108	162-REITZ	ROSE	1,2	NATIONAL FUEL GAS SU	
8104998	5846	3706500000	108	165-JOINER	ROSE	1,0	NATIONAL FUEL GAS SU	
*CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 11/10/80 JA: PA				
8104997	5845	3706322012	108	LOY R VITE WN-1263	BIG RUN-ROCHESTER MILLS	5,0	GENERAL SYSTEM PURCH	
*ENERGY PRODUCTION CO				RECEIVED: 11/10/80 JA: PA				
8104995	5840	3706325626	103	EARL PIFER NO 2	PURCHASE LINE	86,4	COLUMBIA GAS TRANSMI	
*FELMONT OIL CORPORATION				RECEIVED: 11/10/80 JA: PA				
8104976	5817	3706325263	103	DEE F BENNETT #1 F-257	SOUTH PINE	146,0		
8104977	5818	3706325210	103	I R SMITH #2 F-255	SOUTH PINE	0,0		
8104975	5816	3706325264	103	RAYMOND OFMAN #1 F-259	SOUTH PINE	0,0		
8104972	5813	3706325402	103	RONALD M LITTLE #1 F-265	SOUTH PINE	118,0		
8104971	4183	3706324715	103	RUSSELL E FOX #1 F-239	SOUTH PINE	0,0	COLUMBIA GAS TRANSMI	
8104974	5815	3706325265	103	WILLIAM R BENNETT #1 F-258	SOUTH PINE	141,0		
8104973	5814	3706325441	103	WILLIS R GRIFFITH #2 F-266	SOUTH PINE	365,0		
*FRED J RUSSELL DBA LOUDEN PROPERTIE				RECEIVED: 11/10/80 JA: PA				
8104996	5842	3712921638	103	F O KEISTER 997-1		30,0	COLUMBIA GAS OF PENN	
*MERIDIAN OIL & GAS ENT INC				RECEIVED: 11/10/80 JA: PA				
8104980	5825	3703920403	108	C J LORAINE WELL #1		5,0	NATL FUEL GAS DISTRI	
8104981	5826	3703920427	108	C J LORAINE WELL #2		2,5	NATL FUEL GAS DISTRI	
8104982	5827	3703920424	108	EARL R NICOLLS WELL #1		3,5	NATL FUEL GAS DISTRI	
8104979	5824	3703920390	108	F SCHWELLER WELL #1		2,0	NATL FUEL GAS DISTRI	
8104993	5838	3706342792	108	J A ARCHIBALD WELL #1		1,8	T W PHILLIPS GAS & O	
8104994	5839	3706342812	108	J A ARCHIBALD WELL #2		11,0	T W PHILLIPS GAS & O	
8104983	5828	3703920423	108	M M HAEMER WELL #4		2,0	NATL FUEL GAS DISTRI	
8104969	3553	3703940531	108	MICHAEL KOSS WELL #1		4,0	NATL FUEL GAS DISTRI	
8104978	5823	3703920389	108	R A MCCLINTON WELL #1		2,0	NATL FUEL GAS DISTRI	

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
-UGI DEVELOPMENT CO					RECEIVED: 11/10/80 JA: PA			
810g968	p842	3705322214	108		3188-17	DEADMAN CORNERS	1.0	UGI CORP
**********								
TEXAS RAILROAD COMMISSION								
**********								
-AMARILLO OIL COMPANY					RECEIVED: 11/10/80 JA: TX			
810g229	p2945	4217900000	108		ZUEB #12 (#26633)	PANHANDLE EAST	14.7	PIONEER NATURAL GAS
-AMERADA HESS CORPORATION					RECEIVED: 11/10/80 JA: TX			
810g083	j9570	4216500223	108		ADAIR SAN ANDRES UNIT #2307	ADAIR	0.3	PIONEER NATURAL GAS
810g173	p0923	4216500000	108		ADAIR SAN ANDRES UNIT #2308	ADAIR	0.1	PIONEER NATURAL GAS
810g172	p0922	4244500000	108		ADAIR WOLFCAMP UNIT #1301	ADAIR	2.6	PIONEER NATURAL GAS
810g201	p1615	4232900000	108		TEX-HARVEY SPRABERRY UNIT #412	SPRABERRY TREND	0.1	
810g200	p1613	4217300000	108		TEX-HARVEY SPRABERRY UNIT #991	SPRABERRY TREND	0.0	
-AMERICAN PETROFINA COMPANY OF TEXAS					RECEIVED: 11/10/80 JA: TX			
810g278	p3587	4205730978	103		D W MEEKS ET AL NO 1	EAST SHERIFF (6800)	548.0	UNITED TEXAS TRANSMI
-AMOCO PRODUCTION CO					RECEIVED: 11/10/80 JA: TX			
810g238	p3132	4219500000	108		ARTHUR BERNSTEIN #3	SHAPLEY	3.0	PHILLIPS PETROLEUM C
810g030	j5688	4236530890	103		CARTHAGE GAS UNIT 15 WELL NO 5	CARTHAGE (TRAVIS PEAK)	219.0	TENNESSEE GAS PIPELI
*810g080	j9337	4203931366	103		FANNIE DRAKE #27	HASTINGS WEST	37.0	AMOCO GAS CO
810g022	08035	4235531199	103		G H MCCANN NO 34	LUBY (G)	24.0	VALLEY GAS TRANSMISS
810g256	p3472	4213533278	103		MIDLAND FARMS /AV/ #5	FASKEN/PENN/	35.0	PIONEER NATURAL GAS
810g021	07972	4221530801	103		SOUTH WESLACO GAS UNIT NO 20	WESLACO SOUTH (8400)	10.0	4-T RANCHES LTD
-ANDERSON PETROLEUM INC					RECEIVED: 11/10/80 JA: TX			
810g285	p3614	4210532368	103		FRANK WHITE A #1-85	OZONA (CANYON SAND)	20.0	ANDERSON PIPELINE CO
-ARCO OIL AND GAS COMPANY					RECEIVED: 11/10/80 JA: TX			
810g304	p3917	4234100000	108		W L RUSSELL #1	WEST PANHANDLE	18.0	PANHANDLE EASTERN PI
*810g190	p1450	4250131758	103		WILLARD UNIT WELL #2-B	WASSON	23.4	SHELL OIL COMPANY
*810g192	p1454	4250131769	103		WILLARD UNIT WELL #5-BX	WASSON	30.0	SHELL OIL COMPANY
*810g191	p1452	4250131756	103		WILLARD UNIT WELL #7-B	WASSON	35.4	SHELL OIL COMPANY
-ARKLA EXPLORATION COMPANY					RECEIVED: 11/10/80 JA: TX			
810g182	p1224	4236530806	102		FENDER #1	CARTHAGE (COTTON VALLEY)	365.0	ARKANSAS LOUISIANA G
810g194	p1479	4236531007	102		GRIFFITH #1	CARTHAGE (COTTON VALLEY)	180.0	ARKANSAS LOUISIANA G
810g186	p1229	4236530977	102		JOE WEDGEWORTH #1	CARTHAGE (COTTON VALLEY)	130.0	ARKANSAS LOUISIANA G
810g181	p1223	4236530932	102		M L DAVIS #1	CARTHAGE (COTTON VALLEY)	365.0	ARKANSAS LOUISIANA G
810g183	p1225	4236530958	102		M MCJIMSEY #1	CARTHAGE (COTTON VALLEY)	250.0	ARKANSAS LOUISIANA G
810g184	p1127	4236530883	102		PAGE #1	CARTHAGE (COTTON VALLEY)	275.0	ARKANSAS LOUISIANA G
810g185	p1228	4236530984	102		SOAPE #1	CARTHAGE (COTTON VALLEY)	450.0	ARKANSAS LOUISIANA G
810g187	p1230	4236530807	102		SOUTHLAND PAPER #1	CARTHAGE (COTTON VALLEY)	365.0	ARKANSAS LOUISIANA G
-BARBER OIL EXPLORATION INC					RECEIVED: 11/10/80 JA: TX			
810g212	p2320	4235700000	108		BANNER GREGG NO 1	SHARE S E (MORROW LOWER)	21.0	TRANSWESTERN PIPELIN
810g213	p2321	4235700000	108		BEATRICE CONNER NO 1 WELL	SHARE (MORROW UPPER)	16.0	TRANSWESTERN PIPELIN
-BILL FORNEY INC					RECEIVED: 11/10/80 JA: TX			
810g220	p2714	4229732074	102		NO 1 GUS HOUDMANN	CHARLINE (FORNEY 7)	700.0	TRANSCONTINENTAL GAS
810g220	p2714	4229732074	103		NO 1 GUS HOUDMANN	CHARLINE (FORNEY 7)	700.0	TRANSCONTINENTAL GAS
-BILL J GRAHAM					RECEIVED: 11/10/80 JA: TX			
810g257	p3482	4200300000	108		UNIVERSITY P #2 RRC #41971	SHAFTER LAKE YATES	12.0	PIONEER NATURAL GAS
-BLAIR OIL COMPANY					RECEIVED: 11/10/80 JA: TX			
810g039	j6865	4206530699	103		GREG WELL #1	PANHANDLE CARSON	0.0	PANHANDLE EASTERN PI
-CHAMPLIN PETROLEUM COMPANY					RECEIVED: 11/10/80 JA: TX			
810g282	p3610	4245130610	103		A M DUFF ESTATE NO 7	DOVE CREEK (CANYON D)	91.0	NORTHERN NATURAL GAS
810g249	p3369	4243130850	103		R L COPE NO 1	CONGER SW (PENN)	60.0	NORTHERN NATURAL GAS
-CHAPARROSA OIL CO					RECEIVED: 11/10/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8105024	11050	4250730914	102		B K JOHNSON #5 ID #74303	EL BANO (SAN MIGUEL)	153,1	LOVACA GATHERING CO
8105024	11050	4250730914	103		B K JOHNSON #5 ID #74303	EL BANO (SAN MIGUEL)	153,1	LOVACA GATHERING CO
*CHAPMAN OIL CO					RECEIVED: 11/10/80 JA: TX			
8105082	19448	4233900000	102		PLATTE NO 1 WELL	SPLENDORA (YEGUA) FIELD	174,0	
8105082	19448	4233900000	103		PLATTE NO 1 WELL	SPLENDORA (YEGUA) FIELD	174,0	
*CHARLES L WALKER					RECEIVED: 11/10/80 JA: TX			
*8105253	23439	4200331850	102		FISHER 3 #1	BLUCK A-34 (SAN ANDRES)	30,2	PHILLIPS PETROLEUM C
*8105253	23439	4200331850	103		FISHER 3 #1	BLUCK A-34 (SAN ANDRES)	30,2	PHILLIPS PETROLEUM C
*CLAYTON W WILLIAMS JR					RECEIVED: 11/10/80 JA: TX			
8105026	13794	4247531850	103		BARBARA M WILLIAMS NO 1	SCOTT (DELAWARE)	185,0	TRANSWESTERN PIPELIN
*CLOVER ENERGY CORP					RECEIVED: 11/10/80 JA: TX			
8105240	23151	4228531202	102		KITTIE CLARK ESTATE #1	CLARK (FRIO 3050)	0,0	TEXAS EASTERN TRANSM
8105216	22387	4245730316	103		RICE INSTITUTE NO 2 (ID #85808)	HILLISTER EAST (WILCOX 8	180,0	HOUSTON PIPE LINE CO
*COMINCO AMERICAN INC					RECEIVED: 11/10/80 JA: TX			
8105163	20142	4235730796	103		CUDD #2	MCGEE (MURROW UPPER)	158,0	PANHANDLE EASTERN PI
*CONOCO INC					RECEIVED: 11/10/80 JA: TX			
8105166	20224	4217900000	108		CARRIE WRIGHT #7	GRAY-WHEELER	0,0	PHILLIPS PETROLEUM C
8105156	19786	4211500000	108		EAST ACKERLY DEAN UNIT #1 ID #60687	ACKERLY	7,4	TEXACO
8105046	18707	4210532443	108		EAST ACKERLY DEAN UNIT #47	ACKERLY / DEAN SAND	0,4	TEXACO
8105243	23293	4222700000	108		G O CHALK E #15 ID #02689	HOWARD GLASSCOCK	0,6	PHILLIPS PETROLEUM C
8105045	18536	4231700000	108		ODESSA DAVENPORT C #1 ID #16451	ACKERLY / DEAN	0,3	TEXACO INC
8105244	23294	4200330466	108		UNIVERSITY 5 #8 ID #01652	FUHRMAN-MASCHO	0,2	PHILLIPS PETROLEUM C
*DAVID A SCHLACHTER OIL & GAS					RECEIVED: 11/10/80 JA: TX			
8105003	03555	4230100000	108		WHEAT-RAMSEY TRACT A WELL #3	WHEAT FIELD	4,0	PHILLIPS PETROLEUM
*DELMI OIL CORP & NRM					RECEIVED: 11/10/80 JA: TX			
8105259	23484	4217130523	102		BDD RANCH NO 1	PEACH CREEK (AUSTIN CHAL	3650,0	TIPPERARY CORP
8105262	23487	4217100000	102		KELLEY UNIT NO 1	PEACH CREEK (AUSTIN CHAL	3650,0	TIPPERARY CORP
8105260	23485	4217130518	102		LANG NO 1	PEACH CREEK (AUSTIN CHAL	3650,0	TIPPERARY CORP
8105261	23486	4217130543	102		SIMPER UNIT NO 1	PEACH CREEK (AUSTIN CHAL	3650,0	TIPPERARY CORP
8105263	23488	4217130535	102		THORNTON UNIT NO 1	PEACH CREEK (AUSTIN CHAL	3650,0	TIPPERARY CORP
*DELTA DRILLING CO					RECEIVED: 11/10/80 JA: TX			
8105167	20367	4236500000	103		GUILL #2 ID #85694	CARTHAGE (COTTON VALLEY)	161,3	UNITED GAS PIPE LINE
8105202	21705	4236500000	102		J H TURNER #1	CARTHAGE (COTTON VALLEY)	73,0	UNITED GAS PIPELINE
8105202	21705	4236500000	103		J H TURNER #1	CARTHAGE (COTTON VALLEY)	73,0	UNITED GAS PIPELINE
*EL PASO NATURAL GAS COMPANY					RECEIVED: 11/10/80 JA: TX			
8105302	23816	4208726187	108		MC MURTRY A #1	PANHANDLE EAST-BROWN DOL	22,0	EL PASO NATURAL GAS
*ELF AQUITAINE INC					RECEIVED: 11/10/80 JA: TX			
8105252	23405	4247932151	102		CARR #1	CARR (WILCOX) (PROPOSED)	73,0	UNITED TEXAS TRANSMI
8105251	23404	4247932409	102		CARR #2	CARR (LOBO)(PROPOSED)	183,0	UNITED TEXAS TRANSMI
*ENERGY DEVELOPMENT CORPORATION					RECEIVED: 11/10/80 JA: TX			
8105210	22202	4205730914	102		POWDERHORN RANCH NO 2	POWDERHORN SW (FRIO 1020	1100,0	DOW CHEMICAL CO
8105210	22202	4205730914	103		POWDERHORN RANCH NO 2	POWDERHORN SW (FRIO 1020	1100,0	DOW CHEMICAL CO
*ENSERCH EXPLORATION INC					RECEIVED: 11/10/80 JA: TX			
8105169	20683	4249700000	108		CRAFT WATER BOARD UNIT 19 NO 1	BOONSVILLE	9,0	LONE STAR GAS CO
8105250	23382	4228531457	102		H A POHL NO 2	WORD N	562,0	VALERO TRANSMISSION
*ESTATE OIL & GAS CORP					RECEIVED: 11/10/80 JA: TX			
8105242	23175	4220330694	102		IVY WILLIAMS HEIRS GAS UNIT NO 2-T	LANSING NORTH (TRAVIS PE	777,4	TEJAS GAS CORP
*EXXETER PETROLEUM CORP					RECEIVED: 11/10/80 JA: TX			
8105218	22508	4247900000	102		HAIZLIP #2	LAREDO N (WILCOX)	60,0	TRANSCONTINENTAL GAS
*EXXON CORPORATION					RECEIVED: 11/10/80 JA: TX			
8105179	21122	4226100500	102		C M ARMSTRONG 54-F (86011)	CANDELARIA (J-20)	547,0	NATL GAS P/L CO OF A
8105284	23612	4216531707	103		EUBANKS CLFK UNIT #14	ROBERTSON N (CLFK 7100)	3,0	PHILLIPS PETROLEUM C

JD NO	TA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
810199	01565	4216531710	103		EXXON FEE EUBANKS BA #13	ROBERTSON N (CLFK 7100)	2.0	PHILLIPS PETROLEUM C
810198	01564	4200332111	103		FULLERTON CLFK UNIT #1325	FULLERTON	9.0	PHILLIPS PETROLEUM C
*810197	01563	4200332137	103		FULLERTON CLFK UNIT #1635	FULLERTON	1.5	PHILLIPS PETROLEUM C
810275	03562	4208130831	103		IAB UNIT #518	IAB (MENIELLE PENN)	50.0	SUN GAS CO
810277	03564	4210332441	103		J B TUBB A/C 1 #216U	SAND HILLS (JUDKINS)	28.0	EL PASO NATURAL GAS
810205	02004	4210332184	103		J B TUBB C #21L	SAND HILLS (TUBB)	93.0	EL PASO NATURAL GAS
810206	02005	4210332184	103		J B TUBB C #21U	SAND HILLS (MCKNIGHT)	51.0	EL PASO NATURAL GAS
810283	03611	4210332212	103		J B TUBB C #22U	SAND HILLS (MCKNIGHT)	59.0	EL PASO NATURAL GAS
810281	03609	4210332217	103		J B TUBB F #17L	SAND HILLS (TUBB)	58.0	EL PASO NATURAL GAS
810274	03560	4210332217	103		J B TUBB F #17U	SAND HILLS (MCKNIGHT)	36.0	EL PASO NATURAL GAS
810161	00125	4200331709	108		J E PARKER A/C 9 #88	THREE BAR (YATES)	11.0	NORTHERN NATURAL GAS
810177	01065	4224730913	102		MRS A M K BASS 42-D (09474)	KELSEY DEEP (ZONE 19-A S	6.0	TRUNKLINE GAS CO
810273	03559	4216531734	103		ROBERTSON CLFK UNIT #2502	ROBERTSON N (CLFK 7100)	16.0	PHILLIPS PETROLEUM C
810272	03558	4216531773	103		ROBERTSON CLFK UNIT #4902	ROBERTSON N (CLFK 7100)	16.0	PHILLIPS PETROLEUM C
810178	01130	4226130411	102		SOGU 138-D (09481)	SARITA (16-C N)	730.0	NATL GAS P/L CO OF A
810276	03563	4246131496	103		VINA VANCE #1	SPRABERRY (TREND AREA)	41.0	EL PASO NATURAL GAS
-F WILLIAM CARR					RECEIVED: 11/10/80 JA: TX			
810034	16458	4229732013	102		GEORGE WEST ESTATE NO 3-L	GEORGE WEST WEST (8500)	120.0	TEXAS EASTERN TRANSM
810034	16458	4229732013	103		GEORGE WEST ESTATE NO 3-L	GEORGE WEST WEST (8500)	120.0	TEXAS EASTERN TRANSM
810035	16459	4229732013	102		GEORGE WEST ESTATE NO 3-U	GEORGE WEST WEST (8300)	700.0	TEXAS EASTERN TRANSM
810035	16459	4229732013	103		GEORGE WEST ESTATE NO 3-U	GEORGE WEST WEST (8300)	700.0	TEXAS EASTERN TRANSM
-FISHER-WERR INC					RECEIVED: 11/10/80 JA: TX			
810266	03500	4235330883	103		GUEST A NO 3	ARLEDGE (PENN SAND)	150.0	SUN GAS CO
-FORCED GAS CO					RECEIVED: 11/10/80 JA: TX			
810171	00829	4228500000	108		FOERSTER JULIUS WELL NO 1	VIENNA (8400)	13.0	TEXAS EASTERN TRANSM
-GETTY OIL COMPANY					RECEIVED: 11/10/80 JA: TX			
810286	03632	4235300000	108		BOYD B NO 12	DORA NORTH	8.4	SID RICHARDSON CARBO
810279	03594	4237100000	103		MENDEL ESTATE 36 #4	GOMEZ (WOLFCAMP)	264.0	VALERO TRANSMISSION
810280	03598	4237100000	103		MENDEL 24 #1	GOMEZ (WOLFCAMP)	18.0	VALERO TRANSMISSION
810264	03498	4228531455	103		ROBERT MELNAR WELL #1	WORD	380.0	VALERO TRANSMISSION
810247	03335	4249531118	107		UNIVERSITY 7-21 NO 1	WILDCAT	548.0	NATURAL GAS PIPELINE
-GILLRING OIL CO					RECEIVED: 11/10/80 JA: TX			
810223	02792	4235500000	108		ANDERSON L 3 (34184)	AGUA DULCE /5450/ FIELD	21.0	TENNESSEE GAS PIPELI
-GULF COAST MINERALS CO INC					RECEIVED: 11/10/80 JA: TX			
810028	14996	4213132937	102		RUBEN SMITHWICK NO 1	JAM (1820)	720.0	UNITED GAS PIPELINE
-GULF OIL CORPORATION					RECEIVED: 11/10/80 JA: TX			
810043	17118	4221120081	108		C J COOK #1	COOK - GEM / MORROW UPPE	15.0	CITIES SERVICE GAS C
810155	19716	4223300000	108		C L DIAL ET AL NO 100	PANHANDLE HUTCHINSON	0.3	PHILLIPS PETROLEUM C
810152	19712	4223300000	108		C L DIAL ET AL NO 103	PANHANDLE HUTCHINSON	3.0	PHILLIPS PETROLEUM C
810154	19714	4223300000	108		C L DIAL ET AL NO 107	PANHANDLE HUTCHINSON	0.6	PHILLIPS PETROLEUM C
810122	19672	4223300000	108		C L DIAL ET AL NO 122	PANHANDLE HUTCHINSON	1.0	PHILLIPS PETROLEUM C
810121	19671	4223300000	108		C L DIAL ET AL NO 123	PANHANDLE HUTCHINSON	1.0	PHILLIPS PETROLEUM C
810119	19669	4223300000	108		C L DIAL ET AL NO 124	PANHANDLE HUTCHINSON	1.0	PHILLIPS PETROLEUM C
810126	19677	4223300000	108		C L DIAL ET AL NO 131	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810091	19634	4223300000	108		C L DIAL ET AL NO 138	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810090	19633	4223300000	108		C L DIAL ET AL NO 139	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810089	19632	4223300000	108		C L DIAL ET AL NO 141	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810088	19631	4223300000	108		C L DIAL ET AL NO 152	PANHANDLE HUTCHINSON	2.0	PHILLIPS PETROLEUM C
810125	19676	4223300000	108		C L DIAL ET AL NO 156	PANHANDLE HUTCHINSON	3.0	PHILLIPS PETROLEUM C
810085	19628	4223300000	108		C L DIAL ET AL NO 166	PANHANDLE HUTCHINSON	1.7	PHILLIPS PETROLEUM C
810084	19627	4223300000	108		C L DIAL ET AL NO 170	PANHANDLE HUTCHINSON	2.0	PHILLIPS PETROLEUM C
810123	19673	4223300000	108		C L DIAL ET AL NO 181	PANHANDLE HUTCHINSON	1.7	PHILLIPS PETROLEUM C

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD		PURCHASER
810s153	19713	4223300000	108		C L DIAL ET AL NO 183	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s142	19699	4223300000	108		C L DIAL ET AL NO 184	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s124	19675	4223300000	108		C L DIAL ET AL NO 202	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s086	19629	4223300000	108		C L DIAL ET AL NO 203	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s087	19630	4223300000	108		C L DIAL ET AL NO 204	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s145	19700	4223300000	108		C L DIAL ET AL NO 212	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s146	19701	4223300000	108		C L DIAL ET AL NO 221	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s147	19702	4223300000	108		C L DIAL ET AL NO 222	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s148	19703	4223300000	108		C L DIAL ET AL NO 223	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s149	19704	4223300000	108		C L DIAL ET AL NO 225	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s150	19705	4223300000	108		C L DIAL ET AL NO 237	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s120	19670	4223300000	108		C L DIAL ET AL NO 238	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s140	19694	4223300000	108		C L DIAL ET AL NO 239	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s141	19698	4223300000	108		C L DIAL ET AL NO 240	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s118	19668	4223300000	108		C L DIAL ET AL NO 25	PANHANDLE HUTCHINSON		1.5	PHILLIPS PETROLEUM C
810s143	19696	4223300000	108		C L DIAL ET AL NO 257	PANHANDLE HUTCHINSON		2.0	PHILLIPS PETROLEUM C
810s144	19697	4223300000	108		C L DIAL ET AL NO 263	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s102	19650	4223300000	108		C L DIAL ET AL NO 266	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s103	19651	4223300000	108		C L DIAL ET AL NO 268	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s104	19652	4223300000	108		C L DIAL ET AL NO 269	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s151	19711	4223360082	108		C L DIAL ET AL NO 272	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s117	19667	4223300000	108		C L DIAL ET AL NO 30	PANHANDLE HUTCHINSON		1.5	PHILLIPS PETROLEUM C
810s116	19666	4223300000	108		C L DIAL ET AL NO 36	PANHANDLE HUTCHINSON		1.5	PHILLIPS PETROLEUM C
810s115	19664	4223300000	108		C L DIAL ET AL NO 39	PANHANDLE HUTCHINSON		1.5	PHILLIPS PETROLEUM C
810s092	19635	4223300000	108		C L DIAL ET AL NO 4	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s114	19663	4223300000	108		C L DIAL ET AL NO 40	PANHANDLE HUTCHINSON		3.0	PHILLIPS PETROLEUM C
810s113	19662	4223300000	108		C L DIAL ET AL NO 42	PANHANDLE HUTCHINSON		3.0	PHILLIPS PETROLEUM C
810s112	19661	4223300000	108		C L DIAL ET AL NO 43	PANHANDLE HUTCHINSON		2.0	PHILLIPS PETROLEUM C
810s111	19660	4223300000	108		C L DIAL ET AL NO 44	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s110	19659	4223300000	108		C L DIAL ET AL NO 45	PANHANDLE HUTCHINSON		1.7	PHILLIPS PETROLEUM C
810s109	19658	4223300000	108		C L DIAL ET AL NO 48	PANHANDLE HUTCHINSON		1.0	PHILLIPS PETROLEUM C
810s108	19657	4223300000	108		C L DIAL ET AL NO 49	PANHANDLE HUTCHINSON		1.0	PHILLIPS PETROLEUM C
810s127	19678	4223300000	108		C L DIAL ET AL NO 50	PANHANDLE HUTCHINSON		1.0	PHILLIPS PETROLEUM C
810s101	19648	4223300000	108		C L DIAL ET AL NO 62	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s100	19647	4223300000	108		C L DIAL ET AL NO 63	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s099	19646	4223300000	108		C L DIAL ET AL NO 64	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s098	19644	4223300000	108		C L DIAL ET AL NO 67	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s107	19656	4223300000	108		C L DIAL ET AL NO 68	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s097	19643	4223300000	108		C L DIAL ET AL NO 70	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s096	19642	4223300000	108		C L DIAL ET AL NO 71	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s095	19641	4223300000	108		C L DIAL ET AL NO 73	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s094	19640	4223300000	108		C L DIAL ET AL NO 74	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s093	19639	4223300000	108		C L DIAL ET AL NO 75	PANHANDLE HUTCHINSON		0.7	PHILLIPS PETROLEUM C
810s106	19655	4223300000	108		C L DIAL ET AL NO 79	PANHANDLE HUTCHINSON		3.0	PHILLIPS PETROLEUM C
810s105	19654	4223300000	108		C L DIAL ET AL NO 80	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s139	19693	4223300000	108		C L DIAL ET AL NO 81	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s138	19691	4223300000	108		C L DIAL ET AL NO 82	PANHANDLE HUTCHINSON		0.7	PHILLIPS PETROLEUM C
810s137	19690	4223300000	108		C L DIAL ET AL NO 83	PANHANDLE HUTCHINSON		0.1	PHILLIPS PETROLEUM C
810s136	19688	4223300000	108		C L DIAL ET AL NO 85	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s135	19687	4223300000	108		C L DIAL ET AL NO 86	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s134	19686	4223300000	108		C L DIAL ET AL NO 87	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s133	19685	4223300000	108		C L DIAL ET AL NO 88	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C
810s132	19684	4223300000	108		C L DIAL ET AL NO 89	PANHANDLE HUTCHINSON		0.3	PHILLIPS PETROLEUM C

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
810s131	j9682	4223300000	108	C L DIAL ET AL NO 93	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810s130	j9681	4223300000	108	C L DIAL ET AL NO 94	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810s129	j9680	4223300000	108	C L DIAL ET AL NO 97	PANHANDLE HUTCHINSON	0.1	PHILLIPS PETROLEUM C
810s128	j9679	4223300000	108	C L DIAL ET AL NO 98	PANHANDLE HUTCHINSON	1.0	PHILLIPS PETROLEUM C
*810s289	p3747	4248300000	108	CLARK J D C #2	PANHANDLE EAST	10.0	TRANSWESTERN PIPE LI
*810s290	p3748	4248300000	108	CLARK J D D #1	PANHANDLE EAST	8.0	TRANSWESTERN PIPE LI
*810s291	p3749	4248300000	108	GARDNER IDA #2	PANHANDLE EAST	2.5	TRANSWESTERN PIPE LI
810s054	j8828	4223300000	108	HAILE /B/ #10	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s055	j8829	4223300000	108	HAILE /B/ #12	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s056	j8830	4223300000	108	HAILE /B/ #13	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s057	j8834	4223300000	108	HAILE /B/ #17	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s048	j8822	4223300000	108	HAILE /B/ #7	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s049	j8823	4223300000	108	HAILE /B/ #8	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s051	j8825	4223300000	108	HAILE /B/ #9	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s047	j8821	4223300000	108	HAILE /C/ #6	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s050	j8824	4223300000	108	HAILE /C/ #8	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s052	j8826	4223300000	108	HAILE /C/ #9	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s066	j8870	4223300000	108	HAILE /D/ #1	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s074	j8878	4223300000	108	HAILE /D/ #10	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s075	j8879	4223300000	108	HAILE /D/ #12	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s076	j8880	4223300000	108	HAILE /D/ #13	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s077	j8881	4223300000	108	HAILE /D/ #14	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s078	j8882	4223300000	108	HAILE /D/ #15	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s067	j8871	4223300000	108	HAILE /D/ #2	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s068	j8872	4223300000	108	HAILE /D/ #3	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s069	j8873	4223300000	108	HAILE /D/ #4	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s070	j8874	4223300000	108	HAILE /D/ #5	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s071	j8875	4223300000	108	HAILE /D/ #6	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s072	j8876	4223300000	108	HAILE /D/ #7	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s073	j8877	4223300000	108	HAILE /D/ #9	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s060	j8860	4223300000	108	HAILE /E/ #1	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s065	j8869	4223300000	108	HAILE /E/ #10	PANHANDLE HUTCHINSON	4.5	GETTY OIL CO
810s059	j8859	4223300000	108	HAILE /E/ #12	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s061	j8861	4223300000	108	HAILE /E/ #2	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s062	j8862	4223300000	108	HAILE /E/ #3	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s063	j8863	4223300000	108	HAILE /E/ #4	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s064	j8864	4223300000	108	HAILE /E/ #5	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s053	j8827	4223300000	108	HAILE A #10	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
810s058	j8835	4217900000	108	HARRAH #8	PANHANDLE HUTCHINSON	3.5	GETTY OIL CO
*810s292	p3753	4248300000	108	KING MYRTLE #1	PANHANDLE GRAY	4.0	GETTY OIL CO
*810s293	p3755	4248300000	108	MASSAY R A D #1	PANHANDLE EAST	11.0	TRANSWESTERN PIPE LI
*810s294	p3756	4248300000	108	MASSAY R A ET AL A #1	PANHANDLE EAST	5.0	TRANSWESTERN PIPE LI
*810s295	p3757	4248300000	108	MASSAY R A ET AL C #1	PANHANDLE EAST	8.0	TRANSWESTERN PIPE LI
*810s296	p3758	4248300000	108	MASSAY R A I & J #2	PANHANDLE EAST	6.0	TRANSWESTERN PIPE LI
810s040	j6927	4206530605	103	S B BURNETT #107	PANHANDLE EAST	8.0	TRANSWESTERN PIPE LI
810s041	j6928	4206530606	103	S B BURNETT NO 108	PANHANDLE CARSON	5.0	PHILLIPS PETROLEUM C
*810s297	p3759	4248300000	108	SITTER G W D #1	PANHANDLE CARSON	5.0	PHILLIPS PETROLEUM C
*810s298	p3760	4248300000	108	SITTER G W G #1	PANHANDLE EAST	6.0	TRANSWESTERN PIPE LI
*810s299	p3761	4248300000	108	WINGO S #2	PANHANDLE EAST	5.0	TRANSWESTERN PIPE LI
*810s300	p3762	4248300000	108	WUESTER RUBY #1	PANHANDLE EAST	9.0	TRANSWESTERN PIPE LI
					PANHANDLE EAST	5.0	TRANSWESTERN PIPE LI
=H & L OPERATING COMPANY				RECEIVED: 11/10/80 JA: TX			
810s208	p2141	4219530706	103	LASATER #1 RRC #86210	HANSFORD (MURROW UPPER)	150.0	PANHANDLE EASTERN PI
=H=M OIL Co				RECEIVED: 11/10/80 JA: TX			
810s217	p2446	4217531324	103	MARY ELIZABETH MARTIN #3	WILDCAT (ABOVE 4000)	100.0	DELHI GAS PIPELINE C
=H E BRYAN				RECEIVED: 11/10/80 JA: TX			
810s165	p0179	4206530682	103	GRIMES NO 1=A	PANHANDLE WEST	180.0	NORTHERN NATURAL GAS
=H L BROWN JR				RECEIVED: 11/10/80 JA: TX			
810s215	p2355	4231732103	103	SLAUGHTER=HANCOCK NO 3; WELL	SULPHUR DRAW (DEAN 8790)	36.5	GETTY OIL CO
=HNG OIL COMPANY				RECEIVED: 11/10/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
810503	316396	4235500000	103		CHAPMAN HEIRS A #44=2 72194	ARNOLD=DAVID N (FRIO LOW	9.0	HOUSTON PIPE LINE CO
810503	316396	4235500000	108		CHAPMAN HEIRS A #44=2 72194	ARNOLD=DAVID N (FRIO LOW	9.0	HOUSTON PIPE LINE CO
810525	323483	4245530314	102		TEMPLE #3 86692	APPLE SPRINGS (GLEN ROSE	37.0	COLUMBIA GAS TRANSMI
810525	323483	4245530314	103		TEMPLE #3 86692	APPLE SPRINGS (GLEN ROSE	37.0	COLUMBIA GAS TRANSMI
=HOOVER & BRACKEN ENERGIES					RECEIVED: 11/10/80 JA: TX			
*810516	320136	4221131047	103		CAMPBELL #1=39	RED DEER CREEK SOUTH (MO	365.0	COLORADO INTERSTATE
=HOUSTON OIL & MINERALS CORPORATION					RECEIVED: 11/10/80 JA: TX			
810521	322323	4238331535	103		ELLEN MCDOWELL NO 2	SPRABERRY (TREND AREA)	0.0	UNION TEXAS PETROLEU
810525	323447	4238331537	103		MERCHANT ESTATE 16 #3	SPRABERRY (TREND AREA)	40.0	UNION TEXAS PETROLEU
=INLAND OCEAN INC					RECEIVED: 11/10/80 JA: TX			
810503	316748	4213100000	102		ROOS #2	LABBE S (WILCOX UP) FIEL	365.0	
810503	316748	4213100000	103		ROOS #2	LABBE S (WILCOX UP) FIEL	365.0	
=JAKE L HAMON					RECEIVED: 11/10/80 JA: TX			
810523	323020	4219931299	102		A R & S BRADLEY FEE #1	BRADLEY S	300.0	SOUTHWEST GATHERING
=JAMES M FORGOTSON					RECEIVED: 11/10/80 JA: TX			
810524	323365	4245930444	103		VERA ROSS ETAL GAS UNIT WELL NO 1	ROSEWOOD (HOSSTON=COTTON	0.3	ADVANCE TRANSPORT IN
=JAY M FLOYD JR & ROBERT C FLOYD					RECEIVED: 11/10/80 JA: TX			
810502	313615	4232900000	103		DAVENPORT #4 07323	CALVIN (DEAN)	0.0	UNION OF TEXAS OIL C
=JENNINGS EXPLORATION CO					RECEIVED: 11/10/80 JA: TX			
810524	323333	4250731079	102		ELAINE SAND OIL UNIT II NO 1 05844	CEBOLLA (3660)	0.0	VALERO TRANSMISSION
=JONES=O'BRYEN INCORPORATED					RECEIVED: 11/10/80 JA: TX			
810519	321460	4207330377	102		S L STOCKTON #1	PERCY WHEELER (TRAVIS PE	548.0	UNITED GAS PIPE LINE
=KERR=MCGEE CORPORATION					RECEIVED: 11/10/80 JA: TX			
810527	323532	4223320759	103		COCKRELL WELL NO 20	PANHANDLE	7.0	GETTY OIL CO
=KILROY CO OF TEXAS INC					RECEIVED: 11/10/80 JA: TX			
810518	321435	4236130306	102		TEMPLE LUMBER CO NO 1	SHANNON (NODOSARIA)	365.0	UNITED TEXAS TRANSMI
=L E WINDHAM					RECEIVED: 11/10/80 JA: TX			
810515	319845	4213500000	108		J E PARKER A (EO) NO 3	HARPER	1.6	PHILLIPS PETROLEUM C
810517	319846	4213500000	108		J E PARKER A (EO) NO 4	HARPER	1.6	PHILLIPS PETROLEUM C
810515	319847	4213500000	108		J E PARKER A (EO) NO 5	HARPER	1.6	PHILLIPS PETROLEUM C
=LADD PETROLEUM CORPORATION					RECEIVED: 11/10/80 JA: TX			
810500	305547	4236731064	103		DURHAM UNIT #2	TOTO	211.7	LONE STAR GAS CO
=MEWBOURNE OIL COMPANY					RECEIVED: 11/10/80 JA: TX			
810523	323089	4229530749	103		PEERY #7 ID #04432	PEERY (MARMATON)	36.0	TRANSWESTERN PIPELIN
=MITCHELL ENERGY CORPORATION					RECEIVED: 11/10/80 JA: TX			
*810508	319417	4229330480	103		ARTHUR CLIFTON GAS UNIT #1 ID# N/A	PERSONVILLE NORTH (CUTTO	100.0	LONE STAR GAS CO
=MOBIL OIL CORP					RECEIVED: 11/10/80 JA: TX			
810503	316275	4200331568	108		LETA JONES NO 4	FUHRMAN/MASCHO	7.1	PHILLIPS PETROLEUM C
=MOBIL PROD TEXAS & NEW MEXICO INC					RECEIVED: 11/10/80 JA: TX			
810523	323135	4217900000	108		BRADFORD UNIT NO 1	PANHANDLE WEST	16.0	NORTHERN NATURAL GAS
810524	323166	4217900000	108		E B REEVES #1	PANHANDLE EAST	20.4	COLTEXO CORP
810523	323090	4221932807	103		NORTH CENTRAL LEVELLAND UNIT #331	LEVELLAND	2.9	AMOCO PRODUCTION CO
810527	323528	4221932805	103		NORTH CENTRAL LEVELLAND UNIT NO 332	LEVELLAND	5.1	AMOCO PRODUCTION CO
810524	323304	4247531981	103		STATE AM NO 1	CAPRITO (DELWARE MIDDLE)	14.0	LONE STAR GAS CO
=PARAFFINE OIL CORP					RECEIVED: 11/10/80 JA: TX			
810522	322757	4205730962	102		P H WELDER D 1=U	KATIE WELDER (L=7)	365.0	SEAGULL PIPELINE COR
810522	322757	4205730962	103		P H WELDER D 1=U	KATIE WELDER (L=7)	365.0	SEAGULL PIPELINE COR
=PENNZOIL PRODUCING COMPANY					RECEIVED: 11/10/80 JA: TX			
810519	321506	4236530976	103		HULL UNIT NO 8=2	CARTHAGE/COTTON VALLEY/	650.0	UNITED GAS PIPE LINE
810526	323499	4236530874	103		LILLY UNIT NO 2=C	CARTHAGE/TRAVIS PEAK	269.0	UNITED GAS PIPE LINE
=PETROLEUM TECHNICAL SERVICE CO					RECEIVED: 11/10/80 JA: TX			
810502	313526	4213533132	103		E F COWDEN 33 NO 1	COWDEN SOUTH	67.9	ODESSA NATURAL CORP
=PETRUS OPERATING CO INC					RECEIVED: 11/10/80 JA: TX			
810519	321527	4224500000	102		GALLAGHER NO 2	WILDCAT FIELD	365.0	
810519	321527	4224500000	103		GALLAGHER NO 2	WILDCAT FIELD	365.0	
=PHILLIPS PETROLEUM COMPANY					RECEIVED: 11/10/80 JA: TX			
810522	322810	4246103650	108		(03913) N PEMBROOK SPRABERRY 79=02	SPRABERRY (TREND AREA)	1.0	NORTHERN NATURAL GAS
810522	322813	4213507567	108		(08461) KLOH=B NO 11	COWDEN NORTH (DEEP)	3.0	AMOCO PRODUCTION CO

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8105225	02811	4213520224	108		(21556) N PENWELL NO 103	PENWELL	4.0	EL PASO NATURAL GAS
8105226	02812	4213520046	108		(21556) N PENWELL NO 89	PENWELL	3.0	EL PASO NATURAL GAS
8105305	07210	4219530301	108		HITCH F #3	MITCHLAND W	18.0	PANHANDLE EASTERN PI
8105042	16937	4219530301	103		HITCH F NO 3	MITCHLAND W	180.0	PANHANDLE EASTERN PI
*8105288	03684	4234100000	108		MOORE 66 #2	PANHANDLE - MOORE	8.4	EL PASO NATURAL GAS
*8105303	03857	4242100000	108		STARNES G NO 1	TEXAS HUGOTON	20.0	EL PASO NATURAL GAS
8105207	02056	4213533274	103		VINA BAGLEY NO 19	FOSTER	8.0	ODESSA NATURAL GASOL
-QUINTIN LITTLE CO					RECEIVED: 11/10/80 JA: TX			
8105170	00811	4214903041	102		BALD EAGLE A-#1	GIDDINGS (AUSTIN CHALK -	0.0	PHILLIPS PETROLEUM C
8105170	00811	4214903041	103		BALD EAGLE A-#1	GIDDINGS (AUSTIN CHALK -	0.0	PHILLIPS PETROLEUM C
8105079	09300	4214930357	102		VICTORY HILLS UNIT #2	GIDDINGS (AUSTIN CHALK)	0.0	RESERVE GAS SYSTEMS
8105079	09300	4214930357	103		VICTORY HILLS UNIT #2	GIDDINGS (AUSTIN CHALK)	0.0	RESERVE GAS SYSTEMS
-R C BLACK					RECEIVED: 11/10/80 JA: TX			
8105164	00162	4249500000	108		BROWN & ALTMAN A/C #16	EMPEROR	14.5	WEST TEXAS GATHERING
-R E KIBBE					RECEIVED: 11/10/80 JA: TX			
8105044	18020	4213133625	103		H A & H E MOOS #1-A	LA HUERTA NW (NEW YEARS)	182.5	VALLEY GAS TRANSMISS
-R H SIEGFRIED INC					RECEIVED: 11/10/80 JA: TX			
8105268	03507	4249700000	108		R L MORRIS -A- (06978) NO 11	CHICO WEST (CADDO CONGL	0.0	NATURAL GAS PIPELINE
8105269	03508	4249700000	108		R L MORRIS -A- (06978) NO 14	CHICO WEST (CADDO CONGL	0.0	NATURAL GAS PIPELINE
8105267	03505	4249700000	108		R L MORRIS -A- (06978) NO 5	CHICO WEST (CADDO CONGL	0.0	NATURAL GAS PIPELINE
-R L BURNS CORP					RECEIVED: 11/10/80 JA: TX			
8105159	19862	4243530168	108		L W HICKS #1	SAWYER (CANYON) FIELD	6.9	LOVACA GATHERING CO
-RICHARD & NEVILE BACK					RECEIVED: 11/10/80 JA: TX			
8105287	03682	4217900000	108		KATE MORGAN ID #26457 #2	EAST PANHANDLE	15.0	PHILLIPS PETROLEUM
-ROBERT L TIGRETT ET AL	OIL & GAS CO				RECEIVED: 11/10/80 JA: TX			
8105005	05539	4217900000	108		WEBB A WELL #13 RRC #01593	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105013	05786	4217900000	108		WEBB A WELL #14 RRC #01718	PANHANDLE FIELD	1.3	PHILLIPS PET CO
8105015	05788	4217900000	108		WEBB A WELL #15 RRC #01718	PANHANDLE FIELD	1.3	PHILLIPS PETRO CO
8105014	05787	4217900000	108		WEBB A WELL #16 RRC #01718	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105004	05538	4217900000	108		WEBB A WELL #17 RRC #01593	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105010	05782	4217900000	108		WEBB A WELL #24 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PETROLEUM C
8105011	05784	4217900000	108		WEBB A WELL #25 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105016	05799	4217900000	108		WEBB A WELL #26 RRC #01718	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105012	05785	4217900000	108		WEBB A WELL #28 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PET CO
8105009	05635	4217900000	108		WEBB A WELL #3 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105007	05633	4217900000	108		WEBB A WELL #5 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105008	05634	4217900000	108		WEBB A WELL #8 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PETR CO
8105017	05800	4217900000	108		WEBB A WELL #9 RRC #00558	PANHANDLE FIELD	1.3	PHILLIPS PETROLEUM C
-ROBERT M WYNNE					RECEIVED: 11/10/80 JA: TX			
8105209	02197	4215100000	103		COX #1	CLAYTONVILLE CANYON SAND	0.0	
-RODMAN PETROLEUM CORP					RECEIVED: 11/10/80 JA: TX			
8105301	03773	4210500000	108		ADA PIERCE NO 1	V I P (CLEARFORK)	13.0	NORTHERN NATURAL GAS
-SAMEDAN OIL CORPORATION					RECEIVED: 11/10/80 JA: TX			
8105168	00593	4222530301	103		E FT TRINIDAD DEXTER C UT #5-2	EAST FORT TRINIDAD	110.0	LONE STAR GAS CO
-SHELL OIL CO					RECEIVED: 11/10/80 JA: TX			
8105232	03030	4242731364	103		JUDD ESTATE-STATE NO 8	LACOPITA (VICKSBURG Z)	36.5	TENNESSEE GAS PIPELI
8105233	03033	4238300000	108		RICKER 25 #2	SPRABERRY TREND	11.0	EL PASO NATURAL GAS
-SOUTHLAND ROYALTY CO					RECEIVED: 11/10/80 JA: TX			
8105188	01240	4243500000	108		SHURLEY RANCH A #1	SHURLEY RANCH	18.0	EL PASO NATURAL GAS
8105160	00000	4210300000	108		SOUTHLAND A #1	ATAPCO	0.1	PGP GAS PRODUCTS INC
-SOUTHWEST EXPLORATION INC					RECEIVED: 11/10/80 JA: TX			
8105180	01132	4218100000	103		KREAGER NO 1	RIFENBURG 9400 DAVIS 910	80.0	CHEVRON USA INC
-SUN OIL COMPANY (DELAWARE)					RECEIVED: 11/10/80 JA: TX			
8105031	16192	4218300000	108		C BROWN NO 13	EAST TEXAS	0.4	MOBIL OIL CORP
8105811	02272	4208130637	103		CENTRAL NATIONAL BANK A NO 9	LYGAY	57.0	LONE STAR GAS CO
8105237	03116	4210500000	108		NAN D GRIMMER NO 1	OZONA (CANYON SAND)	11.0	NORTHERN NATURAL GAS
8105203	01815	4213500000	108		PAUL MOSS UNIT WELLS NO 100	COWDEN SOUTH	1.5	ODESSA NATURAL CORP
8105204	01816	4213500000	108		PAUL MOSS UNIT WELLS NO 98	COWDEN SOUTH	1.5	ODESSA NATURAL CORP
8105219	02669	4239131331	103		THOMAS OCONNOR NO 6	GRETA (4400)	40.0	UNITED TEXAS TRANSMI

JD NO	DA DKT	API NO	SEC U	WELL NAME	FIELD NAME	PROD	PURCHASER
*TEXAS OIL & GAS CORP				RECEIVED: 11/10/80 JA: TX			
8105037	16570	4210300000	103	KIPP #1	SANDHILLS (JUDKINS)	63.0	WARREN PETROLEUM
8105176	20998	4245930437	102	WALKER J #1	SAND HILL (COTTON VALLEY	182.0	
8105176	20998	4245930437	103	WALKER J #1	SAND HILL (COTTON VALLEY	182.0	
*TOLTEC OIL AND GAS INC				RECEIVED: 11/10/80 JA: TX			
8105036	16466	4229530623	103	HAMKER NO 644-1	NORTHRUP/CLEVELAND	282.0	NORTHERN NATURAL GAS
*TRANSCONTINENTAL OIL CORPORATION				RECEIVED: 11/10/80 JA: TX			
8105228	22839	4236531031	102	WILLIAMS NO 1 - 85896	CARTHAGE (COTTON VALLEY)	146.0	UNITED GAS PIPE LINE
8105228	22839	4236531031	103	WILLIAMS NO 1 - 85896	CARTHAGE (COTTON VALLEY)	146.0	UNITED GAS PIPE LINE
*TRAVELERS OIL CO				RECEIVED: 11/10/80 JA: TX			
8105018	06460	4217900000	108	PERKINS #1 03979	PANHANDLE-GRAY COUNTY	8.4	PHILLIPS PETROLEUM C
*TRAVELERS OIL CO G-V PROJECT				RECEIVED: 11/10/80 JA: TX			
*8105023	08136	4217900000	108	MILTON #3	EAST PANHANDLE	0.0	COLTEXO CORP
*TUCKER DRILLING COMPANY INC				RECEIVED: 11/10/80 JA: TX			
*8105255	23464	4223531509	103	MEZZIE CARSON TRUSTEE #6	CHRISTI (CANYON 6800)	190.0	CRA INC
*U E ROGERS				RECEIVED: 11/10/80 JA: TX			
8105234	23034	4232700000	108	U E ROGERS NO 1A	TUCKMAR (CROSS CUT)	18.0	SUN GAS CO
*U S OPERATING INC				RECEIVED: 11/10/80 JA: TX			
8105221	22727	4228730482	103	DARLENE NO 1 (LEASE 12518)	GIDDINGS (AUSTIN CHALK)	784.7	PGP GAS PRODUCTS INC
8105230	23016	4228730543	102	LUCY NO 1	GIDDINGS (AUSTIN CHALK)	100.0	PGP GAS PRODUCTS INC
*W A MONCRIEF JR				RECEIVED: 11/10/80 JA: TX			
8105019	06709	4236731170	103	MONCRIEF RANCH NO 5	WEATHERFORD (STRAWN)	317.0	SOUTHWESTERN GAS PIP
*WALLACE OIL & GAS INC				RECEIVED: 11/10/80 JA: TX			
8105020	07710	4242173947	103	WALLACE OIL & GAS INC #1 ROSS	TEXAS HUGOTON	84.0	TRANSWESTERN PIPELIN
*WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED: 11/10/80 JA: TX			
8105175	20976	4210332137	103	P J LEA ET AL NO 106	LEA (SAN ANDRES)	17.0	EL PASO NATURAL GAS
*WEFCO INC				RECEIVED: 11/10/80 JA: TX			
8105027	11695	4217900000	108	J S BAIRD WELL #3	PANHANDLE GRAY COUNTY	14.0	CITIES SERVICE OIL C

OTHER PURCHASERS VOLUME NO 322

8105023	TRANSWESTERN P L CO
8105080	TEXAS EASTERN TRANS CO
8105081	SOUTHWESTERN GAS P L
8105162	NORTHERN NATURAL GAS CO
8105190	COLTEXO CORP
8105191	COLTEXO CORP
8105192	COLTEXO CORP
8105197	AMOCO PRODUCTION CO
8105253	EL PASO NATURAL GAS CO
8105255	NORTHERN NAT GAS CO
8105288	PANHANDLE EASTERN P L CO
8105289	HIGH PLAINS NATURAL GAS CO
8105290	HIGH PLAINS NATURAL GAS CO
8105291	HIGH PLAINS NATURAL GAS CO
8105292	HIGH PLAINS NATURAL GAS CO
8105293	HIGH PLAINS NATURAL GAS CO
8105294	HIGH PLAINS NATURAL GAS CO
8105295	HIGH PLAINS NATURAL GAS CO
8105296	HIGH PLAINS NATURAL GAS CO
8105297	HIGH PLAINS NATURAL GAS CO
8105298	HIGH PLAINS NATURAL GAS CO
8105299	HIGH PLAINS NATURAL GAS CO
8105300	HIGH PLAINS NATURAL GAS CO
8105303	PANHANDLE EASTERN P L CO

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 11, 1980.

Please reference the FERC Control Number (JD No) n all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36799 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-42-000]

Florida Gas Transmission Co., Application

November 19, 1980.

Take notice that on November 3, 1980, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP81-42-000 an application pursuant to Section 7 of the Natural Gas Act and paragraphs (c), (e) and (g) of Section 157.7 of the Regulations thereunder (18 CFR 157.7(c), 157.7(e) and 157.7(g)) (1) for a certificate of public convenience and necessity authorizing the construction, during the period, January 7, 1981, through December 31, 1981, and operation of facilities to make miscellaneous rearrangements on its system; (2) for permission and approval to abandon, during the period, January 7, 1981, through December 31, 1981, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers; and, (3) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for the period, January 7, 1981, through December 31, 1981, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application pursuant to § 157.7(c) of the Regulations is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant. Applicant stated that the total cost of the proposed miscellaneous rearrangements would not exceed $390,000 which would be financed from internally generated funds.

The states purpose of this budget-type application pursuant to § 157.7(e) of the Regulations is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales measuring, regulating, and related facilities. Applicant states that it would abandon service and facilities only when deliveries to any one direct sales customer would not have exceeded 100,000 Mcf of natural gas during the last year of service.

The application further states that Applicant would not abandon any service unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has no further need for service would be filed with the Commission.

The stated purpose of this budget-type application pursuant to § 157.7(g) of the Regulations is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application. Applicant states that the total cost of proposed construction and abandonment would not exceed $4,000,000 and no single project would exceed $970,000. Applicant states said cost would be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates and permission and approval for the proposed abandonments are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36803 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3473]

Jack M. Fuls; Application for Preliminary Permit

November 18, 1980.

Take notice that Mr. Jack M. Fuls of Portland, Oregon (Applicant) filed on September 16, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3473 to be known as Bend Diversion Dam Power Project located on the Deschutes River in Deschutes County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jack M. Fuls, 4420 N.W. Malhuer Ave., Portland, Oregon 97229, or Mr. Erling T. Soli, Haner, Ross & Sporseen, Inc., 220 S.W. Alder St., Portland, Oregon, 97204. Any person who wishes to file a

response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (a) the existing 35-foot high, 184-foot long concrete gravity Bend Diversion Dam across the Deschutes River; (b) an existing intake structure within the east abutment of the diversion dam; (c) an existing 300-foot long canal section; (d) a 300-foot long penstock; (e) a powerhouse containing two generating units with a rated capacity of 1,250 kW each (total capacity for the project: 2,500 kW); and (f) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 6.9 million kWh.

Purpose of Project—Project energy would be sold to a local utility company.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $40,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for licenses while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1)980).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3473. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36795 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-568]

Kanawha Valley Power Co.; Order Granting Rehearing for Further Consideration

Issued: November 19, 1980.

On July 31, 1980, Kanawha Valley Power Company (Kanawha) submitted a proposed increase in rates for the sale of power to its parent company, Appalachian Power Company (Appalachian). The proposed rates provided for increased revenues of approximately $570,498 for the twelve-month period ending December 31, 1980. Kanawha requested an effective date of October 1, 1980, for the revised rates. By order issued September 30, 1980, the Commission accepted the rates for filing and suspended them for five months to become effective March 1, 1981, subject to refund. No petitions to intervene were received in response to public notice of the filing.

On October 20, 1980, pursuant to § 1.34 of the Commission's regulations, Kanawha filed an application seeking reconsideration of the Commission's imposition of a five month suspension. Kanawha requested that the Commission Review its determination regarding the appropriate effective date in light of a settlement in principle which Kanawha expected to formalize and file with the Commission.

On October 24, 1980, Kanawha filed an offer of settlement under § 1.18(e) of the regulations. The settlement proposal has been executed by both Kanawha and its sole customer under the proposed rates. The settlement offer, which is predicated on an effective date of November 1, 1980, would reduce the proposed rate increase by approximately $106,382, for the test period.

In order to afford additional time for consideration of the application for rehearing in light of the proposed settlement, we shall grant rehearing for the limited purpose of further consideration. This also will enable the Commission to make an informed evaluation of the settlement offer and any comments which may be filed. Under § 1.34(d) of the Commission's regulations, no answers to the application for rehearing will be entertained since this order does not

grant rehearing on any substantitive issues.

The Commission orders:

(A) Rehearing of Kanawha's application for rehearing is hereby granted for the limited purpose of further consideration.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-36804 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51174; TSH FRL 1682-2]

Certain Chemicals, Premanufacture Notices

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 six PMN's and provides a summary of each.

DATES: Written comments by December 26, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460, (202-426-3936).

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 505444-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 December 26, 1980, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 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-51174]" 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 legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: November 18, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-295

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period.

January 25, 1981.

Manufacturer's Identity.

Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Manufacturing site—Northeast U.S.

Specific Chemical Identity.

Claimed confidential business information. Generic name provided: Disubstitutednitrobenzene. *Use.* Chemical intermediate.

Production Estimates.

The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting point—<0°C.
Density—>1.1 gm/cc.

Vapor pressure—Betwen 10 and 100 torr at 87°C.

Boiling point—>200°C.

Toxicity Data.

No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (unit: mg/m³)	
			Hours/day	Days/year	Average	Peak
Manufacture	Dermal, Inhalation.	[1]18	16	250	1–10	10–100
Processing	Dermal, Inhalation.	[1]21	16	250	1.10	10–100

[1] Total all shifts.

Disposal. The manufacturer states that less than 60 kg of the substance will be released to the environment and that all liquid and solid wastes generated, apart from wastewater streams approved for discharge into the publicly owned treatment plants (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

PMN 80–296.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 25, 1981.

Manufacturer's Identity. Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Manufacturing site—Northeast U.S.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Ethyl, substituted, (((sulfopropyl) heteropolycyclic)methyl) alkenyl heteropolycycle.

Use. Claimed confidential business information. Generic information provided: The manufacturer states that the new substance will be produced and processed in a way that will release less than 50 kg of the substance to the environment per year; that the end-use will involve incorporation of the chemical into consumer article.

Production Estimates. The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

Physical/Chemical Properties. Melting point is >100°C.

Toxicity Data. No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (unit: mg/m³)	
			Hours/day	Days/year	Average	Peak
Manufacture	Inhalation, Dermal.	[1]3	8	250	0–1	0–1
Processing	Inhalation, Dermal.	[1]28	24	250	0–1	0–1
Use	Inhalation, Dermal.	[1]25	24	250	0–1	0–1

[1] Total all shifts.

Environmental Release/Disposal.

Manufacture:

Media—Amount of chemical release (kg/yr).
Air—<10.
Land—<10–100.
Water—<10.

The manufacturer states that: Wastes generated, apart from those waste-water streams approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery; waste-water streams are treated in an on-site waste treatment plant before release to the POTW, including floculation and clarification.

PMN 80–297

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 25, 1981.

Manufacturer's Indentity. Claimed confidential business information. Generic information provided:

Annual Sales—In excess $500 million.

Manufacturing site—Northeast U.S.

Specific Chemical Indentity. Claimed confidential business information. Generic name provided. Ethyl, substituted, methylheteropolycycle tosylate.

Use. Chemical intermediate.

Production Estimates. The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

Physical/Chemical Properties. Melting point is > 100° C.

Toxicity Data. No data were submitted

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (unit: mg/m³)	
			Hours/day	Days/year	Average	Peak
Manufacture	Inhalation, Dermal.	[1] 3	8	250	0–1	0–1
Processing	Inhalation, Dermal.	[1] 3	8	250	0–1	0–1

[1] Total all shifts.

Environmental Release/Disposal. The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated, apart from those waste-water streams approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

PMN 80–298.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period.

January 25, 1981.

Manufacturer's Identity.

Claimed confidential business information. Generic name provided: Substituted, methylheteropolycycle.

Use.

Chemical intermediate.

Production Estimates.

The manufacturer estimates that 25–100 kg of the new substance will be produced during the first three years.

Physical/Chemical Properties.

Vapor pressure—Between 1 and 10 torr at 83°C.

Density—>1.0 gm/cc.

Toxicity Data.

No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (unit: mg/m³)	
			Hours/day	Days/year	Average	Peak
Manufacture	Inhalation, dermal.	[1] 3	8	250	0–1	0–1
Processing	Inhalation, dermal.	[1] 3	8	250	0–1	0–1

[1] Total all shifts

Environmental Release/Disposal.

The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated, apart from those wastewater streams approved for discaharge into the POTW will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemicaly secure landfill, or for treatment or recovery.

PMN 80–299.

The following summary is taken from data submitted by the importer in the PMN.

Close of Review Period.

January 25, 1981.

Importer's Identity.

Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Specific Chemical Identity.

Claimed confidential business information. Generic name provided: Disubstituted benzene.

Use.

Chemical intermediate.

Import Estimates.

The importer estimates that 25–100 kg of the new substance will be imported during each of the first three years.

Physical/Chemical Properties

Density—1.1.

Melting point—<0°C.

Boiling point—Between 50°C and 100°C.

Toxicity Data.

No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (unit: mg/m³)	
			Hours/day	Days/year	Average	Peak
Processing	Dermal; inhalation.	[1] 18	16	250	1–10	10–100

[1] Total all shifts.

Environmental Release/ Disposal.

The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated by this processing, apart from those waste-water streams which are approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

PMN 80–300

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period.

January 25, 1981. Manufacturer's Identity. Claimed confidential business information. Generic information provided:

Annual Sales—In excess of $500 million.

Manufacturing site—Northeast U.S.

Specific Chemical Identity.

Claimed confidential business information. Generic name provided: Bis(Nitro, substituted-phenyl) substituent.

Use.

Chemical intermediate.

Production Estimates.

The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

Physical/Chemical Properties.

Melting point is>100°C.

Toxicity Data.

No data were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (unit: mg/m³)	
			Hours/day	Days/year	Average	Peak
Manufacture	Inhalation, dermal.	Site	Dependent		1–10	10–100
Processing	Inhalation, dermal.	Site	Dependent		1–10	10–100

Environmental Release/Disposal.

The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated, apart from those waste-water streams approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

[FR Doc. 80-36846 Filed 11-25-80; 8:45 am]
BILLING CODE 6560-31-M

[OPP-180524; PH-FRL 1682-3]

Connecticut; Issuance of Specific Exemption for Fenvalerate on Cabbage and Cauliflower

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted permission to the Connecticut Department of Environmental Protection (hereafter referred to as the "Applicant") to use fenvalerate to control the cabbage looper and cabbageworm on 2,000 acres of cabbage and cauliflower in Connecticut. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS–767), Office of Pesticide Programs, Evironmental Protection Agency, Rm: E–124, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: According to the Applicant, the cabbage looper is a serious economic pest of commercially produced cabbage. The cabbage looper is the most difficult cabbage pest to control, and occurs annually in destructive numbers. Effective control is needed throughout the season since poor control during any portion resulst in more adults to attack before the crop has matured. Connecticut grows cabbage for the fresh market only; therefore, the Applicant states, heads with damage must be destroyed. In addition, Connecticut farmers double-crop their cabbage due to the long growing season for this crop. The Applicant states that heavy infestations are already destroying the first crop. The second crop will be planted with heavy infestations of the pest already present. The Applicant estimates a loss of 14 to 85 percent of the cabbage and cauliflower crops, if an effective control program is not available this season. Use of fenvalerate is expected to cut losses from 80 to 5 percent.

The Applicant states that with the possible exception of Monitor, none of the currently registered compounds has been effective and they are not providing adequate control. While Monitor generally controls the pests., the Applicant reports, it may not be used within 35 days of harvest. This pre-harvest interval is a critical period for cabbage and cauliflower due to the unusually high infestation of the cabbage looper.

The Applicant proposed to apply fenvalerate at a rate of 0.05 to 0.1 pound per acre using the product Pydrin, manufactured by Shell Chemical Company.

EPA had determined that residues of fenvalerate from the proposed use should not exceed 2.0 parts per million (ppm) in cabbage or 1.0 ppm in cauliflower. These levels have been judged by the EPA to be adequate to protect the public health. EPA has also determined that the proposed use should not have an unreasonable adverse effect on the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Pydrin (EPA Reg. No. 201–401) manufactured by Shell Chemical Company may be used.

2. Total acreage of cabbage and cauliflower may not exceed 2,000 acres.

3. A maximum of 1,200 pounds of active ingredient may be applied at a maximum rate of 0.05 to 0.1 pound active ingredient per acre.

4. A maximum of six applications is authorized.

5. A seven-day pre-harvest interval is imposed.

6. All applications must be made by State-certified commercial applicators or by qualified growers.

7. Root crops may not be planted in treated fields for 12 months after application. A 60-day crop rotation restriction is imposed for any other crop.

8. Fenvalerate will be applied by ground equipment in a spray volume of 20 to 100 gallons per acre.

9. Fenvalerate may be applied to cabbage or cauliflower fields when fields are to be harvested within 45-days and a State entomologist has determined that:

a. A major infestation of cabbage loopers or cabbageworms exists.

b. Registered pesticides are not controlling the cabbage looper or cabbageworm.

c. Significant economic losses to cabbage or cauliflower growers will occur.

10. It is recommended that fenvalerate not be applied any closer to fish-bearing fresh waters than 100 feet (at the 0.05 lb. a.i. rate) and 200 feet (at the 0.1 lb. a.i. rate). Application closer than these may result in fish and/or other aquatic organism kills.

11. Participants are to be notified of their obligation to report any and all adverse effects on non-target organisms arising from the use of this product. The EPA shall be immediately informed of any adverse effects resulting from the proposed use.

12. Precautions must be taken to avoid or minimize spray drift to non-target areas.

13. This product is highly toxic to bees exposed to direct treatment or to residues on crops or weeds in bloom on which significant numbers of bees are actively foraging. Protective information may be obtained from the State Cooperative Agriculture Extension Service.

14. Fenvalerate is extremely toxic to fish and aquatic invertebrates. It must be kept out of lakes, streams, ponds, tidal marshes and estuaries. Care must be taken to prevent contamination of water by cleaning of equipment or disposing of waste.

15. Cabbage with residues of fenvalerate not exceeding 2 ppm and cauliflower with residues of fenvalerate not exceeding 1 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, had been advised of this action.

16. Cabbage trimmings from treated fields must not be fed to livestock.

17. All applicable directions, restrictions, and precautions on the product label must be adhered to.

18. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: November 19, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-36847 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-30-M

[OPP-C30193; PH-FRL 1682-6]

Herculite Products, Inc.; Application to Conditionally Register Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Herculite Products, Inc. has submitted an application to conditionally register a pesticide product CHECKMATE, which contains the active ingredient (*Z*)–9–dodecenyl acetate at 6.72 percent and (*E*)–9–dodecenyl acetate at 1.68 percent, which has not been included in any previously registered pesticide product.

DATE: Comments must be received on or before December 26, 1980, and should bear a notation indicating the EPA registration number.

ADDRESS: Written comments to: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–341, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee (202–755–1150).

SUPPLEMENTARY INFORMATION: Herculite Products, Inc., 1107 Broadway, New York, NY 10010, has submitted an application to register the pesticide product CHECKMATE (EPA Registraton No. 8730–EN) containing (*Z*)–9–dodecenyl acetate and (*E*)–9–dodecenyl acetate. The application proposes that the product be conditionally registered to disrupt the mating of western pine shoot borers. The proposed classification is for general use.

This application is made pursuant to the provisions of the Federal insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

Notice of approval or denial of this application will be announced in the **Federal Register**. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

(Sec. 3(c) 86 Stat. 972 (7 U.S.C. 136a))

Dated: November 18, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-36849 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50508; PH-FRL- 1682-7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The designated product manager at the telephone number given in each permit at the following address: Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

40546–EUP–1. Fisons Inc., Two Preston Court, Bedford, MA 01730. This experimental use permit allows the use of 2,300 pounds of the pesticide Norton in the following mixtures: Norton Flowable—Ethofumesate in tank mix with Betanal—Phenmedipham and/or Betanex—Desmedipham for evaluation of postemergence weed control in sugar beets. A total of 2,300 acres are involved. The program is authorized only in the States of California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, and Ohio. The experimental use permit is effective from October 9, 1980 to June 30, 1982. Permanent tolerances have been established for Ethofumesate under 40 CFR 180.345, Phenmedipham under 40 CFR 180.278, and Desmedipham under 40 CFR 180.353. (PM 23, Richard F. Mountfort, Rm. E–351, 202–755–1397).

239–EUP–93. Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804. This experiment use permit allows the use of 3,300 pounds of the insecticide, acephate on almond orchards to evaluate control of the navel orangeworm. A total of 1,000 acres are involved. The program is authorized only in the State of California. The program is effective from October 6, 1980 to October 6, 1981. A temporary tolerance has been established for residues of acephate in or on almonds. (PM 16, William H. Miller, Rm. E–343, 202–426–9458).

524–EUP–53. Monsanto Co., 1101 17th St. NW., Washington, D.C. 20036. This experimental use permit allows the use of 8,745 pounds of the herbicide glyphosate on noncrop, fallow, or State seedbeds prior to planting barley, cotton, oats, rye, and wheat to evaluate control of weeds. A total of 11,660 acres are involved. The program is authorized only in the States of California, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, and Wyoming. This experimental use permit is effective from October 9, 1980 to October 9, 1982. A permanent tolerance has been established for residues of glyphosate in or on the above raw agricultural commodities under 40 CFR 180.364. (PM 25, Robert J. Taylor, Rm. E–359, 202–755–2196).

Persons wishing to review these experimental use permits are referred to the designated product manager cited in each permit. Inquiries regarding these permits should be directed to the persons listed above. It is suggested that interested persons call before visiting the EPA Headquarters office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819 as amended; (21 U.S.C. 136))

Dated: November 14, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-36850 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180525; PH FRL 1682-8]

New Jersey; Issuance of Specific Exemption for Captafol on Eggplants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the New Jersey Department of Environmental Protection (hereafter referred toas the "Applicant") for the use of captafol to control phytophthora blight and fruit rot on a maximum of 1,020 acres of eggplant in New Jersey. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on November 15, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Enviromental Protection Agency, Room E-107, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: The fungus *Phytophthora capsici* causes serve plant loss and fruit rot to eggplants. The Applicant claims that presently registered fungicides, including C-O-C-S, copper tetra calcium oxychloride, and zineb, have been used for many years but have not been effective in control. Ridging has also been used in the past and will provide effective control, but only of the collar rot phase, not the foliage blight and fruit rot phases, according to the Applicant. The Applicant claims that without the use of captafol, direct losses could reach $4, $450,000.

The applicant proposed to use a maximum of 4,500 pounds of the active ingredient (a.i.) captafol. A maximum of 5 applications of Difolatan 4F, applied by State-certified applicators using ground or aerial equipment, was proposed.

EPA has determined that residues of captafol in or on eggplants should not exceed 10 parts per million (ppm) from the proposed use. This residue level has been judged adequate to protect the public health. This use of captafol is not expected to pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 15, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Difolantan 4F, EPA Reg. No. 239-2211, may be used. If an unregistered label is used, it must contain the identical applicable precautions and restrictions which appear on the registered label.

2. A maximum of 5 applications may be made at a rate of 3 pints of formulation (1.5 pounds a.i.) per acre.

3. The first application may be made when the disease is predicted to occur. Subsequent applications may be made at 10-day intervals.

4. No application will be made within 4 days of harvest.

5. A maximum of 1,020 acres of eggplant may be treated.

6. A maximum of 4,500 pounds a.i. may be used.

7. Applications will be made by State-certified applicators using either ground or aerial equipment.

8. Residue levels of captafol and its metabolites from the above application are not expected to exceed 10 ppm in or on eggplants. Eggplants with residues not in excess of this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

9. All applicable precautions, directions, and restrictions on the EPA-registered product label must be adhered to.

10. The EPA must be immediately informed of any adverse effects resulting from the use of captafol in connection with this exemption.

11. The Applicant is responsible for ensuring that all of the provisions of this exemption are followed and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: November 19, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-36851 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-59041; TSH FRL 1682-4]

Modified Polyester Based on Carbomonocyclic Anhydride Alkenediols; 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 applications 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 the application by December 12, 1980. Persons should submit written comments on the applications no later than December 11, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-447, 401 M St., SW, Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Mary Cushmac, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-221, Washington, DC 20460, (202-426-3980).

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. Notices of availability of the Inventory were published in the **Federal Register** on 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.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substances 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 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test 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 forms.

Interested persons may, on or before December 11, 1980, submit to the Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Rm. E–447, 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–59041]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: November 18, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

TM–80–46

The following summary is taken from data submitted by the manufacturer in the test marketing exemption application.

Close of Review Period. December 12, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided:

Annual sales—$500,000,000 and up.

Manufacturing site—Mid-Atlantic.

Standard Industrial Classification Code—285, "Paints, Varnishes, Lacquers, Enamels, and Allied Products".

Specific Chemical Identity. Claimed confidential business information. Generic name provided. Modified polyester based on carbomonocyclic anhydride alkenediols.

Use. Claimed confidential business information. Generic information provided: The manufacturer states that the product involved in the test market will release less than 50 kilograms to the environment and that articles fabricated from the test-market quantity would not be expected to reach consumers but would be used to evaluate the physical characteristics of the final product.

Production Estimates. The manufacturer estimates a production of 5,000 to 6,000 kilograms of the substance for test market pruposes to be produced in five days will be provided four customers for evaluation.

Physical/Chemical Properties.

Acid value (on solids)—20–30.

Viscosity (60% in 2-ethoxyethanol)—I+.

Toxicity Data. The manufacturer submitted data on the acute toxicity of thermal decomposition products of an article containing the new chemical substance. The amount of sample required to produce sufficient smoke resulting in 50% mortality (LC_{50}) under specified conditions was 32.1 g. According to the submitter, the results of the testing method show that the formulation using the new chemical substance is classified "as toxic as wood", under identical test conditions.

Exposure.

Site activity	Exposure route(s)	Maximum number exposed	Maximum duration		Concentration (unit: mg/m ^{3})	
			Hours/day	Days/year	Average	Peak
Manufacture	Skin, eye, inhalation.	6	3	[1]4	0–1	0–1
Typical User (Major Use)	Skin, eye, inhalation.	6	8	2	0–1	0–1

Environment Release/Disposal

[Amount/duration of chemical release (kilogram per year)]

Activity/media—manufacturer media:	
Air	<10
Water	<10
Land	<10
Typical user (major use):	
Air	[1] <10
Water	<10
Land	<10

[1] 16 hours per day; 2 days per year.

[FR Doc. 80-36848 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-01-M

[EN-FRL 1681-6]

Motor Vehicle Recalls Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final agency actions.

SUMMARY: This notice announces final EPA actions taken in conjunction with its motor vehicle recall program.

FOR FURTHER INFORMATION CONTACT: Mary T. Smith, Manufacturers Operations Division (EN–340), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202–472–9425).

SUPPLEMENTARY INFORMATION: Under section 307(b)(1) of the Clean Air Act, judicial review of these actions are available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of November 26, 1980. Under section 307(b)(2) of the Clean Air Act, these final actions and the bases for them, which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these actions.

The following EPA actions regarding the recall of motor vehicles under 40 CFR Part 85 for failure to meet applicable Federal emission standards have become final:

1. In accordance with § 85.1804(a), EPA, in a letter of June 17, 1980, conditionally approved, pending the incorporation of some modifications, a plan submitted by American Motors Corporation (AMC) to remedy the oxides of nitrogen (NOx) nonconformity in its 1976 vehicles with eight cylinder engines. By letter of June 26, 1980, AMC assented to EPA's suggested modifications. Therefore, on June 26, 1980, EPA's approval of AMC's remedial plan for 1976 vehicles with eight cylinder engines became final.

2. In accordance with § 85.1804(a), EPA, in a letter of June 23, 1980, conditionally approved, pending the incorporation of some minor modifications, General Motors' (GM) remedial plan of February 15, 1978, insofar as it remedied, at GM's expense, 1975 Cadillacs of engine family 60V43 with carburetor part number 7045230 (230 carburetor) which would still be within their useful lives (defined under section 202(d) of the Clean Air Act to be 5 years or 50,000 miles, whichever occurs first) at the time of their repair. On July 11, 1980, GM assented to EPA's suggested modifications. Therefore, on July 11, 1980, EPA's approval of GM's remedial plan for 1975 Cadillacs of engine family 60V43 with the 230 carburetor which will still be within their useful lives at the time of their repair became final.

In addition, in its letter of June 23, 1980, EPA disapproved, in accordance with § 85.1804(a), that portion of GM's plan of February 15, 1978, which pertained to 1975 Cadillacs of engine family 60V43 with the 230 carburetor which would be beyond their useful lives at the time of their repair because GM has refused to remedy these vehicles at its expense. GM was also encouraged in this letter to submit a plan within 20 days to remedy, at its expense, 1975 Cadillacs of engine family 60V43 with the 230 carburetor beyond their useful lives. GM did not submit such a plan. Therefore, on July 13, 1980, EPA's disapproval of GM's remedial plan for 1975 Cadillacs of engine family 60V43 with the 230 carburetor which will be beyond their useful lives at the time of their repair became final.

3. On February 14, 1980, the Administrator of EPA ordered the recall of 1977 GM Buick vehicles of engine family 740J2 for failure to meet applicable Federal emission standards. In a letter of August 1, 1980, in accordance with § 85.1804(a), EPA approved a plan submitted by GM to remedy the nonconformities. Therefore, on August 1, 1980, EPA's approval of GM's remedial plan for 1977 GM Buick vehicles of engine family 740J2 became final.

4. On June 20, 1980, the Administrator ordered the recall of 1977 GM vehicles of engine family 730H2U and 1976 and 1977 Cadillac Sevilles for their failure to comply with the applicable Federal emission standard for NOx. Under § 85.1807, a manufacturer who disagrees with the Administrator's finding of nonconformity may file a request for a public hearing with the Administrator within 45 days after the receipt of the Administrator's notification of nonconformity. GM has not made a request for a public hearing and, therefore, the recall orders of June 20, 1980, are now final.

5. In a letter of October 18, 1979, Ford submitted a plan to remedy the carbon monoxide (CO) nonconformity in certain 1977 Granada/Monarch vehicles with 250 cubic inch displacement (CID) engine, calibration 7–29A–R1. After subsequent changes to this plan were agreed upon by EPA and Ford, EPA approved in a letter of September 15, 1980, in accordance with § 85.1804(a), a plan to remedy the CO nonconformity in these 1977 vehicles. Therefore, on September 15, 1980, EPA's approval of Ford's remedial plan for certain 1977 Granada/Monarch vehicles with 250 CID engines, calibration 7–29A–R1 became final.

Dated: November 19, 1980.

Jeffrey Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 80-37001 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-33-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

EEOC Senior Executive Service Performance Review Boards

The purpose of this Notice is to establish Performance Review Boards (PRB) and appoint their membership.

The Civil Service Reform Act of 1978 requires each agency to establish one or more PRB's (Section 4314(c)(1), Chapter 43, Title 5, U.S.C.). The PRB's for the Equal Employment Opportunity Commission (EEOC) will make recommendations to the Chair, this agency's appointing authority, on performance ratings (Sec. 4314 of Chapter 43, Title 5, U.S.C.) and performance awards (Sec. 5384 of Chapter 53, Title 5, U.S.C.) in the Senior Executive Service (SES). The Chair shall issue performance appraisals only after considering PRB recommendations (Sec. 4314(c)(3), Chapter 43, Title 5, U.S.C.). Membership of the PRB must include a majority of SES career appointees when the appraisal of a career SES member is under review (Sec. 4314(c)(5), Chapter 43, Title 5, U.S.C.). Members of a PRB may be from within or outside the agency, Federal employees or not, but generally should be in positions equivalent to SES positions (Sec. II(c) of attachment 1, Federal Personnel Manual System Bulletin 920–9, March 15, 1979).

Effective with this Notice, two PRB's are established for EEOC, one to review performance appraisals of headquarters SES members and one to review field SES members' appraisals. The PRB for headquarters will have two EEOC officials as Alternate Chairpersons (one an SES member, the other not), but with membership from other Federal agencies and outside Government to ensure objectivity and avoid the appearance of any conflict of interest. The Chairperson and members of the PRB for the field will be SES members from the headquarters office of EEOC.

The members of the PRB for headquarters are: Preston David, EEOC Executive Director, and Leroy Clark, EEOC General Counsel (Atlternate Chairperson); Terry Banks, Chief, Opinions and Review, Federal Communications Commission; Charlotte Frank, Deputy Commissioner, Administration on Aging, Department of Health and Human Services; Harriett Jenkins, Director of Equal Opportunity Programs, National Aeronautics and Space Administration; and Luis Alvarez, President, National Urban Fellows, Inc., New York City.

The members of the PRB for the field, all in EEOC, are: Francesta Farmer, Director, Office of Interagency Coordination (Chairperson); Robert Amoruso, Director, Office of Administration; Nestor Cruz, Director, Office of Review and Appeals; James Finney, Associate General Counsel (Trial Division); and Constance Dupre, Associate General Counsel (Legal Counsel Division).

The Performance Review Boards established for EEOC will implement and maintain a program of performance appraisal review, system monitoring, and recommendations for action by the Chair that will ensure consistency, stability, and objectivity in performance appraisal.

Dated: November 19, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 80–36779 Filed 11–25–80; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. A–20]

TV Broadcast Applications Accepted for Filing and Notification of

Cut-Off Date

Released: November 18, 1980.

Cut-Off Date: December 29, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. They will be considered to be ready and available for processing after December 29, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 29, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. no later than the close of business on December 29, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on December 29, 1980.

Applications for new stations may not be filed against any application on the attached list which is designated by an asterisk (*).

Federal Communications Commission.

William J. Tricarico,

Secretary.

*BPCT–800929KN (WATU–TV), Augusta, Georgia, WATU Television, Inc., Channel 26, Increase ERP Vis. to 1,700 kW; reduce HAAT to 1,590 feet.

BPCT–801022KE (new), Anchorage, Alaska, Totem Broadcasting Corporation, Channel 4, ERP: Vis. 42.5 kW; HAAT: −17 feet.

BPET–801023KE (new), Dickinson, North Dakota, Prairie Public Television, Inc., Channel 9, ERP: Vis. 265.5 kW; HAAT: 806 feet.

BPCT–801023KG (new), Irving, Texas, CELA, Inc., Channel 49, ERP: Vis. 1,277.6 kW; HAAT: 695 feet.

BPCT–801023KF (new), Lake Charles, Louisiana, Holt-Robinson Television of Louisiana, Inc., Channel 29, ERP: Vis. 710 kW; HAAT: 700 feet.

BPCT–801021KH (new), Arecibo, Puerto Rico, Arecibo Video Corporation, Channel 54, ERP: Vis. 1.178 kW; HAAT: −219 feet.

BPCT–801021KE (new), San Juan, Puerto Rico, JEM Communications, Inc., Channel 24, ERP: Vis. 4,384 kW; HAAT: 1,161 feet.

BPCT–801010KE (new), Orange Park, Florida, Clay Television, Inc., Channel 25, ERP: Vis. 2,060.63 kW; HAAT: 496 feet.

BPET–801029KF (new), Bellingham, Washington, The University of Washington, Channel 34, ERP: Vis. 1,230 kW; HAAT: 2,376 feet.

BPCT–801024KE (new), Bluefield, West Virginia, Channel 40, Inc., Channel 40, ERP: Vis. 1,110 kW; HAAT: 2,503.6 feet.

[FR Doc. 80–36874 Filed 11–25–80; 8:45 am]

BILLING CODE 6712–01–M

[FCC 80–586; CC Docket No. 80–633]

ITT World Communications Inc., Required Rate of Return; Memorandum Opinion and Order Instituting Investigation

Adopted: October 9, 1980.

Released: November 14, 1980.

1. The Commission has under consideration the results of our audit of the international carriers in Docket No. 20778 (75 FCC 2d 726 (1980)), and financial data for the major International Record Carriers (IRCs) filed in recent reports to the Commission.[1] On the basis of the audit and these data, and other information

[1] The International Record Carriers referred to herein are FTC Communications, Inc. (FTCC), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCAGC), TRT Telecommunications Corp. (TRT), Western Union International, Inc. (WUI) and U.S.-Liberia Radio Corp. (U.S.-Liberia).

set forth below, we are initiating a formal hearing into the required rate of return of ITT World Communications Inc. (ITTWC). We are also calling upon ITTWC to file with the Chief, Common Carrier Bureau, data as to its rate base and expenses. However, we do not propose to investigate cost of individual services at this time

I. Background

2. In the *Memorandum Opinion and Order* instituting Docket No. 20778 (59 FCC 2d 240 (1976)),[2] we noted that the issues of rates and rates of return for the IRCs had not been considered by the Commission since 1958. See, *Western Union Telegraph Company*, 25 FCC 538 (1958). We provided that the Common Carrier Bureau should first conduct an audit and study of the IRC operations, and that costs should be allocated to major service categories to determine the extent to which there might be unlawful cross-subsidization among the services or between operating areas (59 FCC 2d at 241). The results of the audit and studies were before us for decision less than one year ago. By Order released January 29, 1980 (75 FCC 2d 726), we made the staff's report therein available for public inspection, and terminated the docket without undertaking any formal ratemaking proceedings. We stated that the staff report indicated that the IRCs were earning excessive rates of return. However, we did not make any findings as to the legal implications of the experienced rates of return because of the questionable reliability of the data provided by the carriers. It appeared that contemporaneous decisions in the international arena would eliminate barriers to entry and help create a competitive market structure, and that these industry structure changes made it unnecessary to begin a formal proceeding at that time. While we emphasized that we were not eliminating our regulatory efforts in the international area, we stated that we would monitor the effects of those decisions and provide for informal conferences with and reports by the carriers to assure that they are complying with Commission rules pertaining to the reporting of financial data.[3]

3. Four methods of computation were used in the audit report to assess the rates of return of each of the IRCs under consideration, based upon 1976 carrier-provided data which, the staff noted, were possibly unreliable. Rates of return were computed overall and for the three major service categories, Telex, Public Message Service, and Leased Channel.[4]

ITTWC demonstrated the highest overall rate of return under each method of computation and for each service category except Leased Channel. The overall rate of return earned by ITTWC appears to have substantially increased since the audit was undertaken. Staff studies of data in the Annual Reports to the Commission filed by ITTWC for 1978 and 1979 show rates of return in excess of 20% after taxes, regardless of the method of computation used (see note 4, *supra*). Although we make no findings herein as to the rate of return level which ITTWC requires, we believe that these computed data compel a preliminary observation that ITTWC's earnings may be excessive. Thus, we are today instituting a hearing so that we will be able to conclusively resolve this matter. Further, to improve the reliability of rate base, expense and earnings information, we are requiring ITTWC to file updated information reflecting the improved accounting procedures deemed necessary in the staff audit. See 75 FCC 2d at 729.

4. There are other factors which lead us to start this formal ratemaking proceeding now. Most importantly, we have discerned no significant alteration or downward trend in IRC rate levels since our actions in the international area last December. We are particularly concerned with the lack of any significant downward movement in Telex rates. Further, we recently started a paper hearing to investigate the trariff revisions filed by the IRCs purporting to unbundle international Telex rates (CC Docket No. 80–339, FCC 80–386, released August 8, 1980). We stated in the Memorandum Opinion and Order therein that the data were incomplete for the purposes of determining whether transmission charges have been fully and properly reduced by the unbundling of terminal equipment, access lines and supplies. Because we found it necessary to start a hearing on those tariff filings, it appears that the carriers are not voluntarily reducing international Telex transmission charges even though that rate element appears to be generating relatively excessive return levels. The hearing that we are commencing in this Order will provide a comprehensive review of the applicable rate of return of ITTWC, which has evidenced a higher overall and Telex rate of return than its major competitors. Should we later decide as a result of this proceeding to prescribe a rate of return for ITTWC which is lower than its actual rate of return, we expect the impact of our action would be to lower the rates of all the international record carriers. In the meantime, we will continue CC Docket 80–339 in accordance with the existing schedule to develop the type of rate structure data needed for our decision on the lawfulness of the unbundling proposals.

5. Another consideration leading to our designation of a hearing herein is the recent decision by the United States Court of Appeals regarding Western Union's participation with foreign carriers in the offering of international Telex service. See *ITT World Communications Inc.* v. *F.C.C.*, Nos. 79–4220 et al. (2d Cir. August 25, 1980). In that decision, the Court vacated our authorization to Western Union to transmit Telex messages from Western Union subscribers to overseas subscribers by interconnecting with Mexican and Canadian carriers, rather than by interconnection with the United States IRCs.[5] The conclusion of the Court that Section 222 of the Communications Act bars Western Union from providing an interconnected service with foreign carriers for international communications appears to foreclose a potential source of competition in the international communications market. Given the elimination of this potential source of competition to the IRCs, the possibility that Section 222 will not be modified or repealed to allow the competition which we envisioned, and the expanded operational opportunities available to the IRCs as a result of our authorization of additional points of operation in the United States,[6] it is now appropriate to undertake further formal rate regulatory efforts.

[2] Docket No. 20778 also considered the earnings of the international voice carriers such as AT&T. That part of the investigation will not be reviewed in this order.

[3] The staff report raised serious questions as to the carriers' compliance with our accounting rules.

[4] The methods of computation used were:

(1) An earned rate of return based on operating plant in service, plant held for future use, earth station investment and their applicable reserves. These are normally the largest components of the carrier's rate base.

(2) An earned rate of return based on all components of rate base as determined in the decisions of Dockets 19129 and 16070, which excluded plant under construction.

(3) An earned rate of return based on all components of rate base determined in Docket 16258, which included plant under construction.

(4) An earned rate of return based upon the carrier's cost data as submitted without any staff adjustments.

[5] *Western Union Telegraph Co.*, 75 FCC 2d 461 (1980).

[6] *International Record Carriers*, 76 FCC 2d 115 (1980), review pending sub nom. *Western Union Telegraph Co.* v. *F.C.C.*, Case No. 79–2492 (D.C. Cir.).

II. Selection of ITTWC

6. As noted, we have decided to examine the rate of return of ITTWC rather than that of each IRC because ITTWC has earned the highest rate of return overall and for its major services, including Telex, in recent years, based upon staff analysis of carrier-supplied data. We stated in the International Audit Order that there were indications that the major IRCs were earning excessive rates of return based on 1976 data. These rates of return have increased since that date. Thus, the need for a formal rate of return hearing focusing upon the carrier with the highest rate of return—ITTWC—has become compelling. For this reason alone, it is important to take a closer look at ITTWC's rate of return. In addition, we note that ITTWC serves sufficient points so that we expect any action we take concerning ITTWC's rate of return to have a significant beneficial industry-wide impact. In other words, should our action here result in an order that ITTWC adjust its rates to earn a lower rate of return, we expect that each of its competitors would follow suit. Nevertheless, we remain free to initiate further proceedings as to the rates of return of other IRCs if this action appears necessary or desirable.

7. Through rate regulation of a single carrier, the Commission can regulate pricing in the entire industry by setting the maximum rates that that carrier may charge to receive a fair rate of return. This approach recognizes that there will result an essential uniformity of rates among carriers, accompanied by a constant pressure upon the other carriers to improve the efficiency of their operations. In this instance, ITTWC's rates would become, in effect, the industry-wide maximums. A carrier which exceeds these rates will lose business. A carrier matching these rates will operate at a less profitable level than ITTWC unless it improves its efficiency.

8. Despite our decision to go forward at this time with a rate of return proceeding concerning only one IRC, we are aware that this course of action may work some hardship. Other rate regulatory solutions are, however, either infeasible or not in the public interest. It would not make sense to set allowable rates of return individually. The less efficient carriers would not be able to set prices at a high enough level to achieve the allowable return. Alternatively, if the allowable rate of return were set upon an industry-wide basis, such a policy would be "a guarantee to the less competent or less efficient operator that his failure to measure up in the competitor's race will be rewarded." *The Western Union Telegraph Company*, 25 FCC 535, 580 (1958). Further, to offset any unfairness to other IRCs, we will scrutinize unusual situations involving particular points of service or facility configurations. However, these exceptions appear to be few and, therefore, in the context of our action here, will be considered only after the termination of this proceeding.

9. The *Audit Report* in Docket No. 20778, and more recent statistical compilations, indicate that ITTWC leads the industry in both efficiency of operations and rate of return. In the past we have examined the rate of return of a single carrier, rather than of the whole industry, under a bellwether approach to ratemaking. *The Western Union Telegraph Company*, 25 FCC 535 (1958). While we are not necessarily limiting our review to ITTWC, we are satisfied that at a minimum ITTWC is the appropriate carrier to undergo initial scrutiny. In the past, predominance in market share, revenues, and service points were major criteria for choosing a carrier, although efficency was also a factor. 25 FCC at 582. Under a modern-day bellwether approach for this industry, we would rely more heavily upon factors showing efficent operation, since three carriers now occupy predominant positions in the provision of international service. The following tables compare ITTWC's place in the market, efficiency of operations and overall and Telex rates of return, with its major rivals.

1. *International Points Served* [6]
   - ITTWC—85
   - RCAGC—92
   - WUI—75
   - Industry Total—118
2. *Overall Service Revenues*
   - ITTWC—34% or $156 M
   - RCAGC—38% or $172 M
   - WUI—22% or $101 M
   - Industry Total—$455 M
3. *Telex Revenues*
   - ITTWC—35% or $94 M
   - RCAGC—36% or $95 M
   - WUI—23% or $64 M
   - Industry Total—$267 M
4. *Net Income After Taxes*
   - ITTWC—$36 M
   - RCAGC—$26 M
   - WUI—$17 M
5. *Operating Revenue Per Dollar of Expenses* [7]
   - ITTWC—$1.56
   - RCAGC—$1.22
   - WUI—$1.35
6. *Overall Rate of Return After Taxes* [8]
   - ITTWC—15%
   - RCAGC—10%
   - WUI—11%
7. *Rate of Return—Telex Service*
   - ITTWC—36%
   - RCAGC—26%
   - WUI—22%

10. The efficiency and rate of return criteria set forth above are based upon financial measures—measures which relate revenues, expenses, and plant investment. We recognize that other measures, such as those based upon engineering or operational considerations, can also be employed—e.g., fill on major truck routes or switching costs per line termination. However, these efficiencies will ultimately be translated into some measure of financial performance. under each of the efficiency measures, ITTWC shows a clear margin of greater operational efficiency. Further, the tables disclose market share and scope of operations by ITTWC comparable with RCAGC and WUI. Thus, we can conclude that ITTWC is the appropriate carrier for review when assessed by the twin criteria of broadness of service coverage and operational efficiency.

III. The Hearing

11. As we have noted, this proceeding will determine the rate of return which we will prescribe for ITTWC to earn on its rate base. This inquiry will require an examination into ITTWC's capital structure, its cost of debt and cost of equity. At the conclusion, the presiding officer shall prepare an initial decision on the rate of return issue, and parties may take exception thereto. Should we decide to go forward with a formal proceeding on rate base and expenses, we will use the above rate of return to compute ITTWC's revenue requirement. A separated Trial Staff will participate in the rate of return proceeding in a manner similar to its participation in other rate of return cases.

12. Since ITTWC has sole access to important information necessary to this rate of return determination, ITTWC has the burden of proof in the proceeding designated herein. Preliminary calculations show that ITTWC's rate of return may significantly exceed its fair rate of return. In our last investigation of the IRC earnings, we found that a fair rate of return for the bellwether carrier was 7.5 to 8.5%, and we prescribed rates accordingly. ITTWC and the other carriers have been earning considerably above this level. Given the passage of time it is incumbent upon ITTWC to show what its present rate of return should be under current economic conditions.

13. We will not now consider rate base and expense issues in this

[6] Source: Items 1–4, *Statistics of Communications Common Carriers;* FCC; year ended 12/31/78.

[7] Source: Item 5, *Statistics of Communications Common Carriers;* FCC; Year ended 12/31/78.

[8] Source: Items 6–7, *Audit Report*, 75 FCC 2d 726.

proceeding. However, as a separate matter we will require ITTWC to file with the Chief, Common Carrier Bureau, by January 14, 1980, such rate base and expense data as it would offer as its direct case in a ratemaking proceeding where those elements are being considered. We expect ITTWC to provide sufficient rate base and expense information and underlying documentation for calendar year 1979 and an estimate for calendar year 1980 to allow for thorough Staff evaluation. In preparing this submission, ITTWC will be required to separately state all joint or common costs shared with affiliated companies and provide the rationale and justification for allocating any portion of such costs to ITTWC. The final results (preferably audited) for calendar year 1980, with underlying documentation, shall be filed by no later than March 31, 1981. We require ITTWC to provide in writing to the Chief, Common Carrier Bureau, by December 4, 1980, a full description of the substance and type of underlying documentation it intends to submit with its rate base and expense figures. We shall also require it to cooperate with the Bureau Chief in submitting any further information or underlying documentation that may be requested by him.

14. Accordingly, it is ordered, That pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 205, 213(e), 213(f), 215(a), 218, 219, 220(c) and 403 of the Communications Act of 1934, as amended, an investigation and hearing is instituted into the authorized rate of return of ITT World Communications Inc.

15. It is further ordered, That this proceeding will include consideration of the following issues:

(a) The cost of embedded debt;

(b) The cost of equity capital;

(c) The cost of other sources of financing;[9]

(d) The appropriate capital structure to be used for ratemaking purposes and the weights to be accorded the above costs of capital; and

(e) The authorized rate of return.[10]

16. It is further ordered, that included within its Final Decision herein, consideration may be given to what action, if any, should be taken by the Commission to effect such rate adjustments as may be warranted on the basis of the record and such order or orders will issue as may be appropriate to this end.

17. It is further ordered, that the hearings in this investigation shall be held at the Commission's offices in Washington, D.C. at a time to be specified, before an Administrative Law Judge to be designated.

18. It is further ordered, that the Administrative Law Judge shall, upon closing of the record, prepare and issue an initial decision which shall be subject to the submission of exceptions and requests for oral argument, as provided in §§ 1.276 and 1.277 of the Commission's rules, 47 C.F.R. 1.276 and 1.277, after which the Commission shall issue its decision as provided in § 1.282 of these rules, 47 C.F.R. 1.282.

19. It is further ordered, that a separated Trial Staff of the Common Carrier Bureau will participate in this rate of return proceeding. The Chief, Hearing Division, and his staff will be separated in accordance with § 1.1209 of the Commission's rules, 47 C.F.R. 1.1209.[11]

20. It is further ordered, that ITT World Communications Inc. is named party Respondent and any ohter interested party wishing to actively participate in this proceeding shall file a notice of its intention to do so on or before December 26, 1980.

21. It is further ordered, that the Secretary shall send a copy of this order by certified mail, return receipt requested to ITT World Communications Inc., and shall cause a copy to be published in the Federal Register.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-38875 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

[9] This issue will include consideration, as necessary, of the sources of funds and inter-company relationships described in para. 4 of our designation order in the AT&T rate of return proceeding, CC Docket 79-63 (73 FCC 2d 689 (1979)).

[10] We are not designating any issue regarding the measurements of ITTWC's rate base and expenses or the measurement or inclusion of specific elements therein.

[11] The Trial Staff has the authorization under the Communications Act and our Rules to utilize all investigatory powers in developing a full and fair record in this proceeding. See Sections 213(e)-(f), 215(a), 218, and 220(c) of Communications Act of 1934, as amended, 47 U.S.C. sections 213(e)-(f), 215(a), 218 and 220(c). Although the formal discovery provisions of our Rules are not applicable to rulemaking proceeding of this nature, information requests may be made on a continuing basis throughout the trial of this case. See *American Telephone and Telegraph Co.*, 73 FCC 2d 689, 694 (1979).

FEDERAL COMMUNICATIONS COMMISSION

[Canadian List No. 399]

Notification List

October 10, 1980.

List of new stations, proposed changes in existing stations, deletions, and correction in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

Call letters	Location	Power kW	Antenna	Schedule	Class	Antenna height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
				550 kHz					
CFJC	Kamloops, British Columbia, N. 50°38'34", W. 120°27'28" (now in operation on new frequency).	25D/5N	DA-2	U	III	.....	.....	.....	
				550 kHz					
CFJC	Spaniard's Bay/Harbour, Grace, Newfoundland, N. 47°39' *36"* W. 53°15' *14"* (correction of georgraphical co-ordinates)	5	DA-1	U	II	.....	.....	.....	April 11, 1981.
				910KHz					
CFJC	Kamloops, British Columbia, N. 50°43' 24" W. 120°20' 26" (delete)	10D/1N	ND-187	U	III	.....	.....	.....	
				960 kHz					
CFTJ	Cambridge, Ontario, N. 43°20' 55" W. 80°14' 45" (now in operation with DA-1 antenna system).	1	DA-1	U	III	.....	.....	.....	

Notification List—Continued

Call letters	Location	Power kW	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
CFYQ	Gander, Newfoundland, N. 48°58' 30" W. 54°36' 47" (PO 1350 kHz).	*5*	ND-*175*	*1010 kHz* U	II	*196*	120	283	October 10, 1081.
New	Ashcroft, Bristish Columbia, N. 50°45' 30" W. 121°17' 47"	1D/0.25N	ND-180	*1340 kHz* U	IV	125	120	294	October 10, 1981.
CFYQ	Gander, Newfoundland, N. 48°58' 30" W. 54°36' 47" (*vide 1010 kHz*).	1	ND-185	*1350 kHz* U	III	135	120	283	

Richard J. Shilben,

Chief, Broadcast Bureau, Federal Communications Commission.

[FR Doc. 80-36900 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than December 19, 1980.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. MANUFACTURERS HANOVER CORPORATION, New York, New York (mortgage banking and servicing activities; Minnesota): to engage through its subsidiary, Manufacturers Hanover Mortgage Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company; and servicing any such loans and other extensions of credit for any person. These activities would be conducted from the *de novo* office of Manufacturers Hanover Mortgage Corporation located in St. Louis Park, Minnesota and serving Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Chisago and Wright Counties located in Minnesota.

2. MANUFACTURERS HANOVER CORPORATION, New York, New York (mortgage banking and servicing activities; Florida): to engage through its subsidiary, Manufacturers Hanover Mortgage Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company; and servicing any such loans and other extensions of credit for any person. These activities would be conducted from the *de novo* office of Manufacturers Hanover Mortgage Corporation located in St. Petersbury, Florida and serving the Tampa Standard Metropolitan Statistical Area, which includes Hillsborough, Pinnellas and Pasco Counties.

3. THE CHASE MANHATTAN CORPORATION, New York, New York (mortgage banking, loan servicing, and investment advisory activities; Florida): to solicit, make, acquire and service loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others; to act as an issuer, broker and/or dealer in respect of securities guaranteed by the Government National Mortgage Association; and to act as investment or financial adviser on real estate matters to the extent of furnishing general economic information and advice as well as portfolio investment advice on real estate matters. This application is for the relocation of an existing office in Jacksonville, Florida. Comments on this application must be received by December 22, 1980.

B. *Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:*

MERCANTILE TEXAS CORPORATION, Dallas, Texas, to engage, through its subsidiary John Rathmall & Company, Inc., in having supervisory responsibility over agents and brokers on behalf of insurance companies with regard to the following types of insurance: (1) all types of property, casualty and liability insurance which are needed by the present and future banking subsidiaries of Applicant, including group protection to their employees and insurance in connection with extensions of credit (excluding credit life and accident and health insurance) made by them including: (a) single interest insurance, (b) blanket bond insurance, (c) comprehensive fire, theft and extended coverage for property owned by such banking subsidiaries, and (d) personal liability insurance for such banking subsidiaries; (2) group employee benefit coverage for employees of the present and future banking subsidiaries of Applicant including hospitalization, group term life, accident and death and dismemberment. These activities will be conducted from an office in Dallas, Texas, serving the State of Texas.

C. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

FIRST HAWAIIAN, INC., Honolulu, Hawaii (industrial banking and insurance agency activities; Hawaii): to engage through its subsidiary, Hawaii Thrift & Loan, Incorporated, in operating

an industrial loan company as authorized by Hawaii law, including making loans upon individual credit, the pledge or mortgage of real or personal property, issuing and selling certificates for the payment of money at any time; and selling property, casualty, life, accident and health insurance directly related to its extensions of credit. These activities will be conducted from an office in Kailua—Kona, Hawaii, serving the Kona, Hawaii area. Comments on this application must be received by December 22, 1980.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, November 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36840 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Govenors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than December 18, 1980.

A. *Federal Reserve Bank of St. Louis* (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

Citizens Fidelity Corporation, Louisville, Kentucky (leasing activities; Missouri, Illinois, Western Kentucky, Kansas City area): to engage, through its subsidary, Citizens Fidelity Leasing Corporation, in the leasing of personal property and equipment and acting as agent, broker or advisor, in the leasing of such property, in a manner such that the leasing would serve as a functional equivalent of an extension of credit and subject to the limitations and restrictions specified in 12 CFR 225.4(a)(6). These activities would be conducted from an office in St. Louis, Missouri, serving the states of Missouri, including the greater Kansas City area, Western Kentucky, and Illinois. Comments on this application must be received by December 16, 1980.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (industrial loan, financing and credit-related insurance activities; California): to engage in financing and industrial loan corporation activities through its subsidary Security Pacific Finance Money Center Inc., including making, acquiring and servicing loans and other extensions of credit; selling and issuing investment certificates; and acting as agent for the sale of credit-related life, credit-related accident and health and credit-related property insurance, all as authorized by California law. These activities would be conducted from offices of Security Pacific Finance Money Center Inc. in the cities of Santa Barbara, San Bernardino, Modesto and Oxnard, California, serving the State of California.

C. *Other Federal Reserve Banks:* None.

Board of Govenors of the Federal Reserve System November 18, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36841 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

Finance Ohio Company; Formation of Bank Holding Company

Finance Ohio Company, Martins Ferry, Ohio, 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 90 per cent or more of the voting shares of the Peoples Savings Bank Company, Martins Ferry, Ohio. 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 Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 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, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36843 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

First City Bancorporation, Inc.; Acquisition of Bank

First City Bancorporation, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares less directors' qualifying shares of Windsor Park Bank, San Antonio, Texas. 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 Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 19, 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, November 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36837 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

First City Bancorporation of Texas, Inc.; Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares, less directors' qualifying shares, of The Bank of South Texas, Alice, Texas. 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 Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 19, 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, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36836 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

First Palm Beach International Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as First Palm Beach International Bank, Miami, Florida. First Palm Beach International Bank would operate as a subsidiary of First National Bank in Palm Beach, Palm Beach, Florida. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than December 18, 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, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 18, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36834 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

First State Holding Company of Prescott, Formation of Bank Holding Company

First State Holding Company of Prescott, Prescott, Arkansas, 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 at least 98.3 per cent of the voting shares of Bank of Prescott, Prescott, Arkansas. 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 St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 19, 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 summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36842 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

Houston County Agency, Inc.; Proposed Continuation of General Insurance Agency Activities as Caledonia Insurance Agency

Houston County Agency, Inc., St. Paul Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in general insurance agency activities as Caledonia Insurance Agency.

Applicant states that it would continue to engage in the activities of acting as agent for the sale of general insurance in a community having a population not exceeding 5,000 inhabitants. These activities would be performed from offices of Applicant's subsidiary bank in Caledonia, Minnesota, and the geographic area to be served is Caledonia, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 December 19, 1980.

Board of Governors of the Federal Reserve System, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36835 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

New Salem Bancorporation, Inc.; Formation of Bank Holding Company

New Salem Bancorporation, Inc., New Salem, North Dakota, 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 88.3 per cent or more of the voting shares of Security State Bank of New Salem, New Salem, North Dakota. 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 December 19, 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, November 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36844 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

Security National Corp.; Acquisition of Bank

Security National Corporation, Sioux City, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 94 percent or more of the voting shares of First State Bank, Mapleton, Iowa. 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 19, 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, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36838 Filed 11-24-80; 8:45 am]

BILLING CODE 6210-01-M

Summit Bancorp.; Acquisition of Bank

The Summit Bancorporation, Summit, New Jersey, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire all the voting shares of Maplewood Bank and Trust Company, Maplewood, New Jersey. 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 New York. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 19, 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, November 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-36839 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Diversified Industries, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Diversified Industries, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Florida Wire & Cable Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Diversified. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary,

[FR Doc. 80-36813 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; General Electric Co.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: General Electric Company is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Tucson Electric Power Company and Public Service Company of New Mexico. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by all parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C., (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-36810 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Kentucky Investors, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules..

SUMMARY: Kentucky Investors, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Citadel Life Insurance Company from Barclays Bank International Ltd. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Kentucky Investors. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 4, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80–36811 Filed 11–25–80; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; MAPCO, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: MAPCO, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Earth Resources Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by MAPCO, Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: November 12, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80–36809 Filed 11–25–80; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Regie Nationale des Usines Renault

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Regie Nationale des Usines Renault is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain stock of American Motors Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by American Motors. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: .

ADDRESS: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80–36812 Filed 11–25–80; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92–463 (5 U.S.C. Appendix I), the fiscal year 1980 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress: Safety and Occupational Health Study Section.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. (telephone: 202/287–6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, S.W., Washington, D.C. (telephone: 202/245–6791).

Dated: November 20, 1980.

Donald R. Hopkins,

Acting Director, Centers for Disease Control.

[FR Doc. 80–36879 Filed 11–25–80; 8:45 am]

BILLING CODE 4110–86–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Executive Director's Procedures for Review of Proposals for Treatment of Archeological Properties; Supplementary Guidance

I. Introduction

Under the authority of 36 CFR 800.14, the Executive Director of the Advisory Council on Historic Preservation issues the following supplementary guidance, to interpret elements of the Council's regulations to assist Federal agencies and State Historic Preservation Officers in meeting their responsibilities. This supplementary guidance was developed with the assistance of the Council's Archeology Task Force, and endorsed by the full Council at its November 1980, quarterly meeting.

The following procedures will be used by the Executive Director of the Council in review of projects involving treatment of archeological properties. They are based on the Council's "Principles in the Treatment of Archeological Properties" (Appendix A). They do not amend or modify the duties of Federal agencies under Section 106 of the National Historic Preservation Act and the implementing regulations (36 CFR Part 800), but agency cognizance of them will make consultation under the regulations easier.

Archeological properties are those properties included in, determined eligible for, or potentially eligible for, the National Register, whose significance lies wholly or partly in the archeological data they contain. Archeological data are data embodied in material remains (artifacts, structures, refuse, etc.) utilized purposely or accidentally by human beings, in the spatial relationship among such remains, and in the environmental context of such remains. Archeological data include historic, prehistoric, and scientific data as defined by the Department of the Interior in accordance with Public Law 93–291 (cf. 36 CFR Part 1210).

An expanded version of this guidance, including the Council's "Recommendations for Archeological Data Recovery," "Principles in the Treatment of Archeological Properties," and explanatory appendices, is available from the Executive Director under the title, *Treatment of Archeological Properties.*

II. Identification and Evaluation of Archeological Properties

1. 36 CFR 800.4 establishes that "it is the primary responsibility of each Agency Official requesting Council comments to conduct the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a SHPO under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property." Identification is the obvious first step to be taken by an Agency in defining its responsibility with respect to archeological and other historic properties.

In evaluation of proposals for treatment of archeological properties, the Executive Director may review field surveys and other identification efforts that have been conducted as part of the Agency's planning process, to determine whether:

A. The identification effort appears to be consistent with the scale and expected impacts of the proposed project;

B. The identification effort appears to be conducted at a sufficient level of intensity in relation to the numbers and types of archeological properties expected to occur in the areas; and,

C. The data recovery proposal submitted for Council consideration appears consistent with the results of the identification effort.

2. The Executive Director will use 36 CFR Part 1210, appendix B, as a general standard for reviewing identification efforts.

3. The Executive Director will encourage recognition of the difference between "testing" archeological sites for identification and evaluation and excavating them for purposes of data recovery. Testing is usually conducted in order to answer questions about an archeological site's eligibility for the National Register, or to obtain data needed to make decisions about how to mitigate project impacts on a site already determined eligible or placed on the Register. Such testing is directed toward determining the site's boundaries, the depth of its deposits, and/or its basic nature and condition. Only a very small sample of the site need be disturbed in order to make such determinations. Excavation for data recovery, on the other hand, is directed toward recovering as much of the important information in the site as possible, given time and other constraints. Unlike testing, excavation for data recovery is seldom simply directed at defining the size, depth, nature and condition of the site; it is directed at answering or contributing to research questions. Excavation for data recovery may result in very extensive—even complete—disturbance of a site. While it is impossible to define a point, applicable in all instances, at which testing ends and data recovery begins, a rule of thumb is that testing is completed when sufficient information has been gathered to make a determination of eligibility or a management decision. Since testing is done, in most cases, before the fate of the site has been determined through the consultation process, it should be kept to the absolute minimum necessary for eligibility determination and/or management purposes. "Testing" that destroys large portions of a site forecloses the Council's opportunity to comment, and circumvents the intent of Section 106. The Executive Director will discourage such "testing," and will notify the Secretary of the Interior, pursuant to P.L. 93–291 Sec. 4(a), in instances where such "testing" threatens the irrevocable loss of scientific, prehistoric, historic, or archeological data.

III. Consideration of In-Place Preservation

In review of projects involving archeological properties, the Executive Director will seek to ensure that all due consideration is given to practical methods of preserving such properties in place.

IV. Consideration of Non-archeological Interests

In review of projects involving archeological properties, the Executive Director will seek to ensure that all due consideration is given to whatever non-archeological historical and cultural values the properties may represent. For example, if an archeological property is also valuable to a local community for cultural reasons, the Executive Director will seek to ensure that this value is considered and given appropriate weight in decisionmaking.

V. Data Recovery Directed to Research Questions

Where it is concluded through the consultation process that preservation in place is not practical, and that data recovery is appropriate, the Executive Director will seek to ensure that the data recovery effort addresses defined and defensible research questions. Such

questions should relate to issues of importance in the sciences or humanities, or to matters of importance to local communities with historical connections to the property or properties. It is expected, however, that the specificity of research questions, and their relationship to larger issues, will vary with the character and quality of prior archeological work in the area, the state of existing knowledge of the property, the nature of local, regional, and topical research efforts pertinent to the property, and the quality of the State Historic Preservation Plan in force in the state at the time the project is undertaken.

VI. Sacrifice of Properties Without Data Recovery

Where an archeological property cannot practically be preserved in place, and the responsible agency proposes to destroy or damage it without data recovery, the Executive Director will seek to ensure that all reasonable consideration has been and is given to the property's potential to yield information relevent to important research questions. The Executive Director will not support or sanction the recovery of data simply because they exist, nor will the Executive Director support arbitrary destruction of data.

VII. Efficiency of Data Recovery

Where data recovery is to be undertaken, the Executive Director will seek to ensure that it is conducted in the most efficient manner possible, in the context of an appropriate data recovery plan. Data recovery programs should be organized to extract, digest, and make available the pertient data in the most efficient manner possible, taking into account local conditions, the potential for unexpected discoveries, non-archeological concerns, and other relevent factors. The kinds of techniques, tools, and expertise required in a given data recovery program are dependent on the kinds of data to be recovered and analyzed. Although all archeological projects share certain basic principles, there is no single, standard way to conduct archeological fieldwork. As a rule, the Executive Director will seek to ensure that the fastest, most economical methods are used that will achieve the desired research result.

VIII. Consideration of Guidance

Where data recovery is to be undertaken, the Executive Director will seek to ensure that due consideration has been given to the Council's "Recommendations for Archeological Data Recovery" and 36 CFR Part 1210 ("Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements").

IX. Budgets

To the extent feasible given Council and staff priorities and agency contracting policy, the Executive Director will provide advice to agencies, seeking to ensure that budgets developed for data recovery and other archeological activities are reasonable and cost-effective.

X. Negating Adverse Effect: Documenting "No Adverse Effect" Determinations

1. Undertakings that result directly or indirectly in the disturbance of an archeological property clearly have adverse effects on that property. In some cases, however, this adverse effect can be essentially negated through data recovery; in such cases a determination of "no adverse effect," pursuant to 36 CFR 800.4(c), may be appropriate. When an agency makes such a determination, the Executive Director's review will focus on the extent to which the adverse effect will in fact be negated by the data recovery effort. The ability to negate adverse effect depends upon (a) the nature of the affecting action, (b) the nature of the archeological property, and (c) the quality of the data recovery effort proposed.

2. To determine whether a data recovery program will negate the adverse effects of an undertaking, the agency, in consultation with the State Historic Preservation Officer (SHPO), should answer the following questions:

A(1) Does the significance of the property, as documented in the nomination to or determination of eligibility for the National Register, lie primarily in the data it contains, so that retrieval of the data in an appropriate manner may preserve this significance? If so:

A(2) Does it appear that preservation in place would be more costly, or otherwise less practical, than data recovery? If so:

B(1) Will the effects of the undertaking be minor relative to the size and nature of the property? Examples of such effects include:

(a) Marginal disturbance to an extensive archeological site by construction along one edge.

(b) Minor disruption of the surface of an archeological site whose primary valuable information lies in subsurface deposits, where this disruption is unlikely to have long-range effects on subsurface conditions (e.g., by causing erosion, etc.).

B(2) Is the property subject to destruction regardless of the undertaking, so the agency's action is only slightly hastening an inevitable process? Examples of such a condition include:

(a) Disturbance of an archeological site on a rapidly eroding cliff, where measures to halt erosion are not practical.

(b) Disturbance of an archeological site that is being vandalized or clearly will be subject to vandalism, where there is no practical way to deter the vandals;

(d) Disturbance of an archeological site on land that has great potential for non-Federal development, where no mechanisms (zoning, State or local preservation ordinances, easements) are likely to be employable for protection.

B(3) Is the property *not:*

(a) A National Historic Landmark, a National Historic Site in non-Federal ownership, or a property of national hsitorical significance so designated within the National Park System;

(b) Important enough to fulfillment of purposes set forth in the State Historic Preservation Plan to require its protection in place;

(c) In itself, or as an element of a larger property, significantly valuable as an exhibit in place for public understanding and enjoyment;

(d) Known or thought to have historic, cultural, or religious significance to a community, neighborhood, or social or ethnic group that would be impaired by its disturbance, or

(e) So complex, or containing such complicated data, that currently available technology, funding, time, or expertise are insufficient to recover the significant information contained in it.

3. If the agency and the SHPO agree that questions A(1) and A(2), and questions B(1), B(2) *or* B(3) are answered in the affirmative, and if the agency establishes a data recovery program consistent with the Council's "Recommendations for Archeological Data Recovery" and 36 CFR Part 1210, the agency has grounds for concluding that the data recovery program will negate the adverse effect, and can hence determine that the undertaking will have No Adverse Effect on the property.

4. In documenting a determination of No Adverse Effect based on this conclusion, pursuant to 36 CFR 800.4(c) and 800.13(a), the agency should:

(A) Report clearly and concisely how it has reached its conclusion;

(B) Document the concurrence of the SHPO and, if pertinent, consultation with, and the opinions of, other specialists and authorities concerned with the property, concerned social and

ethnic groups, local government, and the public;

(C) Provide a copy of the data recovery plan; and,

(D) Show that sufficient time and funds have been allocated to execute the data recovery plan.

5. The Executive Director will review the documentation provided in accordance with 36 CFR 800.6(a) to determine whether (a) the property is shown to be valuable primarily for the information it contains, or whether other public interests are involved, and whether (b) it appears that the adverse effects of the undertaking will in fact be negated, thereby justifying a determination of No Adverse Effect.

XI. Preliminary Case Reports

1. Where it is determined that the undertaking will have an adverse effect on historic properties, the Preliminary Case Report developed by the agency pursuant to 36 CFR 800.4(d)(1) should:

A. document consideration of alternatives that would preserve the archeological property in place, and give reasons for rejecting those alternatives not preferred;

B. Where data recovery is proposed, provide a data recovery plan consistent with the Council's "Recommendations for Archeological Data Recovery" and with 36 CFR Part 1210.

C. Where data recovery is not proposed, explain why it is not proposed. An agency may demonstrate that loss of an archeological property without data recovery is acceptable by showing that:

(1) There is no reasonable way to protect the property in place; and,

(2) Having made a good-faith effort to identify research questions of the kinds discussed in Appendices A and B of the Council's *Treatment of Archeological Properties*, to which the recovery of data from the property would contribute, the agency has been unable to identify such questions. In seeking to identify such questions, the agency should utilize available literature in archeology, anthropology, history, and other disciplines, consult with the State Historic Preservation Officer, and consult with State, regional, and local archeological and historical organizations. The Executive Director will review closely the documentation of such efforts, and may suggest additional research questions or sources of advice to be considered.

XII. Memoranda of Agreement

1. Ordinarily, Memoranda of Agreement executed pursuant to 36 CFR 800.6(c) that provide for data recovery from archeological properties should include or refer directly to data recovery plans consistent with the Council's "Recommendations for Archeological Data Recovery" and 36 CFR Part 1210. Exceptions to this rule may include, but are not necessarily limited to:

A. A Programmatic Memorandum of Agreement, which may provide for preparation and review of such plans in the context of an ongoing programs;

B. A Memorandum of Agreement that covers a planning process, which may provide for preparation and review of a data recovery plan at a subsequent stage in the agreed-upon process; and,

C. A memorandum of Agreement that provides for archeological monitoring or other forms of data recovery as guards against uncertain discovery possibilities (for example, where there is some possibility that archeological data will be discovered when a building is demolished). In such an instance, it may not be feasible to develop a detailed data recovery plan because the nature of the possible discovery situation is too uncertain.

2. The purpose of the data recovery plan is to ensure that the data are recovered in an effective manner using the best applicable professional standards under the circumstances. Technical assistance in developing data recovery plans is available from the State Historic Preservation Officer and Interagency Archeological Services, heritage Conservation and Recreation Service, Department of the Interior. The Executive Director will give data recovery plans the same level of professional review afforded to architectural designs, plans for adaptive reuse, development plans, etc.

3. Memoranda of Agreement may provide for phased data recovery. An example of phased data recovery is:

A. Phase 1: Testing of archeological sites and other research leading to development of a detailed date recovery work plan. The Memorandum of Agreement should set forth guidelines for the testing and other research.

B. Phase 2: Development of a data recovery plan. The Memorandum of Agreement should provide for appropriate technical review of the plan, usually by the SHPO and the Council, and where needed, through peer review by outside parties.

C. Phase 3: Selection of a contractor. The Memorandum of Agreement should ensure that the agency provides a reliable mechanism for obtaining the best qualified contractor(s) for the project at the most reasonable cost, consistent with satisfactory work performance.

D. Phase 4: Conduct of the work plan, typically including recovery of data, analysis, curation, and dissemination of results.

4. In developing Memoranda of Agreement including provisions for data recovery, the Executive Director will attempt to ensure that the data recovery plan in fact is the best feasible method of addressing the archeological value of the property in the public interest. An agency can facilitate development of such Memoranda by notifying the Council of the steps it has taken to develop its data recovery plan, by identifying the parties consulted during its preparation, by ensuring that all concerned parties have had an opportunity to contribute to its preparation, and by articulating the plan as clearly and concisely as possible.

XIII. Programmatic Memoranda of Agreement

Where appropriate under 36 CFR 800.8, the Executive Director will consider execution of Programmatic Memoranda of Agreement with agencies to cover archeological data recovery activities and other activities discussed in this guidance. Such a Programmatic Memorandum of Agreement should specify or stipulate a process for establishing:

1. Conditions in a given State or region, or with reference to the agency's specific types of undertakings, in which data recovery would be appropriate.

2. Guidelines for data recovery, taking into account conditions in a State or region, and/or the agency's types of undertakings and planning/development stages.

3. Methods for procuring appropriate specialists, and controlling costs, and

4. Consultation methods, establishing how the SHPO and other appropriate authorities will be involved in decisionmaking.

XIV. Counterpart Regulations

The Executive Director will use this guidance in reviewing and helping prepare guidelines, standards, and other measures as part of Counterpart Regulations authorized by 36 CFR 800.11.

XV. Archeology for Research

1. When archeological excavations are conducted on Federal land for research purposes, and the only Federal involvement in the excavations is issuance of a permit under the Archeological Resources Protection Act of 1979 (P.L. 96–95) the comments of the Council need not be sought (16 U.S.C. 470cc(i).

2. If Federal actions are involved in the research besides issuance of an ARPA permit (eg., funding, other permits

or licenses) the Council's regulations (36 CFR Part 800) apply.

A. Research projects to which the regulations apply, that involve the physical disturbance of archeological properties, should in most cases be considered to have adverse effects on the properties; the responsible agency should seek the Council's comments in accordance with 36 CFR Sec. 800.4, or programmatically in accordance with 36 CFR 800.8.

B. Projects that address management needs as well as research interests may be taken to have no adverse effect on the properties they disturb, if the facts warrant. Generally, the Executive Director will concur in a "no adverse effect" determination when the following conditions exist:

(1) The research project addresses management needs, such as:

(a) Excavation of a site that is subject to uncontrollable vandalism;

(b) Excavation of a site that is subject to serious natural erosion;

(c) Recording of a site or structure that is deteriorating;

(d) Stabilizing a deteriorating or endangered site or structure.

(2) The determination has been made following Sec. X ("Negating Adverse Effect") of this part of the Supplementary Guidance,

(3) The project will be conducted under the supervision of persons meeting, at a minimum, the qualifications set forth in 36 CFR Part 1210, Appendix C; and,

(4) The project will be conducted in accordance with a research design that takes into account the Council's "Recommendations for Archeological Data Recovery Projects."

John M. Fowler,

Acting Executive Director.

November 21, 1980.

Appendix A—Principles in the Treatment of Archeological Properties

In consulting with Federal agencies and State Historic Preservation Officers regarding archeological properties, the Executive Director will observe the following principles.

Principle I: Archeological research, addressing significant questions about the past, is in the public interest.

Principle II: Archeological properties may be sites, buildings, structures, districts and objects.

Principle III: Archeological properties are important wholly or in part because they may contribute to the study of important research problems.

Principle IV: Not all research problems are equally important; hence not all archeological properties are equally important.

Principle V: Treatment of an archeological property depends on its value for research, balanced against other public values.

Principle VI: Eligibility for the National Register suggests, but does not define, how an archeological property should be treated.

Principle VII: If an archeological property can be practically preserved in place, it should be.

Principle VIII: If an archeological property is to be preserved in place, extensive excavation of the property is seldom appropriate.

Principle IX: Both data recovery and destruction without data recovery may be appropriate treatments for archeological properties.

Principle X: Once a decision is made to undertake data recovery, the work should be done in the most thorough, efficient manner.

Principle XI: Data recovery should be based on firm background data and planning.

Principle XII: Data recovery should relate positively to the development of State Historic Preservation Plans.

Principle XIII: Completion of an approved data recovery plan consummates an agency's data recovery responsibilities.

[FR Doc. 80-36906 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Wapato Irrigation Project, Washington

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with Section 191.1(e) of Part 191, Subchapter I, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information on the Wapato Irrigation Project for Calendar Year 1981 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583) and March 7, 1938 (45 Stat. 210).

The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1981 amount to $2.00 per acre on the Wapato-Satus Unit.

The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, no later than December 26, 1980.

Wapato Irrigation Project—General

Administration

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 191, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season

Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Time for Payment of Water Charges

The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands direct to the project office, remaining unpaid on July 1 following the due date, there shall be added a penalty of one and one-half percent for each

month, or fraction thereof, from the due date until the charges are paid.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1981 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report, $15.00

(2) Requests for Verification of Account Delinquency Status, Per report, 10.00

(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee), Per Bill, 10.00

(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill, 10.00

(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report, 10.00

(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee ($10.00).

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1981 and subsequent years until further notice, is fixed at $6.25 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a minimum charge of $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1981 and subsequent years until further notice, is fixed at $6.25 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a minimum charge for $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1981 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts, $20.50

(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands, 20.50

(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre, 2.20

(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands, 21.60

(b) In addition to the foregoing charges there shall be collected a minimum charge for $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

W. D. Babby,

Acting Area Director.

November 17, 1980.

[FR Doc. 80-36782 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[OR 25306]

Oregon; Proposed Withdrawal and Reservation of Lands

The Fish and Wildlife Service, U.S. Department of the Interior, on November 3, 1980, filed application Serial No. OR 25306 for the withdrawal and reservation of the following described lands:

Willamette Meridian, Oregon

All of the unsurveyed rocks and islands above mean high water elevation offshore from the coast of Oregon in Federal ownership, except (1) those lands already included in the National Wildlife Regfuge System; (2) those lands included in a pending Fish and Wildlife Service application for addition to the Oregon Islands National Wildlife Refuge, Serial No. OR 11517; and (3) the following described lands which will be retained for administration by the Bureau of Land Management:

Name	Description
Squaw Island, 1 acre	(T. 26 S., R 14 W., offshore from Sec. 4) 43°20' N., 124°22'W.
Two unnamed islands, 2 acres.	(T. 26 S., R. 14 W., offshore from Sec. 8) 43°20' N., 124°22'W.
Fish Rock, 0.5 acre	(T. 29 S., R. 14 W., offshore from Sec. 2) 43°05' N., 125°25'45"W.
North Sisters Rocks (3 rocks), 3 acres.	(T. 34 S., R. 14 W., offshore from Sec. 30) 42°37'04" N., 124°24'50"W.
Pistol River and Myers Creek Rocks (8 rocks), 4 acres.	(T. 38 S., R. 14 W., offshore from Sec. 7) 42°18' N., 124°24'50"W.
Lone Ranch Beach Rocks, 3 acres.	(T. 40 S., R. 14 W., offshore from Sec. 22) 42°06'02" N., 124°20'40"W.
Harris Island and unnamed rock, 2 acres.	(T. 40 S., R. 14 W., offshore from Sec. 36) 42°03'50" N., 124°18'30"W.
Zwagg Island, 2.88 acres.	T. 41 S., R. 13 W., Sec. 6 Lot 9; Sec. 7, Lot 2.
Table Rock, 0.5 acre	(T. 41 S., R. 13 W., offshore from Sec. 6) 42°02'55" N., 124°17'25"W.

(Legal descriptions appearing in parentheses indicate unsurveyed lands. Acreage is approximate, except Zwagg Island which has been surveyed.) The lands to be retained under Bureau of Land Management administration are further identified on maps labeled "Coastal Islands Not Within the Oregon Islands NWR," submitted by the Fish and Wildlife Service with the application and on file in this office.

The lands included in the application consist of about 1,100 rocks, small islands, and island groups aggregating approximately 100 acres, in Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, and Curry Counties, Oregon. The Fish and wildlife Service proposes that these rocks and islands, whose principal value is for marine bird and mammal habitat, be added to and made a part of the Oregon Islands National Wildlife Refuge.

On or before January 5, 1981, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the

undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned before January 5, 1981. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register**, giving the time and place of such hearing. Public hearings are scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will ensure that the area sought is the minimum essential to meet the desired needs while providing for the maximum concurrent utilization of the lands for other purposes.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested. The determination of the Secretary on the application will be published in the **Federal Register.**

The lands included in the proposed withdrawal will be managed so as not to impair their suitability for preservation as wilderness, pending completion by the Fish and Wildlife Service of a wilderness review in accordance with sections 3(c) and 3(d) of the Wilderness Act. Subject to valid existing rights, the lands are temporarily segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. The segregative effect of this proposed withdrawal shall continue for a period of two years from the date of publication of this notice in the **Federal Register**, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 12, 1980.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-36783 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-84-M

Salmon, Idaho, District Grazing Advisory Board, Meeting; Correction

The following correction is made in FR Doc. 45-213 appearing on 72297 in the issue of October 31, 1980:

On page 72297 at the bottom of column one, the date "November 2, 1980" is corrected to read "December 2, 1980".

Harry R. Finlayson,

District Manager.

[FR Doc. 80-36877 Filed 11-25-80; 8:45am]

BILLING CODE 4310-84-M

California Wilderness Program; Correction

Correction Notice to California's Final Wilderness Inventory Notice printed November 14, 1980, on page 75583 of the **Federal Register.**

Due to printing delays the protest period for California's interstate inventory units identified in the above notice has been extended through December 29, 1980. Protests received after that date will not be accepted unless postmarked on or before December 29, 1980.

Roland A. Rush,

Acting State Director.

[FR Doc. 80-36899 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Abbey Gardens, 4620 Carpinteria Ave., Carpinteria, CA 93013.

The applicant requests a permit to sell in interstate commerce seed grown or artifically propagated specimens of endangered and threatened cacti.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7301. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: November 21, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc 80-36908 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-55-M

Intent To Prepare Environmental Impact Statement on Wildlife Grassland Habitat Restoration Program for Intensively Farmed Region of Ohio

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) on an Ohio Department of Natural Resources (DNR) proposal to restore wildlife habitat in the intensively farmed region of the State. The Ohio DNR, Division of Wildlife, proposes to acquire and/or lease and manage the vegetative cover on the lands for the purpose of providing missing habitat components for eight species of grassland nesting birds. The necessary habitat is currently lacking on the intensively farmed lands. To accomplish that goal, acquiring effective habitat management control on approximately 25 acres per square mile will be needed in 202 townships where that habitat does not exist. Existing adequate habitat will also be used to reach the goal of 182,000 acres.

Federal involvement in the proposed action would be reimbursement to the Ohio DNR by the Fish and Wildlife Service (FWS), U.S. Department of the Interior, through funds appropriated under the Federal Aid in Wildlife Restoration Act.

A public meeting will be held regarding this proposal and the preparation of an EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATE: Written comments should be received by December 30, 1980. A public meeting will be held in Columbus, Ohio, January 7, 1981, at the Ohio Department of Natural Resources headquarters, Building C, first floor conference room at 10:00 a.m.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service (FA), Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, Attn.: Dale N. Martin.

FOR FURTHER INFORMATION CONTACT: David Urban, Assistant Administrator Wildlife Management and Research, Division of Wildlife, Fountain Square, Columbus, Ohio 43224 (614/466–3610).

SUPPLEMENTARY INFORMATION: Mr. David Urban is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, proposes to assist the Ohio Wildlife Division through reimbursement of land acquisition and habitat development project costs.

Purpose and Need: Loss of wildlife habitat approaches two million acres annually in the United States. Aggravating this loss are land management practices which have lowered the quality of much of the remaining wildlife habitat. Intensification of agricultural production in Ohio without conservation guidelines has resulted in severe habitat losses in both quality and quantity. The loss of federally diverted acres and acres on which grass and legumes were grown for seed has been catastrophic to ground nesting birds. These acres provided the highest quality nesting habitat because they were usually undisturbed during the nesting period. Alfalfa is a preferred nesting cover for farmland wildlife; the frequency at which it is cut leads to high destruction of nests, young, and nesting adults. The acreage of unpastured and unharvested grass/legume cover decreased 90 percent in Ohio between 1964 and 1978.

The Division of Wildlife has conducted wildlife habitat programs on private lands since 1928. Technical assistance on wildlife management to private landowners has been a part of the Division of Wildlife's program since 1949.

This proposal will supplement current Ohio Division of Wildlife Programs:

In 1979, six biologists were assigned full-time to work with private landowners. During the first 10 months wildlife management plans were completed on 16,000 acres of private land. Management plans encompassing 25,000 acres can be completed yearly at current level of staffing.

Food plot seed mixtures are provided to landowners who are willing to plant them. In 1979, 2,400 packets were supplied.

To maintain undisturbed nesting cover for farmland wildlife, the Division of Wildlife began providing pheasants for stocking to those landowners willing to provide this habitat component. Pheasants are allotted on the basis of the amount of nesting cover provided. In the summer of 1980, 24,000 acres of undisturbed nesting cover were provided by cooperating landowners.

Vicinity Description: Buying, taking long-term easements, and/or leasing of land would occur in the glaciated, intensively farmed region of Ohio. This area consists of 65.4% tilled cropland, 8.1% pasture, 3.8% in hay production, 5.5% wooded and the remaining 17% urbanized.

Table 1 identifies the Ohio Counties and townships where the action is proposed.

Concerns, Issues and Opportunities: A primary concern is that increased wildlife populations may cause increased trespass on private land in the area where habitat will be developed. To circumvent this concern, the Division of Wildlife will increase enforcement patrols where problem areas develop. Landowners will also be encouraged to participate in the Cooperative Hunting Program. Under this program the hunter must obtain a permit from the landowner before hunting.

A concern among farmers is that acquisition and easement sites may offer a haven for the spread of noxious weeds. All areas will be planted with vegetation known to out compete noxious weeds. When necessary, mechanical and chemical treatment will be used to control weeds.

There is concern that prime farmland may be acquired and that its management may result in temporary removal from tillage. This would not result in an irreversible loss of potential crop production from these acres.

Management of these areas will be by existing wildlife work unit personnel and by contract with local landowners.

The number of wildlife observers are increasing each year and this activity can be enjoyed by all ages, at all seasons, in all regions. In 1975, 86,817,000 recreation days were spent in wildlife observation and 10,363,000 recreation days were spent hunting small game in Ohio.

This proposal is designed to prevent the extinction in Ohio of some grassland dependent species.

The following alternatives have been identified:

1. No action.

2. Maintain current level of activity of providing wildlife habitat on private land.

3. Provide only technical assistance to landowners for the development of wildlife habitat.

4. Mandatory regulation by law to provide minimum wildlife habitat on intensively farmed land.

5. Develop and subsidize a rest rotation system of grazing using warm-season grasses so that undisturbed wildlife nesting cover is developed.

6. Change the U.S. Department of Agriculture farm policy so that farmland wildlife is recognized as an important agricultural crop and provide econmically viable incentives for those practices that benefit wildlife and economic disincentive for those practices which are detrimental to wildlife.

7. Lease through short-term contract enough land to restore missing habitat components on intensively farmed land.

8. Develop wildlife habitat on roadside to provide nesting habitat.

9. Acquire management rights from willing sellers through fee simple acquisition and long-term easements on agricultural land in the intensively farmed region of Ohio.

The scoping process for the DEIS will be initiated by letter to interested Federal, State, and local agencies and those private organizations and affected parties who have expressed interest in the proposal. Anyone else who has an interest in participating in the scoping process and the development of the DEIS is invited to do so and should contact the Regional Director on or before December 30, 1980.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (40 CFR, Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the DEIS will be made available to the public by March, 1981.

Dated: November 14, 1980.

James C. Gritman,

Acting Regional Director, North Central Region, Fish and Wildlife Service.

Table 1.—*Ohio Counties and Townships Proposed for Grassland Wildlife Habitat Restoration Program*

Allen Co.	Richland Township
Ashland Co.	Vermillion Township
Ashtabula Co.	Cherry Valley Township
Auglaize Co.	Washington Township
Champaign Co.	All Townships
Clark Co.	All Townships
Clinton Co.	Wayne Township
Columbiana Co.	Unity Township
Crawford Co.	Bucyrus Township
Darke Co.	Richland Township
Defiance Co.	Farmer Township
Delaware Co.	Radnor Township
Erie Co.	Milan Township
Fairfield Co.	Amanda Township
Fayette Co.	All Townships
Fulton Co.	Pike Township
Geauga Co.	Chardon Township
Greene Co.	Cedarville Township
Hancock Co.	All Townships
Hardin Co.	Washington Township

Table 1.—*Ohio Counties and Townships Proposed for Grassland Wildlife Habitat Restoration Program*—Continued

Henry Co.	All Townships
Highland Co.	Madison Township
Huron Co.	Clarksfield Township
Knox Co.	Liberty Township
Licking Co.	Hartford Township
Logan Co.	Washington Township
Lorain Co.	Rochester Township
Madison Co.	All Townships
Mahoning Co.	Beaver Township
Marion Co.	Green Camp Township
Medina Co.	Chatham Township
Mercer Co.	Union Township
Miami Co.	Newton Township
Montgomery Co.	Clay Township
Morrow Co.	Chester Township
Ottawa Co.	Bay Township
Paulding Co.	All Townships
Pickaway Co.	All Townships
Portage Co.	Suffield Township
Preble Co.	Harrison Township
Putnam Co.	All Townships
Richland Co.	Cass Township
Ross Co.	Buckskin, Concord, Deerfield, Union, Green Townships
Sandusky Co.	Woodville, Madison, Washington, Rice, Sandusky, Riley, Scott, Jackson, Ballville, Green Creek Townships
Seneca Co.	Jackson, Liberty, Pleasant, Loudon, Hopewell, Clinton, Big Spring, Seneca, Eden Townships
Shelby Co.	Loramie Township
Stark Co.	Marlboro Township
Trumbull Co.	Hartford Township
Union Co.	Dover Township
Van Wert Co.	Jackson Township
Warren Co.	Clear Creek Township
Wayne Co.	Clinton, Chippewa, Baughman Townships
Williams Co.	Springfield Township
Wood Co.	All Townships
Wyandot Co.	Mifflin Township

Geological Survey

General Mining Order; Intention To Develop an Order for Environmental Protection and Reclamation Standards for Uranium Exploration and Mining on Federal and Indian Permits, Leases, and Contracts

AGENCY: Department of the Interior Geological Survey.

ACTION: Proposed Issuance of General Mining Order.

SUMMARY: In carrying out lease management responsibilities under the provisions of the Mineral Leasing Acts, as amended, the Conservation Division (CD), Geological Survey, must assure conservation of Federal and Indian solid leasable minerals, prevention of waste and damage to other minerals and resources, and reclamation of the permit and lease areas disturbed by exploration, mining, and mineral processing operations. The CD supervises exploration and mining operations to properly balance development, conservation, and environmental concerns. Environmental protection, conservation, and reclamation procedures have been required by the CD to be included in exploration and mine plans in the past. The development of general mining orders incorporating environmental and reclamation standards for specific commodities and areas by CD represents a new thrust to ensure that the Nation's resources are developed with due regard for the most up-to-date and economically efficient methods and administration. Solicitation of public comment as an integral step in reviewing existing mining reclamation and environmental protection practices is part of this initiative. Accordingly, the CD proposes to develop a General Mining Order for environmental protection and reclamation standards for uranium exploration and mining on Federal and Indian permits, leases, and contracts for New Mexico and Washington. Written comments and views are requested from interested persons on the content of the Order.

DATES: All concerned parties and the general public are invited and encouraged to submit comments and suggestions as to the content of the proposed General Mining Order. Written comments and suggestions must be received on or before January 30, 1981.

ADDRESS: Comments should be directed to: Mr. Charles L. Sours, Chief, Branch of Rules and Procedures, U.S. Geological Survey, National Center, Mail Stop 650, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Paul J. Buff, Branch of Solid Minerals Management, U.S. Geological Survey, National Center, MS 650, Reston, Virginia 22092. Telephone: 703–860–7506.

SUPPLEMENTARY INFORMATION: Notice is given, under "Operating Regulations for Exploration, Development, and Production," published in 30 CFR Part 231 (37 FR 11041, June 1, 1972), in particular, §§ 231.3(a) and 231.3(c)(9), the Chief, CD, intends to develop a General Mining Order for specific environmental protection and reclamation standards for exploration and mining of uranium on Federal and Indian lands in specific geographic areas and solicits views of interested persons on the content of the Order.

The requirements of this Order would complement existing laws regarding pollution and environmental protection and allow the GS to assure that its regulatory responsibility was being met. It is the intention of the GS that the Order not interrupt interaction between agencies given responsibility for the various environmental and pollution laws.

The GS supervises nine uranium mining operations in New Mexico, including one pilot project for in situ mining; two in Washington; and one in Wyoming. Exploration for uranium on Federal acquired and Indian lands is also supervised by the GS.

The GS presently has regulatory responsibility for approximately 15 percent of the San Juan Basin uranium production (approximately 8 percent of the Nation's production). Demand for uranium may increase above present levels, requiring additional production from lands where the GS has responsibility for regulatory operations. By soliciting public input, the GS intends the Order to reflect interested parties' knowledge and concerns regarding evironmental protection and reclamation for present and possible higher future levels of uranium mining.

Comments on the need for public meetings regarding the Order are solicited. Public meetings will be held if a significant number of responses request them and indicate interest in participation. Probable location for the meetings, if desired, would be Albuquerque, New Mexico; and Spokane, Washington. The Bureau of Indian Affairs, tribes, and State agencies having regulatory responsibilities for mineral development would also be encouraged to participate.

Exploration for, and mining of, uranium presents unique reclamation problems. Comments and suggestions should primarily be concerned with the following:

1. Reclamation procedures that mitigate radiological contamination of water, air, and soil.
2. Procedures for drill hole plugging.
3. Procedures for shaft abandonment.
4. Erosion abatement.
5. Procedures for pit abandonment.
6. Procedures for operation of water treatment and tailings ponds and their abandonment.
7. Procedures for operation of waste dumps (ore and nonore associated overburden) and low grade and ore piles, and their abandonment.
8. Revegetation procedures.
9. Procedures for in situ site abandonment and aquifer restoration.
10. Procedures for environmental protection during in situ mining.

Many of the above items are interrelated. They can be approached in general terms or with specific engineering or scientific principles and criteria. Comments on alterate regulatory approaches to achieving the results are also solicited.

Public input in developing the content of this Order is solicited.

Dated: November 19, 1980.

John J. Dragonetti,

Deputy Division

Chief, Onshore Minerals Regulation.

[FR Doc. 80-36878 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Petition to Designate Certain Federal Lands in Southern Utah Unsuitable for Surface Coal Mining Operations; Availability of Final Combined Petition Evaluaiton and Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Notice of availability of the final combined petition evaluation and environmental impact statement (EIS) document evaluating whether certain lands in southern Utah abutting Bryce Canyon National Park are unsuitable for surface coal mining and reclamation operations.

SUMMARY: The Office of Surface Mining, with the assistance of several Federal agencies and the State of Utah, has prepared a final evaluation of the petition to designate certain Federal lands in southern Utah unsuitable for all or certain types of surface coal mining and reclamation operations, together with a final environmental impact statement.

Copies of the combined final statement are being made available today. OSM has arranged for expedited delivery to assure maximum availability prior to the Secretary's scheduled decision on the petition.

Additional information on this petition may be found in **Federal Register** notices of January 17, 1980 (Receipt of a Complete Petition for Designation of Lands Unsuitable for Surface Coal Mining Operations, 45 FR 3398–99), and April 24, 1980 (Intent to Prepare Coal Resources, Demand, and Impact Statement and Draft Environmental Impact Statement, Scoping Meeting 45 FR 27836–37).

DATES: An accelerated schedule has been approved by the Council on Environmental Quality in concurrence with the Environmental Protection Agency. The Secretary of the Interior will make a decision regarding the petition on or after December 12, 1980.

ADDRESSES: Copies of the final document are available at the following locations: OSM Headquarters Office, 1951 Constitution Avenue, NW, Room 153, Interior South, Washington, D.C. 20240, OSM Regional Office, Division of State and Federal Programs, Region V, 2nd Floor, Brooks Towers, 1020 15th Street, Denver, CO 80202; and Bureau of Land Management, 320 North 100 East, Kanab, UT 84741. All comments received on the documents, transcripts of all hearings, and the file on the petition are available for inspection at the OSM Regional Office in Denver, CO.

FOR FURTHER INFORMATION CONTACT: Paul Bodenberger, Division of Technical Analysis and Research, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, CO 80202 (telephone 303–837–5656).

SUPPLEMENTARY INFORMATION: The final combined petition evaluation and environmental impact statement document presents an analysis of the allegations made in the petition. The document summarizes available information on the petition area (including related NEPA reviews) as well as material from new studies. The document also contains discussions of the potential coal resources in the area, the demand for coal resources, the impact of designation on the environment, the economy and the supply of coal, and the impacts of alternatives available to the Secretary.

Controversial issues raised by the petitioners, the intervenors, the public and other agencies include air quality, visibility, visual intrusions, noise, deep ground water, reclaimability, blasting effects, and impacts on the local economy. Concern was also expressed on the relationship of the Alton coal to the Allen-Warner Valley Energy System.

Public hearings to solicit comments concerning the draft document were held at Kanab, Utah, in two sessions on September 29, 1980, and in one session on October 10, 1980; and at Panguitch, Utah, in one session on September 30, 1980. Responses to the hearings testimony and written comments on the draft document have been prepared and are published in the final document.

The Council on Environmental Quality's (CEQ's) regulations for implementing the National Environmental Policy Act require that agencies normally wait 30 days after publication of the EPA notice of availability before making a decision (40 CFR 1506.10(b)). However, these waiting periods may be reduced in consultation with CEQ, the Environmental Protection Agency (EPA) and the Assistant Secretary for Policy, Budget, and Administration, Department of the Interior. (See 40 CFR 1506.10(d) and 45 FR 27547, April 23, 1980, Section 4.24B.)

OSM has completed the required consultation and has been authorized by CEQ and EPA to reduce the waiting period on this final statement to 13 days. (See letter from Walter Heine, Director, OSM, to Nicholas Yost, General Counsel, CEQ, dated May 2, 1980, and letter from Nicholas Yost to Walter Heine, dated June 9, 1980. See also letters of November 17, 1980 from Paul Reeves, Deputy Director, OSM to Foster Knight, Acting General Counsel, CEQ, and to William Hedeman, Director, Office of Environmental Review, EPA. Copies of this correspondence are available in the Administrative Record of this proceeding in the OSM Region V Office in Denver, CO.) As noted above, OSM will distribute copies of the final statement by the fastest means possible in order to provide maximum time for public review.

Dated: November 20, 1980.

Heather L. Ross,

Deputy Assistant Secretary of the Interior.

[FR Doc. 80-36923 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Permanent Authority Decisions

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 January 12, 1981 (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. OP4–130

Decided: November 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 1117 (Sub-35F) filed October 27, 1980. Applicant: M.G.M. TRANSPORT CORPORATION, 70 Maltese Drive, Totowa, NJ 07512. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. As a *broker* to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 152476F, filed October 20, 1980. Applicant: COMBINED TRANSPORTATION SERVICES, INC. 8300 Bletzer Rd., Baltimore, MD 21222. Representative: Barry Weintraub, Suite 800, 8133 Leesburg Pike, Vienna, VA 22180. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the Unites States Government, and (2) *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.

MC 147156 (Sub-1F), filed October 22, 1980. Applicant: MANUFACTURERS' MOBILE HOME TRANSPORT, INC., P.O. Box 1519, Athens, TX 75751. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. 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 152536F, filed October 30, 1980. Applicant: LARRY L. MILLER, 36 W. Eighth St., Bloomsburg, PA 17815. Representative: Larry L. Miller, 265 E. Eighth St., Bloomsburg, PA 17815. 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,* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP5–062

Decided: Nov. 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 97699 (Sub-50F), filed November 12, 1980. Applicant: BARBER TRANSPORTATION CO., a corporation, P.O. Box 2047, Rapid City, SD 57701. Representative: Leslie R. Kehl, Suite 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. 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 127278 (Sub-7F), filed October 20, 1980. Applicant: PACIFIC VAN & STORAGE CO., INC., 1415 West Torrance Boulevard, Torrance, CA 90501. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036. 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 151129 (Sub-1F), filed October 21, 1980. Applicant: BRONC ENTERPRISES, INC., 14315 West Hardy, Houston, TX 77088. Representative: C. W. Ferebee, 720 North Post Oak, Suite 230, Houston, TX 77024. 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 152128 (Sub-2F), filed November 3, 1980. Applicant: STATE TRANSPORT SERVICE, INC., 13209 Market St., Houston, TX 77015. Representative: C. W. Ferebee, 720 North Post Oak, Suite 230, Houston, TX 77024. Transporting *general commodities* except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 152429 (Sub-1F), filed October 20, 1980. Applicant: C R & S TANK LINES, INC., P.O. Box 871, Benicia, CA 94510. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036. Transporting general commodities (except household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 152499F, filed October 24, 1980. Applicant: LOUVELL E. CRAWFORD, T/A, CRAWFORD TRUCK BROKERS, Maryland Wholesale Produce Market, Building A, Unit 14, Jessup, MD 20794. Representative: Bernard F. Goldberg, 3691 Park Ave., Ellicott City, MD 21043. To arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP5–057

Decided: Nov. 13, 1980

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 25399 (Sub-17F), filed October 24, 1980. Applicant: A-P-A TRANSPORT CORP., 2100 88th St., North Bergen, NJ 07047. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. 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.

MC 123389 (Sub-56F), filed October 16, 1980. Applicant: CROUSE CARTAGE COMPANY, P.O. Box 151, Carroll, IA 51401. Representative: William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. 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 123389 (Sub-57F), filed October 16, 1980. Applicant: CROUSE CARTAGE COMPANY, P.O. Box 151, Carroll, IA 51401. Representative: William S. Rosen, 630 Osborn Building, St. Paul, MN 55102. Transporting *general commodities,*

between Santa Rosa, Tucumcari, Logan, Maravisa, and Endee, MN; Stratford, Genrio, Adrian, Vega, Wildorado, Amarillo, Alanreed, McLean, Shamrock, St. Francis, Fritch, Sunray, Etter, Brum, Wilco, Stinnett, Pringle, Morse, Gruver, Dalhart, Irving, Dallas, Waxahachie, Corsicana, Teagur, Newby, Normangee, Tomball, Houston, Texas City, Galveston, Fort Worth, Graham, Jacksboro, Bowie, Ringgold, and Mexia, TX; Texalo, Sayre, Elk City, Clinton, Weatherford, Bridgeport, Texhoma, Hitchland, Hardesty, Guymon, Mangum, Grantie, Hobart, Carnegie, Anadarko, Apache, Chickasha, Marlow, Duncan, Comanche, Homestead, Alva, Ingersoll, Enid, Binnings, Ponca City, Augusta, Kingfisher, El Reno, Oklahoma City, Shawnee, Seminole, Wewoka, Holdenville, McAlester, Haileville, Hartshorne, Wilburton, Wister, Howe, Medford, Warren, Geary, Okenne, Fort Bill, Verden, Lawton, Walter, Temple, Waurika, and Terral, OK; Eunice, Lecompte, Alexandria, Winnfield, Jonesboro, Hodge, Ruston, Dubach, Bernice, and Junction City, LA; Eldorado, Camden, Crossett, Hermitage, Mace, Banks, Kingman, Fordyce, Carthage, Sparkman, Malvern, Hot Springs, Haskell, Benton, Little Rock, Bauxite, North Little Rock, Carlisle, Hazen, Des Arc, Mesa, DeValls Bluff, Brinkley, Wheatley, Forest City, West Memphis, Edmondson, Stuttgart, Roland, Bigelow, Perry, Cla, Bonneville, Mansfield, and Hartford, AR; Kansas City, Southlea, Pleasant Hill, Windsor, Hay, Versaille, Eldon, Meta, Gasconde, Belle, Owensville, Union, Labadie, St. Louis, Liberty, Excelsior Springs, Polo, St. Joseph, Clarksdale, Maysville, Wetherby, Altamont, Coburn, Trenton, and Princeton, MO; Caldwell, Wellington, Wichita, Peabody, Marion, Harrington, Liberal Plains, Meade, Fowler, Mineola, Bucklin, Dodge City, Greensburg, Pratt, Hutchinson, Medora, McPherson, Salina, White City, Alta Vista, Goodland, Colby, Norton, Phillipsburg, Smith Center, Mankato, Belleville, Cuba, Clyde, Clifton, Clay Center, Riley, Manhattan, McFarland, Topeka, Holton, Horton, Troy, Atchison, and Kansas City, KS; Burlington, Stratton, Flaglea, Arriba, Limon, Simla, Roman, Calhan, Colorado Springs, and Denver, CO; Thompson, Ruskin, Deshler, Hebron, Fairbury, Jansen, Witt, Lincoln, South Bend, Omaha, and Beatrice, NE; Council Bluffs, Shelby, Oakland, Avoca, Audubon, Walnut, Menlo, Stuart, Winterest, Indianola, Chariton, Corydon, Allerton, Seymore, Centerville, Eldon, Ottumwa, Evans, Pella, Monroe, Des Moines, Colfax, Newton, Grinnell, Brooklyn, Marengo, Iowa City, West Liberty, Stockton, Davenport, Clinton, Fairfield, Keosauqua, South Burlington, Buffalo Center, Burlington, Mount Zion, Keokik, Washington, Ainsworth, Columbus Junction, Nichols, Muscatine, Wilton, Elmira, Cedar Rapids, West Union, Oelwein, Vinton, Waterloo, Cedar Falls, Nevada, McCallsburg, Renwick, Iowa Falls, Hampton, Mason City, Maysfield, Manly, Dows, Belmond, Titonka, Armstrong, Northwood, Emmetsburg, Estherville, Spirit Lake, Lake Park, Gowrie, Hanson, Pocohontas, Hartley, and Sibley, IA; Elsworth, Worthington, Lismore, Albert Lea, Hollandale, Clarks Grove, Owatonna, Faribault, Northfield, Farmington, West St. Paul, and St. Paul, MN; Rock Island, Milan, Moline, East Moline, Silvis, Colona, Geneseo, Sheffield, Bureau, Tonlon, Henry, Chillicothe, Peoria, Pekin, Lasalle, Ottawa, Joliet, Elwood, and Chicago, IL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for complete abandonment rail carrier service.

MC 131069F, filed October 14, 1980 Applicant: RONALD WILLIAMSON, 153 Larchmont, Bloomington, IL 60108. Representative: Ronald Williamson (same address as applicant). To arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-36863 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier; Permanent Authority Decisions

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.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 January 12, 1981 (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. OP3-077

Decided: Nov. 14, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 15975 (Sub-39F), filed October 28, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting *wire shelving and parts for wire shelving,* (1) from Farmington, MI, to Pierceton, Greenfield and Lafayette, IN, and (2) from Pierceton, Greenfield and Lafayette, IN, to Bridgeton, MO.

MC 16965 (Sub-9F), filed October 26, 1980. Applicant: FRANKLIN TRUCKING, INC., 210 E. Washington St., Hartford City, IN 47348. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *plastic products,* between points in the U.S., under continuing contract(s) with Minnesota Mining &

Manufacturing Company (3M), of St. Paul MN.

MC 29674 (Sub-1F), filed November 6, 1980. Applicant: R. F. CLEMENS & SON, INC., R.F.D. No. 1 Munyan Rd., Putnam, CT 06260. Representative: Sidney L. Goldstein, 109 Church St., New Haven, CT 06510. Transporting *household goods,* as defined by the Commission, between points in Windham, Tolland, and New London Counties, CT, Worcester County, MA, Burrillville, Glocester and Foster Counties, RI, on the one hand, and, on the other, points in NH, VT, ME, NJ, and PA.

MC 73165 (Sub-535F), filed October 31, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting *paper and paper products,* between points in Jefferson County, AR, and Richmond County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 106074 (Sub-449F), filed November 3, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy 221, S., P.O. Box 727, Forest City, NC 38043. Representative: John J. Capo, P.O. Box 720434, Altanta, GA 30328. Transporting *general commodities* (except household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, articles of unusual value, and those requiring the use of special equipment), between points in Hardemann County, TN and Houston County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 110325 (Sub-165F), filed October 17, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), (1) between Brownsville, TX and Atlanta, GA, from Brownsville over U.S. Hwy 77 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 85, then over Interstate Hwy 85 to Atlanta, and return over the same route; (2) between Brownsville, TX and Laredo, TX, over U.S. Hwy 83; (3) between Laredo, TX and Memphis, TN, from Laredo over Interstate Hwy 35 to junction TX Hwy 31, then over TX Hwy 31 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis and return over the same route; (4) between Victoria, TX and Waco, TX, over U.S. Hwy 77; (5) between McAllen, TX and Denver, CO, from McAllen over U.S. Hwy 281 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 25, then over Interstate Hwy 25 to Denver, and return over the same route; (6) between Victoria, TX and Raton, NM, over U.S. Hwy 87; (7) between San Antonio, TX and Birmingham, AL, from San Antonio over Interstate Hwy 10 to junction U.S. Hwy 59, then over 59 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Birmingham, and return over the same route; (8) between junction Interstate Hwy 35 and U.S. Hwy 79 and junction U.S. Hwy 79 and Interstate Hwy 20, over U.S. Hwy 79; (9) between junction U.S. Hwy 96 and Interstate Hwy 10 and junction U.S. Hwys 96 and 59, over U.S. Hwy 96; and (10) serving all intermediate points in routes (1) through (9) above.

MC 116544 (Sub-227F), filed November 3, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting (1) *foodstuffs;* and (2) *materials, equipment and supplies used in the manufacture and distribution of foodstuffs,* betweeen points in FL and those in Monterey and Monrovia Counties, CA; and Spartanburg County, SC., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 117765 (Sub-304F), filed November 3, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting (1) *recreational equipment,* (2) *heating and air conditioning equipment,* and (3) *materials, equipment, and supplies* used in the manufacture, installation and distribution of the commodities in (1) and (2) above, between the facilities of The Coleman Company, Inc., on the one hand, and, on the other, points in AL, AR, IA, IL, IN, KS, KY, LA, MN, MO, MS, NE, ND, OK, SD, TN, TX, and WI.

MC 133604 (Sub-11F), filed October 16, 1980. Applicant: LYNN TRANSPORTATION COMPANY, INC., 712 South 11 St., Oskaloosa, IA 52577. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting (1) *foodstuffs,* from the facilities of Geo. A. Hormel & Co., at or near Davenport, IA, to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN; and (2) *materials, equipment and supplies* used in the manufacture of gelatin products, in the reverse direction.

MC 134645 (Sub-38F), filed October 31, 1980. Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting (1) *meats, meat products, and meat byproducts, and articles distributed by meat packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions of Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Macon, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141914 (Sub-93F), filed October 30, 1980. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in ME, on the one hand, and, on the other, points in the U.S., (except AK and HI). Condition: Issuance of this certificate is subject to prior or coincidental cancellation, at applicant's written request, of MC 141914 Subs 10, 13, 19, 21, 22, 25, 35, 37, 38, and 59.

Note.—Applicant relies on traffic studies in lieu of shipper support.

MC 145915 (Sub-5F), filed November 4, 1980. Applicant: EAGLE TRANSPORT, INC., P.O. Box 189, Montpelier, ID 83254. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Transporting *oil drilling mud compounds,* (1) between points in Uinta County, WY, on the one hand, and, on the other, points in Lander and Nye Counties, NV, and those in Box Elder, Cache Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake Summit, Weber and Wasatch Counties, UT; and (2) from points in Lander and Nye Counties, NV, to points in Bear Lake County, ID.

MC 151275 (Sub-1F), filed October 20, 1980. Applicant: CHICAGO SURBURBAN EXPRESS, INC., 1500 W. 33rd St., Chicago, IL 60608. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. Transporting *chemicals,* between Chicago, IL, on the one hand, and, on the other, Milwaukee, Racine, and Kenosha, WI.

MC 151534 (Sub-1F), filed October 21, 1980. Applicant: R&D

TRANSPORTATION CORPORATION, P.O. Box 1908, Des Moines, IA 50306. Representative: Donald B. Strater, 1350 Financial Center, Des Moines, IA 50309. Transporting *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, from points in IA, NE, IL, MO, KS, ND, SD, MN, and WI, to points in the U.S.

MC 152085 (Sub-1F), filed October 17, 1980. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Rd., P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kuntz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *coal, limestone, and sand,* between points in the U.S., under continuing contract(s) with Alpha Portland Cement Company, of Frederick, MD.

MC 152225 (Sub-1F), Filed October 27, 1980. Applicant: RICK PERRONE TRANSPORTATION, INC., 39 Depot St., Broad Brook, CT 06016. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *electronic cable, plastic pellets, and materials, equipment, and supplies* used in the manufacture and installation of electronic cable and wire plastic insulation, from South Hadley, MA, to Nogales, AZ, and from Nogales, AZ, to points in the U.S. (except AK and HI).

MC 152325 (Sub-1F), filed October 20, 1980. Applicant: BOWDEN TRANSFER COMPANY, INC., P.O. Box 343, Lewisburg, TN 37901. Representative: Robert E. Campbell, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (A) over regular routes, between Lewisburg and Nashville, TN, over Alternate U.S. Hwy 31, serving all intermediate points; and (B) over irregular routes, between Lewisburg, TN, on the one hand, and, on the other, points in the U.S.

MC 152395 (Sub-1F), filed October 22, 1980. Applicant: KRUEGER TRUCKING, INC., 1330 Bellevue St., Green Bay, WI 54305. Representative: Norman A. Cooper, 145 West Wisconsin Ave., Neenah, WI 54956. Transporting (1) *furniture and fixtures,* and (2) *materials, supplies, and equipment used in the manufacture and distribution of the commodities in (1),* between points in the U.S., under continuing contract(s) with Krueger Metal Products, Inc., and its subsidiaries. Condition: Applicant must submit a statement indicating how it proposes to satisfy the statutory criteria of contract carriage furnishing transportation services designed to meet the distinct need of the shipper. In particular applicant must describe briefly the distinct need for which transportation services have been designed. The statement will be examined by a review board prior to issuance of any permit.

Volume No. OP4–129

Decided: November 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 60066 (Sub-22F), filed November 3, 1980. Applicant: BEE LINE MOTOR FREIGHT, a corporation, 1804 Paul St., Omaha, NE 68106. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *automobile parts and accessories,* between points in Platte County, NE and Cook County, IL.

MC 70557 (Sub-38F), filed November 7, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W. Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. Transporting (1)(a) *paper and paper products* and (b) *plastic articles and containers* and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1)(a) and (b), (except commodities in bulk), between points in AL, DE, FL, GA, IN, KY, MO, NC, NJ, NY, OH, OK, PA, TN, and TX, restricted to traffic originating at or destined to the facilities of Container Corporation of America.

MC 75627 (Sub-3F), filed October 20, 1980. Applicant: PERILLO MOTOR LINES, INC., 499 Central Ave., New Providence, NJ 07974. Representative: Nicholas J. Perillo (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC. Condition: Issuance of a certificate in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of authority held in MC–75627 and subs thereunder which duplicate, in full or in part, the authority herein.

MC 77016 (Sub-22F), filed October 31, 1980. Applicant: BUDIG TRUCKING CO., a corporation, 1100 Gest St., Cincinnati, OH 45203. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Over regular routes, 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 Columbia and Centralia, MO, (a) from Columbia over U.S. Hwy 63 to junction MO Hwy 22, then over MO Hwy 22 to Centralia, and return over the same route, serving no intermediate points, and (2) between Centralia and Mexico, MO, over MO Hwy 22, serving no intermediate points.

MC 99946 (Sub-3F), filed November 12, 1980. Applicant: FOOTHILLS EXPRESS, INC., 2510 Evergreen ave., West Sacramento, CA 95691. Representative: Michael S. Rubin, 256 Montgomery St., 5th Floor, San Francisco, CA 94104. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in CA and NV.

MC 107456 (Sub-25F), filed October 31, 1980. Applicant: HARRY L. YOUNG AND SONS, INC., 542 W. Sixth So., Salt Lake City, UT 84104. Representative: Lon Rodney Kump, 333 E. Fourth So., Salt Lake City, UT 84111. Transporting (1) *iron and steel articles,* and (2) *commodities* because of size or weight requires the use of special equipment, and (3) *machinery parts and contractors' materials and supplies,* in mixed loads with the commodities in (2) and (4) *general commodities* (except motor vehicles, motor vehicle cabs and bodies, and classes A and B explosives), in mixed loads with the commodities in (2) above, and (5) *self-propelled vehicles* (except motor vehicles and vehicles moving in drive-away service), and (6) *construction materials,* between points in UT.

MC 107576 (Sub-32F), filed November 4, 1980. Applicant: SILVER WHEEL FREIGHTLINES, INC., 1321 S.E. Water Ave., Portland, OR 97214. Representative: Ronald D. Browning (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Cowlitz County, WA, on the one hand, and, on the other, points in OR, WA, and ID.

MC 113406 (Sub-17F), filed November 6, 1980. Applicant: DOT LINES, INC., 1000 Findlay Rd., Lima, OH 45802. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Transporting (1) *auto parts,* and (2) *materials, equipment, and supplies* used in the manufacture of auto parts (except commodities in bulk), between Lima, OH, on the one hand, and, on the other, points in the Lower Peninsula of MI.

MC 114457 (Sub-580F), filed November 4, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James C. Hardman, 33 North LaSalle St., Suite 2108, Chicago, IL

60602. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, in tank vehicles, and those requiring special equipment), between points in the U.S.

MC 119777 (Sub-507F), filed November 6, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting (1) *sealant, fireproofing, acoustical, and insulating products,* (2) *building and construction materials,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) between points in Sussex County, NJ, Jefferson County, AL, Orange County, CA, Huntington County, IN, and Fredericksburg, VA, on the one hand, and, on the other, points in the U.S.

MC 123407 (Sub-651F), filed November 6, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (same address as applicant). Transporting (1) *chemical compounds,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of chemical compounds, between St. Louis, MO, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, and NM.

MC 123407 (Sub-653F), filed November 3, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting (1) *prefabricated metal buildings,* knocked down or in sections, and (2) *parts and accessories* used in the installation of the commodities in (1) from Madison, WI, to points in the U.S. (except AK and HI).

MC 125777 (Sub-304F), filed November 3, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Ave., Gary, IN 46403. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are usually transported in dump vehicles, between points in the U.S.

MC 129166 (Sub-4F), filed November 5, 1980. Applicant: RED WING TRANSPORTATION CORPORATION, 3154 No. Service Dr., Red Wing, MN 55066. Representative: Robert L. Cope, 1730 M St., NW. Suite 501, Washington, D.C. 20036 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 S. B. Foot Tanning Co., of Red Wing, MN.

MC 135007 (Sub-87F), filed November 6, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" St., Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Transporting *chemicals or allied products* as described in Item 28 of Standard Transportation Commodity Code Tariff, between points in the U.S, under continuing contract(s) with Thompson, Hayward Chemicals Company, of Des Moines, IA.

MC 138157, (Sub-257F), filed October 31, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 S. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). Transporting *lighting fixtures and materials, equipment, and supplies* used in the manufacture, and distribution of lighting fixtures, between points in Erie and Lorain Counties, OH on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138157 (Sub-258F), filed October 31, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative; Patrick E. Quinn, (same address as applicant). Transporting *fans, heaters, and stands and materials, equipment, and supplies* used in the manufacture, and distribution of fans, heaters, and stands, between points in Tarrant County, TX; Williamson County, TN; and Lancaster and Chester Counties, PA, on the one hand, and, on the other, points in the U.S. restricted to traffic originating at or destined to the facilities of Lasko Metal Products.

MC 139077 (Sub-3F), filed November 5, 1980. Applicant: LOOP FLEET SERVICE, INC., 1818 N. Commerce St., Milwaukee, WI 53212. Representative: James L. Sernovitz (same address as applicant). Transporting (1) *hides, skins and splits,* between points in NE, MN, KS, MO, KY, MI and IN; (2) *leathers and materials* used to make shoes and boots, between points in WI and El Paso, TX; and (3) *general commodities* (except used household goods), between points in WI and Chicago, IL, restricted to traffic having a prior or subsequent movement by rail or water.

MC 14126 (Sub-10F), filed October 31, 1980. Applicant: FOAM TRANSPORT, INC., 201 Ballardvale St., Wilmington, MA 01887. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting (1) *rubber balls, plastic balls and sponge balls,* (2) *rubber automotive parts,* and (3) *materials and supplies* used in the manufacture of the foregoing commodities (except commodities (in bulk), between points in the U.S., under continuing contract(s) with Barr, Inc., of Sandusky, OH.

MC 142546 (Sub-2F), filed October 15, 1980. Applicant: MER–LOU TRANSPORTATION, INC., P.O. Box 247, 401 DuPont Hwy., Millsboro, DE 19966. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. Transporting *foodstuffs* (except commodities in bulk), between New York, NY, and points in Camden and Cumberland Counties, NJ, Sussex County, DE, Caroline, Dorchester, Talbot, and Wicomico Counties, MD, Accomack and Northampton Counties, VA, on the one hand, and, on the other, points in the U.S.

MC 142556 (Sub-1F), filed October 27, 1980. Applicant: GIGUERE'S SUPER MARKET, a corporation, Western Ave., Box 710, Augusta, ME 04330. Representative: Robert J. Daviau, One Center St., Waterville, ME 04901. Transporting *such commodities* as are dealt in or used by chain grocery stores, between points in the U.S., under continuing contract(s) with New England Grocer Supply Co., of Northboro, MA.

MC 144416 (Sub-7F), filed November 4, 1980. Applicant: C. F. McGRAW, and individual, P.O. Box 498, Garden City, KS 67846. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006. Transporting *foodstuffs,* between points in Finney County, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145676 (Sub-6F), filed October 31, 1980. Applicant: JOHN BREITWEISER TRUCKING, INC., P.O. Box 217, Jerseyville, IL 62022. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *carbonated beverages,* and (2) *materials and supplies* used in the manufacture and distribution of carbonated beverages, between points in the U.S., under continuing contract(s) with Taylor Beverages, Inc., of Hazelwood, MO.

MC 146146 (Sub-9F), Filed October 31, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Lilly Metal Products, Inc., of Palm Beach Gardens, FL.

MC 146656 (Sub-59F), filed November 5, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 So. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, 4 Professional Dr., Suite 145, Gaithersburg, MD 20760. 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 Key Warehouse Services, a division of Cowan Enterprises, Inc., of Baltimore, MD.

MC 146656 (Sub-60F), filed November 6, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 S. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting *polyurethane foam,* between points in the U.S., under continuing contract(s) with William T. Burnett & Company, Inc., of Baltimore, MD.

MC 148886 (Sub-1F), filed October 31, 1980. Applicant: A & A TRUCKING, INC., P.O. Box 538, Stephens, AR 71764. Representative: Joe D. Woodward, P.O. Box 727, Magnolia, AR 71753. Transporting (1) *roofing and roofing products,* and (2) *materials and supplies* used in the manufacture of roofing and roofing products, between the facilities of the Elk Corporation at Stephens, AR, on the one hand, and, on the other, points in AL, KY, LA, MO, OK, TN, TX, and MS.

MC 151087 (Sub-2F), filed October 31, 1980. Applicant: AREA INTERSTATE TRUCKING, INC., 15344 Dixie Hwy., Harvey, IL 60426. Representative: Michael R. Werner, 167 Fairfield, P.O. Box 1409, Fairfield, NJ 07006. Transporting *new furniture and materials, supplies, and equipment,* used in the manufacture and distribution of new furniture, between points in the U.S., under continuing contract(s) with Harris Hub Co., Inc., of Harvey, IL 60426.

MC 151137 (Sub-1F), filed November 4, 1980. Applicant: RAPIDO FREIGHT LINES, INC., 1744 Hacienda Pl., El Cajon, CA 92020. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting *bananas,* from Wilmington, CA, to points in AR, AZ, CA, CO, ID, IL, IA, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 151176 (Sub-1F), filed October 31, 1980. Applicant: EDD EUBANKS, d.b.a. EDD EUBANKS TRUCKING COMPANY, Box 204 (Hwy 25 N), Dexter, MO 63841. Representative: Edd Eubanks (same address as applicant). Transporting (1) *automotive air and oil filters,* and (2) *parts* for automotive air and oil filters, between points in the U.S., under continuing contract(s) with Campbell Filter Company, of Dexter, MO.

MC 151527 (Sub-1F), filed November 7, 1980. Applicant: STEWART ENTERPRISE, INC., Route 4, Box 231A, Duncan, OK 73533. Representative: James Stewart (same address as applicant). Transporting *chemicals,* between points in the US (except AK and HI), under continuing contract(s) with Sun Petroleum Products Company of Tulsa, OK.

MC 152067 (Sub-1F), filed October 28, 1980. Applicant: JOHN H. WINSLOW, d.b.a. JOHN WINSLOW TRUCKING, 2660 Knollwood, MO 63031. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *foodstuffs and paper products,* between Granite City, IL, Memphis and Jackson, TN, Tupelo, MS, West Memphis, AR and Forest City, AR.

MC 152226 (Sub-1F), filed October 14, 1980. Applicant: C. G. TRUCKING CORP., 4200 N. Oracle Rd., Tucson, AZ 85705. Representative: Al Stamper (same address as applicant). Transporting *confectionery,* between Bloomington, IL, on the one hand, and, on the other, Los Angeles, West Covina, and San Francisco, CA.

MC 152227 (Sub-1F), filed October 15, 1980. Applicant: DAVID BENDER d.b.a. DAVE'S TOWING SERVICE, Rt. #22 & Mercer St., Somerville, NJ 08876. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *disabled and replacement motor vehicles,* in truckaway service, between points in CT, DE, MD, MA, NC, NJ, NY, OH, PA, RI, VA, WV, and DC.

MC 152566 (Sub-F), filed November 3, 1980. Applicant: ONEDIN LINE, INC., 6021 Bapst St., Toledo, OH 43615. Representative: Keith D. Warner, 5732 W. Rowland Rd., Toledo, OH 43613. Transportating *malt beverages,* between points in the U.S., under continuing contract(s) with Seaway Beverage Company of Toledo, OH.

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Decided: November 13, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 908 (Sub-20F), filed October 27, 1980. Applicant: CONSOLIDATED CARTAGE COMPANY, INC., P.O. Box 171, Argo, IL 60501. Representative: Eugene L. Cohn, One North LaSalle St., Rm. 2255, Chicago, IL 60602. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IN, KY, MI, MO, OH, PA, TN, and WI.

MC 1459 (Sub-11F), filed October 22, 1980. Applicant: ROYAL MOTOR EXPRESS, INC., 240 Harmon Ave., Lebanon, OH 45036. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. 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) under continuing contract(s) with the Standard Oil Company, of Cleveland, OH and its subsidiaries, BP Oil, Inc., Boron Oil Co., Montaineer Carbon Co., Sohio Petroleum Co., Old Ben Coal Co., Division of Sohio Petroleum Co., Sohio Pipeline Company and Vistron Corporation.

MC 25399 (Sub-16F), filed October 24, 1980. Applicant: A-P-A TRANSPORT CORP., 2100 88th St., North Bergen, NJ 07047. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk in tank vehicles, and those requiring special equipment), between points in PA, NJ, NY, CT, MA, RI, NH, VT, ME, DE, MD, VA, WV, and DC. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of MC 25399 and Subs 5, 6, 7, 8, 10, 11, and 14, and dismissal of the pending modification requests of each of the above certificates.

MC 78118 (Sub-57F), filed October 21, 1980. Applicant: W. H. JOHNS, INC., 35 Witmer Rd., Lancaster, PA 17602. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *water treating chemicals and activated carbon,* and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1), between points in the U.S. in and east of MI, IN, KY, TN, and MS (except points in NY, ME, NH, VT, MA, and RI), restricted to traffic originating at or destined to the facilities of Calgon Corporation, a subsidiary of Merck and Co., Inc.

MC 85718 (Sub-17F), filed October 28, 1980. Applicant: SEWARD MOTOR FREIGHT, INC., P.O. Box 126, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting *automotive parts, accessories, and tools,* between

Portland, OR, on the one hand, and, on the other, points in WA and ID.

MC 96769 (Sub-11F), filed October 24, 1980. Applicant: LIBERTY TEX-PACK EXPRESS, INC., Suite 508, Regal Plaza Bldg., 1499 Regal Row, Dallas, TX 75249. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Over regular routes 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 Dallas, TX, and Oklahoma City, OK, over Interstate Hwy. 35 and U.S. Hwy. 77, serving Ardmore, OK, as an intermediate point, restricted (1) against the transportation of packages or articles weighing more than 100 pounds and (2) against the transportation of packages or articles weighing in the aggregate more than 500 pounds, from one consignor at one location, to one consignee at one location in any one day.

MC 97998 (Sub-3F), filed October 22, 1980. Applicant: REFRIGERATED TRANSPORT, INC., P.O. Box 225299, Dallas, TX 75265. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Transporting (1) *such commodities* as are dealt in or used by grocery stores, discount stores, retail department stores, and drug stores, (2) *foodstuffs,* other than those in (1), and (3) *equipment, materials, and supplies* used in the manufacture and distribution of commodities in (1) and (2), between points in TX, restricted to traffic having an immediately prior or subsequent movement in interstate or foreign commerce.

MC 103798 (Sub-52F), filed October 28, 1980. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting *foodstuffs* and *materials, equipment, and supplies* used in the manufacture of foodstuffs, between points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, WI, and WY.

MC 106398 (Sub-1083F), filed October 23, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same address as applicant). Transporting *chemicals or allied products,* As described in Item 28, *clay, concrete, glass or stone products,* as described in Item 32, and *primary metal precut products;* including galvanized; except coating or other allied processing, as described in Item 33, of the Standard Transportation Commodity Code tariff between points in Fairfield County, CT, Henrico County, VA, Taylor County, GA, Montgomery County, OH, Lake County, IL, Smith County, TX, Denver County, CO, King County, WA, San Bernardino County, CA, Erie County, NY, and Greene County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107478 (Sub-78F), filed October 21, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, P.O. Box 2006, High point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *electrical storage batteries,* between points in Tazewell County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107478 (Sub-79F), filed October 17, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, Post Office Box 2006, High Point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *(1) fabricated metal products (except ordnance)* as described in Item 34 of Standard Transportation Commodity Code tariff and *(2) equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) between points in Beaufort, Pitt, and Sampson Counties, NC, and Guernsey County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 109708 (Sub-102F), filed October 22, 1980. Applicant: INDIAN RIVER TRANSPORT CO., INC., P.O. Box AG, Dundee, FL 33838. Representative: John J. Harned (same address as applicant). Transporting *food or kindred products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, (1) between points in the U.S. in and east of MN, IA, MO, AR, and TX, and (2) between points in CA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and TX. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of certificate NO. MC 109708 Subs-2, 50, 53, 55, 56, 59, 62, 65, 74, 76, 77, 79, 84, 85, 86, 87, 89, 92, and 95.

MC 112989 (Sub-131F), filed October 20, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *recycleable waste products,* between points in AZ, on the one hand, and, on the other, points in CA and TX.

MC 118959 (Sub-254F), filed October 17, 1980. APPLICANT: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. REPRESENTATIVE: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. Transporting (1) *vinyl and vinyl products, chipboard and chipboard products, polyethylene and polyethylene products, labels, specialty die cutting and packaging supplies* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) between Cape Girardeau and Scott City, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 119399 (Sub-137F), filed October 28, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Blvd., Joplin, MO 64801. Representative: Don D. Lacy (same address as applicant). Transporting (1) *paper and paper products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk and commodities which because of size or weight require special equipment), between the facilities of St. Regis Paper Co., Southland Division, at or near Herty and Sheldon, TX, on the one hand, and, on the other, points in AR, IL, IA, KS, KY, MO, OK, and TN.

Volume No. OP5–056

Decided: Nov. 13, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill

MC 65658 (Sub-6F), filed October 22, 1980. Applicant: H. E. WAMSLEY TRUCKING, INC., 16600 Jefferson Davis Hwy., Colonial Heights, VA 23834. Representative: Donald M. Schubert, 200 West Grace St., Suite 415, Richmond, VA 23220. Transporting *fabricated structural steel, paint, and iron and steel articles,* between points in the U.S., under continuing contract(s) with Mack's Iron Company, Incorporated, of Colonial Heights, VA.

MC 120378 (Sub-6F), filed October 21, 1980. Applicant: FINDLAY TRUCK LINE, INC., 420 Trenton Ave., Findlay, OH 45840. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods and classes A and B explosives), between points in Allen, Ashland, Auglaize, Crawford, Cuyahoga, Eria, Hardin, Hancock, Holmes, Huron, Lorain, Lucas, Medima, Ottawa, Putnam, Richland, Sandusky, Seneca, Summit, Wayne, Wood, and Wyandot Counties, OH; and Monroe and Lenawee Counties,

MI, on the other hand, and, on the other, points in the U.S.

MC 124078 (Sub-1035F), filed October 20, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *petroleum products,* from points in Milwaukee County, WI to points in MI, IL, IN, and MN.

MC 124489 (Sub-14F), filed October 23, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer Street, Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60609. Transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives) between points in the U.S. (except AK and HI) under continuing contract(s) with Ralston Purina Company of St. Louis, MO.

MC 125299 (Sub-12F), filed October 17, 1980. Applicant: WITTE BROTHERS EXCHANGE, INC., 690 East Cherry St., Troy, MO 63379. Representative: B. W. Tourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except points in WA, OR, CA, NV, ID, MT, WY, UT, AZ, NM, and CO).

MC 125708 (Sub-207F), filed October 21, 1980. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 1473 Ripley Road, P.O. Box 5216, Lake Station, IN 46405. Representative: Edward F. V. Pietrowski, 3300 Birney Avenue, Moosic PA 18507. Transporting *nonferrous metals and nonferrous metal products,* between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 126899 (Sub-132F), filed October 20, 1980. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Pasucah, KY 42001. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. Transporting *asphalt,* in bulk, in tank vehicles, from Kuttawa, KY, to those points in that part of IL in an area and on a line beginning at the MO–IL State line and extending along U.S. Hwy 50 to the IL–IN State line, then along the IL–IN State line to ——— junction U.S. Hwy 36, then along U.S. Hwy 36 to the IL–MO State line, then along the IL–MO State line to junction U.S. Hwy 50.

MC 142999 (Sub-27F), filed October 16, 1980. Applicant: TRANSPORT MANAGEMENT SERVICE CORPORATION, P.O. Box 39, Burlington, NJ 08016. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, DC 20036. 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 National Starch and Chemical Corporation, of Bridgewater, NJ.

MC 143328 (Sub-36F), filed October 28, 1980. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Ave. NW., Suite 400, Washington, DC 20036. Transporting *mineral water,* between points in CA, on the one hand, and, on the other, points in AZ, AR, CO, LA, NM, NV, TX, and WA.

MC 143369 (Sub-4F), filed October 26, 1980. Applicant: SMITH AND SMITH, INC. P.O. Box 71355, 4361 Headquarters Road, Charleston Heights, SC 29405. Representative: Frank A. Graham, Jr., P.O. Box 11864, Columbia, SC 29211. Transporting *coal* between points in SC, restricted to traffic having a prior or subsequent movement in interstate or foreign commerce.

MC 144029 (Sub-7F), filed October 31, 1980. Applicant: CUMBERLAND TRANSPORTATION CORP., 5950 Fisher Rd., East Syracuse, NY 13057. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting (1) *containers and container closures, paper and paper products,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S. under continuing contract(s) with International Paper Company, of New York, NY. Condition:Applicant must submit a statement indicating how it proposes to satisfy the statutory criteria of contract carriage, i.e., either by (1) furnishing transportation service through the assingment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (2) furnishing transportation services designed to meet the distinct need of each individual customer, and if the latter, applicant must describe briefly the distinct need for which transportation services have been designed. The statement will be examined by a review board prior to issuance of any permit.

MC 144188 (Sub-24F), filed October 20, 1980. Applicant: P. L. LAWTON, INC. P.O. Box 325, Berwick, PA 1603. REPRESENTATIVE: J. Bruce Walter, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. Transporting (1) *building sections, panels, curtain wall units, doors, and frames,* (2) *parts and accessories* for the commodities in (1), (3) *moldings and architectural shapes,* (4) *scrap aluminum* produced in the manufacture of the commodities in (1), (2), and (3) and (5) *materials, equipment, and supplies* used in the manufacture, storage, and distribution of the commodities in (1), (2), and (3), between points in the U.S. (except AK, AZ, CA, HI, ID, NV, OR, UT, and WA).

MC 150088 (Sub-4F), filed October 27, 1980. Applicant: STERLING TRANSPORT DIVISION, INC., 801 Heinz Way, Grand Prairie TX 75071. Representative: Robert K. Frisch, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. Transporting (1) *canned and preserved foodstuffs,* between the facilities of Heinz U.S.A. at points in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, points in LA, AR, OK, and NM, and (2) *carpet,* from points in Hempstead County, AR, to points in Dallas and Tarrant Counties, TX.

Volume No. 0P5–058

Decided: Nov. 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 2428 (Sub-32F), filed November 4, 1980. Applicant: H. PRANG TRUCKING CO., INC., 112 New Brunswick Ave., Hopelawn (Perth Amboy), NJ 08861. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or used by manufacturers of building materials (except commodities in bulk), between points in the U.S., under continuing contract(s) with Bird & Son, Inc., of East Walpole, MA.

MC 5888 (Sub-54F), filed October 21, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth Street, Kansas City, MO 64105. Representative: Tom Zaun (same address as applicant). Transporting *expanded metal products* between Hopkins, MN on the one hand, and, on the other, points in the U.S. (except AK and HI)

MC 31389 (Sub-312F), filed October 31, 1980. Applicant: MCLEAN TRUCKING COMPANY, a corporation, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simons, PO Box 213, Winston-Salem, NC 27102. Transporting *pipe and pipe fittings,* from Hoboken and Harrison, NJ, to Manchester (Adams County), OH.

MC 42828(Sub-22F), filed October 28, 1980. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine St., Barre, VT 05641. Representative:

William L. Rossi, P.O. Box 332, Barre, VT 05641. Transporting *stone, stone products, and materials, equipment, and supplies* used by manufacturers of stone products, between points in ME, MA, NH, VT, CT, RI, NY, NJ, and PA, on the one hand, and, on the other, points in and east of TX, OK, KS, NE, SD, and ND.

MC 48958 (Sub-215F), filed November 4, 1980. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Ave., Denver, CO 80216. Representative: Morris G. Cobb, P.O. Box 950, Amarillo, TX 79189. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AL and HI). Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of this certificate.

MC 55778 (Sub-21F), filed November 6, 1980. Applicant: MOTORFRATE DISPATCH, INC., 16360 Broadway Ave., Maple Hts, OH 44137. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *such commodities* as are dealt in by grocery, hardware and drug stores, (2) *cleaning and building materials and supplies*, (3) *chemicals*, and (4) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), (2), and (3) between points in the U.S. (except AK and HI), under continuing contract(s) with Purex Corporation, of St. Louis, MO.

MC 61788 (Sub-41F), filed November 3, 1980. Applicant: GEORGIA-FLORIDA-ALABAMA TRANSPORTATION COMPANY, P.O. Box 2268, Dothan, AL 36302. Representative: Maurice F. Bishop, 601–09 Frank Nelson Bldg., Birmingham, AL 35203. Regular routes, transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between Atlanta, GA and Phenix City, AL; from Atlanta over Interstate Hwy 85 and/or U.S. Hwy 29 to LaGrange, GA, thence over U.S. Hwy 27 to Columbus, GA, thence over U.S. Hwy 80 to Phenix City, and return over the same route, serving all intermediate points and points in Russell County, AL, and Muscogee, Fulton, DeKalb, Clayton, Douglas, Gwinnett, Fayette, Henry and Cobb Counties, GA, as off-route points in connection with applicant's authorized regular route authority.

MC 108859 (Sub-85F), filed October 31, 1980. Applicant: CLAIRMONT TRANSFER CO., 1803 Seventh Ave., North Escanaba, MI 49829. Representative: Elmer J. Wery, P.O. Box 3548, Green Bay, WI 54303. Over regular transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives) (1) between Green Bay, WI, and Milwaukee, WI, over U.S. Hwy 41, (2) between St. Paul, MN and Forest Junction, WI, over U.S. Hwy 10, (3) between Minneapolis, MN and Milwaukee, WI, over Interstate Hwy 94, (4) between Chicago, IL and Junction Interstate Hwy 90 and Interstate 94, over Interstate Hwy 94, (5) serving points in Fond du Lac, Outagamie, St. Croix and Winnebago Counties, WI as intermediate or off-route points in connection with carrier's authorized regular route operations.

Note.—Applicant intends to tack this authority with its existing authorities in NO. MC–108859.

MC 112989 (Sub-135F), filed November 7, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *iron and steel articles*, from points in CA to points in TX, AZ, NM, and NV.

MC 151768 (Sub-5F), filed October 21, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101. Transporting *foodstuffs* (except in bulk, in tank vehicles), from points in Shelby County, TN, to points in the U.S.

MC 151959 (Sub-1F), filed October 31, 1980. Applicant: TRANS-COPPER EXPRESS, CO., 512–514 State Fair Blvd., Syracuse, NY 13204. Representative: Donald G. Hichman, R.D. No. 1, Box 7, Union Springs, NY 13160. Transporting (1)*candles and decorative hardware items*, and (2) *materials and supplies* used in the manufacture and distribution of candles (except commodities in bulk) between points in Onondaga County, NY, on the one hand, and, on the other, points in CT, IL, IN, KS, MA, MI, MO, OH, PA, RI, and WI.

MC 152308 (Sub-1F), filed October 28, 1980. Applicant: KENNETH WOODWARD, d.b.a. KEN WOODWARD TRUCKING, 4239 N.E. Simpson, Portland, OR 97218. Representative: Louis A. Santiago, 1200 SW Main Bldg., Portland, OR 97205. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in OR and WA.

MC 152409 (Sub-1F), filed October 17, 1980. Applicant: COASTAL TOURS, INC., 14809 El Vista Avenue, Oak Forest, IL 60452. Representative: Douglas J. Watson (same address as applicant). To engage in operations in interstate or foreign commerce as a *broker* at Oak Forest, IL, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special and charter operations, beginning and ending at points in IL, IN, WI, and IA, and extending to points in the U.S. (except AK and HI).

MC 152509F, filed October 24, 1980. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., a corporation, 1370 Ontario St., Cleveland, OH 44101. Representative: Leonard A. Jaskiewicz, 1730 M St., NW., Washington, DC 20036. 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 (a) The Sherwin-Williams Company, of Cleveland, OH, and (b) United Freight, Inc., of Morrow, Ga.

Volume No. OP5–059

Decided: November 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 56679 (Sub-175F), filed October 22 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave. SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same address as applicant). General commodities (except Classes A and B explosives and household goods, as defined by the Commission), over the following regular routes: 1) Between Houston, TX and Des Moines, IA, from Houston over Interstate Hwy 45 (also over US Hwy 75) to Dallas, then over Interstate Hwy 35 to Des Moines, and return over the same route. 2) Between Baton Rouge, LA and Galveston, TX, from Baton Rouge, over Interstate Hwy 10 to Houston, TX, then over US Hwy 75 to Galveston, and return over the same route; 3) Between Jackson, MS and Ft. Worth, TX over Interstate Hwy 20; 4) Between Dallas, TX and Knoxville, TN, from Dallas, over Interstate Hwy 30 to Little Rock, AR, then over Interstate Hwy 40 to Knoxville, and return over the same route; 5) Between Little Rock, AR and Oklahoma City, OK over Interstate Hwy 40; 6) Between Oklahoma City, OK and Chicago, IL, from Oklahoma City over Interstate Hwy 44 (also over US Hwy 66) to St. Louis, MO, then over Interstate Hwy 55 (also over US Hwy 66) to

Chicago, and return over the same route; 7) Between Kansas City, MO and Omaha, NE over Interstate Hwy 29; 8) Between Baton Route, LA and Kansas City, MO, from Baton Rouge over US Hwy 190 to jct US Hwy 71, then over US Hwy 71 to Kansas City, and return over the same route; 9) Between Kansas City, KS and Chattanooga, TN, From Kansas City, over Interstate Hwy 70 to St. Louis, MO, then over Interstate Hwy 64 to jct US Hwy 41, then over US Hwy 41 (also over Interstate Hwy 24) to Chattanooga, TN and return over the same route; 10) Between Decatur, AL and Indianapolis, IN over Interstate Hwy 65; 11) Between Memphis, TN and St. Louis, MO over Interstate Hwy 55; 12) Between St. Louis, MO and Davenport, IA over US Hwy 61; 13) Between jct US Hwy 65 and Interstate Hwy 70 and jct US Hwy 65 and Interstate Hwy 20 over US Hwy 65; 14) Between Houston, TX and Texarkana, AR over US Hwy 59; 15) Between Indianapolis, IN and St. Louis, MO over Interstate Hwy 70; 16) Between Cincinnati, OH and Evansville, IN, from Cincinnati over Interstate Hwy 71 to Louisville, KY and then over Interstate Hwy 64 to Evansville, and return over the same route; 17) Between Louisville, KY and Knoxville, TN, from Louisville over Interstate Hwy 64 to Lexington, KY, then over Interstate Hwy 75 to Knoxville, and return over the same route; 18) Between Bridgeport, and Pittsburgh, PA over Interstate Hwy 70; 19) Between Norfolk, and Salem, VA, from Norfolk over Interstate Hwy 64 to jct US Hwy 360, then over US Hwy 360 to junction US Hwy 460, then over US Hwy 460 to Salem, and return over the same route, (20) between Baltimore, MD, and Pittsburgh, PA, from Baltimore over Interstate Hwy 70, (21) between Chicago, IL, and Toledo, OH, over US Hwy 20, (22) between Toledo, OH, and Detroit, MI, over Interstate Hwy 75, (23) between Chicago, IL, and Newark, NJ, from Chicago over US Hwy 6 to Cleveland, OH, then over Interstate Hwy 90 to Albany, NY, then over Interstate Hwy 87 to Sufferen, NY, then over NY Hwy 17 to the NY–NJ State line, then over NJ Hwy 17 to Newark, and return over the same route, (24) between Syracuse, NY, and Harrisburg, PA, over Interstate Hwy 81, (25) between Scranton, PA, and Newark, NJ, from Scranton over Interstate Hwy 380 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction PA Hwy 33 to junction Interstate Hwy 78, then over Interstate Hwy 78 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Newark, and return over the same route, (26) between Scranton, PA, and Knoxville, TN, from Scranton over Interstate Hwy 81 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Knoxville, and return over the same route, serving all intermediate points in routes (1) through (26) and serving (a) Port Arthur, TX, Peoria, IL, Topeka, KS, Beaver Falls, PA, Boston, MA, Hot Springs, AR, Mobile, and Phenix City, AL, and (b) points within 20 miles of the points named in (a), as off route points in routes (1) through (26) above.

Note.—Applicant intends to tack with its otherwise authorized authority.

MC 129609 (Sub-4TA), filed October 22, 1980. Applicant: KENWOOD'S MOVING & STORAGE, INC., Sharron Ave., P.O. Box 429, Plattsburgh, NY 12901. Representative: Alvin Altman, 888 Seventh Ave., New York, NY 10106. Transporting *used household goods,* between Plattsburgh, NY, on the one hand, and, on the other, points in VT.

MC 143059 (Sub-140TA), filed October 24, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). Transporting *iron and steel articles,* between points in the U.S. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of certificates in MC 143059 Subs 3, 20, 21, 25, 27, 34, 40, 44, 49, 60, 65, 71, 75, 77, 111 and 114, and certificates that may be issued in the following pending applications, MC 143059 Subs 95, 106, 107 and 108.

Note.—Applicant relies on traffic studies rather than shipper support for the authority sought.

MC 143059 (Sub-141TA), filed October 31, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Kenneth W. Kilgore (same address as applicant). Transporting (1) *iron and steel articles,* and (2) *materials, equipment and supplies* used in the manufacture of iron and steel articles, between points in Mahoning, Belmont and Jefferson Counties, OH, Washington and Westmoreland Counties, PA, and Ohio, Marshall and Brooke Counties, WV, on the one hand, and, on the other, points in the U.S.

MC 144428 (Sub-13TA), filed October 31, 1980. Applicant: TRUCKADYNE, INC., Rt. 16, P.O. Box 308, Mendon, MA 01756. Representative: Joseph A. Reed (same address as applicant). Transporting (1) *foodstuffs* and (2) *materials and supplies* used in the manufacture, processing, and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Nabisco, Inc., of Cambridge, MA.

MC 144969 (Sub-23TA), filed October 28, 1980. Applicant: WHEATON CARTAGE CO., a corporation, 3rd and "G" Streets, Millville, NJ 08332. Representative: Laurance J. DiStefano, Jr., 1101 Wheaton Ave., Millville, NJ 08332. Transporting (1) *aluminum and aluminum products,* and (2) *materials, equipment, and supplies* used in the manufacture of aluminum and aluminum products (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Alcan Aluminum Corporation.

MC 147038 (Sub-3F), filed November 6, 1980. Applicant: CLAYTON STRANGE, d.b.a. STRANGE TRUCKING CO., Route 2, Box 38, Wallace, MI 49893. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting (1) *foundry products,* and (2) *materials, equipment and supplies* used in the manufacture of foundry products, between points in the U.S., under continuing contract(s) with Waupaca Foundry, Inc., of Waupaca, WI.

MC 151009 (Sub-1F), filed October 26, 1980. Applicant: ATLANTA CARRIERS, INC., 1260 Southern Road, Morrow, GA 30206. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. 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.

MC 151419 (Sub-1F), filed October 22, 1980. Applicant: GORDON JOHNSON, Box 252, Fredericktown, OH 43019. Representative: L. S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Transporting (1) *lawn and garden tools and farm implements,* between points in Franklin County, OH, and points in NY; (2) *household appliances* and *household appliance parts,* between points in Marion County, OH, and points in NJ and NY; and (3) *such commodities* as are dealt in or used by manufacturers of packaging products (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment), between points in Holmes County, OH, and points in CT, MA, NJ, NY, and RI.

MC 151438 (Sub-1F), filed October 18, 1980. Applicant: MID AMERICA TRANSPORT CO., a corporation, 6041 Benore Rd., Toledo, OH 43612. Representative: Michael M. Briley, P.O.

Box 2088, Toledo, OH 43613. Transporting (1) *steel and aluminum articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of steel and aluminum articles, between points in the U.S., under continuing contract(s) with (a) Heidtman Steel Products, Inc., of Toledo, OH, (b) Enterprise Metal Services, Inc., of Toledo, OH, (c) Stateline Steel Corporation, of Erie, MI, and (d) Bedford Steel Processing, Inc., of Erie, MI.

MC 152138 (Sub-1F), filed November 5, 1980. Applicant: D & J TRANSPORTATION SPECIALISTS, INC., Truckstop 7, 107 7th North Street, Liverpool, NY 13088. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *waste* and *hazardous waste* for destruction or disposal only, between points in the U.S.

MC 152238 (Sub-1F), filed October 21, 1980. Applicant: CALIFORNIA-AMERICAN TRUCKING, INC., P.O. Box 288, Grenada, CA 96038. Representative: Guy D. Dodge (same address as applicant). Transporting (1) *paper bags and wrapping paper,* and (2) *materials and supplies* used in their manufacture between points in Multnomah County, OR, and Kings County, CA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY.

MC 152318 (Sub-1F), filed November 4, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Rd., Kings Park, NY 11745. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048. Transporting (1) *such commodities* as are dealt in or used by food business houses and drug and variety stores, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between points in Suffolk, Nassau, Queens, and Kings County, NY, Chatham County, GA, Los Angeles County, CA, and Dallas, TX, on the one hand, and, on the other, points in the U.S., restricted in (1) and (2) against the transportation of commodities in bulk.

Volume No. OP5–060

Decided: November 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 77129 (Sub-12F), filed November 4, 1980. Applicant: RAYMOND H. PUFFER, INC., Box 15, RD 1, Vernon, VT 05354. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *malt beverages,* between points in Onondaga County, NY, on the one hand, and, on the other, points in VT.

MC 78228 (Sub-183F), filed October 26, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *iron and steel articles,* and *materials, equipment, and supplies* used in the manufacture of iron and steel articles, between Beaver Falls, Ambridge, and Koppel, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 106398 (Sub-1085F), filed October 23, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same address as applicant). Transporting *machinery* (except electrical) as described in Item 35 of the Standard Transportation Code Tariff, between points in Crittenden County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 110988 (Sub-434F), filed October 22, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Ave., Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of emulsifiers, between points in the U.S.

MC 112989 (Sub-132F), filed October 21, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *lumber and lumber mill products,* from points in AZ and UT to points in the U.S.

MC 143419 (Sub-1F), filed October 15, 1980. Applicant: SUMMIT FOODS TRANSPORTATION COMPANY, a corporation, P.O. Box 1937, Breckenridge, CO 80424. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting *foodstuffs, and materials, equipment, and supplies* used in the manufacture, and distribution of foodstuffs between points in the U.S. under continuing contract(s) with Summit Foods Company of Breckenridge, CO (hearing site: Denver, CO or Breckenridge, CO.

MC 146078 (Sub-33F), filed October 22, 1980. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting (1) *metal shelving,* and (2) *parts and accessories* for metal shelving, from points in OH to points in TX.

MC 146829 (Sub-3F), filed November 3, 1980. Applicant: MURRAY TRUCK LINE, INC., P.O. Box 172, Pleasanton, KS 66075. Representative: William A. Murray (same address as applicant). Transporting *steel pipe* from points in TX and OK, to the facilities of Northwestern Pump & Supply Co., Inc., at Hill City, Plainville, and Hays, KS, Trenton, and Indianola, NE.

MC 148328 (Sub-2F), filed November 6, 1980. Applicant: LEONARD ALLEN and GARY ARIOTI, d./b./a., ALLEN TRUCKING, 112 Manzanita Dr., West Covina, CA 91791. Representative: Leonard Allen (same address as applicant). Transporting *such commodities* as are dealt in or used by manufactureres of cosmetics and cleaning compounds (except commodities in bulk), between points in the U.S., under continuing contract(s) with (a) Avon Products, Inc., of Pasadena, CA, and (b) Amway Corporation, of Santa Ana, CA.

MC 148598 (Sub-6F), filed November 3, 1980. Applicant: BATROCK, INC., U.S. Hwy 127 North, P.O. Box 220, Lawrenceburg, KY 40342. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *footwear and accessories,* and *materials and supplies* used in the distribution of footwear and accessories, between Danville, KY, on the one hand, and, on the other, points, in AL, AR, GA, IL, IN, MO, NC, OH, SC, and TN. NOTE: The person or persons which appear to be in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 148608 (Sub-2F), filed October 20, 1980. Applicant: WAREHOUSE TRANSPORTATION COMPANY, INC., P.O. Box 84, Urbana, OH 43078. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. Transporting (1) *toilet preparations,* (2) *hair spray,* and (3)(a) *such commodities* as are dealt in or used by retail and wholesale department, hardware, drug and food stores, and (b) *materials, equipment, and supplies* used in the conduct of the business described in (3)(a), between points in the U.S., under continuing contract(s) with Redken Laboratories, of Florence, KY.

MC 149118 (Sub-3F), filed November 4, 1980. Applicant: BEST WAY TRANSPORT, INC., d./b./a., BEST TRANSPORT, INC., 3841 North Columbia Blvd., Portland, OR 97217. Representative: Michael D. Crew, 1700 Standard Plaza, Portland, OR 97204.

Transporting *commodities*, the transportation of which because of size or weight, require the use of special equipment, between points in OR and WA.

MC 150088 (Sub-5F), filed October 27, 1980. Applicant: STERLING TRANSPORT DIVISION, INC., 801 Heinz Way, Grand Prairie, TX 75071. Representative: Robert K. Frisch, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. Transporting *such commodities* as are dealt in or used by retail variety and department stores, (1) between the facilities used by Target Stores, Division of Dayton Hudson Corp., in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, the facilities used by Target Stores, Division of Dayton Hudson Corp., in TX, restricted to traffic having an immediately prior or subsequent movement by rail or motor carrier in interstate commerce, and (2) between Oklahoma City, OK, points in Pulaski County, AR, and points in LA and TX, restricted to traffic originating at or destined to facilities used by Target Stores, Division of Dayton Hudson Corp.

MC 151209 (Sub-1F), filed October 16, 1980. Applicant: GULF WESTERN EXPRESS, INC., P.O. Box 2653, Natchitoches, LA 71457. Representative: John Williams (same address as applicant). Transporting *floor tile*, between points in the U.S., under continuing contract(s) with Uvalde Rock Asphalt Company, of San Antonio, TX.

MC 151768 (Sub-4F), filed October 21, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A. J. SWANSON, P.O. Box 1103, Sioux Falls, SD 57101. Transporting (1) *household and recreational equipment*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk), between points in OH, OK, and CA, on the one hand, and, on the other, points in the U.S.

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Decided: Nov. 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 113459 (Sub-141F), filed November 4, 1980. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, OK 73143. Representative: J. MICHAEL ALEXANDER, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting *lumber or wood products* (except furniture), as described in Item 24 in the Standard Transportation Commodity Code, from points in WY, to points in OK, AR, TX, IL, IA, MI, OH, and IN.

MC 113908 (Sub-516F), filed November 3, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Rd., P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and class A and B explosives), between points in Vernon County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 118838 (Sub-70F), filed October 31, 1980. Applicant: GABOR TRUCKING, INC., RR #4, Detroit Lakes, MN 56501. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg, Minneapolis, MN 55402. Transporting (1) *gypsum, gypsum wallboard, and joint systems*, and (2) *materials and supplies* used in the installation of the commodities in (1), between points in Big Horn County, WY, on the one hand, and, on the other, points in OR and WA.

MC 119019 (Sub-6F), filed October 31, 1980. Applicant: B.N.M. FERTILIZER TRANSPORT, INC., 6414 E Houston Road, Houston, TX 77028. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024. Transporting *potash*, in bulk, from points in Lea and Eddy Counties, NM, to points in TX.

MC 119399 (Sub-138F), filed October 26, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Don D. Lacy (same address as applicant). Transporting (1) *glass, glassware, and containers*, (2) *closures*, for containers, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) (except commodities in bulk), between points in the U.S. (except AK and HI). Condition: Prior or coincidental cancellation, at applicant's written request, of its certificates in MC-119399 subs 7, 18, 36, 45, 46, 56, 65, 66, 81, 83, 101, and 128

MC 120758 (Sub-2F), filed October 23, 1980. Applicant: SAV-MOR TRANSPORTATION, INC.,37 Mystic St., Everett, MA 02149. Representative: Anthony J. Zarrella (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 Wilmington, MA, on the one hand, and, on the other, points in NY and NJ .

MC 121309 (Sub-2F), filed October 23, 1980. Applicant: P. A. JOHNSON & CO., a corporation, P.O. Box 152, Summit, IL 60501. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, those of unusual value, and household goods as defined by the Commission), between points in Boone, Bureau, Cass, Champaign, Cook, Dewitt, Dekalb, DuPage, Ford, Fulton, Grundy, Henry, Iroquois, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Macon, Marshall, McHenry, McLean, Menard, Ogle, Peoria, Piatt, Putman, Rock Island, Sangamon, Stark, Stephenson, Tazewell, Vermilion, Whiteside, Will, Winnebago, and Woodford Counties, IL, Lake, La Porte, Marshall, Porter, St. Joseph, and Starke Counties, IN, and Dane, Green, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington, and Waukesha Counties, WI.

MC 121568 (Sub-61F), filed October 21, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives), and household goods as defined by the Commission, (1) between Little Rock, AR, and Tyler, TX, (a) from Little Rock over Interstate Hwy 30 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction TX Hwy 155, then over TX Hwy 155 to junction U.S. Hwy 271, then over U.S. Hwy 271 to Tyler, and return over the same route, serving no intermediate points, (b) from Little Rock over Interstate Hwy 30 to junction U.S. Hwy 271, then over U.S. Hwy 271 to Tyler, and return over the same route, serving no intermediate points, (2) between Little Rock, AR, and Sherman, TX, from Little Rock over Interstate Hwy 40 to junction U.S. Hwy 69, then over U.S. Hwy 69 to Sherman, and return over the same route, serving no intermediate points, (3) between Fort Smith, AR, and Tyler, TX, over U.S. Hwy 271, serving no intermediate points, (4) between Fort Smith, AR, and Sherman, TX, (a) from Fort Smith over Interstate Hwy 40 to junction U.S. Hwy 69, then over U.S. Hwy 69 to junction U.S. Hwy 75, then over U.S. Hwy 75 to Sherman, and return over the same route, serving no intermediate points, (b) from Fort Smith over Interstate Hwy 40 to juntion Interstate Hwy 35, then over Interstate Hwy 35 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Sherman, and return over the same route, serving

no intermediate points, and (5) serving points in Grayson and Smith Counties, TX, as off-route points in connection with applicant's otherwise authorized routes.

Note.—Applicant intends to track with its existing authority.

MC 128738 (Sub-3F), filed October 20, 1980. Applicant: JOE N. QUNICE, d.b.a., QUINCE UNLOADING & FREIGHT HANDLING, P.O. Box 595, Beloit, WI 53511. Applicant: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting (1) *food and kindred products* as described in Item 20 of the Standard Transportation Code Tariff, from the facilities used by Geo. A. Hormel & Co. at Beloit, WI to points in MI, OH, IN, and IL, and (2) *materials, equipment and supplies* used in the production of foodstuffs in the reverse direction.

MC 138469 (Sub-253F), filed November 5, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *printed matter,* between Oklahoma City, OK, on the one hand, and, on the other, points in NE and TX.

MC 140458 (Sub-1), filed November 5, 1980. Applicant: V. F. WARNER & SON, INC., 706 Anthony Dr., Champaign, IL 61820. Representative: Keith D. Warner, 5732 West Rowland Rd., Toledo, OH 43613. Transporting *such commodities* as are dealt in or used by a manufacturer of scientific equipment, between points in the U.S., under continuing contract(s) with Kewaunee Scientific Equipment Corporation of Statesville, NC.

MC 142288 (Sub-9F), filed October 20, 1980. Applicant: HAMILTON TRUCKING COMPANY OF OKLAHOMA, INC., 12612 E. Admiral Place, Tulsa, OK 74115. Representative: Virginia Hamilton (same address as applicant). Transporting *iron ore,* between points in OK and TX.

MC 143059 (Sub-143F), filed November 5, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). Transporting (1) *forest products,* (2) *clay, concrete, glass or stone products,* and (3) *fabricated metal products* as described in Items 8, 32, and 34 of the Standard Transportation Code Tariff, respectively, between points in Elbert County, GA and points in ND, SD, MT, WY, CO, ID, UT, WA, OR, and NV.

MC 144069 (Sub-24F), filed November 4, 1980. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: W. T. Trowbridge (same address as applicant). Transporting *iron and steel articles,* between points in Guilford County, NC, on the one hand, and, on the other, points in the U.S. in and east of MS, TN, KY, IL and WI.

MC 144168 (Sub-6F), filed November 3, 1980. Applicant: R. E. GARRISON TRUCKING, INC., P.O. Box 186, Cullman, AL 35055. Representative: Michael M. Knight (same address as applicant). Transporting (1) *such commodities* as are dealt in by grocery and drugstores (except foodstuffs), and (2) *foodstuffs* between points in AL, GA, FL, TN, CA, AZ, TX, LA, MS, NC, SC, IA, IN IL, KY, MI, OH, WI, MA, PA, CT, NY, NJ, OR, WA and NV.

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Decided: November 13, 1980.

By the Commission, Review Board Number 2, Member Chandler, Eaton, and Liberman.

MC 96769 (Sub-10F), filed October 9, 1980. Applicant: LIBERTY TEX-PACK EXPRESS, INC., Suite 508, Regal Plaza, 1499 Regal Row, Dallas, TX 75247. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Dallas and Celina, TX, over TX Hwy. 289, (2) between Celina and Pilot Point, TX, over F. M. Road 455, (3) between Pilot Point and Whitesboro, TX, over U.S. Hwy. 377, (4) between Whitesboro and Honey Grove, TX, over U.S. Hwy. 82, (5) between Dallas and Denison, TX, over U.S. Hwy. 75, (6) between Dallas and Mt. Pleasant, TX, over U.S. Hwy 67, (7) between Greenville and Paris, TX, over TX Hwy. 24, (8) between Greenville and Bonham, TX, from Greenville over U.S. Hwy. 69 to junction TX Hwy. 78, then over TX Hwy. 78 to Bonham, and return over the same route, (9) between Dallas and Marshall, TX, from Dallas over Interstate Hwy. 20 to junction U.S. Hwy. 80, then over U.S. Hwy. 80 to Marshall, and return over the same route, (10) between Longview and Gilmer, TX, over F. M. Road 1403, (11) between Gilmer and Atlanta, TX, over TX Hwy. 155, (12) between Daingerfield and Ore City, TX, over U.S. Hwy. 259, (13) between Daingerfield and Linden, TX, over TX Hwy. 11, (14) between (a) Linden and Marshall, TX, and (b) Carthage and Garrison, TX, over U.S. Hwy. 59, (15) between Longview and Carthage, TX, over TX Hwy. 149, (16) between Carthage and Henderson, TX, over U.S. Hwy. 79, (17) between Beckville, TX, and junction F. M. Road 124 and U.S. Hwy. 79, over F. M. Road 124, (18) between Wills Point and Henderson, TX, over TX Hwy. 64, (19) between Mineola and Tyler, TX, over U.S. Hwy. 69, (20) between Tyler and Kilgore, TX, over TX Hwy. 31, (21) between Troup and Gladewater, TX, from Troup over TX Hwy. 135 to junction U.S. Hwy. 271, then over U.S. Hwy. 271 to Gladewater, and return over the same route, (22) between (a) Kilgore and Longview, TX, and (b) Henderson and Mt. Pleasant, TX, (a) over U.S. Hwy. 259, and (b) from Henderson over U.S. Hwy. 259 to junction U.S. Hwy. 67, then over U.S. Hwy. 67 to Mt. Pleasant, and return over the same route, (23) between Mt. Enterprise and Garrison, TX, from Mt. Enterprise over U.S. Hwy. 84 to junction F. M. Road 95, then over F. M. Road 95 to Garrison, and return over the same route, (24) between Timpson and Center, TX, over TX Hwy. 87, (25) between (a) Tenaha and San Augustine, TX, (b) Bronson and Jasper, TX, and (c) Kirbyville and Silsbee, TX, over U.S. Hwy. 96, (26) between San Augustine and Miam, TX, over TX Hwy. 21, (27) between Milam and Bronson, TX, from Milam over TX Hwy. 87 to junction F. M. Road 184, then over F. M. Road 184 to Bronson, and return over the same route, (28) between Jasper and Newton, TX, from Jasper over U.S. Hwy. 96 to junction U.S. Hwy. 190, then over U.S. Hwy. 190 to Newton, and return over the same route, (29) between Newton and Kirbyville, TX, from Newton over TX Hwy. 87 to junction TX Hwy. 363, then over TX Hwy. 363 to Kirbyville, and return over the same route, (30) between Kountze and Nome, TX, over TX Hwy. 326, (31) between Silsbee and Kountze, TX, from Silsbee over TX Hwy. 327 to junction U.S. Hwy. 69, then over U.S. Hwy. 69 to Kountze, and return over same route, (32) between Paris and Texarkana, TX, over U.S. Hwy. 82, (33) between Pittsburg and Paris, TX, over U.S. Hwy. 271, (34) between Clarksville and Bogata, TX, over TX Hwy. 37, (35) between Pittsburg and Commerce, TX, over TX Hwy. 11, (36) between Honey Grove and Greenville, TX, from Honey Grove over TX Hwy. 34 to junction TX Hwy. 50, then over TX Hwy. 50 to Greenville, and return over the same route, serving the intermediate point of Wolfe City, (37) between Mt. Pleasant and Texarkana, TX, over U.S. Hwy. 67, (38) between (a) Wolfe City and Honey Grove, TX, and (b) between Greenville and Terrell, TX, over TX Hwy. 34, (39) between Quinlan and Point, TX, over F. M. Road 35, (40) between Greenville and Mineola, TX, over U.S. Hwy. 69, (41) between Ladonia and Cooper, TX, over

F. M. Road 64, (42) between Petty and Paris, TX, over F. M. Road 137, (43) between Honey Grove and Petty, TX, over U.S. Hwy. 82, (44) between Mineola and Winnsboro, TX, over TX Hwy. 37, (45) between Emory and Sulphur Springs, TX, over TX Hwy. 19, (46) between Quitman and Sulphur Springs, TX, over TX Hwy. 154, (47) between Alba and Quitman, TX, over TX Hwy. 182, (48) between (a) Van and Tyler, TX, and (b) Tyler and Troup, TX, over TX Hwy. 110, (49) between Tyler and Chandler, TX, over TX Hwy. 31, (50) between Kilgore and Price, TX, over TX Hwy. 42, (51) between Henderson and Overton, TX, over TX Hwy. 323, (52) between junction U.S. Hwy. 271 and TX Hwy. 155 and Big Sandy, TX, over TX Hwy. 155, (53) between junction TX Hwy. 149 and TX Hwy. 322 and Lakeport, TX, over TX Hwy. 149, (54) between Carthage and Panola, TX, over U.S. Hwy. 79, (55) between Marshall and DeBerry, TX, over F.M. Road 31, (56) between Marshall, TX, and junction F.M. Road 134 and TX Hwy. 43, over TX Hwy. 43, (57) between Karnack and Jonesville, TX, over F.M. Road 134, (58) between Karnack and Uncertain, TX, over an unnumbered county road, (59) between Marshall and Waskom, TX, over U.S. Hwy. 80, (60) between Marshall and Waskom TX, over Interstate Hwy. 20, (61) between Waskom and Panola, TX, over F.M. Road 9, (62) between Marshall, TX, and junction F.M. Roads 1998 and 134, over F.M. Road 1998, (63) between Marshall and Gilmer, TX, over TX Hwy. 154, (64) between Gladewater and Pittsburg, TX, over U.S. Hwy. 271, (65) between Longview and Lone Star, TX, over U.S. Hwy. 259, (66) between Pittsburg and Daingerfield, TX, over TX Hwy. 11, (67) between Queen City and Bloomburg, TX, over F.M. Road 74, (68) between Atlanta and Bivins, TX, over TX Hwy. 43, (69) between Linden and Bivins, TX, over F.M. Road 1841, (70) between Center and Shelbyville, TX, over TX Hwy. 87, (71) between Center and Haslam, TX, over TX Hwy. 7, (72) between Tenaha and Haslam, TX, over U.S. Hwy. 84, (73) between Paxton and Center, TX, over F.M. Road 699, (74) between (a) Texarkana and Corley, TX, and (b) Omaha and Mt. Pleasant, TX, over U.S. Hwy. 67, (75) between Como and Dike, TX, over F.M. Road 69, (76) between junction F.M. Road 1537 and TX Hwy. 19 and junction F.M. Roads 1537 and 69, over F.M. Road 1537, (77) between New Boston and Corley, TX, over TX Hwy. 8, (78) between Paris and Arthur City, TX, over U.S. Hwy. 271, (79) between Arthur City and Chicota, TX, over F.M. Road 197, (80) between Bonham and Ivanhoe, TX, over F.M. Road 273, (81) between Bonham, TX, and junction F.M. Road 1396 and TX Hwy. 78, over TX Hwy. 78, (82) between junction F.M. Road 1396 and TX Hwy. 78, and junction F.M. Road 1396 and F.M. Road 273, over F.M. Road 1396, (83) between junction TX Hwy. 78 and F.M. Road 1753 and Ravena, TX, over F.M. Road 1753, (84) between Denison and Pottsboro, TX, over F.M. Road 120, (85) between Leonard and Bells, TX, over U.S. Hwy. 69, (86) between Whitewright and Ector, TX, from Whitewright over F.M. Road 898 to junction F.M. Road 3297, then over F.M. Road 3297 to Ector, and return over the same route, (87) between Savory, TX, and junction F.M. Roads 898 and 1752, over F.M. Road 1752, (88) between Greenville and McKinney, TX, over U.S. Hwy. 380, (89) between Rockwall, TX, and junction TX Hwy. 205 and TX Hwy. 78, over TX Hwy. 205, (90) between Lavon and Caddo Mills, TX, over F.M. Road 6, (91) between Royse City and Josephine, TX, over F.M. Road 1717, and (92) between Alba and Yantis, TX, from Alba over F.M. Road 17 to junction F.M. Road 514, then over F.M. Road 514 to Yantis, and return over the same route; serving all intermediate points the routes above, the routes above, except route (36), restricted to the transportation of packages or articles not exceeding 100 pounds per package, and not exceeding 500 pounds per shipment.

MC 145108 (Sub-24F), filed September 15, 1980, previously noticed in **Federal Register** issued of October 15, 1980. Applicant: BULLET EXPRESS, INC., PO Box 289, Bay Ridge Station, Brooklyn, NY 11220. Representative: Terrence D. Jones, 2033 K Street, NW., Washington, DC 20006. Transporting (1) *electric motors electric controls, electric components, electric appliance, and electric fixtures,* and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Fasco Industries, Inc., of Ozark, MO.

Note.—This republication clarifies the commodity description.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-36867 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to

timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

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 November 26, 1980.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified 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, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically 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 those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions or 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act.)

In the absence of legally sufficient petitions for intervention, filed on or before December 26, 1980 (or, if the applicant 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 notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 378

Decided: October 23, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 150640 (Sub-1F), (republication), filed April 23, 1980, and previously noticed in the **Federal Register** issues of July 15, 1980, and August 26, 1980. Applicant: EMERSON EXPRESS CO., INC., 545 Lyell Ave., Rochester, NY 14606. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier,* transporting *scrap materials, metals, stainless steel, batteries,* and *reconditioned steel containers,* including *tubs,* between points in Monroe County, NY, on the one hand, and, on the other, New York, NY, points in Nassau and Suffolk Counties, NY, and points in AL, CT, IL, IN, KY, MA, MI, MO, NJ, OH, PA, and TN, under continuing contact(s) with (1) Krieger Waste Paper Co., (2) Genesee Scrap & Tin Bailing Corp. (3) Atkin's Waster Materials, Inc., and (4) L. Atkin's Sons, all of Rochester, NY.

Note.—The purpose of this republication is to add the contracting shippers listed in (2)–(4) above.

Volume No. 379

Decided: November 18, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman. Member Chandler not participating in part.

MC 143790 (Sub-10F), filed June 2, 1980, and previously noticed in **Federal Register** issue of August 5, 1980. Applicant: FEDERAL FREIGHT SYSTEMS, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43212. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plastic articles and rubber products (except commodities in bulk), between the facilities used by Goldsmith & Eggleton, Inc. at points 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).

Note.—This republication clarifies the territorial description.

MC 145651 (Sub-4F), filed February 4, 1980, and previously noticed in **Federal Register** issue of April 15, 1980. Applicant: DUNCAN & SONS, INC., P.O. Box 775, Lewis, CO 81327. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. Transporting *petroleum products* (except in bulk, in tank vehicles), from Los Angeles, CA, to points in AZ, CO, NM, and UT.

Note.—This republication shows NM as a destination state, in lieu of MN.

MC 151221 (Sub-1F), filed May 28, 1980. Applicant: HUDSON VALLEY BULK SERVICE, INC., Twinbrook Farm Rd., East Chatham, NY 12060. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting *precast cellular concrete,* between Philmont, NY, on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, and VT, under continuing contract(s) with Nicolon Corporation of Norcross, GA.

Volume No. 380

Decided: November 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 59570 (Sub-46F), filed June 10, 1980, and noticed in **Federal Register** issue of August 21, 1980. Applicant: HECHT BROTHERS, INC., 2075 Lakewood Road, Toms River, NJ 08753. Representative: Jean R. Hecht (same address as applicant). Transporting *salt, salt products, salt with additives, pepper and mineral mixtures,* (1) from the facilities of Morton Salt, at Perth Amboy, NJ, to points in ME, MI, NC, NH, OH, VA, WV, and VT, and (2) from the facilities of Morton Salt, at Silver Spring, NY, to points in CT, DE, ME, MD, MA, NC, NH, NJ, NY PA, RI, VA, VT, WV, and DC.

Note.—This republication adds *salt* as a commodity, and, in part (1) shows MI as a destination State in lieu of MA.

MC 107460 (Sub-80F), filed March 31, 1980. Applicant: WILLIAM D. GETZ, INC., 3055 Yellow Goose Road, P.O. Box 566, Lancaster, PA 17604. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Transporting (1) *metal roofing and siding and fabricated metal products,* and (2) *materials and supplies* used in the manufacture and distribution

of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Fabral-Alcan Building Products, Division of Alcan Aluminum Corporation, of Lancaster, PA.

Note.—This is modified to reflect the Motor Carrier Act of 1980.

MC 148751 (Sub-6F), (partial republication), filed February 2, 1980, and previously noticed in **Federal Register** issue of September 16, 1980. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (A)(1) *glass containers* (b) from the facilities of Universal Glass-National Bottling Corp., at Joliet, IL, to points in OH and PA, (M) *paper and paper products,* from the facialities of Willamette Industries, Inc., Western Craft Paper Group, at or near Hawesville, KY, to points in AL, CT, DE, FL, GA, IA, IL, IN, MA, MD, ME, MI, MN, MO, MS, NC, NJ, NY, OH, PA, RI, SC, TN, VA, WI, WV, and DC, (P)(1)(a) *iron articles, steel articles, zinc articles, and lead articles,* (b) *springs,* and (c) *construction equipment, materials, and supplies* (except commodities in bulk), from the facilities used by Penn-Dixie Industries, Inc., Pen-Dixie Steel Corp., and Stevens Spring, Inc., at or near (i) Blue Island and Joliet, IL, (ii) Cicero, Elkhart, Fort Wayne, and Kokomo, IN, (iii) Centerville, IA, (iv) Grand Rapids and Lansing, MI, (v) Jackson, MS, and (vi) Columbus and Toledo, OH, to points in AL, AR, GA, IA, IL, IN, KY, MD, MI, MO, MS, NC, OH, PA, TN, VA, WI, and WV, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction, (Q)(1)(a) *non-carbonated, fruit-flavored beverages,* in cans, (b) *dry beverage preparations,* and (c) *juices,* in cans, from the facilities of Penny Products, Inc., at or near Trafalgar, IN, to points in IL, KY, MI, MN, MO, OH, TN, VA, WI, and WV, and (2) *materials, equipment, and supplies,* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, (R)(1)(a) *moulded wood pulp articles,* from Gary and Hammond, IN, to points in AL, AR, CT, DE, FL, GA, IA, IL, KS, KY, LA, MA, MI, MN, MO, MS, NC, NE, NJ, NY, OH, OK, PA, RI, SC, TN, TX, VA, WI, WV, and DC, and (b) *plastic articles,* from Troy, OH and Memphis, TN, to points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MI, MN, MO, MS, NC, NE, NJ, NY, OH, PA, RI, SC, TX, VA, WI, WV, and DC, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, restricted in (R) to traffic originating at or destined to the facilities of Keyes Fibre Company, and (S)(1) *transmissions and transmission parts,* from the facilities of or used by Warner Gear Division, Borg-Warner Corp., at or near Muncie, IN, to Chicago, IL, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction.

Note.—This republicaton shows PA as a destination state in (A)(1)(b), shows WI as a destination point in (M), shows springs as the commodity in (P)(1)(b), shows MD as a destination state in (P)(1)(c)(vi), shows MN as an origin state in (Q)(1)(c), shows NY as a destination state in (R)(1)(a), shows MI as a destination state in (R)(1)(b), and shows Muncie, IN as an origin point and Chicago, IL, as a destination point in (S)(1).

Passenger

MC 150771F, filed May 6, 1980, and previously noticed in **Federal Register** issue of August 13, 1980. Applicant: ARIZONA BUS TOURS, DIVISION OF WILLETT CORPORATION, 4646 East University Dr., Phoenix, AZ 85034. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *passengers and their baggage,* in special and charter operations, beginning and ending at Sun City, Sun City West, Phoenix, Scottsdale, Tempe, Peoria, Glendale, Mesa, Apache Junction, Chandler, Goodyear, Carefree and Fountain Hills, AZ, and extending to points in the U.S. (except AK and HI).

Note.—This republication shows that applicant will be performing special as well as charter operations.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-36804 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the appication is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.— All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-75

The following applications were filed in region 1. Send Protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 152278 (Sub-1-1TA), filed November 14, 1980. Applicant: REALI BUS SERVICE, 4 Daisy Street, W. Warwick, RI 02893. Representative: Victor E. Reali, 4 Daisy Street, W. Warwick, RI 02893. *Common carrier:* regular route: *Passengers and their baggage,* between E. Natick, RI and Plainfield, CT, via Routes 2, 115, 33, 117 and 14 in RI and Routes 14 and 52 in CT serving intermediate points thereon. Supporting shipper(s): There are 29 individuals as supporting shippers whose statements may be examined at the I.C.C. Regional Office in Boston, MA.

MC 142114 (Sub-1-3TA), filed November 6, 1980. Applicant: RETAIL EXPRESS, INC., 9 Stuart Road, Chelmsford, MA 01824. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract carrier:* irregular: *Alcoholic beverages bottled for retail distribution* between points in KY, NJ, NY, OH, and TN. Supporting shipper: Reitman Industries, Inc., 10 Patton Drive, West Caldwell, NJ 07006.

MC 138950 (Sub-1-1TA), filed November 10, 1980. Applicant: FOR-TRUCKS, INC., P.O. Box 297, Henniker, NH 03243. Representative: John F. O'Donnell, Barrett and O'Donnell, 60

Adams St., P.O. Box 238, Milton, MA 02187. *Contract carrier:* irregular routes: *Pressure treated wooden transmission poles* between points in Orange County, NY, under contract(s) with George McQueston Co., Inc. For–Tek Division, Iron Horse Park, Billerica, MA 01862. Supporting shipper: George McQuestion Co., Inc., For–Tek Division, Iron Horse Park, Billerica, MA 01862.

MC 61942 (Sub-1–1TA), filed November 3, 1980. Applicant: JAMES J. McCABE, JR., d.b.a., J. McCABE & SON, 38 Greenhalge Avenue, Everett, MA 02149. Representative: James L. Sullivan or Edward D. Rapacki, 23 Bow Street, Somerville, MA 02143. *Household goods, new and used, as defined by the Commission* between points in the US. Supporting shipper: Jordan Marsh Company, 500 Commander Shea Blvd, North Quincy, MA 02171.

MC 147 (Sub-1–2TA), filed November 7, 1980. Applicant: CENTENNIAL TRUCK LINES, INC., 301 Broadway, Jersey City, NJ 07306. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722. *Plastic sheets, rods and tubes,* between Cornwall Heights, PA and New York, NY, on the one hand, and, on the other, Baltimore, MD, Birmingham, AL, Bloomfield, CT, Chicago, IL, Clearwater, FL, Cleveland, OH, Columbia, SC, Dallas, TX, Farmingdale, NY, Ft. Worth, TX, Gardena, CA, Gastonia, NC, Houston, TX, Hyattsville, MD, Indianapolis, IN, Jacksonville, FL, Knoxville, TN, Las Vegas, NV, Miami, FL, Newark, NJ, New York, NY, Orange, CT, Orlando, FL, Philadelphia, PA, Pittsburgh, PA, Pleasantville, NJ, Providence, RI, Raleigh, NC, Richmond, VA, Salt Lake City, UT, Santa Clara, CA, Somerville, MA, Syracuse, NY, Trenton, NJ, Warren, MI. Supporting shipper: Commercial Plastics Supply Corporation, 1642 Woodhaven Drive, Cornwall Heights, PA 19020.

MC 98542 (Sub-1–2TA), filed November 3, 1980. Applicant: COLLINS & SIMMONS, INC., P.O. Box 134, Wolcott, NY 14590. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Such commodities as are dealt in and distributed by retail and wholesale grocery outlets; also, materials, equipment and supplies used in the manufacture, sale and distribution of above commodities,* between points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, PA, RI, VT, VA, and DC. Supporting shipper(s): Gerber Products Co., 445 State St., Fremont, MI 49412; Purex Corp., 1445 N. Radcliffe St., Bristol, PA 19007.

MC 150698 (Sub-1–1TA), filed November 3, 1980. Applicant: WEST–CONN TRANSPORTATION SERVICE, INC., Anarock Drive, Somers, NY 10589. Representative: Sidney J. Leshin, Esq., 575 Madison Avenue, New York, NY 10022. *Contract carrier:* irregular routes: *Passengers and their baggage,* between points and places in the counties of Westchester, Putnam and Dutchess, NY and Fairfield County, CT, on the one hand, and the office and plant facilities of American Telephone & Telegraph Co., located in the City of White Plains, NY, on the other hand, under continuing contract with AT&T Employees Group, Patterson, NY. Supporting shipper: American Telephone and Telegraph Employees Group, Patterson, NY.

MC 128343 (Sub-1–17TA), filed November 4, 1980. Applicant: C-LINE, INC., 340 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M Street, NW., Washington, DC 20036. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission, and Classes A and B explosives),* between all points in the U.S., under continuing contract with the Okonite Company of Ramsey, NJ. Supporting shipper: The Okonite Company 100 Hilltop Road, Ramsey, NJ 07446.

MC 152459 (Sub-1–1TA), filed November 4, 1980. Applicant: SUNSHINE TRANSPORTATION, INC., 112 Lehigh Drive, Fairfield, NJ 07007. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract carrier:* irregular routes: *Such commodities as are dealt in by retail department stores (except commodities in bulk and frozen foodstuffs)* from, to or between points in AL, AR, DE, FL, GA, IL, IN, IA, KY, LA, MD, MI, MT, NE, NH, NJ, NY, NC, ND, OH, PA, SC, SD, TN, VT, VA, WV, and WI. Supporting shipper: Jefferson Stores, Inc., 15800 N.W. 13th St., Miami, FL 33169.

MC 145914 (Sub-1–7TA), filed November 12, 1980. Applicant: COASTAL TRUCKLINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Rrepresentative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, One World Trade Center, Suite 2373, New York, NY 10048. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission) and Class A & B explosives* from the facilities of Econocraibe Consolidators, Inc. at or near Dade County, FL to points and places in the States of NJ and NY, under continuing contract with Econocaribe Consolidtors, Inc. Supporting Shipper: Econocaribe Consolidators, Inc., 2929 NW 73rd St., Miami, FL 33147.

No. MC 142114 (Sub-1–4TA), filed November 12, 1980. Applicant: RETAIL EXPRESS, INC., 9 Stuart Road, Chelmsford, MA 01824. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract carrier:* Irregular: *such commodities as are dealt in by retail department stores (except commodities in bulk and frozen foodstuffs)* from, or to between points in CT, DE, FL, IN, KY, LA, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, TN, TX, VA. Supporting shipper: King's Department Stores, Inc., 150 California Street, Newton, MA 02158.

MC 151639 (Sub-1–4TA), filed November 12, 1980. Applicant: COMMAND TRANSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 01208. *Beer,* from Baltimore, MD to Norwood, Lawrence, Marlboro, Fairhaven and West Roxbury, MA. Supporting shipper: United Liquors, Ltd. 99 Rivermmor Street, West Roxbury, MA 02132.

MC 146046 (Sub-1–3TA), filed November 12, 1980. Applicant: INTERCOASTAL LINES, LTD., 200 Foxhunt Crescent, Syosset, NY 11791. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Such commodities as are dealt in or used by a manufacturer and distributor of store fixtures and store furnishings,* between Maspeth, NY. and points in CA and TX, under contract(s) with Richter & Ratner Corporation of Maspeth, NY Supporting shipper(s): Richter & Ratner Contracting Corporation, 55–05 Flushing Avenue, Maspeth, NY 11378.

MC 140986 (Sub-1–1TA), filed November 12, 1980. Applicant: GREAT NORTHERN TRUCK LINES, Bank Street, Netcong, NJ 07857. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Medical devices, pharmaceuticals, drugs, chemicals and pharmaceuticals accessories (except in bulk),* between Parsippany, NJ on the one hand, and, on the other, points in the US. Supporting shipper: Isomedix, Inc., 80 South Jefferson Road, Whippany, NJ 07981.

MC 143127 (Sub-1–27TA), filed November 12, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *(1) Such commodities as are dealt in by grocery and food business houses (except in bulk) and (2) materials, supplies and equipment used in the manufacture and distribution of commodities in (1) (except in bulk),*

between points in the U.S. Supporting shipper: Victory Wholesale Grocers, d.b.a. Brothers Trading Co., Inc., Suite 170, 333 West First St., Dayton, OH 45402.

MC 150295 (Sub-1–2TA), filed November 12, 1980. Applicant: K & M DIESEL SERVICE, INC., 10–12 East Maple Avenue, Cedarville, NJ 08311. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Contract carrier, irregular routes *Electric Wire and Cable and Steel Wire Rope* between NJ, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, ME, MD, MA, NJ, NJ, NY, NC, OH, PA, SC, TX, VT, and VA for 270 days. Supporting shipper(s): Bridgeton Transfer Point, Inscon Cable Co., Manhattan Electric Corp., and Petro Cable Corp., P.O. Box 440, Bridgeton, NJ 08303.

MC 121342 (Sub-1–1TA), filed November 3, 1980. Applicant: GALLO CONSTRUCTION CO., 845 Sandwich Rd., Sagamore, MA 02561. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Salt, in bulk,* from Boston and Taunton MA, to points in ME, NJ, VT, MA, CT, and RI. Supporting shipper: Cargill, Inc., P.O. Box 150, Watkins Glen, NY 14891.

MC 143143 (Sub-1–2TA), filed November 7, 1980. Applicant: RICHARD L. HODGES, INC., P.O. Box 141, Unity, ME 04988. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and commodities of unusual value),* between points in CT, DC, DL, GA, MA, ME, NH, NJ, NY, NC, PA, RI, SC, VT, VA, and WV under continuing contracts with Conwed Corporation and Campbells Soup Company. Supporting shippers: Conwed Corporation, P.O. Box 190, Riverside, NJ 08075, and Campbells Soup Company, 100 Market Street, Camden, NJ 08101.

MC 127524 (Sub-1–6TA), filed November 3, 1980. Applicant: QUADREL BROS. TRUCKING CO., INC., 1603 Hart Street, Rahway, NJ 70765. Representative: David L. Middleton, 1603 Hart Street, Rahway, NJ 07065. *Acetonitrile in bulk marineized tank trailers* from the facility of Upjohn Manufacturing Company, Lima, OH to Baltimore, MD. Supporting shipper: Upjohn Manufacturing Company, P.O. Box 445, Barceloneta, Puerto Rico 00617.

MC 151783 (Sub-1–1TA), filed November 3, 1980. Applicant: S. GOSKI & SONS, INC., 318 Massachusetts Street, Westfield, NJ 07090. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Nonexempt food and kindred products* between points in the States of NJ, PA on and east of Interstate 81, and NY on and east of Interstate 209 and Interstate 87. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 152516 (Sub-1–1TA), filed November 7, 1980. Applicant: PETER J. DiGIOVANNI, d.b.a. GUARANTEED MOTOR TOWING SERVICE, P.O. Box 1, New Brunswick, NJ 08873. Representative: James F. Flint, Suite 406, 918 16th Street, NW., Washington, DC 20006. *Motor vehicles and trailers transported by wrecker or towing equipment* between North Brunswick, NJ on the one hand, and, on the other, points in VA, WV, MD, DC, DE, PA, NY, CT, RI, MA, NH, VT, and ME, restricted to traffic originating at or destined to the facilities of Frito-Lay, Inc. Supporting shipper: Frito-Lay, Inc., 1846 US HWY 1, North Brunswick, NJ 08902.

MC 101219 (Sub-1–1TA), filed November 3, 1980. Applicant: MERIT DRESS DELIVERY, INC., 292 Eleventh Avenue, New York, NY 10001. Representative: Norman Weiss, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *Department store merchandise, when moving in the same vehicle and at the same time with shipments of wearing apparel on hangers,* between points in New York, NY Commercial Zone, CT (except Middletown, CT), ME, MA, NH and RI. Supporting shipper: Associated Dry Goods Corp., 417 Fifth Avenue, New York, NY 10016.

MC 119552 (Sub-1–8TA), filed November 7, 1980. Applicant: J.T.L., INC., 49 Rosedale Street, Providence, RI 02903. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and Classes A and B explosives)* between the commercial zone of Dallas, TX, on the one hand, and, on the other, CA, OH, MO, IL, NM, OK, AR, LA, NV, UT, CO, KS, NE, IA, IN, KY, TN, AL, MS, under continuing contract(s) with Thompson Can Company. Supporting shipper: Thompson Can Company, Box 340259, Dallas, TX.

MC 145085 (Sub-1–1TA), filed November 7, 1980. Applicant: SID'S, INC., P.O. Box D, Jonesport, ME 04649. Representative: James E. Mahoney, 148 State Street, Boston, MA 02109. *Foodstuffs and materials, supplies and equipment used in the manufacture, sale and distribution of foodstuffs (except commodities in bulk, in tank vehicles),* between points in ME, NH, VT, MA, RI, CT, NY, FL and CA, on the one hand, and, on the other, all points in the US; tires, batteries and accessories between points in ME, on the one hand, and, on the other, points in the US in and east of MN, IA, MO, OK and TX. Supporting shipper(s): There are 7 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 143668 (Sub-1–2TA), filed November 7, 1980. Applicant: LONG ISLAND AIRPORTS LIMOUSINE SERVICE CORP., 25 Newton Place, Hauppauge, NY 11787. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Passengers and their baggage, in round-trip charter and special operations,* beginning and ending at points in Nassau and Suffolk Counties, NY and extending to points in Atlantic County, NJ. Supporting shipper(s): There are 27 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 2860 (Sub-1–21TA), filed November 7, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *Plastic articles, and equipment and supplies used in the manufacture and distribution of plastic articles,* between points in the US. Restricted to traffic originating at or destined to the facilities of Mobil Chemical Company. Supporting shipper: Mobil Chemical Company, Macedon, NY 14502.

MC 152449 (Sub-1–1TA), filed November 3, 1980. Applicant: OMNI EXPRESS, INC., 70 West Elder Avenue, Floral Park, NY 11001. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract Carrier:* irregular routes: *Laboratory and hospital equipment and parts* between South Plainfield, NJ, and Tarrytown and Orangeburg, NY, on the one hand, and, on the other, points in NJ, and New York, NY, and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester Counties, NY, and points in Bucks, Delaware, Lebanon, Lehigh and Montgomery Counties, PA, and Philadelphia, PA Commercial Zone. Supporting shipper: Technicon Instruments Corporation, 511 Benedict Ave., Tarrytown, NY 10591.

MC 148632 (Sub-1–6TA), filed November 7, 1980. Applicant: DIXON MOTOR FREIGHT, INC., 2620 Old Egg Harbor Road, Lindenwold, NJ 08021.

Representative: Gary V. Dixon, 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. *Corrugated asphalt, roofing and accesories (including nails and washers) rudge rolls, skylite sheets and filler strips,* between Spotsylvania County, VA and AR, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. Supporting shipper: Orduline USA, Inc., Route 9, Box 195, Fredricksburg, VA 22401.

MC 152202 (Sub-1–2TA), filed November 10, 1980. Applicant: ARGO TRANSPORT LTD., 1570 Montarville Street, Boucherville, Quebec, CD J7B 1Z5. Representative: Me Adrien R. Paquette, Q.C., 200 St. James Street West, Suite 900, Montreal, Quebec, CD H2Y 1M1. *General commodities in containers having a prior or subsequent movement by water (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodity in bulk and those requiring special equipment),* between the ports of entry on the International Boundary line between the US and CD located in NY, VT, NH, and ME on the one hand, and, on the other, points in VT, NH, MA, CT, ME, NY, NJ, DE, MD, RI, PA, OH, IN, IL. Supporting shipper: Midland Container Terminal, Waterloo, Quebec, CD.

MC 152592 (Sub-1–1TA), filed November 10, 1980. Applicant: D.S. LEASING CORPORATION, Eight John Street, Montvale, NJ 07645. Representative: Paul D. Borghesani, Katz & Borghesani, Suite 300, Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516. *Contract carrier:* irregular routes: *(1) Tape and tape products and (2) materials, equipment and supplies used in the manufacture of commodities listed in (1)* between Waterveliet, NY on the one hand, and, on the other, the Chicago, IL Commercial Zone and points in NJ. Restricted to traffic moving under continuing contract with Nashua Corp. Supporting shipper: Nashua Corp., 2600 7th Avenue, Waterveliet, NY 12189.

MC 3753 (Sub-1–7TA), filed November 10, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, One World Trade Center—Suite 2373, New York, NY 10048. *Common carrier:* regular routes: *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 Washington, DC and Hagerstown, MD; Washington, DC and Baltimore, MD, and Washington, DC and Dover, DE, serving all intermediate points and off route points located in MD and DE, from Washington, DC to Baltimore, MD over Interstate Hwy 95 and return over the same routes; from Washington, DC to Dover, DE over US Hwy 50 to Junction MD Hwy 404, thence MD Hwy 404 to US Hwy 13, thence US Hwy 13 to Dover, DE and return over the same route; from Washington, DC to Hagerstown MD over Interstate Hwy 495 to Junction Interstate Hwy 270, thence Interstate Hwy 270 to Junction Interstate Hwy 70, thence Interstate Hwy 70 to Junction Interstate Hwy 81, thence Interstate Hwy 81 to Hagerstown, MD and return over the same route. Supporting shipper(s): There are 18 shippers in support of this application whose statements may be examined at the I.C.C. Regional Office in Boston, MA.

MC 147841 (Sub-1–3TA), filed November 10, 1980. Applicant: CENTENNIAL TRUCK LINES, INC., 301 Broadway, Jersey City, NJ 07306. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722. *Unfinished attache cases, and materials and supplies used in the manufacture of unfinished attache cases,* between New York, NY, on the one hand, and, on the other, Baltimore, MD, Los Angeles, CA, Denver, CO, Washington, MO, Chicago, IL, Richmond, VA, Orlando, FL, Columbus, OH, Utica, NY, Pittsburgh, PA, Indianapolis, IN, Portland, OR, Providence, RI, Norton, MA, Hartford, CT, Greensville, NC, Johnson City, TX, Westville, NJ. Supporting shipper: Glassman Box Co., 2343 41st Street, Long Island City, NY 11105.

The following protest was filed in Region 5. Send protests to: Consumer Assistance Center, Intersate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 115669 (Sub-5–4TA), filed November 3, 1980. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Wilbur G. Hoyt (same address as applicant). *Salt and salt products,* from Lyons and Reno County, KS, to points in WV. Supporting shippers: American Salt Co., 3142 Broadway, Kansas City, MO 64111. Carey Salt Div. of Processed Minerals, Inc., 1800 Carey Blvd., Hutchinson, KS 67501.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 148328 (Sub-6–2TA), filed November 14, 1980. Applicant: LEONARD ALLEN and/or GARY ARIOTTI, d.b.a. ALLEN TRUCKING, 112 Manzanitia Drive, West Covina, CA 91791. Representative: Leonard Allen (same address as applicant). *Contract carrier,* Irregular routes: (1) *Commodities used, sold or distributed by a manufacturer of Cosmetics* (except commodities in bulk), Between Pasadena, CA, and points in the states of AZ, ID, NV, OR, UT and WA, for the account of Avon Products, Inc., for 270 days. Supporting shipper: Avon Products, Inc., 2940 E. Foothill Blvd., Pasadena, CA 91121.

MC 146360 (Sub-6–1TA), filed November 17, 1980. Applicant: ALL FREIGHT TRANSPORTATION, INC., P.O. Box 6699, Boise, ID 83707. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Contract carrier,* Irregular routes: *Frozen Foodstuffs, except commodities in bulk* between points in the United States, except AK and HI. Restricted to traffic originating at or destined to the faiclities utilized by Ore-Ida Foods, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ore-Ida Foods, Inc., 220 W. Parkcenter, Blvd., Boise, ID.

MC 152680 (Sub-6–1TA), filed November 17, 1980. Applicant: ALLIANCE FREIGHTWAYS INC., P.O. Box 2295, Los Angeles, CA 90051. Representative: W.G. Reese, Registered Practitioner, 623 E. Artesia, Carson, CA 90746. *Paper, paper products and supplies used in the manufacture thereof.* Excepting commodities in bulk. Between San Francisco, CA and its commercial zone on the one hand, and, on the other points and places in the states of NY, PA, NJ, and IL, for 270 days. Supporting shipper: Velo-Bind Inc. 650 Almanor Ave., Sunnyvale, CA 94086.

MC 116544 (Sub-6–22TA), filed November 17, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O.B. 10061, Palo Alto, CA 94303. *Batteries, flashlights, store display racks, electrical equipment and parts, and anti-freeze (except in bulk)* from the facilities of Union Carbide Corporation at or near Asheboro & Greenville, NC; Cleveland & Fremont, OH; Maryville, MO; Red Oak, IA; Alsip & Chicago, IL; Texas City, TX; and Torrance, CA to all points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Union Carbide Corporation, 270 Park Ave., New York, NY. 10017.

MC 152691 (Sub-6–1TA), filed November 12, 1980. Applicant: SANTOS RICO, d.b.a. AUTO TRANSPORTES, 1102 E. Francis, Corona, CA 91720. Representative: Santos Rico (same as applicant). *Contract carrier:* Irregular

routes: (1) *Magnetic recording tape, typewriter tape parts and electronic parts and (2) Electronics, electronic parts, instruments and parts and supplies used in the above,* between points in Orange County, CA and Mexicali, Mexico for 270 days. Supporting shipper: (1) Certron Corp.; 1701 S. State College Blvd., Anaheim, CA and (2) Beckman Instruments, Inc., 2500 Harbor Blvd., Fullerton, CA 92634.

MC 138322 (Sub-6–4TA), filed November 12, 1980. Applicant: BHY TRUCKING, INC., 9231 Whitmore St., El Monte, CA 91733. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Oilfield machinery, materials, equipment and supplies,* and *pipe and well casing,* between (1) points in CA, on the one hand, and, on the other, points in AR, CO, KS, LA, MT, NM, OK, TX and Wy, and (2) between points in TX, on the one hand, and, on the other, points in CO, MT and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: There are 10 shippers. Their statements may be examined at the Regional Office listed.

MC 152681 (Sub-6–1TA), filed November 17, 1980. Applicant: FRANK BATY, 2045 Tulare Way, Upland, CA 91786. Representative: Frank Baty (same as applicant). *Contract Carrier,* Irregular routes: *Beer* moving in foreign commerce, from Detroit, MI and commercial zone to CA, for the account of Passino Distributors, Inc., for 270 days. Supporting shipper: Passino Distributors, Inc., 1515 West Mission Road, Alhambra, CA.

MC 152670 (Sub-6–1TA), filed November 12, 1980. Applicant: CANNON MOVING & STORAGE, INC., 18335 Iona Ave., Lemoore, CA 93245. Representative: Trucia Hedge (same address as applicant). *Used Household Goods* in a pack-and-crate operation for the United States Government, in and between points in Kings County, CA, Tulare County, CA, and Fresno County, CA, for 270 days. There are no supporting shippers.

MC 138624 (Sub-6–2TA), filed November 14, 1980. Applicant: CARGO TRANSPORT, INC., Route 1, Box 510, Corvallis, MT 59828. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Salt, in bulk,* from the facilities of Morton Salt at or near Saltair, UT to points in OR and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Morton Salt Division of Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago IL 60606.

MC 152687 (Sub-6–1TA), filed November 12, 1980. Applicant: CASCADE EXPRESS, INC., 1315 D NE. 134th, Vancouver, WA 98665. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Foodstuffs,* (1) from points in WA to points in OR; (2) from WA and OR to points in CA, restricted to traffic moving for the account of, or to or from the facilities of North Pacific Canners and Packers, Inc., for 270 days. Supporting shipper: North Pacific Canners and Packers, Inc., 5200 S.E. McLoughlin Blvd., Portland, OR.

MC 152688 (Sub-6–1TA), filed November 17, 1980. Applicant: CHEMICAL DISPOSAL CO., INC., P.O. Box 397, Rillito, AZ 85246. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Hazardous waste and hazardous waste materials,* from points in AZ to Beatty, NV; Grand View, ID; West Covina and Kettleman City, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Arizona Public Service Company, P.O. Box 21666, Phoenix, AZ 85036.

MC 140943 (Sub-6–2TA), filed November 14, 1980. Applicant: CHEYENNE ROAD TRANSPORT, LTD., 232 38th Ave., N.E., Calgary, Alberta, Canada T2E 2M2. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402. *Drilling mud, and drilling mud additives* from MT, WY, and Gray's Harbor County, WA to points along the international boundary line between the U.S. and Canada in WA, ID, MT, and ND, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Superior Mud Sales, Ltd., 600–608 7th St., S.W., Calgary, Alberta, Canada; Apex Mud Service, Ltd., 322–706 7th Ave., S.W., Calgary, Alberta, Canada; Hollimex Products, Ltd., 5830 87th St., Edmonton, Alberta, Canada; Canamara Supply, Ltd., 126 Acheson Road, Winterburn, Alberta, Canada.

MC 42487 (Sub-6–43TA), filed November 13, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Contract carrier,* irregular routes: *General commodities, (except household goods as defined by the Commission, and Classes A and B explosives),* from Shelley, ID and Clearfield, UT to Clearfield, UT, Jersey City, NJ, Cockeysville, MD and points in WI, MO, IL, MI, IN, and OH, for the amount of R. T. French Co., for 270 days. Supporting shipper: R. T. French Co., 434 S. Emerson, Shelley, ID 83274.

MC 113678 (Sub-6–27TA), filed November 13, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as above). *Photographic paper and supplies and materials and equipment related thereto,* between Denver, Co; Hastings, MN; Billings, MT; Omaha, NE; Fargo, ND; Richardson, TX; Salt Lake City, UT; and Chehalies and Spokane, WA, and points in the commercial zones of each of the cities listed above for 270 days. Supporting shipper: Trans America Film Service Corp., 433 W. Lawndale Dr., Salt Lake City, UT.

MC 136605 (Sub-6–21TA), filed: November 13, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same as applicant). *Package shipments of house logs, windows, shakes, shingles, dimensional lumber and insulation,* from Payette County, ID to points in and west of WI, IL, MO, AR, LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Homestead Log Company, P.O. B. 161 Industrial Park, Payette, ID 83661.

MC 128685 (Sub-6–1TA), filed November 14, 1980. Applicant: DIXON BROS., INC., P.O.D. 8, Newcastle, WY 82701. Representative: Jerome Anderson, 100 Transwestern Bldg., Billings, MT 59101. *Petroleum or coal products and crude petroleum, natural gas or gasoline,* between points in WY, SD, NB, CO and MT for 270 days. Supporting shippers: There are eight supporting shippers. Their statements may be examined at the Regional office listed.

MC 121762 (Sub-6–1TA), filed November 17, 1980. Applicant: DRISKELL TRUCKING, INC., 4739 Durfee Ave., Pico Rivera, CA 90660. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Contract Carrier,* Irregular routes: *Upholstered, Rattan, Metal and Wood Furniture; and, Air Filtering Equipment,* From points in Los Angeles and Orange Counties, CA to points in UT, NM, AZ, NV, OR, WA, ID, CO, CA and TX, and, from points in OR and TX to points in AZ, NV, CA, UT, and ID, for 270 days. Supporting shippers: There are six shippers. Their statements may be examined at the Regional office listed.

MC 121762 (Sub-6–2TA), filed November 17, 1980. Applicant: DRISKELL TRUCKING, INC., 4739 Durfee Ave., Pico Rivera, CA 90660. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Contract Carrier,* Irregular routes: *Furniture of rattan, metal or wood construction; air filtering equipment; paper and paper products; and, equipment, materials and supplies used*

in the manufacture and distribution of the above commodities, except commodities in bulk, Between the Facilities of Scott Paper Company located in the states of CA, OR, and WA, on the one hand, and, on the other, all points located in the states of AZ, CO, ID, NV, OR, TX, and WA, for 270 days. Supporting shipper: The Scott Paper Company, Scott Plaza II, Philadelphia, Pa. 19113.

MC 152683 (Sub-6–1TA), filed November 17, 1980. Applicant: RICK ENDRESEN COMPANY, 709 S. Lane, Seattle, WA 98104. Representative: R. Patrick McGreevy, Ballard Building, Suite 210, Seattle, WA 98107. *Contract carrier:* Irregular Routes: (1) *Alcoholic beverages,* moving in bond, from the storage facilities of Cloud Trading Company, Inc., at Seattle, to ports in WA and OR, for 270 days. Supporting shipper: Cloud Trading Company, Inc., 1035 22nd Avenue, Oakland, CA 94606.

MC 151191 (Sub-6–3TA), filed November 17, 1980. Applicant: ESPENSCHIED TRANSPORTATION CORPORATION, 322 South 600 East, Centerville, UT 84014. Representative: Lee E. Lucero, 450 Capitol Life Center, Denver, CO 80203. *Contract carrier,* irregular routes: *Merchandise dealt in by retail department stores,* between points in CO, ID, MT, UT and WY for 270 days. Supporting shipper: Spiegel, Inc., 1515 West 22nd St., Oak Brook, IL 60521.

MC 125433 (Sub-6–40TA), filed November 17, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 So. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). (1) *Paper,* except building paper, (2) *Sanitary tissue stock;* (3) *wrapping paper, wrappers* and *coarse paper;* (4) *sanitary tissue* and *health products;* (5) *containers and boxes, paperboard, fiberboard and pulpboard,* (6) *Drug, Bio Products, Medical Chemicals,* and *Pharmaceutical preparations;* (7) *Soaps, detergents* and *cleaning preparations, cosmetics and other toilet preparations* except electrical, and miscellaneous parts and supplies incidental to the manufacture, distribution of the above commodities, between points in the U.S., restricted to traffic moving between the facilities of Scott Paper Company, for 270 days. Supporting shipper: Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113.

MC 125433 (Sub-6–41TA), filed November 17, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 So. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). (1) *Paper, except building paper,* (2) *sanitary tissue stock or health products,* (3) *paper bags, wrapping paper and coarse paper* by Major Industries Code—Class 26—Pulp, Paper and Allied Products, between at or near Flagstaff, AZ, Pryor, OK, St. Helens, OR and LaPalma, CA, on the one hand, and on the other, points in the U.S. for 270 days. Supporting shipper: Orchid Paper Company, 5911 Fresca Drive, LaPalma, CA 90623.

MC 116457 (Sub-6–3TA), filed November 13, 1980. Applicant: GENERAL TRANSPORTATION INCORPORATED (P.O. Box 6484), Phoenix, AZ 85005. Representative: D. Parker Crosby (same as applicant). *Laminated wood beams, roof structure materials and materials, equipment and supplies used in the manufacture and distribution thereof* (except in bulk in tank vehicles), between points in Apache County, AZ and points in and west of LA, AR, MO, IA and MN, for 270 days. Supporting shipper: Madera Lumber Sales, Inc., P.O. Box 2551, Mesa, AZ 85204.

MC 144860 (Sub-6–2TA), filed November 14, 1980. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. *Contract carrier,* irregular routes, *copying, duplicating or reproducing machines and materials, supplies, parts and accessories used in the manufacture, distribution, installation or operation of copying, duplicating, or reproducing machines,* between points in the U.S. under continuing contracts with the Xerox Corporation for 270 days. Supporting shippers: Xerox Corporation, 800 Phillips Road, Building 214B, Webster, NY 14580.

MC 126996 (Sub-6–3TA), filed November 12, 1980. Applicant: GOLDEN TRANSPORTATION, INC., P.O. Box 26908, Salt Lake City, UT 84125. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Non-exempt foods and kindred products,* from Steele County, MN, on the one hand, and, on the other, points in AZ, CA, CO and UT for 270 days. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 150726 (Sub-6–4TA), filed November 17, 1980. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA 93662. Representative: Thomas M. Loughran, 100 Bush St., 21st Floor, San Francisco, CA 94104. (A) *air and entraining agent solution,* (B) *concrete or masonry plasticizer and water reducing compound, and,* (C) *lignin, liquor,* in bulk and tank vehicles, from Los Angeles, CA to Phoenix, AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: W. R. Grace Co., 7237 E. Gage Ave., Los Angeles, CA 90040.

MC 110639 (Sub-6–7TA), filed November 17, 1980. Applicant: INCO EXPRESS, INC., 3600 South 124th ST., Seattle, WA 98168. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. *Cardboard containers and paper products* from points in Los Angeles and Orange Counties, CA to points in OR and WA, for 270 days. Supporting shipper: McCabe Quality Meats, 13650 N.E. Whitaker Way, Portland, OR 97220; California Stocktab Co., 11937 Woodruff Avenue, Downey, CA 90241.

MC 139906 (Sub-6–47TA), filed November 13, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O.B. 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O.B. 81849, Lincoln, NE 68501. *Bakery products,* from the facilities of Interbake Foods, Inc., at or near Tacoma, WA to North Sioux City, SD for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Interbake, Inc., P.O.B. 27487, Richmond, VA 23261.

MC 139906 (Sub-6–48TA), filed November 13, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O.B. 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O.B. 81849, Lincoln, NE 68501. *(1) Medical and surgical equipment and supplies, and (2) parts, materials and supplies used in the manufacture, sale or distribution of the commodities listed in (1) above,* (except in bulk) between the facilities of the Bard-Parker Division of Becton Dickinson and Company at or near Los Gatos, CA and Ocala, FL; and (2) between the facilities listed in (1) above on the one hand, and, on the other, the facilities of Automated Moulding Company at or near Pamona, CA the facilities of the Bard-Parker Division of Becton Dickinson and Company at or near Hancock, NY and Salt Lake City, UT; and (3) from the facilities listed in (1) above to Benecia, CA; Atlanta, GA; Itasca, IL; Fairfield, NJ; Dallas, TX; and points in their respective commercial zones, for 270 days. Supporting shipper: Becton Dickinson and Co., Stanley St., East Rutherford, NJ 07070.

MC 125952 (Sub-6–8TA), filed November 14, 1980. Applicant: INTERSTATE DISTRIBUTOR CO., 8311 Durango St. SW., Tacoma, WA 98499. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *(1) such merchandise as is dealt in by*

wholesale, retail, chain grocery and food business houses and agricultural feed business houses and soy products, and (2) materials, equipment and ingredients and supplies used in the development, manufacture, distribution and sale of the items in (1) above (except in bulk), between the facilities of Ralston Purina Company at or near Denver, CO, and points in AZ, for 270 days. Supporting shipper: Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188.

MC 152528 (Sub-6–1TA), filed November 17, 1980. Applicant: KERWIN F. JENSEN, P.O. Box 308, Cleveland, UT 84518. Representative: Harry D. Pugsley, 1283 East South Temple #501, Salt Lake City, UT 84102. *Contract carrier,* Irregular routes: *Coal,* in bulk, from the Pinnacle Mine in Deadman Canyon in Carbon County, UT to railheads in Carbon County, UT for the account of Tower Resources, Inc., for 270 days. Supporting shipper: Tower Resources, Inc., P.O. Box 1027, Price, UT 84501.

MC 140827 (Sub-6–3TA), filed November 13, 1980. Applicant: MARKET TRANSPORT, LTD., 110 North Marine Drive, Portland, OR 97217. Representative: Nick I. Goyak, 555 Benjamin Franklin Plaza, One Southwest Columbia, Portland, OR 97258. (1) *Paper and paper products;* and (2) *Equipment, materials and supplies such as are used in the production, manufacture, packaging, marketing and distribution of the commodities named in (1) above,* from Toledo, OR to points in CA for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Georgia-Pacific Corporation, 900 SW. Fifth Avenue, Portland, OR 97204.

MC 152678 (Sub-6–1TA), filed November 17, 1980. Applicant: JOHN MATTOS, d.b.a. J. MATTOS TRUCKING, 1088 Belford Drive, San Jose, CA 95132. Representative: Philip J. Bovero, 3798 Flora Vista Ave., Santa Clara, CA 95051. (1) *Foods, foodstuffs, food treating compounds, chemicals, preservatives and additives;* (2) *Groceries and grocers' supplies;* (3) *Materials, supplies, equipment and advertising material* used in the manufacture, sale and distribution of commodities described in (1) and (2) above (except in bulk) between San Jose, CA and Reno, NV including the commercial zones thereof, for 270 days. Supporting shipper: Compass Trading Company, Inc., 975 Yosemite Drive, Milpitas, CA 95035.

MC 152685 (Sub-6–1TA), filed November 12, 1980. Applicant: RON NOBACH TRUCKING, INC., 7404 44th Ave. NE., Marysville, WA 98270. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. *Cheese and cheese products,* from Mt. Vernon, WA to Logan, UT., for 270 days. Supporting shipper: Dairy Marketing-Washington Cheese, P.O. Box 1267, Mt. Vernon, WA.

MC 1977 (Sub-6–8TA), filed November 12, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5601 Holly St., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *Contract carrier; Irregular Routes; General Commodities* (except household goods as defined by the Commission). Between points in the U.S. under continuing contract(s) with the Port of Seattle for 270 days. Supporting shipper: The Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

MC 124692 (Sub-6–25TA), filed November 13, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Reinforced fiberglass products,* from Seguin and Houston, TX; Anaheim, CA and Cleveland, OH to points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Xerxes Fiberglass, Inc., 7901 Xerxes Avenue South, Bloomington, MN 55431.

MC 126514 (Sub-6–9TA), filed November 17, 1980. Applicant: SCHAEFFER TRUCKING, INC., 5200 West Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. *Such commodities as are dealt in or used by manufacturers of electrical products,* between the facilities of the General Electric Company, Los Angeles, CA, Ontario, CA, and Seattle, WA on the one hand, and on the other, points in the U.S. for 270 days. Supporting shipper: General Electric Company, 234 East Main St., Ontario, CA 91761.

MC 152682 (Sub-6–1TA), filed November 12, 1980. Applicant: THOUSAND TRAILS, INC., 4800 S. 188th Way, Seattle, WA 98188. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Passengers and their baggage* in special and charter round trip operations between points in WA, on the one hand, and points in the U.S., excluding HI, on the other, for 180 days.

MC 144846 (Sub-6–3TA), filed November 14, 1980. Applicant: TRANSTATES, INC., 2761 East White Star, Anaheim, CA 92806. Representative: David P. Christianson, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. *Paper and paper products; plastic articles, expanded; and equipment, materials, and supplies used in the manufacture and distribution of the above products (except commodities in bulk),* between all points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities of Scott Paper Company, for 270 days. Supporting shipper: Scott Paper Company, Scott Plaza II, Philadelphia, PA 19113.

MC 143775 (Sub-6–31TA), filed November 14, 1980. Applicant: PAUL YATES, INC., P.O. Box 1059, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Foodstuffs* (except in bulk), from Los Angeles, CA, and its commercial zone, to Phoenix, AZ, Columbus, GA, Chicago, IL, Emporia, KS, Hutchinson, KS, Kansas City, KS, Wichita, KS, New Orleans, LA, Dallas, TX, Houston, TX, San Antonio, TX, and Milwaukee, WI, and their respective commercial zones, for 270 days. Supporting shipper: Southern Foods, 5353 Downing Street, Vernon, CA 90058.

MC 115523 (Sub-6–8TA), filed November 17, 1980. Applicant: CLARK TANK LINES COMPANY, 1450 N. Beck St., Salt Lake City, UT 84110. Representative: Melvin J. Whitear (same as applicant). *Potash,* from Potash, UT (near Moab, UT), to AZ, CA, CO, ID, NM, NV, MT, OR, WY, and WA, for 270 days. Supporting shipper: Van Waters & Rogers division of UNIVAC, 84110.

MC 143336 (Sub-6–1TA), filed November 18, 1980. Applicant: BAY RAPID TRANSIT COMPANY, INC., P.O. Box 3258, Salinas, CA 93912. Representative: John Paul Fischer, 256 Montgomery Street, San Francisco, CA 94104. *Passengers and their baggage* in (1) charter operations originating at points in Monterey, San Benito and Santa Cruz Counties, CA, extending to points in OR, WA, CA, ID, UT, NM, AZ, MT, WY and CO; (2) charter operations originating at points in Santa Clara County, CA, and extending to points in OR, WA, CA, ID, UT, NM, AZ, MT, WY, CO and NV; and (3) special operations originating at points in Monterey, San Benito, Santa Cruz and Santa Clara Counties, CA, and extending to points in OR, WA, CA, ID, UT, NM, AZ, MT, WY, CO and NV, for 180 days. A corresponding ETA seeks 90 days authority. Supporting shippers: There are fourteen (14) shippers. Their statements may be examined at the Regional office listed.

MC 138875 (Sub-6–3TA), filed November 17, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same as applicant). *Structural wood*

products and accessories (except commodities in bulk), from Eugene, OR to points in IA, IL, IN, KS, MI, MN, MO, NE, OH and WI, for 270 days. Supporting shipper(s): Trus Joist Corporation, 195 Bertelsen Road, Eugene, OR 97402.

MC 151028 (Sub-6-44TA, filed November 18, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Contract carrier*, Irregular routes: *Salt, in packages and blocks*, from Clearfield, UT to points in IL, IA, IN, MO, KS, MN and WI, under a continuing contract or contracts with Great Salt Lake Minerals & Chemical Corporation, for 270 days. Supporting shipper(s): Great Salt Lake Minerals & Chemical Corporation, P.O.B. 1190, Ogden, UT 84402.

MC 152170 (Sub-6-1TA), filed November 13, 1980. Applicant: PUTNAM MOVING & STORAGE, INC., 302 Via Del Norte, Oceanside, CA 92054. Representative: Patrick Collins, (same as applicant). *Used household goods and unaccompanied baggage* in connection with a pack-and-crate operation between points in San Diego and Orange Counties, CA, for the account of the Department of Defense, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Camp Pendleton Marine Corps Base, Traffic Management Officer, Base Materiel Btn., P.O.B. 1430, Oceanside, CA 92054.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-36910 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-M

[Directed S.O. No. 1398]

Kansas City Terminal Railway Co.—Directed To Operate Over—Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Accounting Report—Instructions Concerning Final Accounting Procedures and Reports

AGENCY: Interstate Commerce Commission.

ACTION: Decision.

SUMMARY: On July 22, 1980, the Kansas City Terminal Railway Company (KCT), as directed rail carrier over the lines of the Rock Island Railroad (KCT-DRC), requested instructions from the Commission regarding the final settlement of the accounting associated with directed service. The Commission has selected a cut-off date for the filing of accounting charges and other claims against KCT-DRC and has ordered all railroads and railroad labor organizations to notify KCT of their willingness to meet the cut-off dates. The Commission has also specified the format of KCT's final report.

DATE: This decision is effective on November 18, 1980.

FOR FURTHER INFORMATION CONTACT: William Moss (202) 275-7510 or Richard Schiefelbein (202) 275-0826.

SUPPLEMENTARY INFORMATION: On July 22, 1980, the Kansas City Terminal Railway Company (KCT) petitioned the Commission for instructions on the proper handling of various accounting functions related to the KCT's operation of the Rock Island Railroad (RI) under directed service (KCT-DRC). Directed service terminated on March 24, 1980, with limited wind-down operations continuing over RI lines until March 31, 1980. In its petition, KCT outlined several standard railroad accounting rules which permit inter-railroad billings for a movement to occur long after the date of the movement. In the case of damage to another railroad's equipment, billing can be as much as five years after the car is damaged. Most of the accounting rules cited in KCT's petition involve time frames of 2-3 years after a movement occurred.

We are deeply concerned about the public costs which would be involved if a large accounting staff were maintained by KCT to handle accounting claims for several years. We are, at the same time, interested in assuring that all valid accounting claims are handled properly and that all directed service responsibilities to other carriers and to the public are concluded in an equitable manner.

In order to balance these goals, we analyzed the railroad accounting rules and practices to determine a reasonable cut-off date for claims against the KCT-DRC. Our intention was to develop a cut-off date which provided railroads and other parties with claims against the KCT-DRC sufficient time to prepare and submit those claims, while at the same time avoiding a multi-year extension of directed service subsidization by the federal government.

We have selected March 1, 1981 as a reasonable cut-off date for the filing of claims by other railroads, railway labor organizations, and other creditors against the KCT-DRC as directed carrier over the RI. The failure to file a claim by March 1, 1981 will not prevent ultimate payment of an otherwise valid claim. However, claimants should be aware that they may face substantial delays in the processing and payment of claims filed after the cut-off date.

We are ordering KCT-DRC to expedite the handling and settlement of all claims received by the cut-off date. After those claims are precessed and settled, we intend, at a minimum, to reduce the KCT-DRC directed service accounting force to a minimum staffing level. If feasible, we will eliminate all accounting functions.

We remind parties with claims against KCT-DRC that the costs of directed service have virtually exhausted the Commission's $80 million appropriation for directed service. After the appropriation is exhausted, payment on any subsequent claims may require an additional Congressional appropriation.

Because railroad accounting rules are agreements among the railroads, we are not in a position to modify those rules directly. We are, however, ordering the chief accounting officer of each railroad to notify the KCT-DRC within 20 days of service of this order indicating to the KCT-DRC whether or not that railroad will comply with the established cut-off date for claims. We are similarly ordering the representatives of the railway labor organizations to notify KCT-DRC of their willingness to meet the March 1, 1981 cut-off date for the filing of claims.

We are ordering KCT-DRC to notify us of the responses received from the railroads and labor organizations. We are also ordering KCT-DRC to cancel any transit tonnage which has not moved from the transit point by January 1, 1981. In addition, due to the reduction in accounting staff anticipated after March 1, 1981, it would be extremely difficult to respond within the time frames required by certain claims. Therefore, the time periods specified in any accounting rules or collective bargaining agreements which require KCT-DRC to respond to a claim within a certain period will not be applicable after March 1, 1981.

We have also provided that shippers filing claims, such as overcharge claims, after March 1, 1981, will look only to KCT-DRC for payment, even on interline movements, so long as the other railroad involved in the movement filed all its claims by the March 1, 1981 cut-off date.

We have reviewed the report format specified in the directed service regulations, § 1126.2 of Title 49 of the Code of Federal Regulations. That reporting format is better suited to a limited directed service operation, and is not useful in accounting for the operation of a major railroad system, such as the Rock Island. We are specifying a different reporting format

for the KCT–DRC directed service operations; that format is presented in the Appendix to this order.

We are also establishing two reporting dates for the operations. KCT–DRC is being ordered to file an unaudited interim report on November 20, 1980, covering the period through July 31, 1980. KCT–DRC is being ordered to file its final accounting report, covering the same period, by May 31, 1981.

It is ordered:

1. Each railroad and railway labor organization which has a claim against KCT–DRC shall notify the Chief Accounting Officer of KCT–DRC within 20 days of the service date of this order of its willingness to file all claims against KCT–DRC by March 1, 1981.

2. Any claims filed by shippers subsequent to March 1, 1981 will be the sole responsibility of KCT–DRC, even if the claim applies to an interline movement, so long as the other railroad involved in the movement filed all its claims by March 1, 1981.

3. KCT shall notify the Commission in writing within 30 days of the service date of this order of the responses it has received from the railroads, railway labor organizations, and creditors.

4. KCT shall cancel any KCT–DRC transit tonnage which has not been moved from the transit point by January 1, 1981.

5. After March 1, 1981, any accounting rules or collective bargaining agreements which require KCT–DRC to respond to a claim within a specified time period shall not be applicable.

6. KCT shall expedite the processing and settlement of all claims filed by March 1, 1981.

7. KCT shall file its directed service accounting report required by 49 CFR 1126.2 in the format specified in the appendix to this order. KCT shall file its unaudited interim report of revenues, expenses and income as of July 31, 1980 no later than November 20, 1980. KCT shall file its final accounting report as of July 31, 1980, no later than May 31, 1981. KCT shall separate transactions between directed service through July 31, 1980 and subsequent accounting wind-down costs. KCT's accounting report must contain standard required footnotes under generally accepted accounting principles.

This decision does not significantly affect the quality of the human environment, or the conservation of energy resources.

Decided: November 17, 1980.

(49 U.S.C. 10321 and 11125)

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix—Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108

Directed Service Order No. 1398—Report of Revenues, Expenses and Income

For the Period Beginning ———— and Ending ————.

Line	Nearest whole dollar
Operating revenues: [1]	
1. Freight	
2. Passenger	
3. All other operating revenues	
4. Total	
5. Passenger service subsidy (RTA)	
6. Total railway operating revenues	
Operating expenses:	
7. Way and structures	
8. Equipment	
9. Transportation	
10. General and administrative	
11. Total railway operating expenses	
12. Loss from railway operations	
Other expenses (income):	
13. Other income	
14. Other deductions	
15. Kansas City Terminal Railway Co.—Allowance for profit	
16. Loss (deficit from operations)	

[1] Operating revenue is to exclude ICC funding.

Note: See accompanying accounting policy disclosures and notes to financial statements.

Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108

Directed Service Order No. 1398—Balance Sheets

For the Period Ending ————.

Line	Nearest whole dollar
Current assets:	
1. Cash and temporary cash investments	
2. Special deposits	
3. Accounts receivable—interline and customers—net	
4. Accounts receivable (Wm. M. Gibbons, Trustee, Rock Island) net	
5. Materials and supplies	
6. Other current assets	
7. Total current Assets	
Other assets:	
8. Total assets	
Current liabilities:	
9. Accounts and wages payable	
10. Accounts payable (Wm. M. Gibbons, Trustee, Rock Island) net	
11. Other current liabilities	
I.C.C. funding received:	
12. I.C.C. funds received	
13. Loss from railway operations	
14. Total I.C.C. funding and losses	

Note: See accompanying accounting policy disclosures and notes to financial statements.

Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108

Directed Service Order No. 1398—Reconciliation of I.C.C. Funds Received

For the Period Ending ————.

Line	Nearest whole dollar
1. Net loss from railway operations	
Less non-cash charges (future cash requirement):	
2. Accounts and wages payable	
3. Casualty reserves	
4. Estimated vacation liability	
5. Accounts payable (Wm. M. Gibbons—Trustee—Rock Island)	
6. Other accrued liabilities	
7. Total cash applied to operations	
Add other cash provided (future cash collections):	
8. Accounts receivable—Customers and other	
9. Accounts receivable (Wm. M. Gibbons—Trustee—Rock Island)	
10. Prepayments	
11. Other current assets	
12. Total other cash applied	
13. Total Cash applied	
14. Cash in banks	
15. Total I.C.C. funds received	

Note: See accompanying accounting policy disclosures and notes to financial statements.

Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108

Directed Service Order No. 1398—Notes to Financial Statements

Additional Comments

BILLING CODE 7035-01-M

VERIFICATION

The foregoing report shall be verified by the oath of the officer having control of the accounting of the respondent. This report shall also be verified by the oath of the president or other chief officer of the respondent, unless the respondent states that such officer has no control over the respondent's accounting and reporting.

OATH

(To be made by the officer having control of the accounting of the respondent)

State of _____

County of _____

_____ makes oath and says that he is _____
(Insert here name of the affiant) (Insert here the official title of the affiant)

Of _____
(Insert here the exact legal title or name of the respondent)

that it is his duty to have supervision over the books of accounts of the respondent and to control the manner in which such books are kept; that he knows that such books have been kept in good faith during the period covered by this report; that he knows that the entries contained in this report relating to accounting matters have been prepared in accordance with the provisions of the Uniform System of Accounts for Railroads and other accounting and reporting directives of this Commission; that he believes that all other statements of fact contained in this report are true, and that this report is a correct and complete statement, accurately taken from the books and records, of the business and affairs of the above-named respondent during the period of time from and including

_____, 19__, to and including _____, 19__

_____
(Signature of affiant)

Subscribed and sworn to before me, a _____ in and for the State and county above named, this _____ day of _____, 19__

My commission expires _____

Use an L.S. impression seal

_____
(Signature of officer authorized to administer oaths)

SUPPLEMENTAL OATH

(By the president or other chief officer of the respondent)

State of _____

County of _____

_____ makes oath and says that he is _____
(Insert here name of the affiant) (Insert here the official title of the affiant)

Of _____
(Insert here the exact legal title or name of the respondent)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent and the operations of its property during the period of time from and including

_____, 19__, to and including _____, 19__.

_____
(Signature of affiant)

Subscribed and sworn to before me, a _____ in and for the State and county above named, this _____ day of _____, 19__

My commission expires _____

Use an L.S. impression seal

_____
(Signature of officer authorized to administer oaths)

[FR Doc. 80-36855 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-C

[Docket No. AB-156 (Sub-No. 9F)]

Delaware and Hudson Railway Co.—Abandonment—in the Towns of Balston and Milton, NY; Findings

Notice is hereby given pusuant to 49 U.S.C. 10903 that by a Certificate and Decision decided September 30, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Oregon Short Line R. Co.—Abandoment Goshen, 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment by the Delaware and Hudson Railway Company of its line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 31.32 to milepost 31.79, a distance.47 miles. A certificate of public convenience and necessity permitting abandonment was issued to the Delaware and Hudson Railway Company. Since the investigation has been completed, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be available during regular business hours at a time and place mutually agreeable to the parties.

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, Washington, D.C. 20423, no later than December 8, 1980. The offer, as filed, shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall be become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-36856 Filed 11-25-80; 8:45 am]

[Docket No. AB-55 (Sub-35F)]

Seaboard Coast Line Railroad Co.—Abandonment—Near S & E Junction at Beck Hammock, FL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided September 8, 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 abandomment by the Seaboard Coast Line Railroad Company of its line of railroad known as the S & E/Beck Hammock segment, which extends from milepost 770 in the City of Sanford, FL, to milepost 773.93 known as Beck Hammock, in Seminole County, FL, 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 Seaboard Coast Line Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice (December 26, 1980)), unless within 15 days from the date of publication (December 11, 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, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(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. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of 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 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). 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. 80-36862 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[332-119]

Background Study of the Economies and International Trade Patterns of the Countries of North America (Including Central America and the Caribbean)

AGENCY: United States International Trade Commission.

ACTION: Notice is hereby given that the United States International Trade Commission, following receipt on October 10, 1980, of a request from the United States Trade Representative at the direction of the President, has instituted an investigation under Section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to the economies and international trade patterns of the countries of North America (including Central America and the Caribbean.)

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Martin F. Smith, Trade Reports Division, Office of Economics, United States Internationl Trade Commission, 701 E Street NW., Washington, D.C. 20436 (202) 724-0092.

SUPPLEMENTARY INFORMATION: Section 1104 of the Trade Agreements Act of 1979 (Pub. L. 96-39) directs the President to study the desirability of entering into trade agreements with countries in the northern portion of the Western Hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and to report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions. The President's study will include, inter alia, chapters on the economic structures and international trade patterns of North American countries. The Commission

investigation will provide materials for these chapters.

Written Submissions

The Commission has no public hearings scheduled for this investigation. Written submissions from interested parties are therefore invited concerning any phase of the Commission's study on the economic structures and international trade patterns of North American countries. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than December 10, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

COMPLETION DATE: The Commission plans to complete its study and submit its report to the United States Trade Representative not later than January 31, 1981.

Issued: November 19, 1980.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-36932 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-91]

Certain Mass Flow Devices and Components Thereof; Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 14, 1980, and amended on October 31, 1980, November 5, 1980, and November 12, 1980 under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Tylan Corp., 19220 South Normandie Avenue, Torrance, Calif. 90220, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain mass flow devices and components thereof, or in their sale, by reason of: (1) Infringement by such mass flow devices of claims 1–5 and 7–10 of U.S. Letters Patent 3,650,505, claims 1–10 of U.S. Letters Patent 3,851,526, and claims 1–5 of U.S. Letters Patent 3,938,384; (2) misappropriation of trade secrets; (3) misappropriation of trade dress; (4) misappropriation of trade nomenclature; and (5) passing off. The amended complaint (hereinafter referred to as the complaint) alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests permanent exclusion from entry into the United States of the imports in question after full investighation, or, alternatively, that a cease and desist order be issued.

Having considered the complaint, the Commission, on November 13, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unlawful importation of certain mass flow devices, components thereof, and products incorporating said devices into the United States, or in their sale, by reason of the alleged—

(a) Infringement by such mass flow devices of—

(i) Claims 1–5 and 7–10 of U.S. Letters Patent 3,650,505,

(ii) Claims 1–10 of U.S. Letters Patent 3,851,526, and

(iii) Claims 1–5 of U.S. Letters Patent 3,938,384, and

(b) Unfair conduct comprising any one or a combination of—

(i) Misappropriation of trade secrets,

(ii) Misappropriation of trade dress and/or trade nomenclature, and

(iii) Passing off,

the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Tylan Corp., 19220 South Normandie Avenue, Torrance, Calif. 90220.

(b) The respondents are the following companies alleged to be involved in the unlawful importation of such mass flow devices, components thereof, and products incorporating said devices into the United States, or in their sale, and are the parties upon which the complaint shall be served:

Advanced Semiconductor Materials, B.V., Soestdijkseweg 328, Bilthoven, The Netherlands.

Advanced Semiconductor Materials America, Inc., 4302 East Broadway Road, Phoenix, Ariz. 85040.

(c) Talbot S. Lindstrom, Chief, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and products incorporating said devices" has been added to paragraphs (1) and (2)(b) above on the basis of informal investigatory activities by the Commission which revealed that mass flow devices of the type alleged to be involved in the aforesaid unfair acts can be imported as mass flow devices, components thereof, and products incorporating said devices.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of the time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for the confidential information contained therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: November 21, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-36935 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-74]

Certain Rotatable Photograph and Card Display Units, and Components Therefor; Commission Determination and Order

Notice is hereby given that, upon consideration of the presiding officer's recommended determination and the record in this proceeding (investigation No. 337–TA–74, Certain Rotatable Photograph and Card Display Units, and Components Therefor), the Commission has unanimously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain rotatable photograph and card display units which infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo" and has ordered that infringing devices be excluded from entry into the United States during the lives of said patents or registered trademark or during the use of the common law trademark, except under license. The Commission also ordered that these devices are entitled to entry into the United States under bond in the amount of 200 percent ad valorem during the period that this action is pending before the President.

Notice is also given that the Commission has granted motions Nos. 74–8 and 74–9 to terminate this investigation as to respondents American Consumer, Inc., and Dan-Dee Imports, Inc., on the basis of settlement agreements between complainants and those respondents.

This Commission order is effective on November 26, 1980. Any party wishing to petition for reconsideration must do so within fourteen (14) days of service of the Commission determination. Such petitions must be in accord with § 210.56 of the Commission's rules (19 CFR 210.56). Any person adversely affected by a final Commission determination may appeal such determination to the United States Court of Customs and Patent Appeals.

Copies of the Commission's Determination, Order, and Memorandum Opinion USITC Publication 1109, November 1980) are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Notice of the institution of the Commission's investigation was published in the Federal Register of November 21, 1979 (44 FR 66997).

Issued: November 21, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 809-36936 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

Change in Scope of Investigation No. 731–TA–7 (Final); Certain Electric Motors From Japan

AGENCY: U.S. International Trade Commission.

ACTION: Change in scope of final antidumping investigation.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Cates, Senior Investigator, Office of Investigations, telephone 202–523–0368.

SUPPLEMENTARY INFORMATION: On June 20, 1980, the Department of Commerce published with respect to AC, polyphase electric motors from Japan a notice of "preliminary determination of sales at less than fair value." This notice advised the public that, with the exception of submersible well-pump motors which had been excluded from the investigation, there was reason to believe or suspect that certain industrial electric motors, of greater than 5 but not greater than 500 horsepower, from Japan are being, or are likely to be, sold in the United States at less than fair value.

On October 29, 1980, the Department of Commerce determined, pursuant to section 735(a) of the Tariff Act of 1930 (19 U.S.C. 1673d), that AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower from Japan are being sold in the United States at less than fair value.

As to AC, polyphase electric motors of greater than 5 horsepower and less than 150 horsepower, on October 29, 1980, pursuant to section 734 of the Tariff Act of 1930 (19 U.S.C. 1673c), the Depart of Commerce accepted an agreement from Toshiba and TIC (the principal importer) to limit the exportation of such motors to the United States. Under the agreement, Toshiba and TIC agree to cease, within 6 months, exports of AC, polyphase electric motors of greater than 5 hp and less than 150 hp, except for oil-well-pump and explosion-proof motors, and to revise prices to completely eliminate any sales at less than fair value of imported oil-well-pump and explosion-proof motors greater than 5 and less than 150 horsepower.

As a result of the agreement, the Department of Commerce, pursuant to section 734(f)(1) of the Tariff Act of 1930 (19 U.S.C. 167c), suspended it investigation with respect to AC, polyphase electric motors of greater than 5 horsepower and less than 150 horsepower. Under section 734(f)(2)(A) of the act, the liquidation of entries of small motors, effective June 20, 1980 (45 FR 41687), is terminated. Any cash deposits, bonds, or other security deposited on entries of small motors pursuant to suspension of liquidation will be refunded. As to the large motors, those of not less than 150 horsepower and not greater than 500 horsepower, the suspension of liquidation shall continue until further notice.

Pursuant to the requirements of section 734(f)(1)(b) of the Tariff Act of 1930, (19 U.S.C. 1673c) the Commission is also suspending that portion of its investigation on certain electric motors from Japan inv. No. 731–TA–7 (Final), that pertains to AC, polyphase electric motors of greater than 5 horsepower but less than 150 horsepower.

Issued: November 20, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-36937 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–84]

Chlorofluorohydrocarbon Drycleaning Process, Machines and Components Therefor; More Complicated Designation

AGENCY: U.S. International Trade Commission.

ACTION: Designation of this investigation as more complicated within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

AUTHORITY: The authority for Commission designation is contained in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and in Rule 210.15 of the Commission's *Rules of Practice and Procedure* (19 CFR 210.22).

SUPPLEMENTARY INFORMATION:

Background—

Upon receipt of a complaint filed by Research Development Co., of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chlorofluorohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4, of U.S. Letters Patent 3,728,074, the effect or tendency of which is to

destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the Federal Register of June 11, 1980 (45 FR 39580).

On October 8, 1980, the complainant filed a motion (Motion 84–9) to designate the investigation "more complicated," within the meaning of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Rule 210.15 of the Commission's *Rules of Practice and Procedure.* The motion was supported in a response from the Commission investigative attorney, filed October 17, 1980. The motion was opposed in a response from Macchine Suprema, filed October 21, 1980. On October 24, 1980, the presiding officer certified to the Commission the recommendation that Investigation No. 337–TA–84 be designated more complicated.

Discussion—

In determing whether an investigation is more complicated, the Commission must find that it "is of an involved nature owing to the subject matter, difficulty in obtaining information, or large number of parties involved." 19 CFR 210.15. In the present case, two parties were recently joined as respondents and joinder of a third (E.I. duPont de Nemours & Co., Inc.) is proposed. DuPont has admitted that it has caused to be imported machinery which allegedly infringes the subject patent. Since these allegations must be investigated and further discovery must taken place, there is clearly a present difficulty in obtaining information.

In addition, the recent joinder of the two respondents and the proposed joinder of duPont increases the number of parties to the investigastion. Since the record indicates that the interests of the various parties are not coincident, the respondents cannot be expected to consolidate their actions. Under these circumstances, the Commission believes that there is now a large number of parties in this investigation.

For these reasons, the Commission concludes that this investigation must be designated more complicated. The practical effect of this determination is that the deadline for making a final determination in this investigation will be extended from June 11, 1981, to December 11, 1981.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: November 17, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-36933 Filed 11-15-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 377–TA–84]

Chlorofluorohydrocarbon Drycleaning Process, Machines and Components Therefor; Addition of a Party Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Addition of party respondent: E. I. duPont de Nemours & Co., Inc., 1007 Market Street, Wilmington, Delaware 19898.

AUTHORITY: The authority for Commission disposition of the subject motion is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in 19 CFR 210.22.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by Research Development Co., of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chlorofluorohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4 of U.S. Letters Patent 3,728,074, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the Federal Register of June 11, 1980 (45 FR 39580).

On September 26, 1980, E. I. duPont de Nemours & Co., Inc. (hereinafter "duPont"), filed a motion to intervene (motion 84–8), pursuant to rule 210.6 of the Commission's *Rules of Practice and Procedure,* as a non-party intervenor.

On October 14, 1980, the Commission investigative attorney's response to motion 84–8 was redesignated motion 84–12 to amend the complaint and notice of investigation by addition of E. I. duPont de Nemours & Co., Inc. as a party respondent. On October 27, 1980, the motion was certified to the Commission by the presiding officer, who recommended that the motion be granted. Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: November 17, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-36934 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79–24]

Metro Substance Abatement Program, Inc.; Revocation of Registration

On December 18, 1979, the Administrator of the Drug Enforcement Administration [DEA] issued to Metro Substance Abatement Program, Inc. [Respondent], of Detroit, Michigan, an Order to Show Cause proposing to revoke the Respondent's DEA Certificates of Registration. Simultaneously, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered that the Respondent's registrations be immediately suspended pending a final determination in these proceedings. The Order to Show Cause and the self-executing Immediate Suspension of Registration were served on the Respondent on December 20, 1979. The Respondent sought relief from the Immediate Suspension in the U.S. District Court for the Eastern District of Michigan. The Honorable Ralph M. Freeman, of that Court, issued a temporary restraining order on December 22, 1979. On January 4, 1980, after a hearing, Judge Freeman issued a preliminary injunction which enjoined the Administrator from suspending the Respondent's registrations pending a full hearing in these administrative proceedings.

The Respondent, on December 28, 1979, requested an administrative hearing on the issues raised by the Order to Show Cause. On January 4, 1980, Government counsel requested

that the hearing be held as soon as possible in light of the entry of the preliminary injunction in the U.S. District Court in Detroit. The Administrative Law Judge acceded to this request and, after conferring with counsel for both sides, set the hearing to begin in Detroit on January 24, 1980. Due to the hospitalization of the Administrative Law Judge, this hearing date was cancelled. The hearing was reset to commence on March 11, 1980 in Detroit. Due to various factors, the hearing could not be concluded in the two days set aside for it. Therefore, it was recessed on March 12 and reconvened on April 29, 1980, again in Detroit. The taking of testimony was completed the following day. The Honorable Francis L. Young, Administrative Law Judge, presided throughout these proceedings.

On October 1, 1980, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision in this matter. In compliance with 21 CFR § 1316.65(b), copies of the Administrative Law Judge's opinion were served on counsel for both sides. Counsel for the Respondent filed exceptions to Judge Young's findings and counsel for the Government filed a letter requesting that this matter be submitted for the Administrator's consideration as soon as the regulations permitted. On October 27, 1980, Judge Young transmitted the record of these proceedings to the Administrator. The record included, *inter alia*, the Administrative Law Judge's report or opinion; the transcript of the four days of hearing testimony; all of the exhibits which had been placed in the record; the proposed findings of fact and conclusions of law, or briefs, submitted by counsel for both sides; the Respondent's exceptions; and all other post-hearing correspondence.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR § 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator considers the issues in this matter to be the following, as set forth by the Administrative Law Judge in his opinion:

Whether the Respondent has failed to comply with the standards established by the Attorney General with respect to the security of stocks of narcotic drugs used in the Respondent's detoxification and maintenance treatment programs and with respect to the maintenance of records on such drugs. (See 21 U.S.C. 823(g); 21 CFR §§ 1301.72, 1301.73, 1301.74, 1304.28 and 1304.29)

Whether, therefore, there is a lawful or statutory basis for the revocation of the Respondent's DEA registrations pursuant to 21 U.S.C. 824(a), as amended by the Narcotic Addict Treatment Act of 1974 (P.L. 93–281; May 14, 1974).

Whether, if such lawful or statutory basis is found to exist, the Administrator, in the exercise of his discretion, should order the revocation of the Respondent's registrations.

Whether the Respondent has taken immediate and adequate corrective measures to provide and maintain adequate security for the dispensation and administration of narcotic controlled substances used in its detoxification program, so as to prevent further losses of methadone.

The Administrative Law Judge recommended 91 separate findings of fact, covering 24 pages of his opinion. These recommended findings were supported by evidence received in this case. They trace the Respondent's problems with security and recordkeeping from 1977 through 1979. They summarize the evidence clearly and fairly. Although some of Judge Young's recommended findings are repeated or paraphrased in this final order, the Administrator has adopted the recommended findings of fact and conclusions of law in their entirety.

The Respondent is registered under 21 U.S.C. 823(g) as a narcotic treatment program authorized to dispense narcotic drugs to addicted persons for detoxification and maintenance purposes. Its registration, PM0120294, also permits it to "compound" bulk quantities of methadone into individual dosage units and to distribute these dosage units to other treatment programs. The Respondent holds a second DEA registration, PM0154334, adjunctive to the first, which registration authorized the Respondent to operate as a researcher in order to use a Schedule I substance, 1-alpha-acetylmethadol (LAAM) in addition to methadone in its treatment program.

The Respondent has suffered a number of losses or suspected losses of methadone and there has been at least one instance in which the security of methadone was seriously compromised. There were at least eight such incidents during 1979. This is an unusually high number of such incidents by comparison with other narcotic treatment programs in the Detroit area.

While the Administrator views any loss or compromise of methadone as an extremely serious matter, some of the incidents which reflect upon the manner in which the Respondent handled its narcotic drugs ought to be recounted in this final order. On February 2, 1979, Mr. Andrew W. Petress, Jr., the Respondent's executive director, and Mr. Eural Johnson, the program's administrator, placed 272 dosage units of methadone, totalling 1,016.5 grams of methadone, into the trunk of a vehicle leased by the firm and assigned to Mr. Johnson. This was done preparatory to delivering the methadone to Care Clinic, a sattelite treatment program operated by the Respondent, located about 15 miles distant from the Metro facility. While Mr. Petress and Mr. Johnson were otherwise engaged inside the Metro clinic, the vehicle was repossessed by the leasing company. The methadone was subsequently turned over to the Detroit Police Department by the leasing company and was ultimately returned to the Respondent. Although this compromise was initially reported to DEA by telephone, the required written report was not submitted to the agency. Numerous loss, or suspected loss, incident reports were initiated by the Respondent's pharmacist, Mr. Lethel Dillard, and then not reported to DEA as required by 21 CFR § 1301.74(c). Such reports were not obtained by DEA until they were seized on December 20, 1979, in connection with the execution of the immediate suspension order. Among the papers so obtained was one in which Mr. Dillard's assistant noted that a liter bottle of methadone was missing. The note contains the following postscript: "P.S. I didn't say nothing to no-one."

The most severe loss of methadone from the Respondent's facility occurred on December 1, 1979, when a night-time burglary resulted in the loss of eight one-liter bottles of methadone. Again, although the Respondent reported the theft to the police department and to DEA, at least verbally or telephonically, the required written report was not submitted until February 21, 1980, well after the commencement of these proceedings.

During 1979, the Respondent has lost, had stolen, or could not account for, the equivalent of almost eleven and one-half one-liter bottles of methadone hydrochloride. The illicit demand for methadone is well documented. One Government witness in the hearing estimated that a single dosage unit bottle of methadone, one containing 20 to 25 milligrams of the drug, could be sold for $25.00; a bottle containing 60 to 80 milligrams would bring $40.00; and a one-liter bottle of undiluted methadone, such as the eight which were stolen from the Respondent's facility on December 1, 1979, would be worth at least $5,000.00, or whatever the traffic would bear.

By way of comparison, the Detroit Health Department's Division of Pharmacy, which serves as compounder for sixteen narcotic treatment programs, has lost but eight unit doses of

methadone, totalling approximately 200 milligrams, during the ten-year period from March 1970 through March 1980. During this period, the city's compounding facility provided daily methadone doses for between 2,000 and 3,600 patients. A smaller program, that of Detroit's Lafayette Clinic, which handles about 50 patients, as compared to the Respondent's 245, has never experienced a theft of methadone and has never had an instance in which the drug was missing or unaccounted for.

There are 51 narcotic treatment programs within the jurisdiction of DEA's Detroit District Office. During 1979, only two of these programs, other than the Respondent's, filed reports of theft or loss of methadone. Each of these programs reported one incident. In one of the cases, it was found that there was no actual loss of methadone. In the other, the loss totalled 290 milligrams of the drug.

A persistent problem encountered by narcotic treatment programs is the diversion of methadone by patients who "mouth" or "palm" the medication. To discourage this practice, the Detroit city programs employ security guards to prevent the patients from leaving without having first ingested the methadone. The Lafayette Clinic adds fruit juice to the medication and then fills the dosage bottles to the top, making it very difficult for the patient to hold the substance in his or her mouth without swallowing. The evidence in this hearing reveals that the Respondent took no effective measures to curb such diversion. Indeed, when the Respondent's clients were referred to the city program during the brief suspension of the Respondent's DEA registration, an unusually high number of such patients were caught trying to "mouth" or "palm" their medication.

In terms of the dosage strength of methadone dispensed, the Respondent's average daily dosage per patient was nearly double that of the average for all of the patients in the clinics served by the city's pharmacy division. Nevertheless, when the Respondent's clients were referred to the city treatment program, they were given the exact dosage of methadone which the Respondent's records indicated that they had been receiving. A few of these individuals "nodded" after receiving their medication, suggesting that they may have actually been receiving somewhat less methadone than the Respondent's records showed them to be taking.

A number of the Respondent's clients were receiving as much as 80 milligrams of methadone per day. The chief pharmacist for the city programs testified that she could recall only one patient who had ever received that much methadone. That patient was an elderly man who had been an addict since he was a young boy. Attempts had been made to reduce this patient's intake of methadone, but these had proved unsuccessful due to his advanced age.

The Detroit Police Department received numerous complaints of illicit drug activity outside of, and in the vicinity of, the Respondent's facility. People selling methadone and other drugs were arrested in the same area. While this activity could not be tied directly to the Respondent's clientele, such complaints and arrests rarely occurred near similar drug treatment programs in Detroit. Early this year, a DEA compliance investigator and her partner were about to enter the Respondent's building on official business when they were approached by an individual who asked whether they had any methadone to sell.

An in-depth regulatory compliance inspection of the Respondent's recordkeeping and physical security was conducted in 1977; both were found to be inadequate. As a result of that inspection, an informal hearing was held and subsequent to that, Mr. Petress executed an agreement in which he undertook to abide by the requirements of the Controlled Substances Act and the regulations thereunder. Mr. Petress agreed, in essence, to make, keep and maintain records which would provide for the strict accountability of the methadone dispensed by the clinic.

Subsequent to the issuance of the Order to Show Cause in the instant proceeding, another accountability audit was performed. Completion of the audit was complicated because relevant records were either missing or not located on the Respondent's premises and because the Respondent had not timely filed reports of its various losses of methadone. The audit of the Respondent's methadone compounding function, using only primary records actually on hand at the facility, revealed an accountability shortage of 412,060 milligrams, the equivalent of 41.2 liters of methadone. Using various secondary records, thus giving the Respondent the benefit of records which the investigators were not required to examine, and applying more lenient standards than are required by the regulations, the shortage was reduced to 218,300 milligrams or 21.8 liters of methadone. Serious overages and shortages were found in the other functions involving the dispensing of methadone and LAAM. The Respondent's records, which were supposed to be meticulously kept, were very poorly maintained despite Mr. Petress' earlier promise to maintain complete and accurate records as required by the law and the regulations.

In 1978, the United States House of Representatives, Select Committee on Narcotics Abuse and Control published a report titled *Methadone Diversion*. In this document, the Committee reported that it had found a high and most disturbing rate of methadone diversion from clinics into the black market. A number of identifiable deficiencies in methadone treatment programs made it relatively easy for methadone to be diverted. Several factors were so identified, including loose or careless evaluation; admission and treatment of patients; overly generous or heavy dosage dispensing of the drug; inadequate recordkeeping and physical security; unqualified staff or inadequate facilities; and operations beyond the capacity of the staff and facilities. A study of methadone deaths and diversion, done by the U.S. General Accounting Office (GAO), found that in poorly operated treatment programs, lack of control due to negligence or ignorance could result in methadone finding its way into the illicit traffic. Failure to adequately safeguard and account for methadone supplies facilitated employee theft and patient diversion of the drug.

The Respondent's narcotic addict treatment program has suffered an inordinate number of thefts and losses of methadone. It has not adequately accounted for its supplies of the drug. Its recordkeeping has been inadequate and slipshod. In some cases, according to its records, it dispensed overly generous dosages of methadone. In short, the Respondent's program has suffered from the very deficiencies which the Select Committee and the GAO found result in the diversion of methadone into illicit channels.

The Narcotic Addict Treatment Act of 1974 (P.L. 93–281) authorized DEA to register methadone treatment programs under the general umbrella of the Controlled Substances Act; to establish strict security and recordkeeping standards for such programs; and to revoke or suspend the registrations of such programs when it is found that they have failed to comply with these standards. Congress enacted the Narcotic Addict Treatment Act after it had found that the rapid and widespread use of methadone in these programs had brought with it a proportional increase in the diversion of methadone for illegal use and sale. The

DEA regulation and supervision of these programs is intended to prevent the loss and diversion of methadone.

DEA inspections of the Respondent's program have revealed serious deficiencies in security, recordkeeping and accountability. Methadone which could have been worth $110,000 on the illicit market was not accounted for. Judge Young found that the evidence received in this proceeding was, as a whole, indicative of a casual indifference to the subject of methadone security and to the important of keeping records so as to account for all supplies of the drug. He also found that the record did not provide a basis for reasonable assurance that the failures of the past will not be continued. He recommended that the Respondent's registrations should be revoked, effective immediately. The Administrator agrees.

After a thorough review of the record of this proceeding, the Administrator finds that the Respondent, Metro Substance Abatement Program, Inc., has failed to comply with the standards established pursuant to the Controlled Substances Act and the Narcotic Addict Treatment Act. The Respondent's casual indifference to its obligation to provide adequate security, to keep complete and accurate records, and to properly account for its supplies of narcotic drugs has resulted in the loss of methadone and, presumably, its diversion into illicit channels. There is, therefore, a lawful or statutory basis for the revocation of the Respondent's DEA registrations. Furthermore, on the basis of the record in this proceeding, the Administrator concludes, as did the Administrative Law Judge, that there is no reason to believe that the Respondent will act more responsibly in the future than it did in the past. The integrity of the controlled substances distribution system, particularly where highly abusable, dangerous, and much sought-after drugs such as methadone are concerned, is too important a consideration to be left to speculation. To hope that the Respondent will operate responsibly in the future, in light of its well-documented past performance, would be speculative at best. The Narcotic Addict Treatment Act provides for, and mandates a remedy for cases such as this one. The Respondent's registrations must be revoked. Having concluded that revocation is an appropriate remedy in this matter, and having determined that the Respondent cannot be entrusted to handle methadone and LAAM without an unacceptable risk of further loss, the revocation must be effective immediately.

Accordingly, pursuant to the authority vested in the Attorney General by Title 21, United States Code, Section 824(a), and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that Certificates of Registration PM0120294 and PM0154334, previously issued to Metro Substance Abatement Program, Inc., be, and they hereby are, revoked, effective immediately.

Dated: November 24, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-37070 Filed 11-25-80; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Advisory Policy Board National Crime Information Center, Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 10 and December 11, 1980, from 9:00 a.m. until 5:00 p.m. in the Executive Hotel, San Diego, California.

The major topics to be discussed include:

(1) NCIC access by government regional dispatch centers.

(2) The proposed implementation of the Pilot Project of the Interstate Identification Index designed to decentralize storage of criminal history records.

(3) The presentation of proposals recommended by local and state users of the NCIC System to improve the effectiveness of the System and the quality of records within the System.

The meeting will be open to the public with approximately 30 seats available for seating on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. W. A. Bayse, FBI, at least twenty-four hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, D.C. 20535, telephone number 202-324-2606.

Dated: November 21, 1980.

William H. Webster,

Director.

[FR Doc. 80-36907 Filed 11-25-80; 8:45 am]

BILLING CODE 4410-02-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel, Meetings

Correction

In FR Doc. 80-35633, appearing on page 75369, in the issue of Friday, November 14, 1980, make the following corrections:

1. In the second column, the date in 30th line now reading "Date: December 18, 1980" should read "Date: December 16, 1980".

2. In the third column, the phone number in the second line now reading "(202) 274-0367" should read "(202) 724-0367."

BILLING CODE 1505-01

Humanities Panel, Meetings

Correction

In FR Doc. 80-35878, appearing on page 76276, in the issue of Tuesday, November 18, 1980, make the following correction:

In the second cloumn, the 19th line should have read "Date: December 15, 1980".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Panel (In Residence/ Workshop); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Panel (In Residence/Workshop) to the National Council on the Arts will be held on December 15-16, 1980, from 9:00 a.m.-5:30 p.m., in the 12th floor screening room, Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the

Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: November 19, 1980.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

[FR Doc. 80–36786 Filed 11–25–80; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Panel (Drawing/Printmaking/Artists Books); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Drawing/Printmaking/Artists Books) to the National Council on the Arts will be held on December 15–16, 1980, from 9:00 a.m.–5:30 p.m., in room 1426, Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: November 19, 1980.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

[FR Doc. 80–36787 Filed 11–25–80; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Radiological Effects; Meeting

The ACRS Subcommittee on the Reactor Radiological Effects will hold a meeting at 8:30 a.m. on December 12, 1980 in Room 1046, 1717 H Street, NW, Washington, DC to discuss the state-of-the-art in the area of radiation standards and dose limits of radiation workers.

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:

Friday, December 12, 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, their consultants, and other interested persons regarding this review.

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 therefore can be obtained by a prepaid telephone call to Mr. Garry G. Young (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EST. The cognizant Designated Federal Employee for this meeting is Mr. John C. McKinley.

Dated: November 20, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80–36854 Filed 11–25–80; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.11.1, "Operational Inspection and Surveillance of Embankment Retention Systems for Uranium Mill Tailings," provides detailed guidance acceptable to the NRC staff for developing an appropriate inservice inspection and surveillance program for earth and rock fill embankments used to retain uranium mill tailings. It supplements the general guidance in this area provided in Regulatory Guide 3.11, "Design, Construction, and Inspection of Embankment Retention Systems for Uranium Mills."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 18th day of November 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80–36853 Filed 11–25–80; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES RAILWAY ASSOCIATION

[Docket 211-27]

Consolidated Rail Corp.; Application for a Loan

Subsection (h) of Section 211 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 721) (the Act), authorizes the United States Railway Association (Association) to enter into loan agreements with the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to Section 303(b)(1) of the Act under conditions and for purposes set forth in this Subsection. Subsection (b) of Section 211 requires that the Association publish notice of the receipt of any application thereunder in the **Federal Register** and afford interested parties an oportunity to comment thereon.

Conrail submitted a Borrowing Application dated November 18, 1980 requesting new borrowings of $934,000.00. Conrail states that it will use the funds to pay nonemployee injury claims of the Penn Central Transportation Company. The Borrowing Application includes the certification and exhibits required by the Loan Procedures.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify by its Docket No., the application to which it relates, and must be filed with the Office of General Counsel, United States Railway Association, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595, on or before December 10, 1980, to enable timely consideration by USRA. The docket containing the original application shall be available for public inspection at that address Monday through Friday (holidays excepted) between 8:30 a.m. and 5:00 p.m.

Dated at Washington, D.C. this 21st day of November 1980.

David Kleyps,

Assistant Secretary, United States Railway Association.

[FR Doc. 80-36826 Filed 11-25-80; 8:45 am]

BILLING CODE 8240-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-20]

American Home Assurance Co.; Hearing on Proposed Action

Pursuant to Section 304(b)(1) of the Trade Act of 1974, as amended, the United States Trade Representative by this notice requests interested parties to present their views on proposed recommendations to the President for action in relation to the petition (see 44 FR 75246) filed under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) on November 5, 1979 on behalf of American Home Assurance Co.

Under section 301(a) of the Trade Act of 1974, the President is required to take all appropriate and feasible action within his power to obtain the elimination of any act, policy or practice of a foreign government which is determined to be unjustifiable, unreasonable or discriminatory and which burdens or restricts U.S. commerce. The U.S. Trade Representative, after considering the advice of the 301 Committee recommends appropriate action to the President. Under section 304 of the Trade Act of 1974, the recommendation of the USTR must be made with respect to this matter on or before December 19, 1980.

The 301 Committee is therefore considering whether the Korean practices 1) of prohibiting American Home Assurance Co. from writing marine insurance in Korea; 2) of prohibiting American Home from joining the Korean Fire Pool or writing most forms of joint venture fire insurance; and 3) of discriminating against American Home with respect to the granting of retrocessions from the Korean Reinsurance Corporation are actionable under section 301 and what, if any, action the USTR should recommend that the President take in response. The following actions have been proposed by the petitioner for consideration as an appropriate action to obtain elimination of these practices:

Denial of the right to enter U.S. ports to Korean vessels owned by shipping companies related to Korean insurance companies by denying Certificaties of Financial Responsibility required under the Federal Pollution Control Act.

Imposition of substantial fees on Korean vessels owned and operated by entities related to Korean insurance companies.

Disqualification of Korean construction companies related to Korean insurance companies from bidding on U.S. government contracts other than contracts related to the support of U.S. forces in Korea.

Imposition of additional duties on imports of products manufactured by affiliates of companies related to Korean insurance companies.

Written briefs submitted by interested parties which present comments on these recommendations, suggestions for other recommendations, and all other aspects of the case will be considered if received on or before December 9, 1980. Regulations concerning the submission of briefs can be found in 15 CFR 2006.8 (45 FR 34872). Briefs should be sent, in twenty (20) copies, to Chairman, Section 301 Committee, Room 715, 1800 G Street, NW, Washington, D.C. 20506.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 80-36947 Filed 11-24-80; 10:49 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 230
Wednesday, November 26, 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).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, December 5, 1980.

PLACE: 2035 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–2157–80 Filed 11–24–80; 12:48 pm]

BILLING CODE 6351–01–M

2

COUNCIL ON ENVIRONMENTAL QUALITY.

November 24, 1980.

TIME AND DATE: 11:30 a.m., December 4, 1980.

PLACE: Conference room, 722 Jackson Place NW., Washington, D.C. 20006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Status of the Chemical Substance Information Network.
3. Current Staff Research on Ecology of Blue Crabs.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea III, (202) 395–4616.

[S–2154–80 Filed 11–24–80; 10:25 pm]

BILLING CODE 3125–01–M

3

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME:

8:00 p.m.–10:00 p.m.
8:30 a.m.–10:00 p.m.
8:30 a.m.–3:00 p.m.

DATE: December 11–13, 1980.

PLACE: Mayflower Hotel, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: Public/Private Sector Task Force Progress Report (Dec. 11, 8:00 p.m.–10:00 p.m.)

Introductions.
Approval of Minutes.
Review of Agenda.
Discussion of Public/Private Sector Report & Implications.
Executive Session (closed) December 12, 11:30 a.m.–12:30 p.m.
Discussion of:
- President's Message concerning WHCLIS Report.
- Supplemental Request to OMB.
- Possible Congressional and Administrative Action(s).
- Institute for Information Policy and Research.

Standing Committee Reports.
Project Reports.
Executive Director and Staff Reports.
1981 and 1982 Meeting Dates.
Old/New Business.
Summary and Conclusions.

CONTACT PERSON FOR MORE INFORMATION: Mary Alice Hedge Reszetar, Associate Director, NCLIS, Area Code 202 653–6252.

Mary Alice Hedge Reszetar,
Associate Director, NCLIS.
November 20, 1980.

[S–2158–80 Filed 11–24–80; 3:35 pm]

BILLING CODE 7527–01–M

4

POSTAL SERVICE.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to meet at 11 a.m. on Monday, December 1 and at 9 a.m. on Tuesday, December 2, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraph, the meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On November 6, 1980, the Board of Governors voted to close to public observation a portion of its next meeting. Each of the members of the Board voted in favor of closing this meeting, which is expected to be attended by the following members: Governors Wright, Hardesty, Babcock, Camp, Ching, Hughes, Jenkins and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Senior Assistant Postmaster General Ulsaker; Counsel to the Governors Joseph A. Califano; and Secretary to the Board Cox. This closed portion will consist of a discussion of the Postal Service's possible strategies and positions in anticipated collective bargaining negotiations involving parties to the 1978 National Agreement between the Postal Service and labor organizations representing certain postal employees, which is scheduled to expire in July of 1981.

Agenda

Monday Morning Session

Discussion of strategies and positions in anticipated collective barganing negotiations.

(The Board will discuss the forthcoming collective bargaining negotiations. As stated above in the Notice of Meeting, this part of the meeting will be closed to the public.)

Tuesday Session

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Adjustments in compensation of certain postal executives.

(The Board will consider recommendations by the Postmaster General for compensation adjustments for certain individuals which require approval by the Board under the Board's Bylaws.)

4. Report of the Audit Committee on fiscal year 1980 Financial Statement.

(Mr. Sullivan, as Chairman of the Audit Committee of the Board, will report to the members on the meeting of the Audit Committee (which is to be held on December 1, 1980) with representatives of the Postal Service's outside auditors concerning the Service's Balance Sheet and Financial Statements for FY 1980.

5. Review of Postal Service Budget Program.
(Mr. Finch, Senior Assistant Postmaster General for Finance, will present the Postal Service's budget for FY 1982 as it is proposed for transmission to the OMB and the Congress.)
6. Review of the Annual Comprehensive Statement to the Congress.
(Public Law 94-421 amended 39 U.S.C. § 2401 to require the Postal Service to present a "Comprehensive Statement" to the Legislative and Appropriations Committees of the Congress having cognizance over postal matters. The Comprehensive Statement is to describe the plans, policies, and procedures of the Postal Service designed to comply with the policies of the Postal Reorganization Act; postal operations generally; and financial summaries and the projections. The Comprehensive Statement is on the Board's agenda because approval of the annual Comprehensive Statement is included in the list of matters that the Board has reserved for its own decision.)
7. Capital Investment Projects:
a. Automated System for the expanded Zip Code Program
(The Board will consider a proposed capital investment for the procurement of optical character reader channel sorters and related mechanization for the expanded Zip Code letter mail processing system.)
b. General Mail Facility and Vehicle Maintenance Facility for Green Bay, Wisconsin.
(Mr. Biglin, Senior Assistant Postmaster General for Administration, will present a proposed project for the construction of a new General Mail Facility and Vehicle Maintenance Facility in Green Bay, Wisconsin.)
c. General Mail Facility and Vehicle Maintenance Facility for Sioux City, Iowa.
(Mr. Biglin will present a proposed project for the construction of a new General Mail Facility and Vehicle Maintenance Facility in Sioux City, Iowa.)

Louis A. Cox,

Secretary.

[S-2156-80 Filed 11-24-80; 12:14 am]

BILLING CODE 7710-12-M

5

POSTAL SERVICE.

The Committee on Audit of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 4 p.m. on Monday, December 1, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

The Committee will review with representatives of the Postal Service's outside auditors the Postal Service's Balance Sheet and Financial Statements for fiscal year 1980.

Louis A. Cox,

Secretary.

[S-2155-80 Filed 11-24-80; 12:14 pm]

BILLING CODE 7710-12-M

federal register

Wednesday
November 26, 1980

Part II

Department of the Interior

Bureau of Land Management

Surface Management of Public Lands Under U.S. Mining Laws

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[Circular No. 2480]

Surface Management of Public Lands Under U.S. Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Federal Land Policy and Management Act of October 21, 1976, amended the mining laws by directing the Secretary of the Interior, by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the lands. This final rulemaking implements that requirement and among other things requires mining claimants to complete reasonable reclamation on Federal lands administered by the Bureau of Land Management during and upon termination of exploration and mining activities under the mining laws. This rulemaking pertains to locatable minerals such as gold, lead, silver, uranium, etc. It does not pertain to coal, oil, gas, phosphate or other leasable minerals or salable minerals such as sand and gravel.

EFFECTIVE DATE: January 1, 1981.

ADDRESS: Send suggestions or inquiries to: Director (520), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Eugene Carlat (202) 343–8537 or Robert M. Anderson (202) 343–8537

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on December 6, 1976, in the **Federal Register** (41 FR 53428). As a result of changes made in response to the more than 5,000 comments received on the initial publication, a second proposed rulemaking was published in the **Federal Register** on March 3, 1980 (45 FR 13959). A total comment period of 135 days was allowed in connection with the second proposed rulemaking, and public meetings were held in Denver, Colorado and Reno, Nevada. This public exposure resulted in more than 366 written comments. The written comments came from various sources, with 83 coming from companies with mining interests, 173 from individuals, 10 from environmental groups, 33 from mining groups and associations, 29 from State and local governments, 7 from attorneys acting in their own behalf, and 31 from Federal agencies. Also received were five petitions, with some 1,131 signatures, that commented on various aspects of the rulemaking. Public comments were also obtained at meetings with interest groups and an oversight hearing before the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs. All of the comments have been given careful consideration and the final rulemaking reflects many of the changes suggested by the comments.

The objective of the decisionmaking process on the final rulemaking was to enable the Bureau of Land Management to ensure that the Federal lands are protected from unnecessary and undue degradation and to ensure that reasonable reclamation will be completed on areas disturbed during the search for and extraction of mineral resources. Another objective was the obtaining of information that would allow the Bureau of Land Management to know where mining operations are occurring on Federal lands and some knowledge of the extent of those operations. The knowledge of where mining operations under the mining laws are being conducted and their extent will also be used in making long term planning decisions and multiple use trade offs for all resource values and to ensure that areas that, in fact, have potential for mineral values are not indiscretely precluded from mineral development.

The final rulemaking incorporates three distinct levels of limitations dependent upon the level of mining activity that the operator proposes to conduct on his/her area of operations. For example, at the lowest level of activity, prospectors or part-time miners who cause only negligible surface disturbance will not need to contact the Bureau of Land Management. Except when he/she is conducting mining operations on special category lands, an operator who exceeds this negligible surface disturbance, but keeps his/her disturbance to an area of five acres or less per year, will be required to file only a notice. Notices will not require approval or bonding.

Operators proposing mining operations causing surface disturbance to more than five acres in one year are required to file a plan of operations which sets out the details of those operations. It is our opinion that a large portion of the mining operations on Federal lands will fall under the first two categories and will proceed with minimal contact with the Bureau.

The goal of this final rulemaking is to afford adequate protection to Federal lands from unnecessary and undue degradation at the least possible burden to the mining industry and to the United States. It has been in this spirit that the Bureau has worked with all segments of the public in an effort to develop a rulemaking that will meet its goal. This effort of working with the public will continue in the future in an attempt to obtain the cooperation of the mining industry and the rest of the public in meeting the goals and objectives of the final rulemaking.

General Comments

General comments on the proposed rulemaking ranged from questioning the authority for issuing the proposed rulemaking to supporting the action and recommending that the rulemaking be strengthened. Many general comments objected to the issuance of a rulemaking that changed the way mining activity has been carried on for over a hundred years under the 1872 Mining Law. A large number of comments strongly objected to combining the regulations on "Exploration and Mining, Wilderness Review Program" (43 CFR 3802) with this rulemaking. The attempt to consolidate the two regulations was confusing to the public because of the difficulty in distinguishing between the requirements for lands not under wilderness review and those for lands under wilderness review. To eliminate this confusion, all references to lands under wilderness review have been deleted from this rulemaking. The interim final rulemaking, 43 CFR 3802, that covers mining on lands involved in the wilderness review program and was published in the **Federal Register** on March 3, 1980 (45 FR 13974), will continue in effect after this rulemaking becomes final. It will not be deleted, as was stated in the preamble to the proposed rulemaking.

Numerous comments questioned the ability of the Bureau of Land Management to respond within the times specified to the large number of plans of operations that would have been generated by the proposed rulemaking. This concern has been met in large measure by changes in the final rulemaking. The changes are discussed later in the preamble and will reduce significantly the number of plans of operations that will be filed.

Another general concern of the comments was the adverse impact of the rulemaking on the small operator. Many of the comments suggested that the proposed rulemaking would limit activities on the Federal lands by the smaller operators and would result in their being put out of business. The final rulemaking relieves the small operator of many of the requirements that were contained in the proposed rulemaking. This will be discussed in more detail later in the preamble.

Finally, many of the comments expressed the view that the final rulemaking for the Bureau of Land Management should be similar to the regulations on this subject published by the U.S. Forest Service. The final rulemaking follows as closely as possible the provisions of the existing U.S. Forest Service regulations, with the major difference being the threshold concept that has been included in the notice provision of this final rulemaking.

Several comments requested that the Bureau of Land Management study the "Institutional Approach" that was described on page 263 of the report "Surface Mining of Non-Coal Minerals" prepared by the National Academy of Sciences in 1979. That report suggests that strict regulatory mechanisms are not necessary to achieve an end result. The final rulemaking is an effort to reduce the regulatory burden for both the regulated public and those responsible for carrying out the rulemaking.

Before discussion of the specific comments, a summary of the significant revisions made in this final rulemaking may be helpful. Basically, the final rulemaking changes the threshold and will require the submittal of plans of operations on special category lands or if surface disturbance resulting from mining operations exceeds five acres. For operations disturbing five acres or less, a notice will be required of the operator. Operators submitting notices will not be subject to bonding nor will approval of the notice be required. Reasonable reclamation is required, as failure to reclaim may constitute unnecessary or undue degradation of the public lands.

The implementation of this final rulemaking will involve monitoring and a cooperative effort by the Bureau of Land Management, the mining industry and the public to ensure that there is no unnecessary or undue degradation of the Federal lands. Close cooperation between the Bureau and the mining industry will reduce the possibility of friction and create a working relationship that will lead to greater mutual understanding. If, at the end of two years, the Bureau determines that this final rulemaking is neither working nor meeting the Secretary's responsibility to prevent unnecessary or undue degradation of the public lands, the regulations will be reassessed and amended as necessary.

Specific Comments

Purpose—Nearly all of the comments made reference to the "impairment of wilderness suitability" phrase in the proposed rulemaking and the fact that it should not be used with respect to the public lands that do not have wilderness characteristics or are not within an area under wilderness review. All references to "impairment" have been deleted. This section has been rewritten to conform with the authority and responsibility set forth in section 302(b) of the Federal Land Policy and Management Act of 1976.

Objectives—Several comments suggested substituting the word "provide" for the word "allow," thus indicating that miners have a right and not a mere privilege to mineral entry on Federal lands. This suggested change has been made. Also, all references to "impairment" of wilderness values have been deleted. One comment expressed the view that the phrase "scenic and scientific" is not appropriate and exceeds the responsibility of the Secretary of the Interior under sections 302(b) and 603(c) of the Federal Land Policy and Management Act. Although this may be true as to those sections, this rulemaking also implements section 601(f) of the Act relating to the California Desert Conservation Area. Therefore, the wording has not been changed.

One comment was of the view that the Bureau of Land Management should have a team of knowledgeable persons traveling to every office to explain the rulemaking. One of the keys to the successful implementation of this rulemaking is consistent application and understanding of the rulemaking by the Bureau's field personnel. Every effort will be made to accomplish this end, including regional workshops for Bureau employees and the preparation of manual sections for field guidance.

Authority—Several comments indicated that the 1872 Mining Law should not be used as authority for the rulemaking. This authority will remain because it gives the Secretary of the Interior authority to issue regulations relating to activities authorized under the mining laws. Furthermore, since part of the authority the States have to regulate mining activity is delegated by Congress in the mining law, that delegated authority serves as one basis for possible State/Federal agreements for the uniform implementation of their respective surface protection regulations.

Additional authorities have been added to this section, some in response to suggestions in comments.

Section 9(a) of the Wild and Scenic Rivers Act has also been added because it authorizes the Secretary of the Interior to, among other things, promulgate regulations to "provide safeguards against pollution * * * and unnecessary impairment of the scenery within * * *" wild and scenic river areas.

Definitions—Several comments were confused over the use of the term "mining operations." In response to these comments, the term has been changed to "operations" in the final rulemaking rather than "mining operations" as it appeared in the proposed rulemaking, and the definition has been changed. As suggested in one comment, the definition of the term "operations" now includes assessment work.

The definition "mining claims" has been changed to include filings under the "mining laws" rather than the 1872 Mining Law specifically. The definition has been expanded to include those mining claims and mill sites in the California Desert Conservation Area which have been or will be patented subsequent to the the enactment of the Federal Land Policy and Management Act.

Reference to the "mining laws" rather than the 1872 Mining Law clears up the comment that placer mining claims are not covered under the 1872 Mining Law. One comment observed that the definition of the term "mining operations" was unclear as to "whether the operations take place on or off the claim" and indicated that no significant activities should take place off the mining claim unless authorized by some other law. This is not technically correct. One does not need a mining claim to prospect for or even mine on unappropriated Federal lands. The definition was designed to include those operations on a mining claim and uses incidental thereto on Federal lands, and does not inhibit "the miner's right to conduct initial prospecting prior to discovery" as one comment suggested, or prior to location.

Many comments addressed the definition of the term "reclamation" in the proposed rulemaking. In response to those comments, the term "reclamation" has been redefined to include the requirement to return disturbed lands to an appropriate contour and to revegetate with a diverse vegetative cover, if feasible and reasonable.

The term "unnecessary or undue degradation" has been redefined since a number of comments found the definition in the proposed rulemaking too confusing. Several comments said that the Federal Land Policy and Management Act does not require reclamation. An explanation of the Department of the Interior's position on that matter is found under bonding in this preamble.

Many comments made the point that the definition of the term "unnecessary

and undue degradation" goes beyond a reasonable interpretation of the law. One comment stated that it was a "familiar evasive tactic of making reference to non-meaningful standards." The definition has been revised in the final rulemaking to delete the parts that caused the objections. Reclamation requirements and the need to consider other resource values and uses of the Federal lands have been added. A clause to cover other statutory authority has also been added.

Several comments suggested that the definition of the term "environment" has little meaning for the purposes of the rulemaking. The final rulemaking eliminates the need to define the term "environment" and it has been deleted.

Because the term "Federal lands" appears several times in the rulemaking and its meaning is not clear, that term has been defined. This new definition should clarify the scope of the rulemaking. Further, the terms "road," "wilderness," "wilderness study area," "wilderness inventory," "impairment of suitability," "substantially unnoticeable" and "valid existing rights" have been deleted from the final rulemaking because they are no longer needed. They continue to be applicable to the regulations for lands under wilderness review (43 CFR Part 3802) implemented on April 2, 1980.

Several comments expressed fear that the authorized officer could be an unqualified person with little knowledge of mining and minerals problems and concerns. Some of the comments also made the point that the authorized officer could abuse his/her discretionary authority. The definition has not been changed. It is intended that the district manager will be the authorized officer for approval of plans of operations and any appeals. District managers have personnel on their staff who are knowledgeable of mining and mineral problems and their advice will be available to the district manager as part of the decisionmaking process. Guidance will be provided to the field that will ensure consistency and fairness in the implementation of the final rulemaking, thus reducing the possibility of abuse of discretionary authority. Any associated problems will be handled on a case-by-case basis. The final actions of the authorized officer are subject to the administrative review process provided in this rulemaking and 43 CFR Part 4.

A new term, "casual use," has been added to the definition section. This new term is needed to specify those activities that may be engaged in without any contact with the Bureau of Land Management. "Casual use" is part of the new threshold concept that has been included in the final rulemaking.

Policy—Several comments addressed the confusion caused by combining provisions of the "wilderness review" regulations with this rulemaking. Again, references to impairment have been removed. The section has been revised to clarify the position of the Department of the Interior in meeting its responsibilities under section 302(b) of the Federal Land Policy and Management Act.

Section 2 of the Mining and Minerals Policy Act of 1970 has been added because that section provides for, among other things, the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries and the reclamation of mined lands. Section 102(a)(12) of the Federal Land Policy and Management Act, which makes it a policy of the United States to implement the Mining and Minerals Policy of 1970, has been added.

Scope—Numerous comments suggested that it was improper for the Bureau of Land Management to regulate mining activities on lands patented under the stockraising homestead laws where the minerals are reserved to the United States. Mining operations on these lands are adequately covered by existing laws (43 U.S.C. 299 and 30 U.S.C. 54) and regulations (43 CFR Part 3814) and the deletion of this section removes them from this rulemaking.

One comment stated that the rulemaking should be clarified to apply to "spillover impacts" on Federal lands from mining operations on patented lands. "Spillover impacts," such as dust and water pollution, will be monitored in accordance with applicable Federal and State law. In addition, all "spillovers" will be monitored by the Bureau of Land Management to ensure that unnecessary or undue degradation is not occurring.

The scope section in the final rulemaking has been deleted because the definition of the term "Federal lands" now incudes all of the exclusions that were listed in the scope section of the proposed rulemaking. This deletion and change in the definition clarifies the final rulemaking by setting out in one section what lands are covered by the final rulemaking.

Plan of Operations—As a result of the numerous comments on this section, the level of activity requiring a plan of operations to be filed with the Bureau of Land Management has been changed. On lands other than special category lands, the new threshold allows mining activities, including access, to take place without filing a plan of operations if five acres of less of Federal lands are disturbed by those operations, subject to the requirement that the operator file a notice. The notice requires the operator to furnish sufficient information to allow the Bureau to get a good fix on the type of operations that will be occurring, and if necessary, make a determination as to whether unnecessary and undue degradation is occurring. The notice is not subject to approval nor is bonding required for the activities covered by the notice. Reclamation is required for all operations. The new five-acre threshold will allow most exploration activities and some extraction activities to take place without a plan of operations having to be filed and processed, provided that lands that are disturbed are reclaimed by the operator. Additionally, the prospector who causes only negligible damage to Federal lands will be covered under the "casual use" provision and will not be required to make any contact with the Bureau of Land Management.

Retained as part of the final rulemaking is the procedure for a plan of operations for those operations that cause surface disturbance in excess of five acres and for mining activities located on certain categories of Federal lands.

The plan of operations section of the proposed rulemaking drew several comments suggesting that the authorized officer should not be responsible for developing mitigating measures or reclamation plans for the mining industry. This section of the rulemaking was designed to assist the small operator who often lacks the technical resources to develop reclamation measures in the preparation of his/her plan of operations and to make it optional for the industry as a whole to submit reclamation measures. The section had been amended in the final rulemaking to require the operator to submit reclamation measures unless the operator can show that he/she does not have the resources to comply, in which case the authorized officer will assist the operator in preparing such measures.

Many of the comments expressed the view that the authorized officer was given too much time to approve a plan of operations and that unnecessary time delays would result that would be costly to the mining industry and might jeopardize exploration projects. Additional comments on this section of the proposed rulemaking discussed the mining industry's reluctance to commence operations if the authorized officer does not take action on a plan of operations in a timely manner. The comments indicated that it was too risky

to conduct an expensive exploration operation under an unapproved plan of operations which the Bureau of Land Management could subsequently reject. The final rulemaking has been changed to virtually eliminate these problems. The revised threshold will allow most exploration operations to commence without delay after the filing of a notice with the Bureau 15 days in advance of commencing operations. Unless the activities exceed the threshold or take place on special category lands, no approval or bonding is required. The approval process for a plan of operations, including the time sequence, remains unchanged in the final rulemaking. However, like the regulations of the U.S. Forest Service (36 CFR Part 252) where a plan of operations is required, the final rulemaking contains no provision allowing an operation to begin without the explicit approval of the plan.

Many comments suggested that the authorized officer has too much power and could be dictatorial. The changes in the final rulemaking should reduce this possibility significantly. In addition, the field offices will be monitored to ensure that the rulemaking is consistently applied and that fair and reasonable decisions are made to meet the Secretary of the Interior's responsibility under section 302(b) of the Federal Land Policy and Management Act and the Mining and Minerals Policy Act of 1970.

Several comments made the point that cultural and endangered species inventories and compliance with laws relating to these matters may be reason to stop or significantly delay a mining operation. Under the final rulemaking, these inventories will be required only when a plan of operations is submitted. Because of the new threshold level that is provided in the final rulemaking, this should cause delay in only a few instances. If there is an unavoidable conflict with an endangered species habitat, a plan could be rejected based not on section 302(b) of the Federal Land Policy and Management Act, but on section 7 of the Endangered Species Act. If, upon compliance with the National Historic Preservation Act, the cultural resources cannot be salvaged or damage to them mitigated, the plan must be approved. Essentially, as the comments suggested, these laws may slow the plan approval process; one law may stop a project while the other may only delay it.

The language of the final rulemaking has been clarified as to the party who has the responsibility to pay for cultural inventories and salvage. Further, the applicant is now given the option to proceed with the inventory or mitigation at his/her expense in order to expedite the approval process.

One comment alleged that the Bureau of Land Management lacked the authority to protect cultural resources under section 106 of the National Historic Preservation Act, stating that section 106 applies only where there is an expenditure of Federal funds or Federal licensing. The regulations implementing the National Historic Preservation Act define the phrase "Federal license" as those activities "carried out pursuant to a Federal lease, permit, license, certificate, approval, or other forms of entitlement or permission" (36 CFR 3800.2(c)(3)). Thus, the approval of a plan of operations, where required, constitutes a Federal undertaking within the purview of the licensing authority of section 106 and, where necessary, requires compliance with the procedures of the National Historic Preservation Act.

One comment stated that the Bureau of Land Management did not have to complete an environmental impact statement on a plan of operations since the Secretary of the Interior has no authority to disapprove any plan which does not result in unnecessary or undue degradation of the Federal lands. Hence, the Secretary's action in approving such a plan is not a discretionary act. The purpose of an environmental assessment or environmental impact statement is to inform the authorized officer of the environmental consequences of his/her actions. There may exist several alternative ways to achieve a particular result which are reasonable and prudent from a business standpoint. However, an environmental assessment or environmental impact statement may show the authorized officer that the first alternative would have significant detrimental environmental impacts not associated with the second alternative. Since both alternatives are reasonable and practical, it would either be necesssary to adopt the second, or the authorized officer would attach conditions to his approval of the plan of operations on implementation of the first alternative so that the detrimental impacts would not occur. Similar reasoning applies with respect to determining whether a proposal will cause unnecessary or undue degradation. Furthermore, the issue of whether an act is discretionary or non-discretionary does not preclude the Secretary from employing National Environmental Policy Act procedures in determining whether a proposed activity exceeds the statutory prohibition against unnecessary or undue degradation.

Several comments expressed concern for timely compliance with requirements of Federal and State laws such as assessment work, discovery work, staking of locations, etc. One comment suggested that a mining claim operator has an unrestricted right to conduct discovery and other activities in accordance with State laws. Although this may have been the fact at one time, it is no longer true. Section 302(b) of the Federal Land Policy and Management Act expressly amends the 1872 Mining Law to provide constraints on mining operations in order to prevent unnecessary or undue degradation. Since the mining laws are the source of a State's authority to regulate acquisition of Federal minerals and possessory rights on Federal lands, any amendment to the Federal mining laws requires an adjustment in laws and regulations flowing therefrom—whether they are State law or the custom of the local mining district. Section 302(b) of the Act does not eliminate the need to comply with State laws, nor does this final rulemaking preempt State law. However, activities done in compliance with State law must likewise satisfy the requirements of section 302(b) of the Act.

The final rulemaking contains a new section that provides guidance on the filing of a notice in connection with those mining activities that come within the new threshold established in the rulemaking. The new section sets out the conditions under which the notice is to be filed, the place where it is to be filed and the information that is required. Special emphasis is placed on the location and type of access route or routes that may be required. This emphasis reflects the importance of routes of access and the impacts they can have on the Federal lands. In many instances, the route of access has the potential to cause more unnecessary and undue degradation than those activities directly related to the mining operations.

The notice is to be filed 15 days prior to the commencement of any operations covered by the notice. This 15-day period will give the authorized officer and his/her staff an opportunity to evaluate the proposed operations to determine whether a particular location contains some special resource value that could be avoided by the operation. If special values are discovered, the authorized officer could bring that to the attention of the operator and discuss possible alternatives with the aim of avoiding resource use conflicts. This is

an area where cooperation between the Bureau of Land Management and the mining industry will lead to protection of Federal lands from those mining operations that might otherwise inadvertently cause damage to those lands. The location of a route of access is an example of the type of matters that might be discussed during the 15-day period. The authorized officer might have information as to special resource values in an area the route of access is to cross. If a slight change in the route of access would preserve the special value, the authorized officer and the mining operator could reach an agreement to make such a change.

Environmental Assessment—Many of the comments supported the need for environmental protection but were fearful that the strict environmental standards which apply to those lands under wilderness review would also apply to the lands not under wilderness review. As stated earlier, all reference to lands under wilderness review and to the regulations on Exploration and Mining, Wilderness Review Program (43 CFR Part 3802) has been deleted from the final rulemaking.

A number of comments expressed concern about the additional time granted for public involvement in a plan of operations and environmental assessment where substantial public interest exists. Since the threshold has been changed, so that a majority of operations can be carried out without an approved plan of operations, there will be a minimum of delay or interference in approval of plans of operations because of public involvement. Further, it is the Bureau of Land Management's intention to closely monitor the timeframes established in this final rulemaking for review of a plan of operations to assure that, wherever possible, delays beyond the 30-day review period are the exception rather than the rule. Indefinite delays beyond the 90-day approval period may occur when an environmental impact statement is required for a project or when compliance with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act is required.

A number of editorial changes have been made for clarification of the section in response to comments received.

Other Requirements for Environmental Protection—The deletion of all reference to lands under wilderness review in this section of the final rulemaking will alleviate many of the concerns expressed in the comments. Some comments made the point that all of the requirements set forth in this section were required by other laws and regulations and repeating them in this rulemaking was not necessary. Many of the provisions have been kept in the final rulemaking to emphasize that the operator's activities are subject to other applicable Federal and State laws. Serious conflicts are not expected to arise because other agencies are involved with different aspects of environmental protection.

Several comments correctly observed that mining operations in areas of critical environmental concern cannot be precluded because of potential irreparable damage. Section 302(b) of the Federal Land Policy and Management Act amended the 1872 Mining Law not to prevent irreparable damage, but to prevent unnecessary or undue degradation. Limitations placed on mine operators in the California Desert Conservation Area by 601(f) of the Act or in areas under wilderness review of section 603(c) are not applicable to areas of critical environmental concern. However, all activities within an area of critical environmental concern will require the submission and approval of a plan of operations.

One comment suggested that the Bureau of Land Management require harmony with visual resources. The Bureau agrees that this should be done, but only to the extent practicable. However, the provision covering visual resources has been deleted from this section of the final rulemaking because it is covered under the section relating to prevention of unnecessary or undue degradation.

Numerous comments were made on endangered species and cultural or paleontological resources. Discussion of how these resources are handled appears in the discussion of the section on plan approval set out above.

Several comments suggested developing guidelines for defining significant paleontological resources. The Bureau of Land Management is in the process of doing just that in another rulemaking that will be published in proposed form sometime in the next several months.

Another comment asked if the Bureau of Land Management would be adequately funded to investigate and salvage cultural resources. The Bureau will mitigate to the extent possible, but significantly increased funding for this program is not expected in the near future. Another comment suggested alternative wording for the time period in which the authorized officer is required to respond to a cultural or paleontological discovery made by an operator. As a result of this comment, the wording of the section has been changed.

The comment was made that there is no authority to protect survey monuments such as section corners whether they are rock or brass-cap. Existing law (18 U.S.C. 1858) provides a $250 fine for the destruction or removal of any U.S. Government survey monument. The Secretary of the Interior has incorporated this provision in the final rulemaking as part of the exercise of his authority to protect the lands.

Another comment expressed the view that the authorized officer should require the operator to maintain records on the quality and quantity of water. This does not fall within the authority expressly granted by the Federal Land Policy and Management Act, but if a problem exists, other Federal agencies will be responsible for monitoring and enforcement.

A comment was made that the rulemaking should not apply to areas disturbed before its effective date. The final rulemaking does not apply to those areas that were disturbed prior to the effective date of this final rulemaking unless operations continue or begin again in the same project area, a term defined in this rulemaking. In that event, the provisions of this rulemaking will apply.

Numerous comments suggested that this rulemaking should be consistent with the regulations of the U.S. Forest Service on this subject so as to bring "some kind of uniformity to government regulations." Numerous other comments indicated that the Forest Service regulations were unworkable and that many small operators shy away from Forest Service lands because of the need to comply with their regulations. An effort has been made to be as consistent as possible with the Forest Service regulations; however, a major difference is that the threshold level on Federal lands for operations, where a plan of operations is not required, has been raised in this final rulemaking to permit disturbance of up to five acres without the filing of a plan of operations. The Forest Service regulations do not incorporate the concept of a threshold level. Thus, most exploration activities may start by filing a notice with the Bureau of Land Management which will not require approval. It is estimated that there are two or three times the number of mining claims on Bureau administered lands than on lands under the jurisdiction of the U.S. Forest Service. Whether the Bureau has budget and staff or the capability to administer the rulemaking as it was proposed in March 1980 is questionable, but the Bureau should be able to administer the

program established by this final rulemaking. In addition, the rulemaking should not prove to be a great burden on the mining industry, yet it will allow the Secretary of the Interior to meet his/her responsibilities under the Federal Land Policy and Management Act.

Several comments suggested a threshold similar to the one that has been adopted in this final rulemaking. One comment suggested that the threshold level be set at 10 acres and that no plan of operations be required until that level had been reached, but also suggested that reclamation be required on all activities on the public lands. These concepts, with modifications, have been incorporated into the final rulemaking.

Many of the comments expressed views concerning valid existing rights, grandfathered rights and impairment as they pertain to lands under wilderness review. Since all references to lands under wilderness review and the associated terms have been deleted from this final rulemaking, the comments are no longer applicable. However, the regulations on Exploration and Mining, Wilderness Review Program that became effective on April 2, 1980, do incorporate these concepts and remain in effect.

One comment observed the dilemma of the assessment work requirement on lands under wilderness review by stating "(I)t would tend to cause some individuals to break one law (impairment rules) to meet the requirements of another (assessment work)." Because of the possibility of these conflicts, consideration is being given to requesting legislation that would grant the Secretary of the Interior some flexibility in granting deferrals and, further, in allowing suspension of annual assessment work.

Modification of plan—Numerous comments were made concerning the additional time delays that could be inherent in the modification of a plan of operations. Also, the need to be flexible in an exploration project to permit adjustment to meet specific geologic and topographic conditions was identified in some of the comments. Comments were of the opinion that it was unnecessary to modify a plan to cover such incidental changes. The language in this section of the final rulemaking has been changed to more accurately reflect the Bureau of Land Management's responsibilities under the unnecessary and undue degradation concept. Only significant modifications will now require an approval. The basic procedure remains unchanged. Because the threshold level has been revised to the five acre limit, fewer conflicts are expected to result from plan modifications.

Existing Operations—Most of the comments on this section of the proposed rulemaking dealt with activities associated with lands under wilderness review. Again, all references to activities on lands under wilderness review have been deleted from this final rulemaking. The section has been revised to accommodate a concern that the Bureau of Land Management was too strict in using such words as "immediately" instead of "reasonably." The intent is not to shut down existing operations or in any way take away rights granted under the mining laws. One comment pointed out that operations existing prior to October 21, 1976, may have valid existing rights under section 701(h) of the Federal Land Policy and Management Act and should not be regulated at all. The existence of a valid existing right or lack thereof, however, is immaterial to the exercise of the Secretary of the Interior's regulatory authority. This rulemaking does not extinguish any possessory rights that an individual may have under the mining laws. Those rights, however, are subject to the reasonable regulations mandated by the Federal Land Policy and Management Act.

Bond Requirements—Except for the plan approval section of the proposed rulemaking, this section drew the most comments. Perhaps it is the most controversial because of the difficulty by most operators, especially small operators, believe they will have in obtaining a bond. Several comments stated that the Conference Committee which was appointed to resolve differences between the Senate and House-passed versions of the bills that became the Federal Land Policy and Management Act "identified no basis for a definitive recommendation," on requirements for reclamation and bonding. The Senate version had a provision directing the Secretary of the Interior to require appropriate land reclamation as a condition of uses likely to entail significant disturbance to or alteration of the public lands. The conferees did not adopt this provision. One comment went on to state "of course, with no requirement for reclamation, there is no need for a performance bond." The policy reflected in this final rulemaking is that there is no mandatory bonding; rather, it is discretionary. With the new threshold level contained in the final rulemaking, most exploration and some extraction activities would not be bonded. If a proposed activity exceeds the threshold and requires a plan of operations, bonding is then discretionary with the authorized officer. Essentially, the Congress did not see the immediate need for mandatory bonding in all cases, but neither did Congress deny that option to the Secretary of the Interior. Rather, it left open the discretion to impose standards for bonding.

The problems of bonding, especially for the small operator, are recognized. As a result, guidance will be given the Bureau of Land Management's field offices that bonding will be imposed only when necessary to protect the public lands from unnecessary or undue degradation and when imposed, it will be handled in a fair manner. Other comments on this section concerned duplication of bonding when other regulatory agencies are involved. The intent is to avoid duplicative enforcement and bonding in the administration of the regulations. The Director of the Bureau stated to the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs during its oversight hearings that it would be the Bureau's policy not to require duplicate bonding when State bonding requirements provided adequate protection, and the final rulemaking so provides.

The wording of the bonding section has been revised in the final rulemaking to make it more understandable and to clarify the applicability of nationwide and statewide bonding.

As mentioned earlier, numerous comments stated that authority to require reclamation, like bonding, was taken out of the Federal Land Policy and Management Act by the Conference Committee and, therefore, should not be required by this rulemaking. Reclamation is an integral part of any effort to prevent unnecessary or undue degradation of the lands. Failure to require the reclamation of disturbed areas may lead to scars on the lands that may remain for years. Likewise, failure to revegetate the surface of the lands may cause increased erosion of watersheds and lead to siltation and pollution of streams and other water resources. The failure to use reasonable means to reclaim the lands and eliminate these disturbances may constitute unnecessary or undue degradation and, thus, constitute a direct violation of section 302(b) of the Federal Land Policy and Management Act. In addition, the Bureau of Land Management is also responsible for implementing the Mining and Minerals Policy Act which requires reclamation of mined areas.

Operations Within Bureau of Land Management Wilderness Areas—There was considerable confusion among

those who commented on this section of the proposed rulemaking as to whether "wilderness areas" meant the lands administered by the Bureau of Land Management that are under wilderness review or wilderness areas that have been officially designated by Congress as part of the National Wilderness Preservation System. In accordance with section 603(c) of the Federal Land Policy and Management Act, once an area is designated by Congress as part of the National Wilderness Preservation System, the provisions of the Wilderness Act of 1964 apply. That Act states that reasonable regulations to govern ingress and egress may be prescribed consistent with the use of the lands for mineral operations and "restoration as near as practicable of the surface." The Wilderness Act also provides that the mining laws shall apply to designated wilderness areas until midnight December 31, 1983. To avoid further confusion, this section has been deleted from the final rulemaking. However, the final rulemaking makes it clear that any mining operations, other than casual use, proposed for a designated wilderness area will require an approved plan of operations before operations can commence.

Applicability of State Law—Generally, the comments on this section were favorable because the language of the proposed rulemaking attempted to avoid duplication of effort, principally in areas of bonding and enforcement. Several comments expressed concern as to whether or not the States had jurisdiction on Federal lands, as defined in this rulemaking. It has been the view of the Department of the Interior that under section 3 of the 1872 Mining Law (30 U.S.C. 26), the States may assert jurisdiction over mining activities on Federal lands in connection with their own State laws. This may be done as long as the laws of the State are not in conflict or inconsistent with Federal law. The adoption and implementation of this final rulemaking is not intended to pre-empt the continued application and enforcement of State law and regulations governing the conduct of activities pursuant to the United States mining laws.

The language of this section has been changed to allow more flexibility for the Director, Bureau of Land Management, and the respective States in entering into working agreements concerning the administration of their respective laws and regulations.

One comment questioned whether the United States could allocate monies to States which have signed agreements to administer the Bureau of Land Management's regulations. This question is being studied in recognition of the fact that it is in the best interest of all concerned to avoid, to the extent possible, excessive burdens created by duplication of effort.

Noncompliance—Numerous comments stated that the 30 days provided in the proposed rulemaking for completing corrective action in cases of noncompliance is too short. In the light of these comments, this section has been changed to require that action to correct must be started within 30 days. Several comments said that the noncompliance section should include provisions for cease and desist orders and for fines. The Bureau of Land Management will cooperate with an operator to the extent possible in rectifying situations that are causing unnecessary or undue degradation. In extreme cases, where an operator will not cooperate, injunctive procedures can be initiated and a restraining order requested. Failure to comply with an injunction will make an operator subject to such penalty as a court may impose. An important provision added to this section is that all operations fall under the provisions of the noncompliance section whether the operations are (1) casual use, not requiring any notice, (2) below the threshold level, or (3) under plans of operations because in each case they must not cause unnecessary or undue degradation. One comment feared that there would be no "benchmark" for measuring noncompliance and that such determinations may be arbitrary and capricious. For all practical purposes, the "benchmark" will be whether there is unnecessary or undue degradation of Federal lands. All phases of the final rulemaking will be monitored to ensure that all operations are treated equitably.

Access—Comments on this section centered around concerns that the authorized officer had too much discretion in specifying when and where access would be allowed. In response to these comments, the threshold in the final rulemaking has been increased. The changes made in this final rulemaking should alleviate the concerns. The authorized officer's discretion, when a plan of operations is submitted, is limited to determining whether or not unnecessary or undue degradation will be caused. One comment said that ingress and egress are rights under the mining law and cannot be interfered with. Although basically true, section 302(b) of the Federal Land Policy and Management Act amended the mining law by requiring that all mining activities, including access, must be carried out in a manner that prevents unnecessary or undue degradation.

Another comment raised the issue of "non-exclusive" access and the fact that degradation may be caused by recreation vehicles, or perhaps a competitor. The word "non-exclusive" has been deleted from the section in the final rulemaking. However, case law has established that the public can use Federal lands, including the surface or unpatented mining claims, as long as their presence does not materially interfere with mining operations. On the question of degradation caused by recreation vehicles, section 302(b) of the Act applies to all users of Federal lands. Therefore, every user must take the necessary precautions to prevent unnecessary or undue degradation of Federal lands.

Another comment was concerned whether rights-of-way for access to mining claims would require approval under Title V of the Federal Land Policy and Management Act. Access for all purposes of ingress and egress to unpatented mining claims will not be regulated under the provisions of Title V. One comment suggested stronger controls over access including maintenance fees and use of existing roads. When non-exclusive access is involved, the Bureau of Land Management may not charge a fee for access. This relates back to the mineral laws themselves which state that Federal lands shall be "free and open." Use of existing access will be encouraged to the greatest extent possible. Failure to use existing access may result in building an unnecessary road and, thus, creating unnecessary or undue degradation. In accordance with the provisions of the final rulemaking, all roads constructed, whether under a notice or a plan of operations, are required to be reclaimed by the operators. In addition, the Bureau will work as closely as possible with operators to assist them in road location or other facets of their operations, with the overall goal of preventing unnecessary or undue degradation to Federal lands. Maximum interchange between Bureau field offices and the mining industry will be encouraged so that each will appreciate and understand the objectives of the other.

Multiple Use Conflicts—The comments on this section indicated that it was confusing. After careful study, it was determined that the section was not needed and it has been deleted from the final rulemaking.

Fire Prevention and Control—The comments on this section were of a general and supportive nature and suggested no change. Therefore, the

section remains unchanged in the final rulemaking.

Maintenance and Public Safety—Several comments suggested that the proposed rulemaking might conflict with regulations of the Mine Safety and Health Administration. After studying this possibility, it was decided that no conflict exists and this section of the final rulemaking is unchanged.

Inspection—The comments objected to this section of the proposed rulemaking on the basis that the inspection might come at an inconvenient time and interfere with operations. The section remains in the final rulemaking in order to put operators on notice that the authorized officer can inspect their operations to be certain that no activity causing unnecessary or undue degradation is taking place. Inspection will normally occur during regular business hours.

Notice of Suspension of Operations and Cessation of Operations—Numerous comments suggested that it is difficult for operators to determine, with certainty, when operations will cease due to fluctuations in price of the mineral in the marketplace. Therefore, they may want to maintain their equipment at the site. The section on notice of suspension of operations has been deleted from the final rulemaking because the recordation requirements imposed by section 314 of the Federal Land Policy and Management Act provide adequate coverage of the miner's intent to maintain the claim. The section on cessation of operations has been revised to allow more flexibility as to the removal of structures and equipment. One comment said that the Bureau of Land Management should require a "detailed outline of how the operation will be dismantled at the end of activities." Another comment asked "what happens if the operator fails to comply with this paragraph?" A detailed outline of "dismantling" is not necessary since failure to remove any structures and to reclaim the site may create unnecessary or undue degradation of Federal lands. The noncompliance section discusses the consequences of noncompliance.

Appeals—Numerous comments said that third parties should not be allowed to appeal a decision issued under this rulemaking. In accordance with those comments, the final rulemaking has been amended to provide one type of administrative review process for operators, but preserves the rights of affected parties under Part 4 of Title 43 of the Code of Federal Regulations through a paragraph that has been added to this section in the final rulemaking. One comment suggested that the final rulemaking conform to the U.S. Forest Service regulations concerning the time within which to file an appeal and "request for stay." This change has been made in the final rulemaking. An intermediate administrative review step has been added to the final rulemaking whereby an operator may appeal to the State Director. This new procedure is designed to resolve questions early in the administrative review process and thereby shorten it, if possible, before those questions become an issue on appeal.

Public Availability of Information—A large number of comments expressed a fear that the authorized officer may not be qualified to make a determination as to what information may or may not be confidential. This section of the final rulemaking has been amended to give the operator the right to designate which of the submitted information he or she regards as confidential, with any requests from the public for confidential material being made and handled under the provisions of the Freedom of Information Act procedures.

Special Provisions Relating to the California Desert Conservation Area—Several comments were received that suggested the promulgation of a separate rulemaking for the California Desert Conservation Area. The final rulemaking includes provisions that will afford the area adequate protection. Separate regulations are not warranted. The final rulemaking requires the filing of a plan of operations for any activity in the California Desert Conservation Area beyond that covered by casual use. The plan would be evaluated to ensure protection against "undue impairment" and against pollution of the streams and waters within the Area. A few comments made the point that it was not clear whether this final rulemaking supersedes the mining regulations now in effect for the King Range National Conservation Area. It does not. There have been no major changes in this section of the final rulemaking.

Editorial changes and corrections have been made as necessary.

The principal authors of this final rulemaking are Eugene Carlat and Robert M. Anderson of the Divison of Mineral Resources, assisted by Eleanor R. Schwartz, Chief, Office of Legislation and Regulatory Management, all of the Bureau of Land Management; and Kenneth Lee, Office of the Solicitor, Department of the Interior.

A regulatory analysis and final environmental impact statement were prepared in conjunction with this final rulemaking. Copies of these decision documents may be obtained from the Director (520), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, or by calling 202-343-8537. The final environmental impact statement is available at all State Offices of the Bureau of Land Management.

Under the authority of sections 2319 (30 U.S.C. 22) and 2478 (43 U.S.C. 1201) of the Revised Statutes and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3800, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is revised by adding a new Subpart 3809 as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

November 19, 1980.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

General

Subpart 3809—Surface Management

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General

Subpart 3809—Surface Management

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of federal lands which may result from

operations authorized by the mining laws.

§ 3809.0–2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0–3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary.to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

§ 3809.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this part.

(b) "Casual Use" means activities ordinarily resulting in only negligible disturbance of the federal lands and resources. For example, activities are generally considered "casual use" if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed or limited to off-road vehicles as defined in subpart 8340 of this title.

(c) "Federal lands" means lands subject to the mining laws including, but not limited to, the certain "public lands" defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stockraising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR Part 3802 regulations).

(d) "Mining claim" means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) "Mining laws" means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) "Operations" means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across federal lands subject to these regulations.

(g) "Operator" means a person conducting or proposing to conduct operations.

(h) "Person" means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) "Project area" means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted, as well as federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) "Reclamation" means taking such reasonable measures as will prevent unnecessary or undue degradation of the federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) "Unnecessary or undue degradation" means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, and other such areas, that level of protection shall be met.

§ 3809.0-6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the federal lands and to provide for reasonable reclamation.

§ 3809.1 Operations.

§ 3809.1-1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1-2 Casual use—negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of federal lands will not occur.

§ 3809.1-3 Notice—disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under § 3809.1-3(c)(3) of this section when the construction of access routes are involved.

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1-3(d) of this section and that reasonable measures will be taken to prevent unnecessary or undue degradation of the federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

(2) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and State Laws.

(3) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the federal lands.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3-2 of this Part.

§ 3809.1-4 Plan of operations—when required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1-3 of this Part.

(b) Any operation, except casual use, in the following designated areas:

(1) California Desert Conservation Area;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas withdrawn from operation of the mining laws in which valid existing rights are being exercised; and

(6) Areas designated as "closed" or "limited" to off-road vehicle use as defined in subpart 8340 of this title.

§ 3809.1-5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be

promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1–3(d) of this Part. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

§ 3809.1–6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary and undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1–9 of this Part as it relates to bonding.

§ 3809.1–7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1–8 Existing operations.

(a) Persons conducting operations on the effective date of these regulations, who would be required to submit a notice under § 3809.1–3 or a plan of operations under § 3809.1–4 of this Part may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1–3 of this Part for operations

where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1–4 of this Part. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

§ 3809.1–9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1–2) or that are conducted under a notice (§ 3809.1–3 of this Part).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1–5 of this Part may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1–7 of this Part, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (See § 3809.6 of this Part).

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2–1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the envrionmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is "substantial public interest" in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan is § 3809.1–6(a) of this part, is required to consider public comments on the environmental assessment.

§ 3809.2–2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1–3) or a plan of operations (§ 3809.1–4 of this Part), shall be conducted to prevent unnecessary or undue degradation of the federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air Quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water Quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(c) *Solid Wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall neither be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *Fisheries, Wildlife and Plant Habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(e) *Cultural and Paleontological Resources.* (1) Operators shall not

knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on federal lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

§ 3809.3 General provisions.

§ 3809.3–1 Applicability of State law.

(a) Nothing in this part shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on federal lands under the mining laws.

(b) After the publication date of these regulations the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible, provide for State administration and enforcement of such programs.

§ 3809.3–2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1–3 of this Part or a plan of operations under § 3809.1–4 of this Part will subject the operator, at the discretion of the authorized officer, to being served a notice of non-compliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1–3 of this Part is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1–3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1–3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the same manner as described in § 3809.3–2(b)(1) above.

(c) All operators who conduct operations under a notice pursuant to § 3809.1–3 and a plan pursuant to § 3809.1–4 of this Part on federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1–5 of this Part, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1–3 of this Part.

§ 3809.3–3 Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3809.3–4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§ 3809.3–5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§ 3809.3–6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 3809.3–7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§ 3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in Part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

§ 3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR Part 2.

§ 3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject to the regulations in this part, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

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federal register

Wednesday
November 26, 1980

Part III

Department of Commerce

Office of the Secretary

Improving Government Regulations; Semiannual Agenda

DEPARTMENT OF COMMERCE

13 CFR Chs. III and V

15 CFR Chs. I–IV, IX, and XII

19 CFR Ch. III

32A CFR Ch. I

37 CFR Ch. I

46 CFR Chs. II and III

50 CFR Chs. II, IV and VI

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: U.S. Department of Commerce.

ACTION: Semiannual agenda of regulations.

SUMMARY: In compliance with Executive Order 12044, the Department of Commerce (DOC) publishes twice a year an agenda of significant regulatory actions under consideration by its units. The agenda also includes a list of existing rules and regulations selected for review. The purpose of the regulatory agenda is to provide information to the public on regulations issued by the Department and to facilitate comments and views by interested public parties.

The closing date for information submitted for inclusion in this agenda was October 1, 1980. Therefore, regulatory activity arising, for example, from new legislation is not covered. This is the case for legislation signed by President Carter on October 22, 1980. The legislation, amendments to the Coastal Zone Management Act of 1972, and the Fisheries Loan Fund, will require regulatory actions.

FOR FURTHER INFORMATION CONTACT: For additional information about a specific regulatory action contained in the agenda, contact the individual identified as the contact person. Comments or inquiries of a general nature about the agenda should be directed to: Robert T. Miki, Deputy Assistant Secretary for Regulatory Policy (Acting), U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–2482.

SUPPLEMENTARY INFORMATION: On March 23, 1978, President Carter signed Executive Order 12044, "Improving Government Regulations." To comply with the Executive Order, the Department published in the **Federal Register** (44 FR 2082, January 9, 1979) Department Administrative Order (DAO) 218–7, entitled, "Issuing Departmental Regulations." The Administrative Order, including appendices, establishes the overall procedures to be followed by the Department units in developing and promulgating regulations as well as procedures to be followed in reviewing existing regulations.

The Executive Order requires that all executive agencies publish semiannually an agenda of significant regulations which are under consideration. The Executive Order directs government agencies to provide in the agenda the following information regarding significant regulations under consideration: description, need, legal basis, the name and telephone number of a knowledgable agency official, and whether a regulatory analysis is required. In addition, the Department's agenda provides an outline of each unit's plan for obtaining public comments and the major issues to be considered before formulating final regulations.

As required by the Executive Order, a list of regulations to be reviewed is also provided in the agenda. This is the fourth agenda to be published by the Department. Publication dates of previous agendas were:

First Agenda—March 7, 1979 (44 FR 12562). Addendum published April 30, 1979 (44 FR 25354) by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS)
Second Agenda—September 18, 1979 (44 FR 54166)
Third Agenda—June 5, 1980 (45 FR 37972)

Explanation of Information Contained in the Agenda

The Department has 13 primary operating units in addition to departmental offices. Some of the operating units, such as the Maritime Administration (MARAD), have major regulatory activities whereas other operating units, such as the Office of Minority Business Development Agency (MBDA), currently have no regulations in effect. The departmental offices, such as the Office of Investigations and Security (OIS) and the Office of Administrative Services (OAS), have few regulations.

The abbreviations and names of the Department units which have reported regulatory activities in this agenda are as follows:

ADMIN—Assistant Secretary for Administration
EDA—Economic Development Administration
ITA—International Trade Administration
MARAD—Maritime Administration
MBDA—Minority Business Development Agency
NOAA—National Oceanic and Atmospheric Administration
NMFS—National Marine Fisheries Service
OCZM—Office of Coastal Zone Management
NTIA—National Telecommunications and Information Administration
OADS—Office of the Associate Deputy Secretary
OCE—Office of the Chief Economist
CENSUS—Bureau of the Census
ORD—Office of Regional Development
PTI—Assistant Secretary for Productivity, Technology and Innovation
PTO—Patent and Trademark Office

Schedule A contains a list of regulatory actions under consideration. Regulations under consideration include new regulations being proposed and changes, additions, or deletions to existing rules and regulations. The schedule indicates whether the regulation is significant, whether a regulatory analysis is required, and the date (month or season) that the next regulatory action is anticipated. The name, position title, and telephone number of a person familiar with the regulation is provided. Additional information on each significant action listed in Schedule A is provided in the appendix. Each agenda entry provides the information required by Executive Order 12044 and DAO 218–7.

Schedule B contains a list of existing regulations scheduled for review by Department units over the next 12 months. A more detailed presentation of the Department's regulatory review effort is provided in DOC's Inventory of Regulations which was published in the **Federal Register** on October 27, 1980 (45 FR 71088). The Inventory contains 241 existing Department regulations and provides the review schedule for these regulations. To date, the Bureau of Economic Analysis, Bureau of Industrial Economics, Bureau of the Census, and the National Bureau of Standards have completed reviews of all of their regulations. All Department regulations are scheduled tentatively for review by December 1982.

Schedule C lists regulations which appeared in the previous agendas but are deleted from Schedules A and B. The reasons for deletion are given. For example, a regulation previously under consideration was adopted or the scheduled review of an existing regulation was completed. Where appropriate a **Federal Register** citation is provided.

Nine of the 13 primary operating units of the Department report regulations under consideration.

There are 174 regulations in the Department's agenda. Of the total, 101 are regulations under consideration (Schedule A) and 73 are existing regulations scheduled for review (Schedule B).

Of the 101 regulations reported under consideration, 64 are determined to be significant by agency heads. Thirty-two are considered not significant and the significance of five is unknown. Twenty-eight regulatory analyses are being prepared (see Schedule A).

As noted above, the significance of five regulations is not known. In these instances, the regulations under consideration have not reached the notice of proposed rulemaking stage or action on the regulation is not scheduled for at least six months.

A large number of the regulations presented in the agenda deal with fish management programs under NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS's programs, a section on "Explanation of Information Contained in NMFS's Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS's Regulatory Entries

The Fishery Conservation and Management Act of 1976 (the Act), 16 U.S.C. 1801 *et. seq.*, requires that a preliminary fishery management plan (PMP) be prepared for all fisheries within a fishery conservation zone (FCZ) fished in by foreign fishing nations. The FCZ refers to those waters from the outer edge of the United States territorial sea to a distance of 200 miles (i.e., in which there is domestic fishing). Fishery management plans (FMPs) are to be prepared if those fisheries require conservation and management measures. Although PMPs apply only to foreign fishing, the FMPs regulate both foreign and domestic fishing. When promulgated, the FMPs supersede the PMPs. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs for fisheries within their respective areas.

The Act requires that certain standards be met in regulated fisheries. Among the factors, the optimum yield of the fisheries is to be specified. This entails the development of appropriate regimes to insure sound management of involved stocks while taking into account relevant biological, social, and economic factors. Domestic fishermen are given a preferred status by the Act. However, for those fisheries in which the optimum yield is greater than the domestic harvest, foreign nations are permitted to fish, provided certain conditions are met. For each fishery, the total allowable level of foreign fishing (TALFF) is determined. The TALFF is allocated among foreign nations by the Secretary of State. Governing International Fishery Agreements are executed between the United States and nations desiring to fish. Allocations are based on standards such as historic fishing rights and reciprocal fishing privileges. Also, vessels of foreign nations are to apply for and receive permits to fish in the FCZ.

Classes of domestic fishermen may be allocated shares of the harvest in fisheries regulated under FMPs. Such allocations are not be be discriminatory and must relate to the conservation and management of the fishery. There can be allocations between the commercial and recreational sectors of the fishery.

In the allocation of fish stocks, fish caught as a result of directed effort (target catch), and fish caught incidentally (incidental catch) are taken into account. Various management tools are used to regulate fisheries. These include limitations based on certain types of gear (e.g., bottom trawls, longlines), seasons, and the necessity of opening or closing areas to fishing based upon gear conflicts, conditions of the stocks, or other factors.

The initiation of FMPs is the responsibility of the eight Councils. Guidelines for the development of the FMPs are published in the **Federal Register.** In the development of such plans (and regulations), the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs, in conjunction with the DOC practive of publishing an agenda covering a 12-month, rather than a 6-month period, makes it difficult for the NMFS to determine the significance of some regulatory actions under consideration at the time the semiannual regulatory agenda is published. Frequently, the NMFS does not have specific plan objectives or alternatives for management since the Councils have neither approved nor submitted plans to the Secretary of Commerce for review, adoption and implementation.

Public Participation Summary

Legal Authority: The Department's General Counsel decided that where no statutes forbid establishment of a public participation funding program, Department funds can be used when the participation is considered necessary and lack of funding would preclude participation.

Supervision: The Consumer Affairs Office, in conjunction with the Office of Regulatory Policy, coordinates consumer participation responsibilities throughout the Department. The Consumer Affairs Office and consumer contact persons in the operating units are responsible for assuring that timely and meaningful consumer participation occurs throughout the development and review of the Department's rules, policies and programs.

Participation Mechanisms and Special Features

—Notices of proposed and final rules, programs, and policies will appear in the **Federal Register.**

—Quarterly notices for forthcoming rulemaking activities are disseminated to consumer representatives and consumer media by the Consumer Affairs Office, and to other constituents by the Regional Representatives of the Secretary of Commerce.

—Funds will be made available whenever possible to enable consumer representatives to give in-depth advice and assistance on major policy or program initiatives. For example, the Office of Consumer Affairs has funded a project for consumer representatives to develop guidelines for business in five general areas of consumer interest.

—Informal meetings and briefings will be arranged between Commerce officials and consumer leaders to discuss emerging or ongoing problems and issues, as well as policy and program developments.

Special Unit Programs for Public Participation

—National Bureau of Standards (NBS): The NBS Center for Consumer Product Technology (Center), in conjunction with Underwriters Laboratories, the American Society for Testing and Materials, the National Fire Protection Association, and the American National Standards Institute, maintains a Consumer Sounding Board network to ensure that consumer input on activity is obtained. The Consumer Sounding Boards are composed of a demographic cross-section of consumers convened to provide direct consumer involvement in standards-making programs. The Center's programs are reviewed annually by a panel appointed by the National Academy of Sciences. This panel is composed of individuals from industry, academic institutions, government, and consumer interest groups. The Center works with the National Conference on Weights and

Measures which is composed of State and local government representatives who have responsibility for consumer issues. The Center will continue to seek consumer involvement.

—NOAA/NMFS: The Administrator of NOAA may provide compensation for reasonable attorney's fees, fees and costs of experts and other costs of participation incurred by eligible participants in any NOAA proceeding involving a hearing in which there may be public participation. Rules governing NOAA's public participation program are in 15 CFR Part 904.

The Marine Fishery Advisory Committee (MAFAC), composed of approximately 25 presentatives from industry, academic institutions and consumer groups, advises the NMFS on fishery activities. The MAFAC Subcommittee on Consumer Affairs covers consumer-related fishery activities.

Under the authority of the Fishery Conservation and Management Act of 1976, eight Fishery Management Councils were established. The membership of the Councils is required by the Act to have fisheries expertise. The majority of the members are appointed by the Secretary, based on the recommendation of the Governors of the Coastal States. These appointments include consumer members. The NMFS consumer affairs personnel are actively pursuing strengthened consumer representation on these Councils. In addition, the NMFS is planning regional workshops to be held in conjunction with the Councils to encourage and expand consumer participation.

—NTIA: NTIA is in the process of establishing an advisory committee which will offer advice on grant applications under the Public Telecommunications Facilities Program and on the development of public telecommunications policy. The proposed advisory committee will have 20 members. One seat is reserved for a representative of a public interest or consumer organization.

Special Unit Programs for Funding Assistance

The Department is giving special attention to developing new procedures and funding sources for consumer participation in its regulatory proceedings.

—NOAA: NOAA issued regulations in 1978 for funding public participation in its rulemaking proceedings (43 FR 17806, April 26, 1978).

—NTIA: NTIA is establishing funding procedures for public participation. The procedures relate primarily to the Public Telecommunications Facilities Program which awards matching grants yearly for the development and expansion of public telecommunications services. The agency's final rules will be published in the **Federal Register.**

—Other operating units such as the International Trade Administration and the Minority Business Development Agency are also exploring funding procedures.

Technical Assistance

The operating units, with advice from the Consumer Affairs Office, will determine staff responsibilities, assistance procedures and types of technical assistance for consumers. For example, NTIA's Public Telecommunications Facilities Program provides technical assistance upon request to potential applicants and to other groups interested in public telecommunications. Also, NTIA prepares materials explaining the process of obtaining matching grants for telecommunications facilities. This information is distributed to individuals, public interest groups, the trade press, publishers, journals, and other media.

The NMFS plans to hold individual consultations and workshops for consumer-interest groups to provide technical assistance in preparing proposals for cost-sharing funding under the Fisheries Financial Assistance Program.

Public Participation Documents

During FY 81, the Office of Regulatory Policy and the Consumer Affairs Office will develop general guidelines for consumer participation to be used throughout the Department.

Contact Person: Marti Yocum, Acting Director of Consumer Affairs, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–5001.

Philip M. Klutznick,

Secretary of Commerce.

BILLING CODE 3510-BJ-M

SCHEDULE A - DOC SEMIANNUAL AGENDA OF PENDING REGULATIONS
NOVEMBER 14, 1980

Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
ADMIN	Section 504 of the Rehabilitation Act of 1973	Alice K. Helm Ofc. of Civil Rights (202) 377-4993		X			X	
ADMIN	Age Discrimination Act of 1975 (As Amended)	Alice K. Helm Ofc. of Civil Rights (202) 377-4993		X			X	
ADMIN	Public Information, Freedom of Information (15 CFR Subtitle A, Part 4)	Donald S. Budowsky Ofc. of Organization & Mgmt. Systems (202) 377-4217	X				X	
EDA	Miscellaneous Technical Amendments Regarding the Administration of Programs (13 CFR 302.41(b), 303.4-1(d)(3), 305.5(f), 305.8, 305.95, 309.4, 309.28)	Otto B. Bird Ofc. of Chf. Counsel (202) 377-5441		X			X	
EDA	Environmental Requirements (13 CFR 309.18)	Andrew Kauders Spec. Asst. for the Environment (202) 377-4208		X			X	
EDA	Hospitals, Nursing Homes and Convalescent Care Facilities (13 CFR 305.42)	Otto B. Bird Ofc. of Chf. Counsel (202) 377-5441		X			X	
ITA	Energy Regulation 1: Allocation Regulations (Old 32A CFR Part 671)	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233		X			X	
MARAD	Requirements and Procedures for the Administration of Condition Surveys and Maintenance and Repair Subsidy (46 CFR Part 272)	John J. Davis Div. of Ship Mgmt. (202) 377-3640	X				X	
MARAD	Construction-Differential Subsidy (CDS) Repayment: Total Repayment Policy and Procedure (46 CFR Part 276)	William B. Ebersold Ofc. of Trade Studies & Statistics (202) 377-4791	X			X		

Anticipated Date of Regulatory Action
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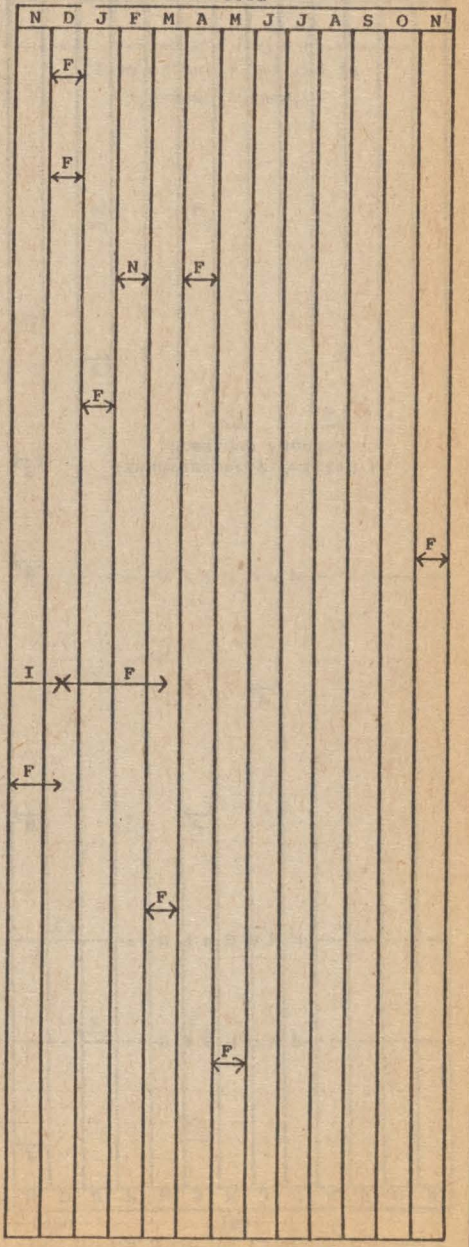

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown	Anticipated Date of Regulatory Action (A = ANPRM, N = NPRM, I = Interim, F = Final)*
MARAD	Documentation Transfer or Charter of Vessels (46 CFR Part 221)	Virginia O'Brien Ofc. of Ship Operations (202) 377-3213	X				X		F
MARAD	Construction-Differential Subsidy (CDS) Requirements for Aid (46 CFR Part 251) - Entire Part	James E. Saari Ofc. of Gen. Counsel (202) 377-2771	X				X		UNKNOWN
MARAD	Cargo Preference - U.S. Flag Vessels - Determination of Fair and Reasonable Rates (46 CFR 381.8, 381.9, and New Part 382)	Frederick R. Larson Ofc. of Ship Operating Costs (202) 377-5532	X				X		UNKNOWN
MARAD	Merchant Marine Training (46 CFR Part 310)	Kathleen A. Shetler Ofc. of Maritime Labor & Training (202) 377-5653	X				X		N, F
MARAD	Award and Administration of Operating-Differential Subsidy (ODS) for Dry Bulk Cargo Vessels (46 CFR Part 254)	Frederick R. Larson Ofc. of Ship Operating Costs (202) 377-2771	X				X		F
MARAD	Construction-Differential Subsidy (CDS) Standard Contracts (46 CFR Part 251)	Melvin S. Eck Ofc. of Gen. Counsel (202) 377-2771	X				X		F
MARAD	Requirements for Establishing United States Citizenship (46 CFR Part 355)	Doris Lansberry Ofc. of Gen. Counsel (202) 377-2506	X				X		F (Inadvertently Omitted in Previous Agenda)
MARAD	Federal Tax Aspects of the Capital Construction Fund (46 CFR Part 391)	E. A. Uttridge Ofc. of Subsidy Contracts (202) 377-3797	X				X		F

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
MARAD	Rules of Practice and Procedure; Procedure for Hearing on Operating-Differential Subsidy (ODS) Applications; Applications for Subsidies and Other Direct Financial Aid (46 CFR Parts 201, 208 (New), and 251)	Robert J. Patton Acting Secretary, MARAD (202) 377-2188	X				X	
MBDA	MBDA Financial Assistance Awards	John Smith Ofc. of Gen. Counsel (202) 377-4939	X				X	
NOAA/NMFS	Atlantic Butterfish Fishery Management Plan (FMP)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X			X		
NOAA/NMFS	Extension of Commercial/Recreational Salmon Off California, Oregon and Washington Fishery Management Plan (FMP) (50 CFR Part 661) (Fishing Year 1981)	Herbert Larkins Northwest Region (206) 442-7575	X			X		
NOAA/NMFS	Designation of Critical Habitat for the Hawaiian Monk Seal (50 CFR Part 222)	Alan W. Ford Southwest Region (213) 548-2575	X				X	
NOAA/NMFS	Regulation Declaring Restricted Fishing Areas (Port Canaveral and Other Areas) (50 CFR Parts 222 and 227)	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461	X					X
NOAA/NMFS	Fish and Wildlife Coordination Act, Uniform Procedures for Compliance	James W. Rote Ofc. of Habitat Protection (202) 634-7409	X				X	
NOAA/NMFS	Precious Coral Fishery Management Plan (FMP) (Western Pacific)	Alan W. Ford Southwest Region (213) 548-2575	X			X		
NOAA/NMFS	Reef Fish Resources of the Gulf of Mexico Fishery Management Plan (FMP)	Harold B. Allen Southeast Region (813) 893-3141	X			X		
NOAA/NMFS	Fishery Management Plan (FMP) for the Spiny Lobster Fishery of Puerto Rico and the Virgin Islands	Harold B. Allen Southeast Region (813) 893-3141	X			X		

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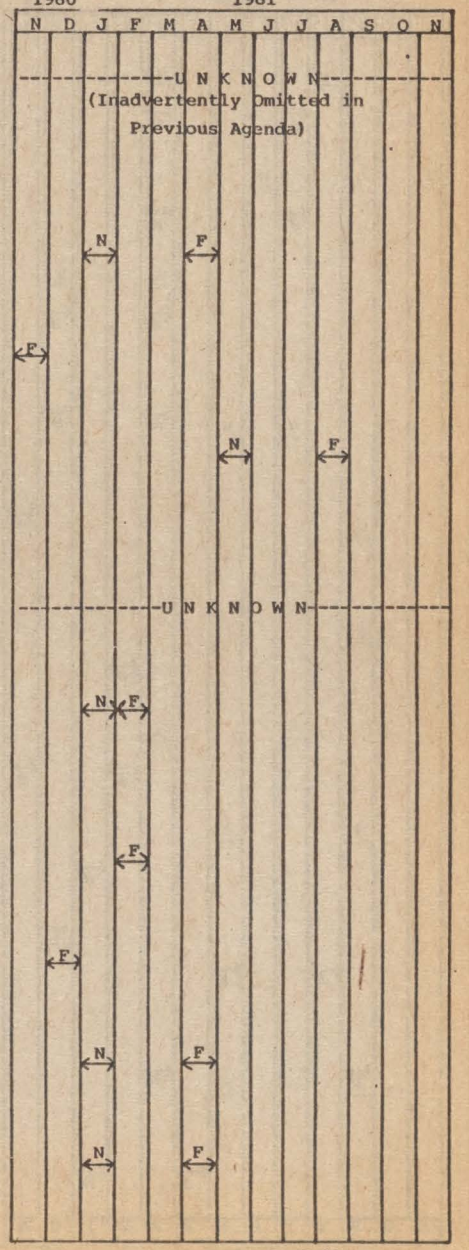

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/NMFS	Coastal Migratory Pelagic Fishery Management Plan (FMP)	Harold B. Allen Southeast Region (813) 893-3141	X			X		
NOAA/NMFS	Fishery Management Plan (FMP) for Sharks and Other Elasmobranchs	Harold B. Allen Southeast Region (813) 893-3141	X			X		
NOAA/NMFS	Spiny Lobster Fishery Management Plan (FMP) (Western Pacific)	Alan W. Ford Southwest Region (213) 548-2575	X			X		
NOAA/NMFS	Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico	Harold B. Allen Southeast Region (813) 893-3141	X			X		
NOAA/NMFS	Bering Sea and Aleutian Islands Groundfish Fishery Management Plan (FMP)	Robert W. McVey Alaska Region (907) 586-7229	X			X		
NOAA/NMFS	Amendments to Regulations to Control the Incidental Take of Porpoise in the Yellowfin Tuna Purse Seine Fishery	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461	X			X		
NOAA/NMFS	Tanner Crab Fishery Management Plan (FMP) Regulations (Alaska) (Amendment No. 5)	Robert W. McVey Alaska Region (907) 586-7221	X			X		
NOAA/NMFS	Tanner Crab Fishery Management Plan (FMP) Regulations (Alaska) (Amendment No. 7)	Robert W. McVey Alaska Region (907) 586-7221	X			X		
NOAA/NMFS	Bering Sea - Chukchi Sea Herring Fishery Management Plan (FMP)	Robert W. McVey Alaska Region (907) 586-7221	X			X		
NOAA/NMFS	Alasks King Crab Fishery Management Plan (FMP)	Robert W. McVey Alaska Region (907) 586-7221	X			X		
NOAA/NMFS	Pacific Billfish and Oceanic Sharks Fishery Management Plan (FMP) (Western Pacific)	Alan W. Ford Southwest Region (213) 548-2575	X			X		

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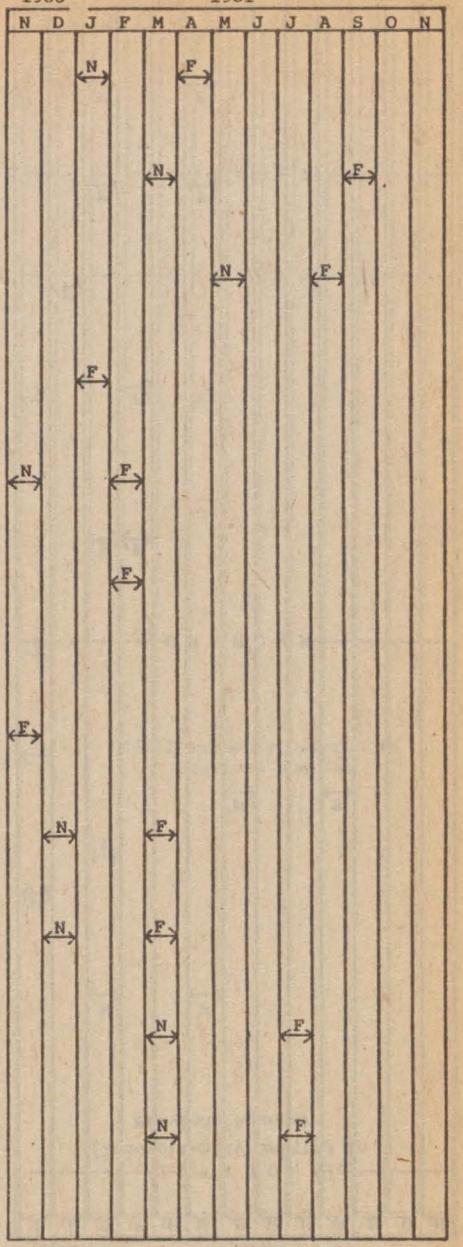

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/NMFS	Groundfish Fishery Management Plan (FMP) (Southeast Region)	Harold B. Allen Southeast Region (813) 893-3141	X			X		
NOAA/NMFS	Caribbean Shallow Water Reef Fishery Management Plan (FMP)	Harold B. Allen Southeast Region (813) 893-3141	X			X		
NOAA/NMFS	Whaling (50 CFR Part 230)	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461	X					X
NOAA/NMFS	High Seas Salmon Fishery Management Plan (FMP) (Amendment No. 2)	Robert W. McVey Alaska Region (907) 586-7221	X			X		
NOAA/NMFS	American Lobster Fishery Management Plan (FMP)	Bruce Nicholls Northeast Region (617) 281-3600	X			X		
NOAA/NMFS	Sea Scallops Fishery Management Plan (FMP)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X			X		
NOAA/NMFS	Bluefish Fishery Management Plan (FMP)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X			X		
NOAA/NMFS	Pink Shrimp Fishery Off Washington, Oregon, and California Fishery Management Plan (FMP)	Herbert Larkins Northwest Region (206) 442-7575	X			X		
NOAA/NMFS	Groundfish Amendment to the Atlantic Groundfish Fishery Management Plan (FMP) - Supplement No. 4 to the Final Environmental Impact Statement	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X			X		
NOAA/NMFS	Amendment to the Atlantic Groundfish Fishery Management Plan (FMP)- Supplement No. 5 to the Final Environmental Impact Statement	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X			X		

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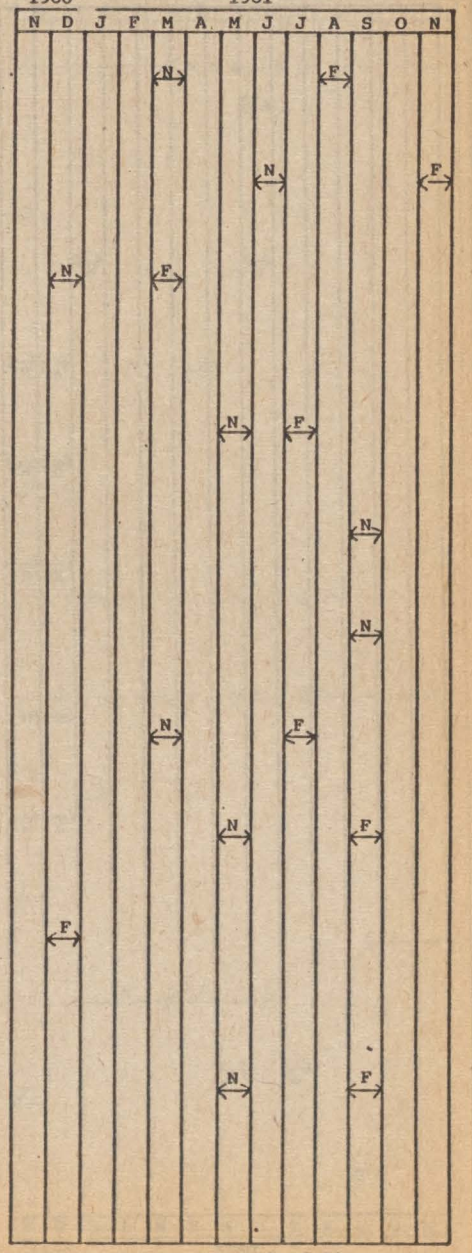

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/NMFS	Surf Clam and Ocean Quahog Fishery Management Plan (FMP) (Amendment No. 3)	Bruce Nicholls Northeast Region (617) 281-3600	X			X		
NOAA/NMFS	Regulations for the U.S. Sockeye and Pink Salmon Fisheries Under the Fraser River Fishery Convention	Herbert Larkins Northwest Region (206) 442-7575	X			X		
NOAA/NMFS	Guidelines for Development of Fishery Management Plans (FMP) (50 CFR 602.2)	William G. Gordon Ofc. of Resource Conservation & Mgmt. (202) 634-7218	X				X	
NOAA/NMFS	Bering Sea Snail Preliminary Fishery Management Plan (PMP) Regulations	Robert W. McVey Alaska Region (907) 586-7229		X			X	
NOAA/NMFS	Foreign Trawl Fisheries of Northwestern Atlantic Preliminary Fishery Management Plan (PMP) - Extension for 1981 Fishery	Frank Grice Northeast Region (617) 281-3600		X			X	
NOAA/NMFS	Hake Preliminary Fishery Management Plan (PMP) - Extension for 1981 Fishery	Allen E. Peterson, Jr. Northeast Region (617) 281-3600		X			X	
NOAA/NMFS	Hake Preliminary Fishery Management Plan (PMP)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600		X			X	
NOAA/NMFS	Pacific Billfish and Oceanic Sharks Preliminary Fishery Management Plan (FMP)	Alan W. Ford Southwest Region (213) 548-2575		X			X	
NOAA/NMFS	Determination of Critical Habitat for Endangered and Threatened Species of Sea Turtles in Mosquito Lagoon, Florida (50 CFR Part 226)	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461			X			X
NOAA/NMFS	Determination of Critical Habitat for Kenp's Ridley and Loggerhead Sea Turtles (50 CFR Part 226)	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461		X				X

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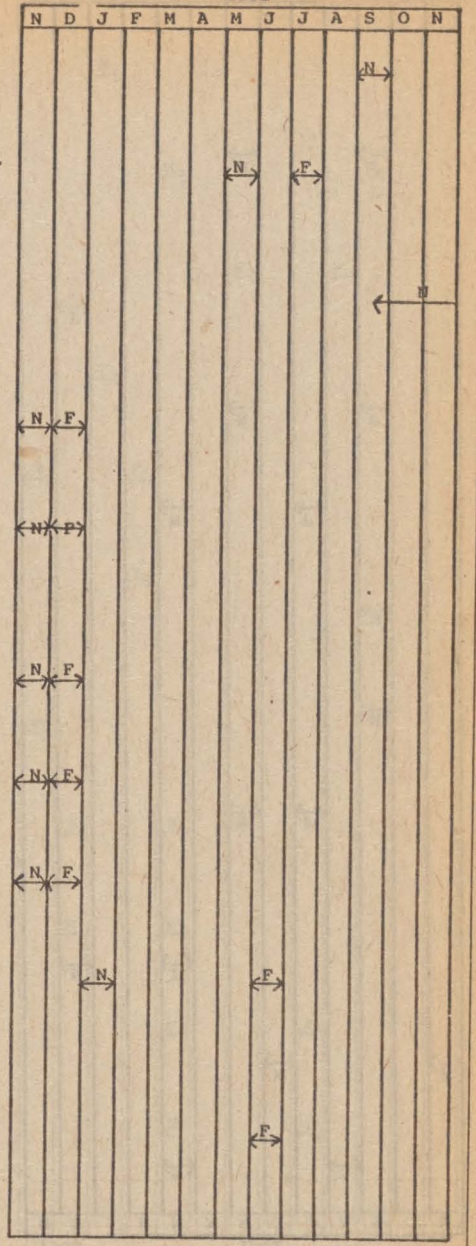

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/NMFS	Section 7 of Endangered Species Act: Interagency Cooperation (50 CFR Part 402)	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461		X			X	
NOAA/NMFS	Scientific Research and Public Display Permit Regulations (Proposed 50 CFR Part 223)	R. B. Brumsted Ofc. of Marine Mammals & Endangered Species (202) 634-7529		X			X	
NOAA/NMFS	Trawl Fisheries of Washington, Oregon, and California Preliminary Fishery Management Plan (PMP) (Fishing Year 1981)	Herbert Larkins Northwest Region (206) 442-7575		X			X	
NOAA/NMFS	Trawl and Herring Gillnet Fishing in the Eastern Bering Sea Preliminary Fishery Management Plan (PMP)	Robert W. McVey Alaska Region (907) 586-7221		X			X	
NOAA/NMFS	Amendments of U.S. Yellowfin Tuna Regulations for the Atlantic Ocean	Alan W. Ford Southwest Region (213) 548-2575			X			X
NOAA/NMFS	Amendments of U.S. Yellowfin Tuna Regulations for the Pacific Ocean	Alan W. Ford Southwest Region (213) 548-2575			X			X
NOAA/NMFS	Amendments to 50 CFR Part 251 (Financial Aid Program Procedures)	Michael L. Grable Financial Svcs. Div. (202) 634-7496		X			X	
NOAA/NMFS	Atlantic Mackerel Fishery Management Plan (FMP) (Amendment No. 1)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600		X			X	
NOAA/NMFS	Atlantic Mackerel Fishery Management Plan (FMP) (Amendment No. 2)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600		X			X	
NOAA/NMFS	Atlantic Butterfish Fishery Management Plan (FMP) (Amendment No. 1)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600		X			X	

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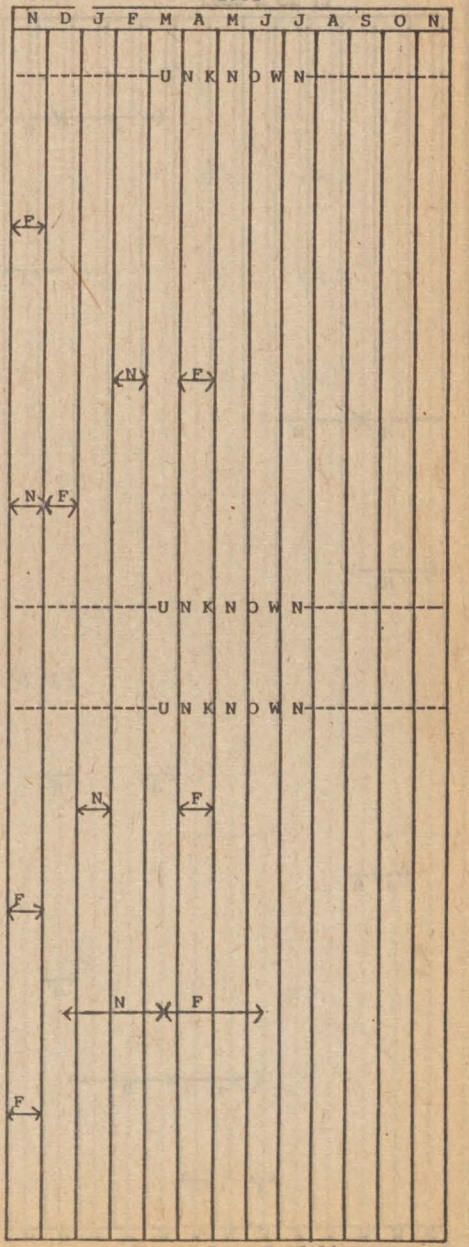

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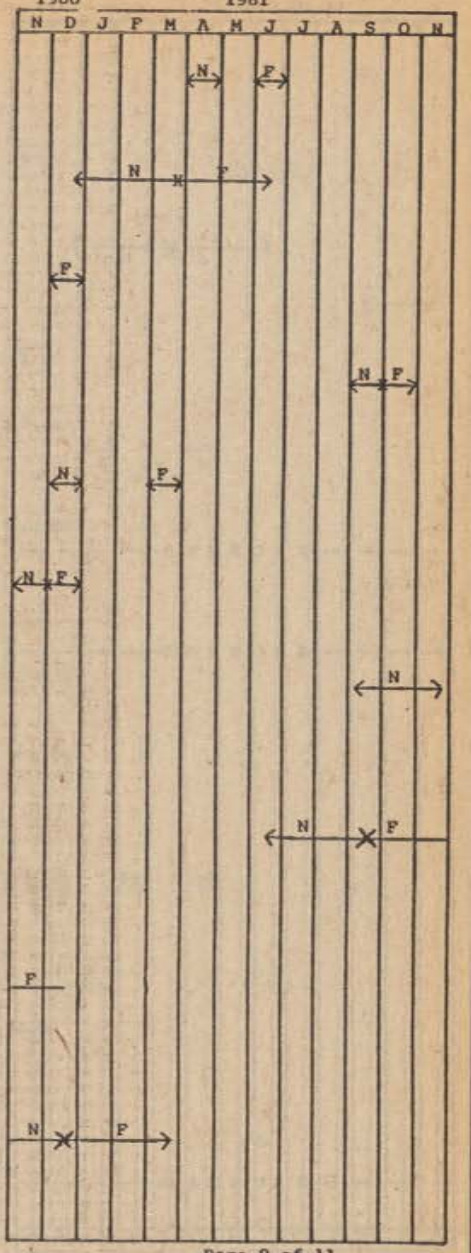
Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/NMFS	Atlantic Butterfish Fishery Management Plan (FMP) (Amendment No. 2)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X				X	
NOAA/NMFS	Atlantic Squid Fishery Management Plan (FMP) (Amendment No. 2)	Allen E. Peterson, Jr. Northeast Region (617) 281-3600	X				X	
NOAA/NMFS	Tanner Crab Fishery Management Plan (FMP) Regulations (Alaska) (Amendment No. 6)	Robert W. McVey Alaska Region (907) 586-7221	X				X	
NOAA/NMFS	Gulf of Alaska Groundfish Fishery Management Plan (FMP) (Amendment No. 8)	Robert W. McVey Alaska Region (907) 586-7221	X				X	
NOAA/NMFS	Gulf of Alaska Groundfish Fishery Management Plan (FMP) (Amendment No. 9)	Robert W. McVey Alaska Region (907) 586-7221	X				X	
NOAA/NMFS	Seamount Groundfish Preliminary Fishery Management Plan (PMP)	Alan W. Ford Southwest Region (213) 548-2575	X				X	
NOAA/NMFS	Guidelines for Development of Fishery Management Plans (FMP) (50 CFR Part 602 - Subparts Addressing Content and Format (e.g., 602.3 and 602.4)	William G. Gordon Ofc. of Resource Conservation & Mgmt. (202) 634-7218		X			X	
NOAA/NMFS	Uniform Standards for Organization, Practices, and Procedures - Regional Fishery Management Councils (50 CFR Part 601, Subpart C)	William G. Gordon Ofc. of Resource Conservation & Mgmt. (202) 634-7218	X				X	
NOAA/NMFS	Whaling (50 CFR Part 351)	Richard B. Roe Ofc. of Marine Mammals & Endangered Species (202) 634-7461		X				X
NOAA/NMFS	Termination of Utility Services (50 CFR Part 215)	Walter Kirkness Northwest Region (206) 442-7777	X				X	

Anticipated Date of Regulatory Action
(A = ANPRM, N = NPRM, I = Interim, F = Final)*



* A = Advanced Notice of Proposed Rulemaking; N = Notice of Proposed Rulemaking; I = Interim Rule; F = Final Rule.

Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/OCZM	Federal Consistency with Approved Coastal Management Programs	Jane P. Rogers Ofc. of Policy (202) 634-4245	X				X	
NOAA/OCZM	Regulations for Improving the Achievement of Coastal Zone Management Objectives	Jane P. Rogers Ofc. of Policy (202) 634-4245	X				X	
NOAA/OCZM	Review of the Performance of Coastal States with Respect to Coastal Management	Jane P. Rogers Ofc. of Policy (202) 634-4245	X				X	
NOAA/OCZM	Revision of the Regulations for Allocating Funds Under the Coastal Energy Impact Program	Jane P. Rogers Ofc. of Policy (202) 634-4245		X			X	
NOAA/OCZM	Estuarine Sanctuary Regulations	James MacFarland Sanctuary Programs Office (202) 653-7301		X			X	
NOAA/OCZM	Final Regulations for Key Largo Coral Reef Marine Sanctuary	Nancy Foster Sanctuary Programs Office (202) 634-4236	X				X	
NOAA/OCZM	Regulations for Proposed Looe Key Marine Sanctuary	Nancy Foster Sanctuary Programs Office. (202) 634-4236	X				X	
NOAA/OCZM	Regulations for Proposed Monterey Bay Marine Sanctuary	Nancy Foster Sanctuary Programs Office (202) 634-4236	X				X	
NOAA/OCZM	Regulations for Proposed Point Reyes/Farallon Islands Marine Sanctuary	Nancy Foster Sanctuary Programs Office (202) 634-4236	X				X	
NOAA/OCZM	Regulations for Proposed Flower Garden Banks Marine Sanctuary	Nancy Foster Sanctuary Programs Office (202) 634-4236	X				X	

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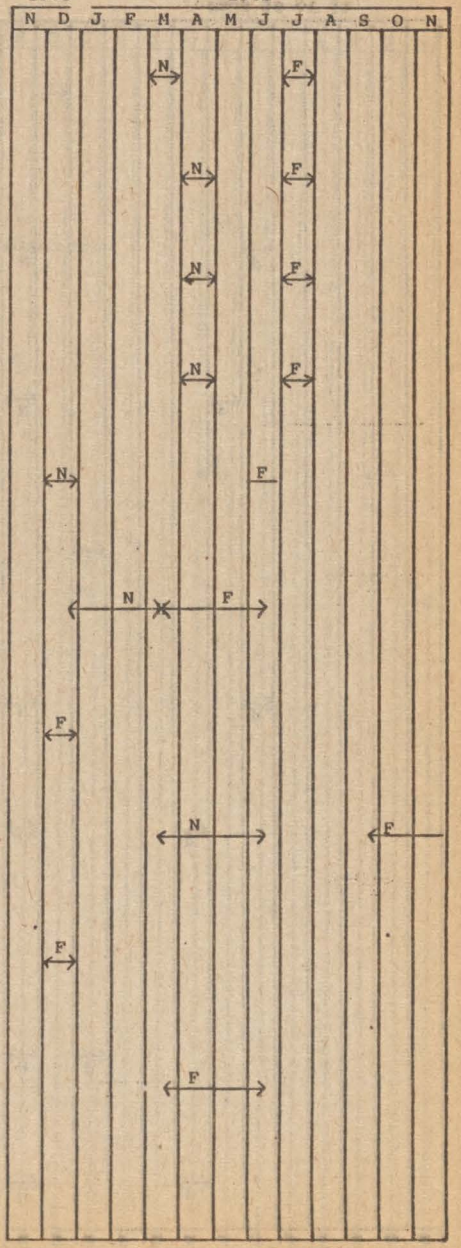

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
NOAA/OCZM	Regulations for Proposed St. Thomas Marine Sanctuary St. Thomas, Virgin Islands	Nancy Foster Sanctuary Programs Office (202) 634-4236	X				X	
*OCE/CENSUS	Foreign Trade Statistics (15 CFR Part 30)	Emerson Jones Foreign Trade Division (301) 763-7982		X			X	
ORD	Amendments to Rules Covering Regional Action Planning Commissions (13 CFR, Chapter V)	Frances Pappas Program Officer (202) 377-5174		X			X	
PTI/PTO	Patent Interference Proceedings (37 CFR 1.225, 1.231, 1.253, 1.254, 1.258 and 1.288)	Ian A. Calvert Chairman, Board of Patent Interferences (703) 557-3625	X				X	
PTI/PTO	Correction of Inventorship (37 CFR 1.45, 1.48 and 1.324)	Louis O. Maassel Editor, Manual of Patent Examining Procedures (703) 557-3070	X				X	
PTI/PTO	Deposit of Computer Program Listings (37 CFR 1.21, 1.77 and 1.96)	Louis O. Maassel Editor, Manual of Patent Examining Procedures (703) 557-3070	X				X	
PTI/PTO	File Wrapper Continuing Application Procedure (37 CFR 1.62 and 1.138)	Louis O. Maassel Editor, Manual of Patent Examining Procedures (703) 557-3070	X				X	
PTI/PTO	Professional Conduct of and Advertising by Persons Registered to Practice Before the PTO (37 CFR 1.344, 1.345, 2.13 and 2.14)	Harry I. Moatz Assistant Solicitor (703) 557-2238	X				X	

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Department Unit	Title of Regulation Under Consideration	Contact Person	Is Regulation Significant? Yes	No	Unknown	Is Regulatory Analysis Required? Yes	No	Unknown
PTI/PTO	Compulsory Counterclaims in Trademark Opposition and Cancellation Proceedings (37 CFR 2.106 and 2.114)	David J. Kera Trademark Trial & Appeal Board (703) 557-3551	X				X	
PTI/PTO	Continuation-In-Part Application Oath or Declaration (37 CFR 1.65, 3.18 and 3.18(a)	Louis O. Maassel Editor, Manual of Patent Examining Procedures (703) 557-3070	X				X	
PTI/PTO	Requests for Identifiable Records (37 CFR 1.15)	John W. Dewhirst Associate Solicitor (703) 557-3542	X				X	
PTI/PTO	Secrecy of Certain Inventions and Licenses to File Applications in Foreign Countries (37 CFR Part 5)	S. W. Engle Special Laws Admin. Group (703) 557-2897	X				X	
PTI/PTO	Ex Parte Prosecution of Trademark Applications, Inter Partes Proceedings Before the Trademark Trial and Appeal Board, Petitions to the Commissioner and Post-Registration Requirements (37 CFR 2.20, 2.27, 2.63, 2.65, 2.81, 2.88, 2.94-2.135, 2.142, 2.146, 2.165, 2.173, 2.184 and 2.186)	David J. Kera Trademark Trial & Appeal Board (703) 557-3551	X				X	

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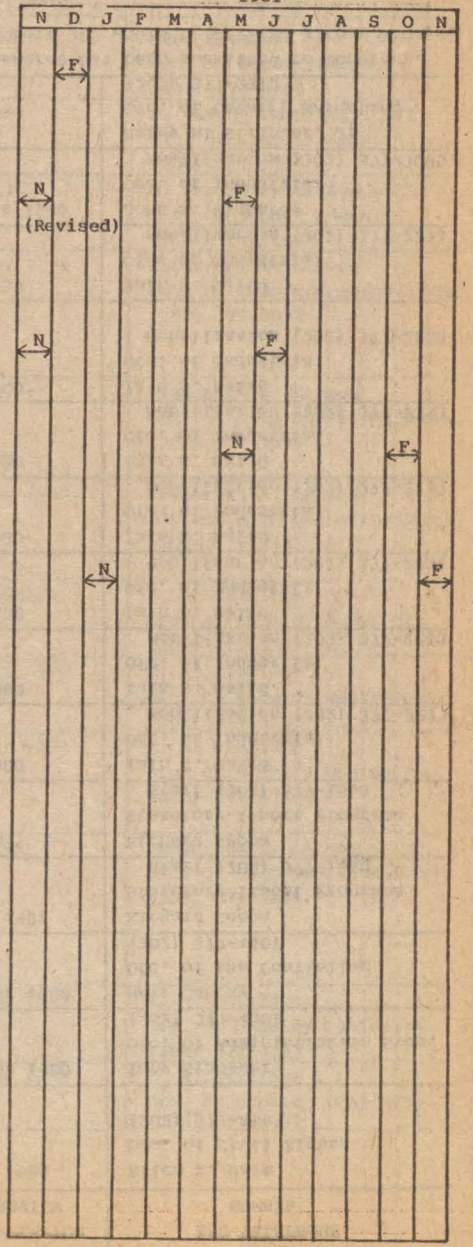

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SCHEDULE B: REGULATIONS SELECTED FOR REVIEW BY DOC DEPARTMENT UNITS

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
Non-Discrimination in Federally Assisted Programs of the DOC-Implementation of Title VI of the Civil Rights Act of 1964 (15 CFR 8.1-15)	ADMIN	42 U.S.C. 2000-1	Under Review	Winter 1980	Alice K. Helm Ofc. of Civil Rights (202) 377-4993
Operation of Vending Stands	ADMIN	49 Stat. 1559	Under Review	December 1980	Tony Stadeker Ofc. of Administrative Svcs. (202) 377-4501
Procedure for Handling and Settlement of Claims Under the Federal Tort Claims Act	ADMIN	28 U.S.C. 2671-2680	Under Review	December 1980	Meir Gabbay Ofc. of the Controller (202) 377-4407
Instruments and Apparatus for Educational and Scientific Institutions (15 CFR Part 301)	ITA	19 U.S.C. 1202	Under Review	Summer 1981	Richard Seppa Statutory Import Programs Staff (202) 377-1660
Foreign Excess Property Regulations (15 CFR Part 302)	ITA	40 U.S.C. 512	Unknown 1/	Unknown	Richard Seppa Statutory Import Programs Staff (202) 377-1660
Defense Materials System and Defense Priorities System (15 CFR Parts 330-32, 350, and 353-4)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
Defense Materials System Order 1: Iron and Steel (15 CFR Part 340)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
Defense Materials System Order 2: Nickel Alloys (15 CFR Part 341)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
Defense Materials System Order 3: Aluminum (15 CFR Part 342)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
Defense Materials System Order 4: Copper and Copper-Base Alloys (15 CFR Part 343)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
DPS Regulation 2: Operations of the Priorities and Allocations System Between Canada and the United States (15 CFR Part 351)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
DPS Regulation 3: Compliance and Enforcement Procedures (15 CFR Part 352)	ITA	50 U.S.C. App. 2061 et. seq., Executive Order 10480	Under Review	Fall 1980	Iain S. Baird Ofc. of Industrial Mobilization (202) 377-2233
Effects of Imported Articles on the National Security (15 CFR Part 359)	ITA	19 U.S.C. 1862	Under Review	November 1980	John A. Richards Ofc. of Industrial Mobilization (202) 377-3695
China Trade Act Corporations (15 CFR Part 363)	ITA	15 U.S.C. 141-162	Unknown	Unknown	Harry R. Stringer, Jr. Ofc. of Country Marketing (202) 377-2210

*Regulation deemed significant by DOC Department unit

**Regulatory analysis to be required

1/ Pending legislation proposed by Commerce has been submitted to Congress. Upon enactment of the legislation, Part 302 would be revised within 90 days.

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
*Export Administration Regulations (15 CFR Parts 368 and 370-399)	ITA	50 U.S.C. App. 2401 et. seq.	Under Review**	May 1981	Kent Knowles Ofc. of Export Admin. (202) 377-4293
General Regulations Governing Foreign-Trade Zones in the United States, with Rules of Procedure (15 CFR Part 400)	ITA	19 U.S.C. 81a-81u	Fall 1980	Fall 1981	B. Waring Partridge, III Ofc. of Import Admin. (202) 377-1782
*Antidumping Duties and Countervailing Duties (19 CFR Parts 353 and 355)	ITA	5 U.S.C. 301, P.L. 96-39	Under Review	Spring 1981	B. Waring Partridge, III Ofc. of Import Admin. (202) 377-1782
*Operating-Differential Subsidy (ODS) Rates for Liner Vessels - New Part (Procedures now published in a manual; will be revised and published in regulation form)	MARAD	46 U.S.C. 1114(b)	Under Review	November 1980	Frederick R. Larson Ofc. of Ship Operating Costs (202) 377-5532
*Operating-Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in Carrying Grain to the U.S.S.R. (46 CFR Part 294) - Entire Part	MARAD	46 U.S.C. 1114(b)	January 1981	April 1981	Frederick R. Larson Ofc. of Ship Operating Costs (202) 377-5532
*Operating-Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in Worldwide Service (46 CFR Part 252) - Entire Part	MARAD	46 U.S.C. 1114(b)	Under Review	November 1980	Frederick R. Larson Ofc. of Ship Operating Costs (202) 377-5532
*Limitations on the Award of Operating-Differential Subsidy (ODS) for Liner Operators (46 CFR Part 280) - Entire Part	MARAD	46 U.S.C. 1114(b)	February 1981	April 1981	E. A. Uttridge Ofc. of Subsidy Contracts (202) 377-3797
Establishment of Construction Reserve Funds (46 CFR Part 287)	MARAD	46 U.S.C. 1114(b)	Under Review	December 1980	E. A. Uttridge Ofc. of Subsidy Contracts (202) 377-3797
Valuation of Vessels for Determining Capital Employed and Net Earnings Under Operating-Differential Subsidy (ODS) Agreements (46 CFR Part 284)	MARAD	46 U.S.C. 1114(b)	Under Review	December 1980	E. A. Uttridge Ofc. of Subsidy Contracts (202) 377-3797
*Operating-Differential Subsidy (ODS) for Bulk Cargo Vessels in the United States Foreign Commerce on the Great Lakes, Connecting Rivers, St. Lawrence River and Gulf of St. Lawrence (46 CFR Part 279) - Entire Part	MARAD	46 U.S.C. 1114(b)	January 1981	April 1981	Frederick R. Larson Ofc. of Ship Operating Costs (202) 377-5532
*Capital Construction Fund (46 CFR Part 390)	MARAD	46 U.S.C. 1114(b)	Under Review	November 1980	E. A. Uttridge Ofc. of Subsidy Contracts (202) 377-3797
Payments of Capital Reserve Fund (46 CFR Part 255)	MARAD	46 U.S.C. 1114(b)	Under Review	December 1980	E. A. Uttridge Ofc. of Subsidy Contracts (202) 377-3797

*Regulation deemed significant by DOC Department unit

**Regulatory analysis to be required

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
*National Shipping Authority (NSA) Review of 28 Regulations that were transferred from 32A CFR Chapter XVIII to 46 CFR Chapter II (Parts 315-339 and 345-347)	MARAD	50 U.S.C. App. 1744	Under Review	Completion of Reviews will start December 1980. Subsequent Agenda(s) will provide progress on these reviews.	Arys H. Huizinga Ofc. of Ship Operations (202) 377-5157 (Pts. 315-39) Armour S. Armstrong Ofc. of Port & Intermodal Development (202) 377-4123 (Pts. 345-47)
*Value for War Risk Insurance (46 CFR Part 309)	MARAD	46 U.S.C. 1114(b)	January 1981	April 1981	K. H. Green Div. of Marine Insurance (202) 377-4820
*Marine Mammals: Pribilof Islands (General) (50 CFR Part 215, Subpart A)	NOAA/NMFS	P.L. 89-702 16 U.S.C. 1151-1187	Under Review	Summer 1981	Georgia Cranmore Ofc. of Marine Mammals & Endangered Species (202) 634-1792
*Marine Mammals: Pribilof Islands Public Display of Living Fur Seals (50 CFR Part 215, Subpart B)	NOAA/NMFS	P.L. 89-702 16 U.S.C. 1151-1187	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
*Marine Mammals: Pribilof Islands (Administration) (50 CFR Part 215, Subpart C)	NOAA/NMFS	P.L. 89-702 16 U.S.C. 1151-1187	Under Review	Summer 1981	Georgia Cranmore Ofc. of Marine Mammals & Endangered Species (202) 634-1792
Regulations Governing the Taking and Importing of Marine Mammals: Introductions and Prohibitions (50 CFR Part 216, Subparts A and B)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
Regulations Governing the Taking and Importing of Marine Mammals: Penalties and Procedures for Their Assessment (50 CFR Part 216, Subpart F)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	January 1981	Not Determined	Steve Powell Ofc. of Asst. Gen. Counsel for Enforcement & Lit. (202) 254-8350
Regulations Governing the Taking and Importing of Marine Mammals: Notice and Hearing on Section 103 Regulations (50 CFR Part 216, Subpart G)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Summer 1981	Not Determined	Eric Erdheim Ofc. of Asst. Gen. Counsel (301) 443-8066
Regulations Governing the Taking and Importing of Marine Mammals: Approval and Review of State Laws and Regulations (50 CFR Part 216, Subpart H)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Summer 1981	Not Determined	Ronald Naveen Ofc. of Asst. Gen. Counsel - Fisheries (202) 634-4224
Regulations Governing the Taking and Importing of Marine Mammals: Actions Permitted by International Treaty, Convention, or Agreement (50 CFR 216.21)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	January 1981	Not Determined	Georgia Cranmore Ofc. of Marine Mammals & Endangered Species (202) 634-1792

*Regulation deemed significant by DOC Department unit
**Regulatory analysis to be required

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
Regulations Governing the Taking and Importing of Marine Mammals: Taking by State and Local Government Officials (50 CFR 216.22)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	Summer 1981	Thomas McIntyre Ofc. of Marine Mammals & Endangered Species (202) 634-7529
*Regulations Governing the Taking and Importing of Marine Mammals: Native Exceptions (50 CFR 216.23)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	June 1981	Georgia Cranmore Ofc. of Marine Mammals & Endangered Species (202) 634-1792
*Regulations Governing the Taking and Importing of Marine Mammals: Taking and Related Acts Incidental to Commercial Fishing Operations (50 CFR 216.24)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Summer 1981	Spring 1982	Thomas McIntyre Ofc. of Marine Mammals & Endangered Species (202) 634-7529
Regulations Governing the Taking and Importing of Marine Mammals: Excepted Marine Mammals and Marine Mammal Products (50 CFR 216.25)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	January 1981	Not Determined	Thomas McIntyre Ofc. of Marine Mammals & Endangered Species (202) 634-7529
Regulations Governing the Taking and Importing of Marine Mammals: Collection of Certain Marine Mammals Parts (50 CFR 216.26)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	January 1981	December 1981	Thomas McIntyre Ofc. of Marine Mammals & Endangered Species (202) 634-7529
*Regulations Governing the Taking and Importing of Marine Mammals: Scientific Research Permits and Public Display Permits (50 CFR 216.31)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
*Regulations Governing the Taking and Importing of Marine Mammals: Waivers of the Moratorium (50 CFR 216.32)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
*Regulations Governing the Taking and Importing of Marine Mammals: Procedures for Issuance of Permits and Modifications, Suspension, or Revocation Thereof (50 CFR 216.33)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202)634-7461
*Regulations Governing the Taking and Importing of Marine Mammals: Possession of Permits (50 CFR 216.34)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
Regulations Governing the Taking and Importing of Marine Mammals: Importation at Designated Ports (50 CFR 216.40)	NOAA/NMFS	P.L. 92-522 16 U.S.C. 1361-1407	January 1981	Not Determined	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461

*Regulation deemed significant by DOC Department unit
**Regulatory analysis to be required

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
*Endangered Species: General Provisions (50 CFR 217)	NOAA/NMFS	88 Stat. 905, 87 Stat. 884, P.L. 93-205	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
*Endangered Species: General Permit Procedures (50 CFR Part 220, Subparts A, B, C and D)	NOAA/NMFS	87 Stat. 884, P.L. 93-205	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
*Endangered Species: Permits Involving Endangered or Threatened Sea Turtles (50 CFR Part 220, Subpart E)	NOAA/NMFS	87 Stat. 884 P.L. 93-205	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
*Endangered Species: Importation and Exportation at Designated Ports (50 CFR Part 221)	NOAA/NMFS	87 Stat. 884 P.L. 93-205	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
Marine Mammals: Federal/State Cooperation in the Conservation of Endangered and Threatened Species (50 CFR Part 225)	NOAA/NMFS	16 U.S.C. 1531-1543 P.L. 93-205	January 1981	Not Determined	Thomas Loughlin Ofc. of Marine Mammals & Endangered Species (202) 634-7471
*Threatened Fish and Wildlife (50 CFR Part 227)	NOAA/NMFS	16 U.S.C. 1531 et. seq., P.L. 93-205	Under Review	Summer 1981	Gary Barone Ofc. of Marine Mammals & Endangered Species (202) 634-7461
Aid to Fisheries: Commercial Fisheries Research and Development (50 CFR Part 253)	NOAA/NMFS	16 U.S.C. 779a-779f	September 1981	Not Determined	Leo Fisher State/Federal Div. (202) 634-7454
Aid to Fisheries: Control or Elimination of Jellyfish (50 CFR Part 254)	NOAA/NMFS	16 U.S.C. 1201-1205	Under Review	December 1980	Leo Fisher State/Federal Div. (202) 634-7454
Aid to Fisheries: Fishing Vessel Obligation Guarantee Program Procedures (50 CFR Part 255)	NOAA/NMFS	46 U.S.C. 1271-1279	Under Review	December 1980	James Meehan Financial Svcs. Div. (202) 634-7466
*Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Whole or Dressed Fish (50 CFR Part 261)	NOAA/NMFS	7 U.S.C. 1621-1630	Summer 1981	Winter 1981-82	James R. Brooker Seafood Quality & Inspection Div. (202) 634-7458
*Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Fish Steaks (50 CFR Part 262)	NOAA/NMFS	7 U.S.C. 1621-1630	Summer 1981	Winter 1981-82	James R. Brooker Seafood Quality & Inspection Div. (202) 634-7458

*Regulation deemed significant by DOC Department unit

**Regulatory analysis to be required

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
*Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: Inspection and Certification (50 CFR Part 260)	NOAA/NMFS	16 U.S.C. 742 E 7 U.S.C. 1622, 1624	January 1981	January 1982	I. D. Sackett Seafood Quality & Inspection Div. (202) 634-7451
U.S. Standards for Grades of Fried Fish Sticks and Fried Fish Portions (50 CFR Part 264, Subpart G)	NOAA/NMFS	7 U.S.C. 1621-1630	May 1980	December 1981	James R. Brooker Seafood Quality & Inspection Div. (202) 634-7458
U.S. Standards for Grades of Frozen Raw Headless Shrimp (50 CFR Part 265, Subpart A)	NOAA/NMFS	7 U.S.C. 1621-1630	Under Review	March 1981	James R. Brooker Seafood Quality & Inspection Div. (202) 634-7458
*Fishery Marketing Cooperatives: Issuance of Cease and Desist Orders by the Government (50 CFR Part 290)	NOAA/NMFS	15 U.S.C. 522	March 1981	December 1981	Jukka Kolhonen Fisheries Development Div. (202) 634-7451
Anadromous Fisheries Conservation, Development, and Enhancement (50 CFR Part 401)(Joint regulations with the Department of the Interior)	NOAA/NMFS	16 U.S.C. 757a-757f	September 1981	Not Determined	Richard Schaefer State/Federal Div. (202) 634-7454
Interagency Cooperation, Endangered Species Act of 1973 (50 CFR Part 402) (Joint regulations with the Department of the Interior)	NOAA/NMFS	16 U.S.C. 1531 et. seq.	Summer 1981	Not Determined	Ronald Naveen Ofc. of Asst. Gen. Counsel Fisheries (202) 634-4224
Fishery Conservation and Management: Confidentiality of Statistics (50 CFR Part 603)	NOAA/NMFS	16 U.S.C. 1361 et. seq.	Under Review	December 1980	B. G. Thompson Resource Statistics Div. (202) 634-7415
Fishery Conservation and Management: Civil Procedures (50 CFR Part 621)	NOAA/NMFS	16 U.S.C. 1801-1861	Summer 1981	Not Determined	Steve Powell Ofc. of Asst. Gen. Counsel for Enforcement & Lit. (202) 254- 8350
Coastal Energy Impact Program, Project Assessments and Environmental Impact Statements	NOAA/OCZM	16 U.S.C. 1956, 1966	November 1980	January 1981	Eileen Mulaney Coastal Energy Impact Program Ofc. (202) 634-4120
Coastal Energy Impact Program Regulations (15 CFR Part 931)	NOAA/OCZM	16 U.S.C. 1456, 1466	January 1981	March 1981	Jane P. Rogers Ofc. of Policy (202) 634-4245
*Coastal Zone Management Program Development and Approval Provisions (15 CFR Part 923)	NOAA/OCZM	16 U.S.C. 1456, 1466	January 1981	March 1981	Jane P. Rogers Ofc. of Policy (202) 634-4245
*Monitor Marine Sanctuary (15 CFR Part 924)	NOAA/OCZM	16 U.S.C. 1432(f)	June 1981	September 1981	Nancy Foster Sanctuary Programs Ofc. (202) 634-4236

*Regulation deemed significant by DOC Department unit

**Regulatory analysis to be required

TITLE OF REGULATION	RESPONSIBLE DEPARTMENT UNIT	LEGAL AUTHORITY	PROPOSED DATE FOR START OF REVIEW	TARGET DATE FOR COMPLETION OF REVIEW	CONTACT PERSON AND TELEPHONE NUMBER
Coastal Energy Impact Program Engineering and Construction Guidelines for Applicants	NOAA/OCZM	16 U.S.C. 1461	November 1980	January 1981	Eileen Mulaney Coastal Energy Impact Program Ofc. (202) 634-4120
*Public Telecommunications Facility Program	NTIA	47 U.S.C. 390 et. seq.	Unknown	Unknown	Kenneth D. Salomon Ofc. of the Gen. Counsel (202) 377-1866
Procedural Regulation Setting Forth the Criteria for Applications for Federal Recognition of International Expositions (15 CFR Part 1202)	Ofc. of Assoc. Dep. Sec.	22 U.S.C. 2801	Under Review	Fall 1980	Richard Henry Exposition Staff (202) 377-4987
*Register of Government Interests in Patents (37 CFR Part 7)	PTI/PTO	Executive Order 9424	June 1981	October 1981	B. R. Padgett Special Laws Admin. Group (703) 557-2037

*Regulation deemed significant by DOC Department unit

**Regulatory analysis to be required

SCHEDULE C: REGULATIONS DELETED FROM PRIOR DOC SEMIANNUAL AGENDA 1/

Department Unit	Title of Regulation	Prior Agenda Listing 2/	Reason for Deletion from Agenda
EDA	Non-relocation (13 CFR 309.3)	UC	Published in Fed. Reg. in final on July 1, 1980 (45 FR 44257)
EDA	Industrial Parks and Sites (13 CFR 305.43)	UC	Published in Fed. Reg. in final on July 1, 1980 (45 FR 44257)
EDA	*Requirements Regarding the Organizational Structure of Economic Development Districts (13 CFR 303.2, 303.4, 303.4(a), 303.7, 304.3, 307.25, and 311.4)	UC	Published in Fed. Reg. in final on August 21, 1980 (45 FR 55696)
EDA	*Miscellaneous Changes Regarding Energy Conservation in EDA Financial Assistance Programs (13 CFR 305.59, 306.12, 307.3, 307.22, 307.28, 307.52, 307.55-57, 308.6, and 315.54-55)	UC	Published in Fed. Reg. in final on August 29, 1980 (45 FR 57960)
EDA	Vocational or Skill Training Center Projects (Public Works and Development Facilities Program)(13 CFR 305.45)	UC	Published in Fed. Reg. in final on October , 1980
ITA	Joint Export Associations (15 CFR Part 366)	UR	Removed from CFR on July 21, 1980 (45 FR 48606)
ITA	BDC Notice 1: Ratification of Bureau of Competitive Assessment and Business Policy Actions (32A CFR Part 601)	UR	Removed from CFR On July 1, 1980 (45 FR 44574)
ITA	BDC Notice 2: Signature of Official DIBA/BDC Actions (32A CFR Part 602)	UR	Removed from CFR on July 1, 1980 (45 FR 44574)
ITA	BDC Notice 3: Designation of BDC Actions to be Taken Under the Authority of the Defense Production Act of 1950, as Amended (32A CFR Part 603)	UR	Removed from CFR on July 1, 1980 (45 FR 44574)
ITA	Defense Priorities System Order 3: Titanium (32A CFR Part 663) (Proposed)	UC	Withdrawn as proposed rule on May 22, 1980 (45 FR 34304)
MARAD	*Operating-Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in Worldwide Service; Essential Service Requirement (46 CFR 252.21)	UC	Published in Fed. Reg. in final on May 8, 1980 (45 FR 30439)
MARAD	*Conservative Dividend Policy (46 CFR Part 283)	UC	Published in Fed. Reg. in final on June 3, 1980 (45 FR 37442)

1/ Prior Agenda refers to third Agenda which was published on June 5, 1980 (45 FR 37972).
2/ Listed in prior Agenda(s) as regulation under consideration (UC) or existing regulation under review (UR).

* Regulation was deemed significant by Deparment unit.
** Regulatory analysis performed by Department unit.

Department Unit	Title of Regulation	Prior Agenda Listing 2/	Reason for Deletion from Agenda
NOAA/NMFS	*Atlantic Mackerel Fishery Management Plan (FMP)	UC	**Published in Fed. Reg. in final on July 3, 1980 (45 FR 45291)
NOAA/NMFS	Atlantic Squid Fishery Management Plan (FMP)(Amendment No. 1)	UC	Published in Fed. Reg. in final on September 26, 1980 (45 FR 63863)
NOAA/NMFS	Listing of the Guadalupe Fur Seal as an Endangered Species (50 CFR Parts 17 and 222)	UC	Determination has been made that Guadalupe Fur Seals will not be listed as an endangered species.
NOAA/NMFS	Extension of Commercial/Recreational Salmon Off California, Oregon, and Washington Fishery Management Plan (FMP)(50 CFR Part 661)(Fishing Year 1980)	UC	Published in Fed. Reg. in final on July 31, 1980 (45 FR 50764)
NOAA/NMFS	*Washington, Oregon, and California Groundfish Fishery Management Plan (FMP)	UC	**Efforts to develop regulations suspended. Anticipated dates when action will be resumed are too tentative and/or too far into the future to make inclusion in this Agenda meaningful.
NOAA/NMFS	Trawl Fisheries of Washington, Oregon, and California Preliminary Fishery Management Plan (PMP)	UC	Published in Fed. Reg. in final on May 21, 1980 (45 FR 34003)
NOAA/NMFS	Technical Amendments to Fishing Vessel Obligation Guarantee Program Procedures	UC	Published in Fed. Reg. in final on July 23, 1980 (45 FR 49083)
NOAA/NMFS	*High Seas Salmon Fishery Management Plan (FMP)(Amendment No. 1)	UC	**Published in Fed. Reg. in final on September 8, 1980 (45 FR 59172)
NOAA/NMFS	U.S. Standards for Grades of Fish Fillets (50 CFR Part 263)	UR	Final notice for new permissive regulations for quality standards for fillets established and effective July 23, 1979 (50 CFR Part 263, Subpart A)

1/ Prior Agenda refers to third Agenda which was published on June 5, 1980 (45 FR 37972)
2/ Listed in prior Agenda(s) as regulation under consideration (UC) or existing regulation under review (UR)

*Regulation was deemed significant by Department unit.
**Regulatory analysis performed by Department unit.

Department Unit	Title of Regulation	Prior Agenda Listing 2/	Reason for Deletion from Agenda
NOAA/NMFS	Uniform Standards for Organization, Practices, and Procedures - Regional Fishery Management Councils (50 CFR Part 601, Subpart C)	UR	Review of regulations has been completed. Existing regulations will be revised to conform with current agency policy with regard to uniform standards for administrative and operational practices of the Regional Fishery Management Councils. NOTE: Agenda item being deleted from list of regulations "under review" and being added to list of regulations "under consideration."
NOAA/OCZM	Regulations for Proposed Georges Bank Sanctuary (Tentative)	UC	The site was withdrawn as an active candidate for marine sanctuary designation. This decision was based on the fact that the ability of the existing regulatory mechanisms to protect the values of the area most immediately threatened had been significantly increased. The withdrawal announcement was published in the Fed. Reg. on October 31, 1979 (44 FR 62553)
NOAA/OCZM	Shorefront Access/Island Preservation Regulations	UC	Formulation of regulations has been postponed pending the outcome of legislation to amend the Coastal Zone Management Act.
NOAA/OCZM	Estuarine Sanctuary Regulations	UR	Review completed. See regulations under consideration.
OCE/CENSUS	Foreign Trade Statistics (15 CFR Part 30)	UC	One proposed amendment to this regulation has been dropped. The proposed amendment dealt with fuel oil taken on board by U.S. and foreign vessels engaged in foreign trade. The other amendment, dealing with obtaining statistical data on movements of merchandise into and out of U.S. Foreign Trade Zones, is still under consideration.

1/ Prior Agenda refers to third Agenda which was published on June 5, 1980 (45 FR 37972)

2/ Listed in prior Agenda(s) as regulation under consideration (UC) or existing regulation under review (UR)

* Regulation was deemed significant by Department unit.

** Regulatory analysis performed by Department unit.

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Appendix—Complete Entries of Significant Regulations in DOC's Semiannual Agenda of Regulations

DOC Department Unit: Office of the Secretary, Office of Organization and Management Systems

Title of Regulation: Public Information, Freedom of Information (15 CFR Subtitle A–Part 4)

(a) *Description and Need:*

The Freedom of Information Act (FOIA) is being employed frequently by corporations in an effort to obtain information about other business operations. The administrative burden of the growing number of requests for business data has fallen on agencies handling the requests, and on those companies whose information is sought. Hundreds of requests dealing with procurement data are handled by this Department each year.

The FOIA establishes the policy that all Government information should be available to the public unless there is a reason to withhold it. Business contends that the release of certain information would permit competitors to scrutinize pricing strategy, discount policy, profit margin, and other vital data.

A September 1980 departmental study, entitled "Study of Policy and Procedures for Handling Business Information under the Freedom of Information Act" reviewed the Department's decisionmaking process. The study recommended that the Department's practice of communicating with business data submitters should be formally adopted by inclusion in the Department's FOIA regulations. The regulations will:

- Apply only to data potentially covered by the fourth, or "business confidential" exemption of the FOIA, not to business data which is covered by the third, or "otherwise protected by statute" exemption.
- Provide that the Department will notifiy submitters of the receipt of an FOIA request for records they have submitted and that the submitters will have the opportunity to give the Department additional information on why the records requested should not be disclosed.
- Provide a means of dealing with time constraints, such as seeking the requester's voluntary cooperation, or using the additional time authorized by statute.

(b) *Legal Authority*:

5 U.S.C. 552, the Freedom of Information Act.

(c) *Importance*:

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: February 1, 1981.

(ii) In final form: April 1, 1981.

(e) *Tentative Plan for Obtaining Public Comments:* Federal Register publication and notification of firms that commonly deal with the Department of Commerce.

(f) *Major Issues:*

- How should business firms' right to keep proprietary data confidential be balanced with the public's right to know?
- How can the Department respond promptly to FOIA requests that require notification to business data submitters?

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes——, no x, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

All public comments are available from the Central Reference and Records Inspection Facility.

(h) *Agency contract:*

Donald S. Budowsky, Management Analyst, Office of Organization and Management Systems, Washington, D.C. 20230, (202) 377–4217.

DOC Department Unit: Patent and Trademark Office (PTO)

Title of Regulation: Patent interference proceedings (37 CFR 1.225, 1.231, 1.253, 1.254, 1.258 and 1.288)

(a) *Description and Need:* PTO is considering a revision of its regulations, currently published in Title 37, Code of Federal Regulations, Part 1, relating to motions, printed briefs, the use of discovery and final hearings in interference proceedings between rival inventors to determine who was the first inventor. The established practice relating to motions needs to be defined more specifically and with greater clarity. Recent experience has demonstrated a need to make it clear that after an interference has been redeclared, a motion is not permitted if it could have been filed earlier during the motion period and been considered by the primary examiner. A recent decision of the United States Court of Customs and Patent Appeals indicates a need to state specifically that an issue of benefit raised by motion is not preserved for later consideration at final hearing unless the motion was transmitted to, and decided by, the primary examiner. The same Court has also made certain amendments in its rule governing the acceptance of printed briefs which should be reflected in PTO's comparable regulation governing the acceptance of printed briefs.

(b) *Legal Authority:* 35 U.S.C. 6, as amended.

(c) *Importance:*

(i) Significant? (yes x, no ——, unknown ——).

(ii) Major? (yes ——, no x, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: November 1980.

(ii) In final form: April 1981.

(e) *Tentative Plan for Obtaining Public Comments:* PTO will publish its proposed revision of the regulations in the **Federal Register** and the *Official Gazette* and invite the public to submit comments. No public hearing will be held.

(f) *Major Issues:* None.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no x, unknown ——). Anticipated date of draft analysis: Not applicable

(ii) Other documents: None.

(h) *Agency contact:*

Ian A. Calvert, Chairman, Board of Patent Interferences, Commissioner of Patents and Trademarks, Washington, D. C. 20231, (703) 557–3625.

Title of Regulation: Deposit of computer program listings (37 CFR 1.21, 1.77 and 1.96)

(a) *Description and Need:* PTO proposes to revise its regulations relating to patent application disclosures, currently published in Title 37, *Code of Federal Regulations*, Part 1, to allow lengthy computer program listings to be deposited in PTO and incorporated by reference in the patent application to the deposited listing. Under current regulations, lengthy computer program listings must be reproduced in the specification or the drawings as integral parts of a patent application. The proposed revision will benefit patent applicants by relieving them of the burden and expense of reproducing lengthy computer program listings in the specification or the drawings of a patent application. PTO and patent applicants will both benefit from a reduction in the costs of printing patents which do not include a lengthy computer program listing in the specification or drawings.

(b) *Legal Authority:* 35 U.S.C. 6, as amended.

(c) *Importance:*

(1) Significant? (yes x, no ——, unknown ——).

(ii) Major? (yes ——, no x, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Has been published.

(ii) In final form: January 1981.

(e) *Tentative Plan for Obtaining Public Comments:* PTO published the proposed revision in the **Federal Register** (42 FR 30522, June 15, 1977) for comment and held a public hearing.

(f) *Major Issues:* None.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no x, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: A file of the written comments received by the PTO, a summary and analysis of the comments and a transcript of the hearing will be available for examination by interested parties.

(h) *Agency Contacts:* Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–3070. J. Kent Hughes, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–0410.

Title of Regulation: File wrapper continuing application procedure (37 CFR 1.62 and 1.138).

(a) *Description and Need:* PTO is considering a revision of its regulations currently published in Title 37, *Code of Federal Regulations,* Part 1, to allow the prosecution of patent applications to continue after a final rejection if an additional fee is paid. The revision will benefit patent applicants by making it unnecessary for them to file a complete new application in order to continue prosecution after a final rejection in the original application. PTO will benefit from a saving in file space and a reduction in handling and recordkeeping costs.

(b) *Legal Authority:* 35 U.S.C. 6, as amended.

(c) *Importance:*

(i) Significant? (yes x, no ——, unknown ——).

(ii) Major? (yes ——, no x, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: November 1980.

(ii) In final form: May 1981.

(e) *Tentative Plan for Obtaining Public Comments:* PTO will publish its proposed revision in the **Federal Register** and the *Official Gazette* for comment. A public hearing may be held.

(f) *Major Issues:* None.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes——, no X, unknown——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contract:* Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231 (703) 557–3070.

Title of Regulation: Professional conduct of and advertising by persons registered to practice before the PTO (37 CFR 1.344, 1.345, 2.13 and 2.14)

(a) *Description and Need:* PTO is considering a revision of its regulations prescribing the standards of conduct and advertising of persons registered to practice before the PTO, currently published in Title 37, *Code of Federal Regulations,* Parts 1 and 2. PTO proposes to revise these regulations to make reference to the current version of the American Bar Association's "Code of Professional Responsibility," an older version being referred to in the current regulations, and to make the standards for advertising consistent with recent decisions of the Supreme Court.

(b) *Legal Authority:* 35 U.S.C. and 31, as amended.

(c) *Importance:*

(i) Significant? (yes X, no——, unknown——).

(ii) Major? (yes——, no X, unknown——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: November 1980.

(ii) In final form: June 1981.

(e) *Tentative Plan for Obtaining Public Comments:* PTO will publish the proposed revision of these regulations in the **Federal Register** and the *Official Gazette* for comment. A public hearing will also be held.

(f) *Major Issues:*

The major issue involved in the proposed revision is whether the American Bar Association's "Code of Professional Responsibility" should continue to be PTO's standard of conduct.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes——, no X, unknown——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:* Harry I. Moatz, Assistant Solicitor; Commissioner of Patents and Trademarks, Washington, D.C. 20231 (703) 557–2238.

Title of Regulation: Compulsory counterclaims in trademark opposition and cancellation proceedings (37 CFR 106 and 2.114)

(a) *Description and Need:* PTO is considering a revision of its regulations relating to counterclaims in trademark cases, currently published in Title 37, *Code of Federal Regulations,* Part 2. Defendants who could counterclaim to cancel a registration pleaded by the plaintiff in trademark opposition and cancellation cases are not required by current regulations to do so. The revision under consideration would require the defendant to do so. The primary benefit of the revision will be to avoid piecemeal litigation and settle all issues between the parties at one time with a minimum expenditure of time and effort by the parties and PTO.

(b) *Legal Authority:* Pub. L. 489, 79th Cong., 2d Sess., Ch. 540, Sec. 41, as amended (15 U.S.C. 1123, as amended).

(c) *Importance:*

(i) Significant? (yes X, no——, unknown——).

(ii) Major? (yes——, no X, unknown——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Has been published.

(ii) In final form: December 1980.

(e) *Tentative Plan for Obtaining Public Comments:* PTO published the proposed revision in the **Federal Register** (44 FR 22478, April 16, 1979) and the *Official Gazette* for comment.

(f) *Major Issues:*

The major issue involved in the revision being considered by PTO is whether a defendant would, in certain circumstances, be precluded from filing a concurrent use application if he or she is required to counterclaim for cancellation of a registration pleaded by the plaintiff.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: A file of the comments the PTO has received and a summary and analysis of the comments will be available for examination by interested parties.

(h) *Agency Contact:* David J. Kera, Member, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–3551.

Title of Regulation: Secrecy of certain inventions and licenses to file applications in foreign countries (37 CFR Part 5).

(a) *Description and Need:* PTO has reviewed these regulations and found that they should be revised to clarify procedures and provide up-to-date information relating to these procedures.

(b) *Legal Authority:* 35 U.S.C. 6 and 181–188, as amended.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: May 1981.

(ii) In final form: October 1981.

(e) *Tentative Plan for Obtaining Public Comments:* PTO will published its proposed revision in the **Federal Register** and the *Official Gazette* and invite the public to submit comments. No public hearing will be held.

(f) *Major Issues:* None.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:* S. W. Engle, Special Laws Administration Group, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–2897.

Title of Regulation: Correction of inventorship (37 CFR 1.45, 1.48 and 1.324).

(a) *Description and Need:* PTO is considering a revision of its regulations, currently published in Title 37, *Code of Federal Regulations,* Part 1, to permit correction of inventorship under certain circumstances in a patent application filed by a person who is not the sole inventor or by persons who are not the joint inventors. Issued patents would be similarly correctable. The revision is needed in order to remove restrictions against this type of substitution under the circumstances existing in *Stoddard* v. *Dann,* 564 F.2d 556, 195 USPQ 97 (D.C. Cir. 1977).

(b) *Legal Authority:* 35 U.S.C. 6, as amended.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: November 1980.

(ii) In final form: June 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

PTO will publish its proposed revision of the regulations in the **Federal Register** and the *Official Gazette* and invite the public to submit comments. A public hearing will be held.

(f) *Major Issues:*

The major issues involved in the revision under consideration are whether the PTO should authorize substitution of one sole inventor for another under the circumstances in *Stoddard* v. *Dann* and how these circumstances should be defined.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——).

(ii) Other documents: None.

(h) *Agency Contact:* Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–3070.

Title of Regulation: Continuation-in-part application oath or declaration (37 CFR 1.65, 3.18 and 3.18a)

(a) *Description and Need:* PTO proposes to revise its regulations to provide in their oaths or declarations in patent applications, currently published in Title 37, *Code of Federal Regulations,* Part 1. PTO proposes to require that an oath or declaration speak as of the filing date of the application if the application is a continuation-in-part. This requirement will provide information that court decisions indicate should be considered by PTO in examining patent applications.

(b) *Legal Authority:* 35 U.S.C. 6, as amended.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Published (43 FR 55417) November 28, 1978; revised proposal November 1980.

(ii) In final form: May 1981.

(e) *Tentative Plan for Obtaining Public Comments:* PTO published a proposed revision in the **Federal Register** for comment and held a public hearing on February 7, 1979. In view of objections to one part of the proposed revision, that part is being deleted. A revised proposal will be published for comment since the original proposal was inadvertently not published in the Official Gazette. No further hearing will be held.

(f) *Major Issues:* There are no major issues involved in the proposed revision.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: A file of the written comments received by PTO, a transcript of the hearing and a summary and analysis of comments will be available for examination by interested parties.

(h) *Agency Contact:* Louis O. Maassel, Editor of the Manual of Patent Examining Procedure, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–3070.

Title of Regulation: Requests for identifiable records (37 CFR 1.15)

(a) *Description and Need:* PTO has reviewed and found that it needs to update its regulation, currently published in Title 37, *Code of Federal Regulations,* Part 1, relating to requests by members of the public for records not disclosed as part of the regular informational activity of PTO and not otherwise dealt with in Part 1.

(b) *Legal Authority:* 35 U.S.C. 6, as amended.

(c) *Importance of Regulation:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: November 1980.

(ii) In final form: June 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

PTO will publish its proposed revision in the **Federal Register** and the *Official Gazette* and invite the public to submit comments. No public hearing will be held.

(f) *Major Issues*: None.

(g) *Documents Available to the Public*:

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact*: John W. Dewhirst, Associate Solicitor, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–3542.

Title of Regulation: Ex parte prosecution of trademark applications, inter partes proceedings before the Trademark Trial and Appeal Board, petitions to the Commissioner and post-registration requirements (37 CFR 2.20, 2.27, 2.63, 2.65, 2.81, 2.88, 2.94–2.135, 2.142, 2.146, 2.165, 2.173, 2.184 and 2.186)

(a) *Description and Need*: PTO is considering a revision of its regulations relating to the ex parte prosecution of trademark applications, inter partes proceedings before the Trademark Trial and Appeal Board, petitions to the Commissioner and post-registration requirements, currently published in Title 37, *Code of Federal Regulations,* Part 2, which have been found on review to need clarification, updating and expansion.

(b) *Legal Authority*: Pub. L. 489, 79th Cong., 2d Sess., Ch. 540, Sec. 41, as amended (15 U.S.C. 1123, as amended).

(c) *Importance*:

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: January 1981.
(ii) In final form: November 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
PTO will publish its proposed revision in the **Federal Register** and the *Official Gazette* and invite the public to submit comments. No public hearing will be held.
(f) *Major Issues:* None.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.
(ii) Other documents: None.
(h) *Agency Contact:* David J. Kera, Member, Trademark Trial and Appeal Board, Commissioner of Patents and Trademarks, Washington, D.C. 20231, (703) 557–3551.

DOC Department Unit: National Marine Fisheries Service

Title of Regulation: Fishery Management Plan (FMP) for the Spiny Lobster Fishery of Puerto Rico and the Virgin Islands.

(a) *Description and Need:*
This action will initiate management of the spiny lobster resources of the Caribbean. Management measures implemented will protect long-term yields, prevent depletion of the stocks, increase yield from the fishery, and acquire information necessary to better manage the fishery.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (Yes X, no ——, unknown ——).
(ii) Major? (Yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: January 1981.
(ii) In final form: April 1981.
(e) *Tentative Plan for Obtaining Public Comment:*
Publication in **Federal Register** and public hearings.
(f) *Major Issues:*
Gear and user group conflicts in harvesting the stock, poaching by pulling another's traps, and establishment of a size limit.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (Yes X, no ——, unknown ——).
Date of draft analysis: May 1980.
Other documents:
Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the Virgin Islands.
(h) *Agency Contact:*
Harold B. Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813) 893–3141.

Title of Regulation: Bering Sea and Aleutian Islands Groundfish Fishery Management Plan (FMP).

(a) *Description and Need:*
Regulates foreign and domestic fishermen in the Bering Sea and North Pacific.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (Yes X, no ——, unknown ——).
(ii) Major? (Yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: November 1980.
(ii) In final form: February 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Well be published in proposed form in the **Federal Register.**
(f) *Major Issues:*
Domestic processing capacity; area restrictions.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (Yes X, no ——, unknown ——).
Date of draft analysis: October 1979.
(ii) Other documents: Bering Sea and Aleutian Islands Groundfish FMP.
(h) *Agency Contact:*
Robert W. McVey, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907) 586–7229.

Title of Regulation: Alaska King Crab Fishery Management Plan (FMP).

(a) *Description and Need:*
Regulation of domestic fishing for King crab in the Fishery Conservation Zone off Alaska.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (Yes X, no ——, unknown ——).
(ii) Major? (Yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: March 1981.
(ii) In final form: July 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Well be published in proposed form in the **Federal Register** as proposed regulations.
(f) *Major Issues:*
Optimum yield of King crab.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (Yes X, no ——, unknown ——).
Date of draft analysis: August 1980.
(ii) Other documents: Alaska King Crab Fishery Management Plan.
(h) *Agency Contact:*
Robert W. McVey, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907) 586–7221.

Title of Regulation: Groundfish Fishery Management Plan (FMP) (Southeast Region)

(a) *Description and Need:*
Implement regulations for the management of groundfish resources and to minimize user conflicts.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: March 1981.
(ii) In final form: August 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Public hearings will be held on the FMP. Consultations will be conducted with commercial and recreational organizations, local, State and Federal agencies as appropriate.
(f) *Major Issues:*
Utilization and maintenance of the resource while minimizing conflicts with other commercial interests.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——).
Date of draft analysis: July 1980.
(ii) Other documents: Groundfish Fishery Management Plan.
(h) *Agency Contact:*
Harold B. Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813) 893–3141.

Title of Regulation: Reef Fish Resources of the Gulf of Mexico Fishery Management Plan (FMP)

(A) *Description and Need:*
Implementation of reef fish and management controls for the domestic harvest of reef fishes in the Fishery Conservation Zone (FCZ). The basic objective is to manage these stocks for their optimum yield.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant: (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: January 1981.
(ii) In final form: April 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Public hearings will be held on the FMP. Consultation will be held with State, local and Federal agencies as appropriate.
(f) *Major Issues:*
Rebuild declining reef fish stock, monitor the harvest of reef fish resources with a reporting system, and minimize conflicts between user groups (i.e., traps versus hook and line).
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: April 1980.
(ii) Other documents:
Reef Fish Resources of the Gulf of Mexico Fishery Management Plan
(h) *Agency Contract:*
Harold B. Allen, Acting Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813) 893–3141.

Title of Regulation: Coastal Migratory Pelagic Fishery Management Plan (FMP)

(a) *Description and Need:*
The action will result in management of king and Spanish mackerel, and cobia in the Fishery Conservation Zone (FCZ) within the South Atlantic and Gulf of Mexico. Management measures are being developed to resolve gear conflicts among user groups.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: January 1981.
(ii) In final form: April 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Publication in **Federal Register** and public hearings.
(f) *Major Issues:*
Maintenance of the resource while making fair allocations of the stocks available to both recreational and commercial fishermen.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: March 1980.
Other documents: Coastal Migratory Pelagic Fishery Management Plan.
(h) *Agency Contact:*
Harold B. Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893–3141.

Title of Regulation: Precious Coral Fishery Management Plan (FMP) (Western Pacific)

(a) *Description and Need:*
Implementation of the FMP for Precious Coral Fisheries of the Western Region is needed to protect corals from overfishing and to achieve the optimum yield from the fishery.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: September 15, 1980 (45 FR 60957).
(ii) In final form: December 1980.
(e) *Tentative Plan for Obtaining Public Comments:*
Hearings on the FMP have been held previously. Regulations will be subject to 60-day public review as well as Department of Commerce Secretarial review and approval of the FMP.
(f) *Major Issues:*
Allowing exploratory fishing by dredging or other nonselective means; establishment of quotas associated with optimum yields; allocation of exploratory quotas to foreign interests.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——).
Date of draft analysis: April 1980.
Anticipated date of final analysis: December 1980.
(ii) Other documents:
Fishery Management Plan for Precious Coral Fisheries of the Western Pacific, and associated Final Environmental Impact Statement.
(h) *Agency Contact:*
Alan W. Ford, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213) 548–2575.

Title of Regulation: Tanner Crab Fishery Management Plan (FMP) Regulations (Alaska) (Amendment No. 5)

(a) *Description and Need:*
Regulates foreign and domestic harvest of Tanner crab in Fishery Conservation Zone (FCZ) off Alaska.
(b) *Legal Authority.*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unkown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: April 15, 1980 (45 FR 25421).
(ii) In final form: November 1980.
(e) *Tentative Plan for Obtaining Public Comments:*
Proposed regulations will be published in the **Federal Register.** Public hearings have been held by the Regional Fishery Management Council.
(f) *Major Issues:*
Optimum yield of stocks; allowable level of foreign fishing.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown). Date of draft analysis: February 1980.
(ii) Other documents: Commercial Tanner Crab Fishery Off the Coast of Alaska Fishery Management Plan (FMP).
(h) *Agency Contact:*
Robert W. McVey, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; (907) 586–7221.

Title of Regulation: Groundfish Amendment to the Atlantic Groundfish Fishery Management Plan (FMP), Supplement No. 4 to the Final Environmental Impact Statement

(a) *Description and Need:*
Increase optimum yields for cod, haddock, and yellowtail flounder with corresponding adjustments in annual commercial quotas, quarterly quota guidelines, and vessel class allocations. Optimum yield increases based on improved stock conditions as indicated by 1979 resource assessments.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: October 1, 1980.
(ii) In final form: December 30, 1980.
(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.
(f) *Major Issues:*
No major issues of controversy.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: December 6, 1979
(ii) Other documents: Supplement to Final Environmental Impact Statement.

(h) *Agency Contact:*
Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; (617) 281–3600.

Title of Regulation: Bering Sea—Chukchi Sea Herring Fishery Management Plan (FMP)

(a) *Description and Need:*
Regulation of domestic and foreign fishing in the Bering Sea and Chukchi Sea Fishery Conservation Zone.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
d. *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: December 1980.
(ii) In final form: March 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in **Federal Register** as proposed regulations.
(f) *Major Issues:*
Herring optimum yield, allowable level of foreign fishing, allowable domestic harvest.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: May 1980.
(ii) Other documents: Bering Sea—Chukchi Sea Fishery Management Plan.
(h) *Agency Contact:*
Robert W. McVey, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; (907) 586–7221.

Title of Regulation: Tanner Crab Fishery Management Plan (FMP) Regulations (Alaska) (Amendment No. 7)

(a) *Description and Need:*
Establish optimum yields, domestic annual harvest and foreign fishing appropriate to the 1981 fishing season.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: December 1980.
(ii) In final form: March 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Proposed regulations will be published in the **Federal Register**. Public hearings have been held by the Reginal Fishery Management Council.
(f) *Major Issues:*
The impact of the measures on the U.S. export market for Tanner Crab.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Anticipated date of draft analysis: December 1980.
(ii) Other documents: Commercial Tanner Crab Fishery off the Coast of Alaska Fishery Management Plan (FMP).
(h) *Agency Contact:*
Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; (907) 586–7221.

Title of Regulation: Atlantic Butterfish Fishery Management Plan (FMP)

(a) *Description and Need:*
Regulations will implement the Fishery Management Plan for Butterfish. The regulations will control the domestic and foreign fishery in the Fishery Conservation Zone (FCZ) of the Atlantic Ocean.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: April 1, 1980 (45 FR 21307).
(ii) In final form: November 1980.
(e) Tentative Plan for Obtaining Public Comments:
Publication of proposed rulemaking in **Federal Register** for 60-day public comment period. News release mailed to state agencies, environmental groups, and fisheries organizations indicating where text of proposed rulemaking can be obtained.
(f) Major Issues:
Optimum yield for butterfish, allocation of buterfish between domestic and foreign fishermen, provisions for reallocation of butterfish from domestic quota to foreign quota during fishing season, and mandatory reporting of catches by domestic vessels.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: August 1979.
(ii) Other documents: Fishery Management Plan and accompanying Environmental Impact Statement for Butterfish (November 1978); Revised Fishery Management Plan (June 1979).
(h) *Agency Contact:*
Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; (617) 281–3600.

Title of Regulation: Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico

(a) *Description and Need:*
The action will result in the management of the shrimp fishery of the Gulf of Mexico. It will optimize the yield of shrimp, minimize take of incidental finfish, coordinate management measures with state programs where possible, and provide for a statistical reporting system.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: October 1980.
(ii) In final form: January 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Publication in **Federal Register** and public hearings.
(f) *Major Issues:*
Maximize the harvest of shrimp and minimize the taking of finfish and marine turtles.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: October 1979.
Other documents:
Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.
(h) *Agency Contact:*
Harold B. Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893–3141.

Title of Regulation: Fishery Management Plan (FMP) for Sharks and Other Elasmobranchs

(a) *Description and Need:*
To manage the sharks and other elasmobranchs of the Gulf of Mexico for maximum utilization.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: May 1981.
(ii) In final form: September 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Publication in **Federal Register** and public hearings.

(f) *Major Issues:*
Determination of optimum and catch allocations among user groups.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Anticipated date of draft analysis: December 1980.
(ii) Other documents: Fishery Management Plan for Sharks and Other Elasmobranchs.
(h) *Agency Contact:*
Harold B. Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893–3141.

Title of Regulation: Regulations for the U.S. Sockeye and Pink Salmon Fisheries Under the Fraser River Fishery Convention

(a) *Description and Need:*
Regulates the U.S. fishery for sockeye and pink salmon in U.S. Convention waters in the Strait of Juan de Fuca and northern Puget Sound.
(b) *Legal Authority:*
16 U.S.C. 776–776f.
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ———.
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) in proposed form: May 1981.
(ii) In final form: July 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in the **Federal Register.**
(f) *Major Issues:*
Fishing schedules: Allocations among domestic user groups.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.
(ii) Other documents: Previous regulations for 1977, 1978, 1979, and 1980. Annual reports—International Pacific Salmon Fisheries Commission (IPSFC). Annual summaries of U.S. Indian and non-Indian fishing activities in IPSFC fisheries (Northwest Region, NMFS).
(h) *Agency Contact:*
Herbert Larkins, Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, North, Seattle, Washington 98109 (206) 442–7575.

Title of Regulation: High Seas Salmon Fishery Management Plan (FMP) (Amendment No. 2)

(a) *Description and Need:*
Prevents overfishing and regulates domestic troll salmon fishery in the Fishery Conservation Zone (FCZ) off Alaska.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ———).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: May 1981.
(ii) In final form: July 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in **Federal Register** as proposed regulations.
(f) *Major Issues:*
Controlling fishing effort on stocks.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Anticipated date of draft analysis: February 1981.
(ii) Other documents: High Seas Salmon FMP.
(h) *Agency Contact:*
Robert W. McVey, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907) 586–7221.

Title of Regulation: Bluefish Fishery Management Plan (FMP)

(a) *Description and Need:*
Intensive recreational effort in this fishery, and possibility of commercial entry into market of required data collection and establishment of framework for commercial/recreational regulatory regime.
(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ———).
(ii) Major? (yes X, no ——, unknown ——).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: March 1981.
(ii) In final form: July 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.
(f) *Major Issues:*
State cooperation; need for an FMP in view of present miniscule commercial effort; and difficulty of management of a recreational fishery.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Anticipated date of draft analysis: January 1981.
(ii) Other documents: None.
(h) *Agency Contact:*
Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930 (617) 281–3600.

Title of Regulation: Regulation Declaring Restricted Fishing Areas (Port Canaveral and Other Areas) (50 CFR Parts 222 and 227)

(a) *Description and Need:*
On July 28, 1978, the National Marine Fisheries Service published notice in the **Federal Register** that it is considering areas where sea turtles are concentrated for designation as Restricted Fishing Areas and/or Critical Habitat (43 FR 32800). A Restricted Fishing Area is an area where incidental catch is prohibited or otherwise controlled. Controls may include proper gear usage, fishing methods or procedures, or other regulatory controls to reduce or eliminate incidental catch of sea turtles. The following areas where turtles are concentrated will be considered for designation as Restricted Fishing Areas: North Island—Georgetown, South Carolina; Cape Romain, South Carolina; Brunswick River Channel, Georgia; Hole-in-the-Rock Channel, Georgia; Cape Canaveral Ship Channel, Florida; and North and South Padre Island, Texas.
(b) *Legal Authority:*
Endangered Species Act of 1973 (Pub. L. 93–205) (87 Stat. 884) (16 U.S.C. 1531–1543).
(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes ——, no ——, unknown X).
(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: January 1981.
(ii) In final form: February 1981.
(e) *Tentative Plan for Obtaining Public Comments:*
Prior to the designation of any Restricted Fishing Area within state waters, the Assistant Administrator (NMES) shall consult with the Governor(s) and Marine Conservation Department(s) of the affected state(s). The Assistant Administrator shall also consult with the appropriate Regional Fishery Management Councils and with affected fishing industries. Public meetings and hearings will be held.
(f) *Major Issues:*
Unknown at this time. The environmental assessment and, if appropriate, environmental impact statement will examine major issues.
(g) *Documents Available to the Public:*
(i) Regulatory analysis required (yes ——, no ——, unknown X). Anticipated date of draft analysis: Not determined.

(ii) Other documents: An environmental assessment and/or environmental impact statement will be prepared prior to the proposed designation(s).

(h) *Agency Contact:*

Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7461.

Title of Regulation: Amendments to Regulations to Control the Incidental Take of Porpoise in the Yellowfin Tuna Purse Seine Fishery

(a) *Description and Need:*

The Marine Mammal Protection Act of 1972 states that the incidental mortality and serious injury of marine mammals involved in commercial fishing operations must be reduced to levels approaching a zero rate. Regulations and quotas for tuna purse seine fishing were promulgated in 1977 for calendar years 1978, 1979, and 1980. These regulations continued action to reduce the incidental injury and mortality of marine mammals and to prohibit the importation of fish caught in association with marine mammals, from countries which do not meet U.S. standards.

(b) *Legal Authority:*

16 U.S.C. 1361–1407.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: February 15, 1980 (45 FR 10552).

(ii) In final form: February 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Public comment will be solicited at all stages of the regulatory amendment process, including those opportunities available through the National Environmental Policy Act process and the Administrative Procedures Act process. Formal administrative law judge (ALJ) hearings were conducted in Washington, D.C., and San Diego, California.

(f) *Major Issues:*

The status of the porpoise populations will be the central issue. A second issue will be the economic viability of the U.S. tuna industry. U.S. flag tuna vessels comprise approximately 50 percent of the world tuna fleet operating in the eastern tropical Pacific Ocean. U.S. vessels landed approximately 37,000 metric tons of yellowfin tuna in 1978 which were caught in association with porpoise. The economic viability of the world tuna fleet is highly dependent upon the ability to catch tuna in association with porpoise. The mortality of porpoise has been reduced from over 300,000 in 1971 to under 20,000 in 1978. However, public concern over the mortality of porpoise continues. Strong public pressure is expected to reduce the mortality to zero. Tuna industry representatives are expected to exert pressure to keep quotas high enough to avoid economic harm to their operations.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——). Date of draft analysis: November 1979.

(ii) Other documents: None.

(h) *Agency Contact:*

Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7461.

Title of Regulation: Extension of Commercial/Recreational Salmon Off California, Oregon, and Washington Fishery Management Plan (FMP) (50 CFR Part 661) (Fishery Year 1981)

(a) *Description and Need:*

Prevents overfishing and regulates the domestic fishery for salmon in the Fishery Conservation Zone (FCZ) off California, Oregon, and Washington.

(b) *Legal Authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: May 1981.

(ii) In final form: August 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Will be published in the **Federal Register** as proposed regulations.

(f) *Major Issues:*

Length of fishing season. Allocation among domestic user groups.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: February 1981.

Other documents: Commercial and Recreational Salmon FMP Amendment, 1979; Commercial and Recreational Salmon FMP, 1978; Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California FMP, 1977; and Commercial and Recreational Salmon FMP Amendment, 1980.

(h) *Agency Contact:*

Herbert Larkins, Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, North, Seattle, Washington, 98109, (206) 442–7575.

Title of Regulation: Designation of Critical Habitat for the Hawaiian Monk Seal (50 CFR Part 222)

(a) *Description and Need:*

Designation of Critical Habitat for the Hawaiian Monk Seal is pursuant to the Endangered Species Act of 1973, as amended. The Act requires that Critical Habitat be designated for endangered and threatened species now listed in accordance with the Act. Critical Habitat means the specific areas within (or outside) the geographic range of the species on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.

(b) *Legal Authority:*

Endangered Species Act of 1973 (Pub. L. 93–205) (87 Stat. 884) (16 U.S.C. 1531–1543).

(c) *Importance:*

(i) Significant? (Yes X, no ——, unknown ——).

(ii) Major? (Yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Unknown.

(ii) In final form: Unknown.

(e) *Tentative Plan for Obtaining Public Comments:*

Public comment and consultation with state and local governments will be solicited at all stages of the process of designation, including those opportunities available through the National Environmental Policy Act process, and public hearings. Public comments will also be solicited when the proposed area(s) designated are published in the **Federal Register.**

(f) *Major Issues:*

Impact of the designation on state and Federal activities within, and adjacent to, the Critical Habitat; economic impact of the proposed area designation on the private sector; effectiveness of the area designation on increasing the likelihood of the survivial of endangered species; ecological impact of the area designation on the associated flora and fauna within, and adjacent to, the Critical Habitat.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (Yes ——, no X, unknown ——).

Anticipated date of draft analysis: Not applicable.

(ii) Other documents: Draft Environmental Impact Statement (DEIS) is available for public review.

(h) *Agency Contact:*
Alan W. Ford, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731, (213) 548–2575.

Title of Regulation: American Lobster Fishery Management Plan (FMP)

(a) *Description and Need:*
Implementation of the Fishery Management Plan (FMP) for American Lobster will be necessary to prevent recruitment overfishing and coordinate development and implementation with states.

(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*

(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no —— unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: September 1981.
(ii) In final form: January 1982.

(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.

(f) *Major Issues:*
Whether or not to adopt effort control measures; coordination with state management programs; and coordination with Canada.

(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes X, no ——, unknown ——). Anticipated date of draft analysis: Summer 1981.
(ii) Other documents: None.

(h) *Agency Contact:* Bruce Nicholls, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, (617) 281–3600.

Title of Regulation: Whaling (50 CFR Part 230)

(a) *Description and Need:*
Regulations to govern the subsistence hunt for bowhead whales conducted by U.S. Eskimos in Alaska. Whaling activities conducted by U.S. citizens domestically are subject to the terms of the Whaling Convention Act which implements the International Convention for the Regulation of Whaling, 1946. Regulations are updated annually subject to International Whaling Commission actions.

(b) *Legal Authority:*
Whaling Convention Act (16 U.S.C. 916 a–1).

(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes ——, no ——, unknown X).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: December 1980.
(ii) In final form: March 1981.

(e) *Tentative Plan for Obtaining Public Comments:*
Public meetings in Washington, D.C., and Anchorage, Alaska.

(f) *Major Issues:*
Allocation of International Whaling Commission quota among whaling villages; and licensing and reporting requirements on sighting, striking, and landing whales.

(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.
(ii) Other documents: None.

(h) *Agency Contact:* Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7461.

Title of Regulation: Fish and Wildlife Coordination Act, Uniform Procedures for Compliance

(a) *Description and Need:*
Defines requirements and procedures that must be met by Federal agencies for complying fully with the Fish and Wildlife Coordination Act (FWCA).

(b) *Legal Authority:*
President's Water Policy Memorandum issued July 21, 1978; Fish and Wildlife Coordination Act (16 U.S.C. 661); and Fish and Wildlife Act of 1956 (16 U.S.C. 742-(a–k).

(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: May 18, 1979.
(ii) In reproposed form: September 15, 1980.
(iii) In final form: February 1, 1981.

(e) *Tentative Plan for Obtaining Public Comments:*
Proposed rules were published in the **Federal Register** May 18, 1979, in response to the President's water policy directive issued July 12, 1978, and were distributed widely to state governments, Federal agencies, and public groups known to be interested. Public hearings were held in six regions during June 26–28, 1979. Approximately 450 written comments were reviewed and evaluated. A determination was made on August 17, 1979, to prepare an environmental impact statement (EIS) and notice of such intent was published for public comment (44 FR 48305). A public hearing was conducted September 14, 1979. On November 6, 1979, a Notice of Intent to Prepare an EIS on the proposal and reissue draft rules was published (44 FR 64097). An open scoping meeting was conducted on November 19, 1979. Reproposed rules and a draft EIS was jointly published in mid-September 1980.

(f) *Major Issues:*
- Applicability of FWCA to a variety of Federal activities including Outer Continental Shelf oil and gas leases, permits, licenses, grants, financial or technical assistance, or other projects affecting waters of the U.S. and oceanic waters.
- Assessment methods to be used to evaluate wildlife resource values and project effects on those values.
- Establish a definition of "equal consideration or wildlife" in planning projects and "justifiable measures" for wildlife conservation.
- Degree of involvement by National Marine Fisheries Service field biologists in the planning process of federal construction and regulatory agencies.

(g) *Documents Available to the Public:*
(i) Regulatory analysis required: (yes ——, no X, unknown ——).
Anticipated date of draft analysis: Not applicable.
(ii) Other documents: None.

(h) *Agency Contact:*
James W. Rote, Director, Office of Habitat Protection, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7409.

Title of Regulation: Sea Scallops Fishery Management Plan (FMP)

(a) *Description and Need:*
Implementation of a Fishery Management Plan for the Sea Scallops is necessary to control meat count per pound (size) and recruitment and catch per unit effort.

(b) *Legal Authority:*
16 U.S.C. 1801 *et seq.*

(c) *Importance:*
(i) Significant? (yes X, no ——, unknown ——).
(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*
(i) In proposed form: September 1981.
(ii) In final form: January 1982.

(e) *Tentative Plan for Obtaining Public Comments:*
Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.

(f) *Major Issues:*
Whether or not to adopt effort control measures; coordination with state

management programs; and coordination with Canada.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: Summer 1981.

(ii) Other documents: None.

(h) *Agency Contact:*

Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, (617) 281–3600.

Title of Regulation: Pacific Billfish and Oceanic Sharks Fishery Management Plan (FMP) (Western Pacific)

(a) *Description and Need:*

Supersedes the Preliminary Fishery Management Plan (FMP) for Pacific Billfish and Oceanic Sharks, in the Fishery Conservation Zone (FCZ) off Hawaii, Guam, American Samoa, the Northern Mariana Islands, and U.S. possessions in the central and western Pacific Ocean.

(b) *Legal Authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: March 1981.

(ii) In final form: July 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Draft FMP and Environmental Impact Statement will be circulated for public review and hearings. Draft regulations will be subject to 60-day public review period.

(f) *Major Issues:*

Control of incidental catch of billfish, sharks, and related species by foreign longline vessels fishing for tuna in the FCZ.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: December 1980.

(ii) Other documents:

Final Supplemental Environmental Impact Statement (EIS)/Preliminary Fishery Management Plan (FMP) for Pacific Billfish and Oceanic Sharks.

(h) *Agency Contact:*

Alan W. Ford, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731, (213) 548–2575.

Title of Regulation: Surf Clam and Ocean Quahog Fishery Management Plan (Amendment No. 3)

(a) *Description and Need:*

The existing plan expires on January 1, 1980. The biological data, however, indicate that continued management is necessary. Amendment No. 3 controls existing jurisdiction and authorizes consideration of additional management techniques (quotas, limited entry techniques, etc.).

(b) *Legal Authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: September 1981.

(ii) In final form: December 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.

(f) *Major Issues:*

Should there be a moratorium on new entrants to the Mid-Atlantic surf clam fishery? Should a numberical quota and optimum yield system be used in the future management of both surf clam and ocean quahog? Should the plan be amended so that regulatory authority will continue in perpetuity.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: March 1981.

(ii) Other documents:

Surf Clam and Ocean Quahog FMP.

(h) *Agency Contact:*

Bruce Nicholls, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, (617) 281–3600.

Title of Regulation: Amendment to the Atlantic Groundfish Fishery Management Plan (FMP), Supplement No. 5 to the Final Environmental Impact Statement

(a) *Description and Need:*

To provide a mechanism within the FMP which allows adjustment of optimum yields to reflect the latest status of stocks information without long time delays (adjustments based on specified criteria). Refine the FMP to eliminate measures which do not contribute to effective management, are not enforceable, or are unjustifiably costly to implement.

(b) *Legal Authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: May 15, 1981.

(ii) In final form: September 30, 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.

(f) *Major Issues:*

Biological justification for increased optimum yields for haddock and yellowtail flounder; and acceptability of criteria used to adjust optimum yields in response to assessed changes in stock abundance.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: November 30, 1980.

(ii) Other documents:

Supplement to the Final Environmental Impact Statement.

(h) *Agency Contact:*

Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, (617) 281–3600.

Title of Regulation: Pink Shrimp Fishery off Washington, Oregon, and California Fishery Management Plan (FMP)

(a) *Description and Need:*

To prevent overfishing on the pink shrimp resource, and to increase economic benefits derived from resource.

(b) *Legal Authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: May 1981.

(ii) In final form: September 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Will be published in **Federal Register** as proposed regulations. Regional Fishery Management Council will hold public hearings.

(f) *Major Issues:*

Mesh size, winter closures and their impact on fishermen from the States of Washington, Oregon, and California.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: February 1981.

Other documents: None.

(h) *Agency Contact:*

Herbert Larkins, Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, North Seattle, Washington 98109, (206) 442–7575.

Title of Regulation: Spiny Lobster Fishery Management Plan (FMP) (Western Pacific)

(a) *Description and Need:*

Implementation of the Fishery Management Plan (FMP) for Spiny Lobster Fisheries of the Western Pacific Region will be necessary to achieve the optimum yield and to prevent overfishing.

(b) *Legal Authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: May 1981.

(ii) In final form: August 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Western Pacific Regional Fishery Management Council will prepare draft FMP for public hearings, and comments will be received on draft Environmental Impact Statement, as well. Regulations and final FMP will be subject to 60-day public review.

(f) *Major Issues:*

Determination of optimum yield and selection of size limits for spiny lobster.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: December 1980.

(ii) Other documents:

Fishery Management Plan and associated Environmental Impact Statement for Spiny Lobster Fisheries of the Western Pacific Region.

(h) *Agency Contact:*

Alan W. Ford, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731, (213) 548–2575.

Title of Regulation: Guidelines for Development of Fishery Management Plans (FMP) (50 CFR 602.2)

(a) *Description and Need:*

Revise existing 602 regulations to conform with current agency policy with regard to standards, procedures, content, format, and integration of other statutory requirements in the development of FMP's by Regional Fishery Management Councils.

(b) *Legal Authority:*

16 U.S.C. 1851

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Fall 1981.

(ii) In final form: Winter 1981–82.

(e) *Tentative Plan for Obtaining Public Comments:*

Consultation with Council members and staff; publication as proposed regulations with comment periods appropriate to the significance of the regulation.

(f) *Major Issues:*

Fishery Conservation and Management Act national standards for fishery management plans; content, format, processing of plans, conformance with overlaying statutory requirements.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——).

Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

50 CFR Part 602 and amendments published in 1979 (44 Fr 7708) and 1977 (42 36981).

(h) *Agency Contact:*

William G. Gordon, Director, Office of Resource Conservation and Management, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634–7218.

Title of Regulation: Caribbean Shallow Water Reef Fish Management Plan

(a) *Description and Need:*

Implement management regulations for the efficient utilization of shallow water resources and to reduce user group conflicts.

(b) *Legal authority:*

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

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: June 1981.

(ii) In final form: November 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Public hearings will be held on the FMP. Consultations will be conducted with local, State and Federal agencies as appropriate.

(f) *Major Issues:*

Maintenance of the resource while providing fair allocations of the resource available to recreational and commercial fishermen.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——).

Anticipated date of draft analysis: October 1980.

Other documents: None.

(h) *Agency Contact:*

Harold B. Allen, Acting Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813) 893–3141.

DOC Department Unit: Office of Coastal Zone Management

Title of Regulation: Regulations for Proposed St. Thomas Marine Sanctuary, St. Thomas, Virgin Islands

(a) *Description and Need:*

The regulations will be necessary to protect the ecological, recreational, and aesthetic resources of certain waters off St. Thomas if designated as a Marine Sanctuary.

(b) *Legal Authority:*

Section 302(f), Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1432(f).

(c) *Importance:*

(i) Significant? (yes X, No ——, unknown ——).

(ii) Major? (yes—, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Notice of Proposed Regulations and Notice of Availability of DEIS in **Federal Register**—November 1980.

(ii) In final form: Notice of Availability of FEIS in **Federal Register**—February 1981.

Notice of Final Rulemaking in **Federal Register**—April 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Meetings were held in May and June 1979 with Virgin Islands government officials. An Issue Paper discussing the site and soliciting comments was distributed in mid-July 1979. A public workshop was held in mid-August 1979. Future comments will be solicited by:

- Publishing the Notice of Availability of the DEIS and the Notice of Proposed Rulemaking in the **Federal Register** and distributing the DEIS.
- Holding a public hearing on the DEIS in St. Thomas with extensive publicity through established mailing lists and the press.
- Publishing the Notice of Availability of the FEIS and the Notice of Final

Rulemaking in the **Federal Register** and applicable documents.

• The Governor of the Virgin Islands will be mailed copies of the DEIS, the Notice of Proposed Regulations and all other applicable documents.

(f) *Major Issues:*

Whether a marine sanctuary should be designated off St. Thomas; and the

Type and extent of the regulation of activities necessary within the sanctuary, in particular the regulation of boat anchoring and recreational diving.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes——, no X, unknown ——).

Anticipated date of draft analysis: Not applicable.

(ii) Other documents: Issue Paper.

(h) *Agency Contact:*

Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, (202) 634–4236.

Title of Regulation: Regulations for Proposed Flower Garden Banks Marine Sanctuary

(a) *Description and Need:*

The regulations will be necessary to protect the ecological, recreational, and aesthetic resources of Flower Garden Banks if designated as a Marine Sanctuary.

(b) *Legal Authority:*

Section 302(f), Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1432(f).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

In final form: Notice of Availability of FEIS in **Federal Register**—Winter 1981.

Notice of Final Rulemaking in **Federal Register**—Spring 1981.

(e) *Tentative plan for Obtaining Public Comments:*

The following has already been done to solicit comment:

• A public workshop was held in Houston, Texas, in December 1977.

• A White Paper discussing the site and soliciting comments was widely distributed in June 1978.

• Two further meetings were held in Houston in July 1978, one with recreationists and one with offshore oil and gas companies.

• The Notice of Availability of DEIS and the Notice of Proposed Rulemaking was published in the **Federal Register** on April 13, 1979 (44 FR 22061).

• Two public hearings on the DEIS were held in May 1979, one in Texas and one in Louisiana, with extensive publicity through established mailing lists and the press.

• Revised regulations, based on public comment on the DEIS and input from cooperating agencies, were published in the **Federal Register** on June 26, 1980 (45 FR 43205).

Future comment will be solicited by:

• Publishing the Notice of Availability of the FEIS and the Notice of Final Rulemaking in the **Federal Register** and distributing the FEIS.

• Mailing to the Governors of Texas and Louisiana copies of the FEIS, the Notice of Final Rulemaking, and all other applicable documents.

(f) *Major Issues:*

Whether a marine sanctuary should be designated at Flower Garden Banks; and the

Type and extent of the regulation of activities necessary within the sanctuary, in particular the regulation of oil and gas development. The economic impact of oil and gas regulation is the issue that will be of particular importance.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: White Paper; DEIS; and Reproposed Regulations.

(h) *Agency Contact:*

Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, (202) 634–4236.

Title of Regulation: Regulations for Proposed Looe Key Marine Sanctuary

(a) *Description and Need:*

The regulations will be necessary to protect the ecological, recreational, and aesthetic resources of Looe Key if designated as a Marine Sanctuary.

(b) *Legal Authority:*

Section 302(f), Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1432(f).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

In final form: Notice of Availability of FEIS in **Federal Register**—October 1980.

Notice of Final Rulemaking in **Federal Register**—December 1980.

(e) *Tentative Plan for Obtaining Public Comments:*

A public workshop was held in Big Pine Key, Florida in January 1978 regarding the proposed designation of Looe Key as a Marine Sanctuary. The DEIS was distributed in May 1980. The Notice of Availability of the DEIS and the Notice of Proposed Rulemaking were published in the **Federal Register** on May 16, 1980 (45 FR 32415). Public hearings were held in June 1980. Future comment will be solicited by:

• Publishing the Notice of Availability of the FEIS and the Notice of Final Rulemaking in the **Federal Register** and distributing the FEIS.

• The Governor of Florida will be mailed copies of the FEIS, the Notice of Final Rulemaking and all other applicable documents.

(f) *Major Issues:*

Whether a marine sanctuary should be designated at Looe Key; the size of any sanctuary designated; and the

Type and extent of the regulation of activities necessary within the sanctuary, in particular the regulation of activities impacting the coral reef.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required (yes ——, no X, unknown ——).

Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

Looe Key Resource Inventory; and DEIS.

(h) *Agency Contact:*

Nancy Foster, Deputy Director, Sanctuary Programs Office, Ofice of Coastal Zone Management, (202) 634–4236.

Title of Regulation: Regulations for Proposed Point Reyes/Farallon Islands Marine Sanctuary

(a) *Description and Need:*

The regulations will be necessary to protect ecological, recreational, and aesthetic resources of the waters around Point Reyes and the Farallon Islands if designated as a Marine Sanctuary.

(b) *Legal Authority:*

Section 302(f), Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1432(f).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

In final form: Notice of Availability of FEIS in **Federal Register**—October 1980.

Notice of Final Rulemaking in **Federal Register**—December 1980.

(e) *Tentative Plan for Obtaining Public Comments:*

In April 1978 NOAA held a public workshop in Marin County, California to discuss the recommendation of this site. In December 1978 NOAA distributed an Issue Paper with regulatory options, and the California Coastal Commission held

public hearings on the Issue Paper. The Notice of Availability of DEIS and the Notice of Proposed Rulemaking were published in the **Federal Register** on March 28 and March 31, 1980, respectively (45 FR 20545 and 20907). Public hearings were held in May 1980. The FEIS was distributed in September 1980. Future comments will be solicited by:

- Publishing the Notice of Availability of the FEIS and the Notice of Final Rulemaking in the **Federal Register.**
- Mailing to the Governor of California a copy of the FEIS, the Notice of Final Rulemaking, and all other applicable documents.

(f) *Major Issues:*

Whether a marine sanctuary should be designated in the waters around Point Reyes and the Farallon Islands; and

Type and extent of the regulation of activities necessary within the sanctuary.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——).

Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

Issue Paper; DEIS; and FEIS.

(h) *Agency Contact:*

Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 202 634–4236.

Title of Regulation: Final Regulations for Key Largo Coral Reef Marine Sanctuary

(a) *Description and Need:*

The regulations will be necessary to replace and update interim regulations to protect ecological, recreational, and aesthetic resources of Key Largo Coral Reef National Marine Sanctuary.

(b) *Legal Authority:*

Section 302(f), Title III of the Marine Protection Research and Sanctuaries Act, 16 U.S.C. 1432(f).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Notice of Proposed Final Regulations in **Federal Register**—Winter 1981.

(ii) In final form: Notice of Final Rulemaking in **Federal Register**—Spring 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Publishing the revised regulations in proposed form for comment in the **Federal Register.**

(f) *Major Issues:*

Whether to allow the taking of tropical fish for educational and public display purposes; and

Whether to prohibit wire trap fishing.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——).

Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

Interim Regulations (15 CFR Part 929).

(h) *Agency Contact:*

Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, (202) 634–4236.

Title of Regulation: Review of the Performance of Coastal States With Respect to Coastal Management

(a) *Description and Need:*

The Secretary of Commerce is directed by the 1980 amendments to the Coastal Zone Management Act to issue regulations necessary to administer section 312, which establishes the requirement for continuing review of the performance of coastal states under their approved coastal zone management programs. The regulations are needed to establish the policy and procedures to be used in these evaluations.

(b) *Legal Authoriy:*

Section 312 of the Coastal Zone Management Act, as amended, 16 U.S.C. 1458.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Notice of Proposed Regulations in **Federal Register**—April 1981.

(ii) In final form: Notice of Final Rulemaking in **Federal Register**—July 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Public notice will appear in the **Federal Register** soliciting public comments on the proposed regulation. The Office of Coastal Zone Management may hold one or more public meetings on the proposed regulation.

(f) *Major Issues:*

The major issue is the formulation of the policies and procedures according to which state coastal management programs will be evaluated. What constitutes significant improvement?

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

Memorandum to State Coastal Zone Management Program Managers from Robert W. Knecht, dated September 13, 1979, on section 312 Evaluations of Approved State CZM Programs—Purposes and Procedures.

(h) *Agency Contact:*

Jane P. Rogers, Chief of Policy and External Relations, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235, (202) 634–4245.

Title of Regulation: Regulations for Proposed Monterey Bay Marine Sanctuary

(a) *Description and Need:*

The regulations will be necessary to protect ecological, recreational, and aesthetic resources of the waters of Monterey Bay and the adjacent coast if designated as a Marine Sanctuary.

(b) *Legal Authority:*

Section 302(f), Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1432(f).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Notice of Proposed Regulations and Notice of Availability of DEIS in **Federal Register**—Spring 1981.

(ii) In final form: Notice of Availability of FEIS in **Federal Register**—Summer 1981. Notice of Final Rulemaking in **Federal Register**—Fall 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

In April 1978 NOAA held a public workshop in Monterey, California. In December 1978 NOAA distributed an Issue Paper with regulatory options, and the California Coastal Commission held hearings on the Issue Paper in March and April 1979. Future comment will be solicited by:

- Circulating preliminary draft chapters of the DEIS and holding public meetings in the affected areas.
- Publishing the Notice of Availability of the DEIS and the Notice of Proposed Rulemaking in the **Federal Register** and distributing the DEIS.
- Holding public hearings on the DEIS in Monterey area with extensive publicity through established mailing lists and the press.
- Publishing the Notice of Availability of the FEIS and the Notice of Final

Rulemaking in the Federal Register and distributing the FEIS.

• Mailing to the Governor of California a copy of the FEIS, the Notice of Final Rulemaking, and all other applicable documents.

(f) *Major Issues*:

Whether a marine sanctuary should be designated in the waters of Monterey Bay and the adjacent coast; and size of any sanctuary designated; and the type and extent of the regulation of activities necessary within the sanctuary.

(g) *Documents Available to the Public*:

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: Issue Paper.

(h) *Agency Contact*:

Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, (202) 634–4236.

Title of Regulation: Regulations for Improving the Achievement of Coastal Zone Management Objectives

(a) *Description and Need*:

The 1980 Amendments to the Coastal Zone Management Act (CZMA) require states to improve coastal management by increasing attention to issues of national concern such as: protection of significant coastal resources; minimization of flood and storm damage; siting of major facilities; public access to the coasts; waterfront redevelopment; and the simplification of government processes. The CZMA amendments require that regulations be developed to guide the implementation of the mandated improvements.

(b) *Legal Authority*:

Sections 306 and 317 of the Coastal Zone Management Act, as amended, 16 U.S.C. 1456, 1466.

(c) *Importance*:

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication*:

(i) In proposed form: Notice of Proposed Regulations in Federal Register—April 1981.

(ii) In final form: Notice of Final Rulemaking in Federal Register—July 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Public notice will appear in the Federal Register soliciting public comments on the proposed regulations. The Office of Coastal Zone Management may hold one or more public meetings on the proposed regulations.

(f) *Major Issues*:

The major issues are likely to be the interpretation of what constitutes activities that are responsive to issues of national concern and the degree of oversight that the Federal government will have over state functions.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

Previous Federal consistency regulations 44 FR 18590, March 1979.

(h) *Agency Contact:*

Jane P. Rogers, Chief of Policy, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235 (202) 634–4245.

Title of Regulation: Federal Consistency with Approved Coastal Management Programs

(a) *Description and Need:*

The Secretary of Commerce has directed the National Oceanic and Atmospheric Administration to promulgate regulations defining the term "directly affecting" in Section 307 of the Coastal Zone Management Act. Section 307 requires that all Federal activities be consistent to the maximum extent practicable with approved state coastal management programs. Clarification of the definition of this term is necessary in order to avoid future disagreements such as the one which arose between the State of California and the Department of the Interior concerning whether Outer Continental Shelf lease sales were activities that directly affected the coastal zone of a state.

(b) *Legal Authority:*

Sections 307 and 317 of the Coastal Zone Management Act, as amended, 16 U.S.C. 1456, 1466.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for* Federal Register Publication:

(i) In proposed form: Notice of proposed regulations in Federal Register—March 1981.

(ii) In final form: Notice of Final Rulemaking in Federal Register—July 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Public notice will appear in the Federal Register soliciting public comments on the proposal regulations. The Office of Coastal Zone Management may hold one or more public meetings on the proposed regulations.

(f) *Major Issues:*

The major issue is the controversy over the interpretation of the term "directly affecting" as it relates to the consequences of Outer Continental Shelf leasing and other Federal activities within the coastal zones of states with federally approved Coastal Management Programs.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents:

Previous Federal consistency regulations (44 FR 37142, June 25, 1979).

Department of Commerce Mediation record for the disagreement between the State of California and the Department of the Interior.

(h) *Agency Contact:*

Jane P. Rogers, Chief of Policy, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235 (202) 634–4245.

DOC Department Unit: MarAd

Title of Regulation: Award and Administration of Operating-Differential Subsidy for Dry Bulk Cargo Vessels (46 CFR Part 254)

(a) *Description and Need:* The Maritime Administration (MarAd) administers an operating-differential subsidy (ODS) program, which is intended to compensate American shipowners in foreign trade for the cost difference between operating a ship under American, rather than foreign registry. The level of ODS payments is based on the comparative costs incurred by representative American and foreign operators with respect to major items. The procedures for selecting representative cost items and representative foreign flags, as well as costs, and for calculating ODS payments are revised frequently as economic conditions change. The proposed regulation will recognize the need for some substantive rules and procedures in the administration of the ODS for dry bulk cargo vessels. Regulations governing ODS for all bulk cargo vessels engaged in worldwide services appear in 46 CFR Part 252, selected for review. Amendments to Part 252 will be based on the scheme and format of the newly proposed Part 254. The new Part 254 will also implement any new legislation which might be enacted, arising out of proposals submitted by MarAd and other legislative initiatives.

(b) *Legal Authority:* Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——.

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Published September 6, 1979 (44 FR 52002). (To be consolidated as a subpart in a revised 46 CFR Part 252 ODS Bulk Cargo Vessels Engaged in Worldwide Services, to be published in proposed form about December 1980.)

(ii) In final form: June 1981.

(e) *Tentative Plan for Obtaining Public Comments:* Through publication in proposed form in **Federal Register** and release of information to *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:*

The need to develop regulations that recognize the unique problems of dry bulk vessel operators receiving ODS, to clarify existing law and reflect enactment of legislative proposals, if enacted.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:*

Frederick R. Larson, Director, Office of Ship Operating Costs, Washington, D.C. 20230, (202) 377–5532.

Title of Regulations: Rules of Practice and Procedure; Procedure for Hearing on Operating-Differential Subsidy Applications; Applications for Subsidies and Other Direct Financial Aid (46 CFR Parts 201, 208 (New) and 251). (Deleted From Last Agenda in Error)

(a) *Description and Need:*

Proposed amendments to the Rules of Practice and Procedure are intended to clarify those rules and simplify them with respect to such matters as requests for discovery, time limitation for filing petitions for reconsideration, interlocutory appeals, and authority of the Maritime Subsidy Board (MSB) to deny petitions. Proposed new Part 208 would establish a standard discovery order and a standard technique for forecasting the adequacy/inadequacy of U.S.-flag liner service in hearings required under section 605(c), Merchant Marine Act, 1936 (1936 Act) relating to applications for operating-differential subsidy (ODS). The form of application for such subsidy (in Part 251) would be amended to conform to the requirements of the new Part 208. This action arises out of a Petition for Issuance of a Rule by an operator receiving ODS, alleging that there was an inordinate delay, resulting in excessive costs to applicants for ODS, in the proceedings under section 605(c) of the Act. The petition was published in the **Federal Register** inviting public comment. The MSB denied the petition on March 22, 1979 (Docket No. A–133), but announced an intent to promulgate proposed regulations that would most likely reduce some of the delay and expense. The proposed rulemaking has been published with that objective.

(b) *Legal Authority:*

Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes —— no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Published June 25, 1979 (44 FR 37003).

(ii) In final form: Unknown. (Substantial changes to new Part 208 might result in republication of that part in proposed form).

(e) *Tentative Plan for Obtaining Public Comments:* Through publication in proposed form in **Federal Register** and information released to and published by *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:*

Whether the existing procedures of the MSB for considering petitions for award of ODS under section 605(c) of the 1936 Act, as well as the applicable general Rules of Practice and Procedure in 46 CFR Part 201, result in unreasonable delay with resulting excessive costs to vessel operators.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:*

Robert J. Patton, Jr., Secretary, Maritime Administration, Washington, D.C. 20230, (202) 377–2188.

Title of Regulations. Merchant Marine Training (46 CFR Part 310)

(a) *Description and Need:*

The Maritime Administration (Marad) is responsible for the administration of the U.S. Merchant Marine Academy, the aid programs to state merchant marine academies, and the U.S. Maritime Service, a voluntary maritime training organization.

The regulations relevant to these programs have not always been amended in a timely fashion to reflect policy and program development. The need to bring the regulatory framework up to date is particularly great for the Maritime Service, since the regulations have not been revised since the Service was significantly restructured in the 1950's. The Select Subcommittee of the House Merchant Marine and Fisheries Committee, after reviewing these programs, recommended that the regulations be amended to reflect current practice and legal requirements. The draft regulations are intended to implement these recommendations. The publication of the proposed regulations has been delayed pending congressional action on comprehensive pending legislation dealing with maritime education and training.

(b) *Legal Authority:* Sec. 204(b) and 216, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b) and 1126); Pub. L. 85–672 (46 U.S.C. 1381–1388).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes —— no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: November 1980.

(ii) In final form: April 1981.

(e) *Tentative Plan for Obtaining Public Comments:* Through publication in proposed form in **Federal Register;** release of information and publication in *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication); and notice of opportunity to comment in other selected publications.

(f) *Major Issues:*

Whether procedures adopted by Marad in the area of maritime education and training are consistent with the requirements of applicable statutory authority.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (Yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:*

Kathleen A. Shetler, Office of Maritime Labor and Training, Washington, D.C. 20230, (202) 377–5653.

Title of Regulation: Documentation Transfer or Charter of Vessels (46 CFR Part 221)

(a) *Description and Need:*

Regulations in 46 CFR Part 221 includes provisions governing the transfer of vessels and interests in vessels owned by U.S. citizens to non-citizens and approvals of vessel charters to aliens, pursuant to authority in the Shipping Act, 1916. The amendments are being made to clarify the applicability of a general provision for the approval of certain vessel charters to aliens and to

distinguish it from a procedure limited to approval of vessel charters for carriage of agricultural commodities to the U.S.S.R. The list of countries with which trade may not be approved for vessels chartered to aliens has been revised to be consistent with policy as proclaimed by the President. A similar revision has been made to a restricted list with respect to transfers of vessels, or interests therein, to aliens.

(b) *Legal Authority:*

Secs. 9, 37 and 41, Shipping Act, 1916 as amended.

(c) *Importance:*

(i) Significant? (Yes X, no ——, unknown ——).

(ii) Major? (Yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Not applicable.

(ii) In final form: November 1980.

(e) *Tentative Plan for Obtaining Public Comments:*

None. Clarifying amendments are not significant, and the amendments of the restricted countries list relates to implementation of the exercise by the President of a foreign affairs function, which is not subject to the requirements of E.O. 12044 pursuant to provision of section 2(b) thereof.

(f) *Major Issues:*

Clarify distinction between a general provision and one of limited applicability and conform provision concerning trade restricts to be consistent with policy announced by the President.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (Yes ——, no X, unknown ——). Anticipated data of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:*

Virginia O'Brien, Foreign Transfer Officer, Division of Ship Management, Office of Ship Operations, Washington, D.C. 20230, (202) 377–3213.

Title of Regulation: Cargo Preference—U.S. Flag Vessels—Determination of Fair and Reasonable Rates (46 CFR 381.8, 381.9 and New Part 382)

(a) *Description and Need:*

46 U.S.C. § 1241 states that at least 50% of the materials procured by the United States Government which are shipped by water shall be transported on privately-owned United States flag commercial vessels so long as they are available at "fair and reasonable rates." The Maritime Administration (Marad) is responsible for issuing regulations governing the implementation of this program by other agencies.

The proposed regulation will set forth the standards and procedures used in determining "fair and reasonable rates." These standards and procedures have not been set forth by regulation in the past. It is expected that codification and publication of these standards and procedures will provide merchant ship operators with the information needed to determine the rates they could expect for section 1241 cargo. It will also allow other government agencies to determine more easily under what conditions they are obliged to ship available cargoes on U.S.-flag vessels.

(b) *Legal Authority:*

Sec. 204, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (Yes X, no ——, unknown ——).

(ii) Major? (Yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Indefinite.

(ii) In final form: Indefinite. (Maritime Subsidy Board is to determine policy as to scope of regulations, i.e., whether they should be applicable to carriage of dry bulk cargoes as well as liquid bulk cargoes.)

(c) *Tentative Plan for Obtaining Public Comments:*

Publication in proposed form in **Federal Register** and release of information to *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:*

The major issue involved in drafting these regulations is to determine whether a proper balance is struck between the interests of private carriers and government agencies. A "fair and reasonable return" should allow efficient carriers to make a competitive profit at the lowest rates consistent with the development of a healthy merchant marine industry. Marad must also determine whether the economic assumptions about cost and financing on which the calculations of fair and reasonable rates are based are consistent with industry experience.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no ——, unknown X). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:*

Frederick R. Larson, Director, Office of Ship Operating Costs, Washington, D.C. 20230, (202) 377-5532.

Title of Regulation: Requirements and Procedures for the Administration of Condition Surveys and Maintenance and Repair Subsidy (46 CFR Part 272)

(a) *Description and Need:*

46 CFR Part 272 establishes the policy and procedure of the agency in administering that part of the operating-differential subsidy (ODS) program relating to requirements for conducting condition surveys of vessels under ODS agreements (ODSA), which provide for maintenance and repair (M&R) subsidy. It includes requirements for the accomplishment and reporting of maintenance and repair. This part is not applicable to ODSA for the carriage of grain to the U.S.S.R. The revision clarifies various provisions, which have presented administrative problems, and reorganizes the entire part. Also, it reflects a change in policy to allow payment of ODS for that part of the M&R costs accomplished by utilizing labor, materials, or both, of domestic origin, irrespective of where the work was accomplished, i.e., anywhere in the world.

(b) *Legal Authority:*

Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: October 1980.

(ii) In final form: March 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Publication in proposed form in **Federal Register** and release of information to *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:*

The major issue is whether the agency has been too restrictive in its interpretation of a requirement in section 606(6) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1176), to be incorporated in every ODSA, that "an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency." This interpretation, as reflected in existing §§ 272.10(a) and 272.11(c), disallows subsidy for all foreign repairs performed "outside the continental limits of the United States." The Maritime Subsidy Board has reviewed an analysis of the legislative history of this provision of the 1936 Act, and has concluded that M&R subsidy should be payable for that part of the M&R cost of domestic origin, irrespective of where the work was accomplished, i.e., anywhere in the world.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

Agency Contact:

John J. Davis, Chief, Division of Ship Management, Washington, D.C. 20230, (202) 377–3640.

Title of Regulation: Construction-Differential Subsidy (CDS) Repayment: Total Repayment Policy and Procedure (46 CFR Part 276)

(a) *Description and Need:*

The Maritime Subsidy Board (Board) published a notice in the **Federal Register** on November 2, 1978, proposing to amend 46 CFR Part 276 to include a new section describing its policy in considering applications for the total repayment of CDS, including terms for repayment. At the time of publication there was pending before the U.S. Court of Appeals for the District of Columbia a decision by the District Court, holding that the Secretary of Commerce has the authority to accept total repayment of CDS in exchange for removal of domestic trade restrictions imposed by section 506 of the Merchant Marine Act, 1936, as amended. The Board issued proposed regulations prior to final disposition of the litigation based upon the request of the parties to promulgate regulations, as suggested by the District Court in its decision. The Board has not proceeded with final rulemaking action, pending final resolution of the issue of the Secretary's authority to accept the total CDS repayment. On February 20, 1980, the Supreme Court ruled that the Secretary had this authority. The Supreme Court reversed the Court of Appeals decision, and remanded the case to the Court of Appeals for further consideration of whether the Secretary could accept a promissory note as repayment.

(b) *Legal Authority:* Sec. 204(b) Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes X, no ——, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Published June 3, 1980 (43 FR 51045).

(ii) Interim: October 1980.

(iii) In final form: May 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Through publication in proposed form in the **Federal Register** with information released to and published by *Journal of Commerce and Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:* Under what circumstances should the Secretary of Commerce exercise existing authority to accept total repayment of CDS, and what terms of repayment will be equitable, balancing the interests of the CDS vessel owners, competitors whose vessels were built without CDS, and the Government?

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes X, no ——, unknown ——). Anticipated date of draft analysis: January 1981.

(ii) Other documents: None.

(h) *Agency Contact:* William B. Ebersold, Director, Office of Trade Studies and Statistics, Washington, D.C. 20230, (202) 377–4791.

Title of Regulation: Federal Tax Aspects of the Capital Construction Fund (46 CFR Part 391)

(a) *Description and Need:*

Section 607 of the Merchant Marine Act, 1936, as amended, authorizes an agreement with the Secretary of Commerce (Secretary) for the establishment of a capital construction fund (fund) by any United States citizen owning or leasing one or more "eligible vessels" (as defined). Deposits to the fund that are attributable to "agreement vessel" (defined) earnings from operations, gains on disposition and insurance proceeds for loss indemnification, as well as deposits of income from fund investment or reinvestment, are not subject to current Federal income taxation. On June 15, 1972, MarAd and the Internal Revenue Service (IRS) jointly published proposed comprehensive regulations (37 FR 11887) with respect to tax aspects of the fund. On January 29, 1976, final regulations were published with respect to the establishment of a fund, ceiling on deposits, treatment of withdrawals and other areas (41 FR 4257). At the same time the agencies jointly published in proposed form technical provisions that had been the subject of extensive comments when first published as proposed regulations (41 FR 4280). Representatives of MarAd and the IRS have conferred on many occasions for the purpose of issuing final regulations with respect to these technical provisions so that 46 CFR Part 391, as well as 26 CFR Part 3, will contain a detailed explanation of all substantive and procedural requirements relative to the taxability of deposits to and withdrawals from the fund.

(b) *Legal Authority:*

Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: January 1976.

(ii) In final form: January 1981.

(e) *Tentative Plan for Obtaining Public Comments:*

Through publication in proposed form in **Federal Register** with information released to and published by *Journal of Commerce and Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:*

What tax provisions are necessary to effect the intent of the capital construction fund authorized by section 607, Merchant Marine Act, 1936, as amended by section 21 of the Merchant Marine Act of 1970, with respect to the following technical subjects: an under-deposit caused by an audit adjustment; determination of net proceeds from the disposition of agreement vessels; installment sales of agreement vessels; effect of fund deposits and withdrawals on corporate earnings and profits; determination of ordinary gain on the disposition of a vessel; certain corporate reorganizations and changes in partnership, and certain transfers by a decedent.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:*

E. A. Uttridge, Director, Office of Subsidy Contracts, Washington, D.C. 20230, (202) 377–3797.

Title of Regulation: Construction-Differential Subsidy (CDS)—Standard Contracts (46 CFR Part 251)

(a) *Description and Need:*

The Maritime Administration (Marad) administers a construction-differential subsidy program (CDS) which is intended to encourage the construction of privately-owned merchant ships in American shipyards. The CDS payment compensates for the difference in cost for work done in American, rather than foreign shipyards. Three contracts are required for each project: one between the purchaser or owner and the shipyard; one between the purchaser or owner and MarAd and one between the shipyard and MarAd. Currently, the terms of all three contracts are negotiated for each project even though the same set of legal standards applies to all projects. MarAd will therefore promulgate a standard set of contracts

for use by all parties on future projects. This will greatly reduce legal time and expenses for all parties and will ensure that all interested parties participated in a CDS program on an equal basis.

(b) *Legal Authority:*

Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Published February 19, ,979 (44 FR 3997).

(ii) In final form: November 1980.

(e) *Tentative Plan for Obtaining Public Comments:* Provided through publication in **Federal Register;** comments have been reviewed and proposed revisions are being made by the staff for consideration by the Maritime Subsidy Board.

(f) *Major Issues:*

The major issues in drafting the standardized contracts are to ensure that they are consistent with legal requirements, adequately protect the interests of the Government, are consistent with industry practices and are sufficiently flexible to cover future contingencies.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:* Melvin S. Eck, Attorney-Adviser, Office of General Counsel, Washington, D.C. 20230, (202) 377–2771.

Title of Regulation: Construction-Differential Subsidy (CDS)—Requirements for Aid (46 CFR Part 251)—Entire Part

(a) *Description and Need:* The Maritime Administration (MarAd) makes available construction-differential subsidy (CDS) for shipowners who undertake construction, reconstruction or reconditioning in American shipyards. CDS payments are intended to offset the higher cost of work in American shipyards. It is made available only to qualified shipowners who will place the vessels in the foreign trades of the U.S. MarAd has developed over the years many restrictions, requirements and procedures for administering the CDS program. These policies determine who is eligible, the procedures for application, the types of ships which may be built with CDS funds, the conditions of service for CDS built vessels, the level of CDS payments, and the obligations of both MarAd and the vessel owner after construction. These policies have been set forth in a wide range of documents. Some of them have never been formally published as regulations. The proposed regulation would therefore codify these policies without making any substantive change in them. Among the anticipated benefits are: clarification of the legal status of the CDS policies and procedures; advising the public of program benefits and requirements; and easing the task of administering the CDS program.

(b) *Legal Authority:* Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Unknown.

(ii) In final form: Unknown. (The need for developing regulations is being reassessed.)

(e) *Tentative Plan for Obtaining Public Comments:* Through publication in proposed form in **Federal Register;** and release of information to *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:*

Regulations would be codifications of existing policies and practices for the CDS program. Therefore, it is not anticipated that any major issues or controversies would develop if they are issued.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:* James E. Saari, Attorney-Adviser, Office of General Counsel, Washington, D.C. 20230, (202) 377–2771.

Title of Regulation: Requirements for Establishing United States Citizenship (46 CFR Part 355)

(a) *Description and Need:* In order for individuals, corporations and other entities to participate in the various financial assistance programs administered by the Maritime Administration (MarAd) under the Merchant Marine Act, 1936, as amended, they must establish United States citizenship within the meaning of section 2, Shipping Act, 1916, as amended (1916 Act, 46 U.S.C. 802). This citizenship requirement applies to bareboat charterers and shipowners, as well as owner participants and owner trustee in specialized lease arrangements, and other parties deemed to have a legal or beneficial interest in vessels constructed with subsidy, obligation guarantees, or both. For corporations owning and operating vessels in the coastwise trade, section 2 of the 1916 Act requires at least 75 percent ownership by U.S. citizens. By regulation in 46 CFR Part 355 this may be established with respect to publicly-held corporations under a "fair inference" rule, i.e., by proof that 95 percent of the corporate stock is owned by persons having registered United States addresses. An amendment to the regulations in Part 355 that has been proposed would change the fair inference standard to 90 percent. Another amendment recognizes the growing trend for corporate boards of directors to delegate significant decisionmaking authority to committees, e.g., Executive Committees. It would require that a majority of directors on such committees that are authorized to act on behalf of the Board of Directors be United States citizens. This is in addition to the statutory requirement that a majority of the number of the directors necessary to constitute a quorum shall be citizens. Two new sections have been proposed. One would allow agency discretion to accept alternative methods of proof of corporate citizenship, and the other would inform the public of the agency's policy with respect to Freedom of Information Act requests for documents filed in support of establishing U.S. citizenship.

(b) *Legal Authority:* Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)), Sec. 2, Shipping Act, 1916, as amended (46 U.S.C. 802).

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: Published October 12, 1979, 44 FR 58928. (Inadvertently omitted as an entry in regulatory Agenda published June 5, 1980 (44 FR 37972).

(ii) In final form: November 1980.

(e) *Tentative Plan for Obtaining Public Comments:* Through publication in proposed form in **Federal Register** with information released to and published by *Journal of Commerce* and *Congressional Information Bureau* (maritime industry publication).

(f) *Major Issues:* The major issues are to adopt a modified fair inference rule that will be effective in establishing the requisite percentage of stock ownership

in United States publicly-held corporations owning and operating vessels in the coastwise trade and to establish a citizenship requirement that will effectuate the statutory intent that corporate decisionmaking by the boards of directors be subject to the control of United States citizens.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:* Doris Lansberry, Office of the General Counsel, Washington, D.C. 20230, (202) 377–2506.

Minority Business Development Agency (MBDA)

Title of Regulation: MBDA Financial Assistance Awards

(a) *Description and Need:*

MBDA coordinates Federal activities designed to assist minority businesses, stimulates private sector efforts in support of minority enterprise, and provides financial assistance to private and public organizations that provide management and technical assistance to minority businesspersons, as authorized by Executive Order 11625. Implementing the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, these regulations not only define and distinguish the kinds of MBDA financial assistance awards but also provide information on how to apply for them and the administrative requirements imposed. The primary benefit that these regulations will bring is the standardization of the usage and the clarification of the meaning of legal instruments reflecting Federal assistance relationships from Federal procurement relationships. Removal of uncertainty as to the meaning of such terms as "contract," "grant," and "cooperative agreement" and the relationships they reflect will reduce, if not altogether eliminate, operational inconsistencies, confusion, inefficiency and waste.

(b) *Legal Authority:*

Executive Order 11625, October 13, 1971, and 15 U.S.C. 1512.

(c) *Importance:*

(i) Significant? (yes X, no ——, unknown ——).

(MBDA has indicated in DAO 218–7 (Appendix I, Section 2) that all regulations of the agency will be considered significant.)

(ii) Major? (yes ——, no X, unknown ——).

(d) *Timetable—Anticipated Dates for Federal Register Publication:*

(i) In proposed form: January 31, 1980.

(ii) In final form: April 5, 1980.

(e) *Tentative Plan for Obtaining Public Comments:*

Upon publication in the **Federal Register** MBDA will review and consider all comments received prior to issuing the final regulations on April 5, 1980. Further, various public interest groups will be sent a copy of the proposed regulations simultaneously with its submission to the **Federal Register** for publication.

(f) *Major Issues:*

The major issues involved in these regulations concern the determination of the existence of a competitive environment, and the meaning of substantial involvement. The determination of when or where "competition" is feasible is important since one of the purposes of Pub. L. 95–224 is "to maximize" competition in the award of contracts and encourage competition, where deemed appropriate, in the award of grants and cooperative agreements. The question of "substantial involvement," on the other hand, is vital in as much as its anticipation or non-anticipation with the recipient during performance of the contemplated activity is decisive in categorizing it either as grant or cooperative agreement.

(g) *Documents Available to the Public:*

(i) Regulatory analysis required: (yes ——, no X, unknown ——). Anticipated date of draft analysis: Not applicable.

(ii) Other documents: None.

(h) *Agency Contact:* John Smith, Deputy Chief Counsel, Washington, D.C. 20230 (202) 377–4939.

[FR Doc. 80–36559 Filed 11–25–80; 8:45 am]

BILLING CODE 3510-BJ-M

federal register

Wednesday
November 26, 1980

Part IV

Department of Education

Bilingual Education Training Projects Program; Proposed Regulations and Closing Dates for New Projects and Transmittal of Applications

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Part 510

Bilingual Education: Training Projects Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Regulations.

SUMMARY: The Secretary proposed to amend regulations for the Bilingual Education Training Projects Program. The regulations are being amended to clarify statutory requirements concerning advisory committees and to give priority to applicants that will serve areas having the greatest need for training projects.

DATES: Comments must be received on or before January 25, 1981.

ADDRESSES: Comments should be addressed to Dr. Josue Gonzalez, U.S. Department of Education, 400 Maryland Avenue, S.E. (Room 421 Reporters Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Regina Robbins, Telephone No. (202) 245–2600.

SUPPLEMENTARY INFORMATION: On April 4, 1980, final regulations for programs authorized under the Bilingual Education Act were published in the **Federal Register** (45 FR 23208, 23222; 45 FR 77368, November 21, 1980). Based on a review of the recent competition for training projects under the new regulations, the Secretary has determined that the regulations should be amended to give greater consideration to the relative need for training projects in the geographic areas that the applicants propose to serve. Under the current regulations, the selection criteria for training institutes include a criterion, worth 15 out of 100 possible points, that evaluates whether a proposed project addresses training needs not addressed by existing projects. No evaluation of need is included among the selection criteria for training programs at institutions of higher education or for training projects for State educational agency personnel.

Under the proposed regulations, the Secretary considers the need for training projects in selecting grantees under each of the training programs. The criterion for need has been deleted from the selection criteria for training institutes. A section is added to the regulations providing that in awarding grants the Secretary considers the rank order of the application under the selection criteria and the need for training projects in the area to be served by the applicant.

In determining the need for the proposed project, the Secretary considers the number of children of limited English proficiency who will benefit from the training proposed under the project. The Secretary also considers the number and kinds of personnel (teachers, counselors, parent volunteers, etc.) that are currently providing for the educational needs of the children, as well as the number and kinds of personnel for which there is a need for inservice or preservice training.

To minimize duplication of effort and to ensure that assistance is provided to applicants with the greatest need, the Secretary reviews current support provided for training activities assisted under any of the Title VII programs as well as new training activities proposed for funding under those programs in the current fiscal year. The Secretary reviews new and continuation applications submitted under any of the Title VII programs, comments provided by the State educational agencies based on their review of the new applications, and the most current statistics on training needs that are available to the Secretary.

Another proposed amendment to the regulations clarifies the requirements contained in Section 723(a)(8) of the Act. That section provides that the requirements for advisory councils and advisory committees under the Basic Projects in Bilingual Education Program also apply to some, but not all, of the training activities authorized under the Training Projects Program. In order to prevent any confusion, the proposed regulations state which applicants and grantees must meet these requirements. The new sections provide that a training project, which meets the specific training needs of one or more local educational agencies by providing preservice or inservice training to education personnel or parents, to the requirements concerning advisory councils and advisory committees.

In determining how these requirements should be applied to the Training Projects Program, the Secretary has taken into account the differences between the Basic Projects and Training Projects programs, and the wide range of activities authorized under the Training Projects Program regulations. Under the Basic Projects Program, a local educational agency provides educational services directly to children of limited English proficiency in programs of bilingual education and provides training for persons participating in, or preparing to participate in, those programs. Parental involvement in a Basic project is strong. For this reason, the requirements governing advisory councils provide that a council must be selected by and predominantly composed of the parents of children participating in the program of bilingual education assisted under the grant.

Under the Training Projects program regulations, authorized activities range from the preparation of individuals to participate more effectively in specific programs of bilingual education to the operation of an undergraduate or graduate degree training program at an institution of higher education that attracts students nationally. A training project may be designed to meet the needs of particular schools or school districts, *or* to meet the national shortage of qualified bilingual personnel, *or* to meet other training needs defined by the applicant.

With such a broad range of authorized activities, it is clear that, if the advisory council and advisory committee requirements of the Basic Projects Program are to make sense when applied to the Training Projects Program, those requirements must be restricted to training projects that meet the needs of particular schools or school districts. For these projects, parental involvement in developing the applications and in implementing the projects that directly affect their children's programs of study is consistent with the Act's emphasis on involving parents in the education of their children. It should be no more difficult for an applicant to involve parents in its training project in these cases than it would be to involve parents in a Basic project. On the other hand, it would be quite difficult for an applicant to identify, notify, and involve parents of children whose programs of study might be affected by a degree program operated by an institution of higher education or by any any other training project with participants that represent a large geographic area. Therefore, applicants proposing training activities that are not connected to programs of bilingual education in particular local educational agencies are not subject to advisory council and advisory committee requirements.

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 the 45th day after publication of

this document 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 421, Reporters Building, 7th and D Streets, S.W., 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 proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.003, Bilingual Education Program)

Dated: November 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary of Education proposes to amend Part 510 of Title 34 of the Code of Federal Regulations as follows:

1. A new § 510 is added to read as follows:

§ 510.21 What requirements pertain to advisory councils and advisory committees?

An applicant that proposes a training project designed to provide preservice or inservice training to persons who are participating in, or preparing to participate in, programs of bilingual education in a particular LEA(s)—

(a) Comply with the requirements in 34 CFR 501.20(a) and (b) pertaining to advisory councils; and

(b) Submit with its application an assurance that, in carrying out its project, it will provide for frequent consultations with, and participation by, the advisory committee described in § 510.42.

(20 U.S.C. 3223(a)(4)(E), 3233(a)(8))

2. In § 510.32, the introductory paragraph is revised; paragraph (a) is deleted; and (b)–(f) is redesignated as (a)–(e) as follows:

§ 510.32 What selection criteria does the Secretary use for applications proposing to provide short-term or year-round training institutes?

The Secretary considers the following criteria worth a total of 85 points:

(a) Impact (45 points) * * *

(b) Evalutation plan (5 points) * * *

(c) Plan of operation (10 points) * * *

(d) Budget (5 points) * * *

(e) Personnel (20 points) * * *

(20 U.S.C. 3233(a)(1))

3. A new § 510.34 is added to read as follows:

§ 510.34 What factors does the Secretary consider in awarding grants?

(a) The Secretary considers the following factors in awarding a grant:

(1) The rank order of the application as determined by applying the selection criteria in § 510.31 (for applications proposing to provide training programs at institutions of higher education), § 510.32 (for applications proposing to provide short-term or year-round training institutes), or § 510.33 (for applications proposing to provide training projects for SEA personnel).

(2) The need for the training project in the area to be served by the applicant.

(b) In determining need under paragraph (a)(2) of this section, the Secretary considers—

(1) The number of children of limited English proficiency who would benefit from the training to be provided to persons participating in the project;

(2) The number and kinds of personnel currently participating in or preparing to participate in programs of bilingual education for these children, compared to the number and kinds of personnel needed; and

(3) The number and kinds of personnel that applicants propose to train under this program and other programs supported under the Act.

(c) In determining need under paragraph (a)(2) of this section, the Secretary uses—

(1) Information provided by the applicant;

(2) Information provided by the SEA under 34 CFR 500.20;

(3) Information on current and past training activities supported under the Act; and

(4) Other statistical information available to the Secretary.

(20 U.S.C. 3231(c), 3233(a)(1))

4. A new § 510.42 is added to read as follows:

§ 510.42 What requirements pertain to the establishment of an advisory committee?

(a) A grantee carrying out training activities designed to provide preservice or inservice training to persons who are participating in, or preparing to participate in, programs of bilingual education in a particular LEA(s) shall—

(1) Establish an advisory committee within 60 days after it receives an award; and

(2) Consult frequently with the committee in carrying out its project.

(b) Parents of children who are or will be participating in programs of bilingual education in that LEA(s) shall select the members of the committee.

(c) Parents of children who are or will be participating in programs of bilingual education in that LEA(s) must be a majority of the committee.

(d) In the case of projects to train persons to participate more effectively in programs of bilingual education at secondary schools, the committee must include secondary student representatives.

(e) The committee may also include—

(1) Parents of children attending schools in that LEA(s);

(2) Teachers in that LEA(s); and

(3) Other interested individuals.

(f) A member of the advisory council described in § 510.21 also may serve as a member of the advisory committee.

(20 U.S.C. 3223(a)(4)(E), 3233(a)(8))

[FR Doc. 80-36821 Filed 11-25-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Bilingual Education Act—Training Projects Program; Closing Date for New Projects

AGENCY: Department of Education.

ACTION: Notice of Closing Date for New Projects Under the Bilingual Education Act—Training Projects Program.

Applications are invited for new projects under the Bilingual Education Act—Training Projects Program.

Authority for this program is contained in Section 723 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978. (20 U.S.C. 3233)

This program issues awards to local education agencies; State educational agencies; and institutions of higher education and nonprofit private organizations which apply after consultation with, or jointly with, one or more local educational agencies or a State educational agency.

The purpose of the awards is to establish, operate, and improve bilingual education training programs for persons who are participating in, or preparing to participate in, programs of bilingual education and bilingual education training programs.

Closing Date for Transmittal of Applications: An application must be mailed or hand delivered by February 13, 1981.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003J, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) 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, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Regulations governing the Training Projects Program were published in the April 4, 1980 issue of the **Federal Register** (45 FR 23208; 45 FR 77368, November 21, 1980). Applicants should review the regulations, particularly the selection criteria in §§ 510.31–510.33, before preparing their applications. An applicant should also refer to § 500.41 for the rates for allowable costs for trainees participating in training activities.

In addition, proposed amendments to the regulations are published in this issue of the **Federal Register.** Applicants should review the proposed regulations before preparing their applications. The proposed regulations provide that, in selecting grantees under each training program, the Secretary takes into account the need for training projects in the areas that the applicants propose to serve. Since the Secretary anticipates that this provision will take effect in fiscal year 1981, applicants should address this new criterion in their applications. The proposed regulations also establish requirements for advisory councils and advisory committees for certain training projects. The regulations implement statutory requirements concerning advisory councils and advisory committees. These statutory requirements must be met by applicants for fiscal year 1981 awards. An applicant that meets the requirements of the proposed regulations in preparing its application will be considered to have satisfied the statutory requirements on advisory councils and advisory committees.

The maximum project period which a local educational agency, applying as either a sole or joint applicant, may propose is three years. The maximum project period which an applicant other than a local educational agency may propose is five years. An applicant that proposes a project period of more than one year must justify the need for the proposed project period.

In addition to meeting requirements on consultations with an advisory council, an applicant must meet the following requirements:

(1) A local educational agency, applying as either a sole or joint applicant, is required to hold at least one meeting, open to the public, to discuss the contents of its application. Requirements for scheduling and holding this open meeting are contained in the Education Divison General Administrative Regulations (34 CFR 75.139–75.141). The local educational agency must complete the certification form in the application package. This requirement must be met regardless of whether the local educational agency is designated as the applicant under 34 CFR 75.128.

(2) Joint applicants must complete a special certification form in the application package.

(3) An applicant must provide a copy of its application to the appropriate State educational agency in its State in advance of submitting it to the Department of Education. Requirements pertaining to State educational agency review are contained in § 500.20 of the regulations.

Available Funds: It is expected that approximately $5,500,000 will be available for new grants under the Training Projects Program in fiscal year 1981.

It is estimated that these funds could support 56 projects.

The anticipated award for each project is between $50,000 and $150,000.

However, these estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Allocation of Funds: Under § 510.30 of the final regulations, the Secretary holds separate competitions for applications proposing any combination of the activities described in § 510.10 (a), (b), and (c); applications proposing the activities described in § 510.10(d) that are designed exclusively for parents; applications proposing the activities described in § 510.10(d) that are designed for any participants, including parents; and applications proposing the activity described in § 510.10(e).

For fiscal year 1981, the Secretary anticipates that funds will be allocated to those competitions in the amounts stated below. However, these amounts

are only estimates and do not bind the Department of Education. The Secretary may reallocate funds if too few applications of high quality are received under a competition.

Section 510.10 (a), (b), or (c)—Providing training that leads to an undergraduate degree or teaching credential with a specialization in bilingual education; encouraging reform, innovation, and improvement in bilingual education training programs at institutions of higher education; and providing specialized graduate bilingual education degree curricula in areas such as administration and supervision, guidance and counseling, evaluation, and curriculum development: $4,375,000.

Section 510.10(d)—Providing short-term or year-round training institutes designed to improve the skills of parents and other participants in carrying out their responsibilities in programs of bilingual education: $1,000,000, of which $500,000 is allocated for applications proposing to train parents exclusively.

Section 510.10(e)—Providing non-degree training programs to increase the skills of State educational agency personnel in carrying out their responsibilities with regard to programs of bilingual education: $125,000.

The applicant must identify in its application which activity is being proposed. Applications compete only against other applications proposing the same activity.

Application Forms: Application packages are available and may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, (Room 421, Reporters Building), 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 application package. The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicant not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(1) The regulations governing the Training Projects Program (34 CFR Parts 500 and 510).

(2) The Education Division General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

FOR FURTHER INFORMATION CONTACT: The Training Projects Application Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland avenue, S.W., Washington, D.C. 20202. Telephone (202) 447–9273.

(20 U.S.C. 3233)

(Catalog of Federal Domestic Assistance No. 84.003 Bilingual Education)

Dated: November 19, 1980.

Charles E. Hansen,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 80-36822 Filed 11-25-80; 8:45 am]

BILLING CODE 4000-01-M

Bilingual Education Act—Support Services Projects Program; Closing Date for New Projects

AGENCY: Department of Education

ACTION: Notice of Closing Date for New Projects Under the Bilingual Education Act—Support Services Projects Program: Bilingual Education Service Centers (BESCs).

Applications are invited for new projects under the Bilingual Education Act—Support Services Projects Program: Bilingual Education Service Centers (BESCs).

Authority for this progaram is contained in Sections 721 and 723 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (20 U.S.C. 3231, 3233).

This program issues awards to local educational agencies; State educational agencies; and institutions of higher education and nonprofit private organizations which apply jointly with, or after consultation with, one or more local educational agencies or State educational agencies.

The purpose of the awards is to provide training and other services to programs of bilingual education and bilingual education training programs within designated service areas.

Closing Date for Transmittal of Applications: An application must be mailed or hand delivered by February 13, 1981.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.003L. Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If any 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, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Regulations governing the Support Services Projects Program (BESCs) were published in the April 4, 1980 issue of the **Federal Register** (45 FR 23208; 45 FR 77368, November 21, 1980). An applicant should review the regulations, particularly the selection criteria in § 504.30, before preparing its application.

An applicant under this program may include support for training activities in the project. An applicant should refer to § 500.41 of the regulations for the rates for allowable costs for training activities.

An applicant will be ruled ineligible if it does not meet the following requirements:

(1) A local educational agency, applying as either a sole or joint applicant, is required to hold at least one meeting, open to the public, to discuss the contents of its application. Requirements for scheduling and holding the open meeting are contained in the Education Division General Administrative Regulations (34 CFR 75.139–75.141). The local educational agency must complete the certification form in the application package. This requirement must be met regardless of whether the local educational agency is designated as the applicant under 34 CFR 75.128.

(2) Joint applicants must complete a special certification form in the application package.

(3) An applicant must provide copies of its application to the appropriate State educational agencies in the States within its designated service area in advance of submitting the application to the Department of Education. Requirements pertaining to State educational agency review are contained in § 500.20 of the regulations.

Available Funds: It is expected that approximately $1,500,000 will be available for four new grants under the Support Services Projects Program: BESCs in fiscal year 1981.

The anticipated award for each project is between $250,000 and $500,000.

However, this estimate does not bind the U.S. Department of Education to a specific number of grants or the amount of any grant unless that amount is otherwise specified by statute or regulations.

Service Areas: Section 504.14 of the regulations provides for the designation of service areas for BESCs. For fiscal year 1981, the Secretary invites applications that propose to serve the service areas described in the following paragraphs. A BESC may provide services to all language groups served by programs of bilingual education and bilingual education training programs within the geographic area described.

(1) New York (excluding New York City and Suffolk and Nassau Counties), New Jersey, Pennsylvania, Delaware, the District of Columbia, Maryland, Virginia, and West Virginia.

(2) Louisiana, Mississippi, Alabama, Arkansas, and Tennessee.

(3) Washington, Idaho, Alaska, and the Counties of Clatsop, Columbia, Tillamook, Multnomah, Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Union, Wallowa, Baker, Grant, Wheeler, Crook, Jefferson, Marion, Polk, Lincoln, Benton, Deschutes, Yamhill, Clackamas, Linn, Lane, and Washington in Oregon.

(4) Puerto Rico and the Virgin Islands.

Only applicants proposing to serve these geographic areas will be considered for a grant.

For fiscal year 1981, the Secretary anticipates making continuation awards to fifteen current recipients under this program that have approved project periods in excess of one year. Recipients of fiscal year 1981 continuation awards provide services in service areas that, with the service areas designated above, cover the United States, Puerto Rico, the Virgin Islands, and the Pacific Territories.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 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 package. The Secretary strongly urges that the narrative portion of the application not exceed 50 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(1) The regulations governing the Support Services Projects Program (34 CFR Parts 500 and 504); and

(2) The Education Division General Administrative Regulations (34 CFR Parts 75 and 77).

FOR FURTHER INFORMATION CONTACT: The Support Services Projects: BESCs Application Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue, S.W., Washingon, D.C. 20202. Telephone (202) 245–2961.

(20 U.S.C. 3231, 3233)

(Catalog of Federal Domestic Assistance No. 84.003, Bilingual Education)

Dated: November 18, 1980.

Josue M. Gonzalez,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 80-36823 Filed 11-25-80; 8:45am]

BILLING CODE 4000-01-M

Bilingual Education Programs and the Bilingual Vocational Education Programs; Revision of Closing Dates for Transmittal Applications

AGENCY: Department of Education.

ACTION: Revision of Closing Dates for Transmittal of Applications.

SUMMARY: Closing dates for the transmittal of applications for new projects under the Bilingual Education Programs and the Bilingual Vocational Education Programs and for the transmittal of requests for noncompeting continuations under the Bilingual Education Programs were previously announced in the Department of Education's Single Notice of Closing Date published in the **Federal Register** (45 FR 66564) on October 7, 1980. This notice is to notify the public that closing dates for the following programs have changed:

The closing dates for receipt of applications for new projects have been extended one month to allow applicants additional time to develop their applications. Based on that extension and the Secretary of Education's desire to make timely grant awards, the closing date for receipt of requests for noncompeting continuations has been changed. To be assured of prompt consideration of noncompeting continuations, requestors should mail or hand deliver their requests by the closing date announced below.

CFDA No. and program title	Closing date announced previously	Revised closing date
84.077 Bilingual Vocational Training Program—New Projects.	Dec. 22, 1980	Jan. 13, 1981.
84.099 Bilingual Vocational Instructor Training Program—New Projects.	Dec. 22, 1980	Jan. 13, 1981.
84.003D Bilingual Education—Basic Projects—New Projects.	Jan. 12, 1981	Feb. 13, 1981.
84.003 Bilingual Education—SEA Projects for Coordinating Technical Assistance—New Projects.	Jan. 12, 1981	Feb. 13, 1981.
84.003L Bilingual Education—Support Services Projects (EDACs)—New Projects.	Jan. 12, 1981	Feb. 13, 1981.
84.003L Bilingual Education—Materials Development Projects—New Projects.	Jan. 12, 1981	Feb. 13, 1981.
84.003N Bilingual Education—Demonstration Projects—New Projects.	Jan. 12, 1981	Feb. 13, 1981.
84.003P Bilingual Education—School of Education Projects—New Projects.	Jan. 12, 1981	Feb. 13, 1981.
84.003E Bilingual Education—Training Projects—Noncompeting Continuations.	Mar. 30, 1981	Jan. 26, 1981.
84.003G Bilingual Education—Support Services Projects (BESCs)—Noncompeting Continuations.	Mar. 30, 1981	Jan. 26, 1981.
84.003H Bilingual Education—SEA Projects for Coordinating Technical Assistance—Noncompeting Continuations.	Mar. 30, 1981	Jan. 26, 1981.
84.003L Bilingual Education—Materials Development Projects—Noncompeting Continuations.	Mar. 30, 1981	Jan. 26, 1981.
84.003P Bilingual Education—School of Education Projects—Noncompeting Continuations.	Mar. 30, 1981	Jan. 26, 1981.

CFDA No. and program title	Closing date announced previously	Revised closing date
84.003T Bilingual education—Demonstration Projects—Noncompeting Continuations.	Mar. 30, 1981	Jan. 26, 1981.

No other changes have been made to the closing date notices published in the October 7, 1980 issue of the **Federal Register.**

Also published in this issue of the **Federal Register** are closing date notices for the Bilingual Education—Support Services Projects (BESCs)—New Projects and the Bilingual Education—Training Projects—New Projects. The closing date for receipt of applications for those programs is February 13, 1981.

FOR FURTHER INFORMATION CONTACT: Office of Bilingual Education and Minority Languages Affairs, Department of Education, 400 Maryland Avenue, S.W. (Room 421 Reporters Building), Washington, D.C. 20202. For program specific information contact: Bilingual Vocational Training, Bilingual Vocational Instructor Training (202) 245-2600; Bilingual Education—Basic Projects, Demonstration Projects (202) 447-9227; Bilingual Education—State Educational Agency Projects for Coordinating Technical Assistance, Support Services Projects (BESCs) (202) 245-2961; Bilingual Education—Support Services Projects (EDACs), Materials Development Projects, School of Education Projects, Training Projects (202) 447-9273.

(Catalog of Federal Domestic Assistance Number 84.003 Bilingual Education, 84.077 Bilingual Vocational Training, 84.099 Bilingual Vocational Instructor Training)

Dated: November 19, 1980.

Charles E. Hansen,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

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November 26, 1980

Part V

Environmental Protection Agency

N-Methanesulfonyl-P-Toluenesulfonamide; Determination of Significant New Uses

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50013 FRL 1558-1]

N-Methanesulfonyl-P-Toluenesulfonamide; Determination of Significant New Uses for a Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing that certain uses of the chemical substance N-methanesulfonyl-p-toluene sulfonamide be designated as "significant new uses" under section 5(a)(2) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2604). This substance was the subject of a premanufacture notice (PMN) submitted on September 5, 1979 by National Starch and Chemical Corporation. Under Section 5(a)(1)(B) of TSCA, any person who intends to manufacture, import, or process the substance for a "significant new use" must submit a notice to EPA at least 90 days prior to manufacture, import, or processing for that use.

DATES: Written comments should be submitted on or before January 12, 1981.

ADDRESS: Written comments should bear the document number OPTS 50013 and should be submitted in triplicate to the Document Control Officer, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-429, 401 M St., SW., Washington, DC 20460; toll free: (800-424-9065); in Washington, D.C. (554-1404).

SUPPLEMENTARY INFORMATION: Section 5(a)(2) of the Toxic Substances Control Act (TSCA) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by a rule, promulgated after consideration of all relevant factors, including those enumerated in section 5(a)(2)(A) through (D). Once a use is determined to be a "significant new use," persons who intend to manufacture or process the substance for that use must, under section 5(a)(1)(B), submit a notice at least 90 days proir to manufacture or processing for that use. The section 5(a)(1)(B) notice is subject to the same general statutory requirements and procedures as a premanufacture notice (PMN) submitted under section 5(a)(1)(A). In particular these include the information submittal requirements of section 5(d)(1) and section 5(b), the exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f).

In this notice, EPA is proposing a significant new use rule (SNUR) which would apply to a particular chemical substance for which a premanufacture notice (PMN) was submitted under section 5(a)(1) of TSCA. This action is one of several approaches under TSCA to follow up on new chemical substances and to obtain additional data on selected Inventory substances.

First, OPTS will continue to issue section 5(a)(2) significant new use rules on a case-by-case basis for new chemical substances of concern. Second, because use of the section 5(a)(2) and other reporting authorities on a purely case-by-case basis would impose a heavy burden on OPTS's limited resources, OPTS will develop model rules suitable for most situations when follow up of new substances is necessary. These model follow-up rules, establishing general requirements and procedures, would allow EPA to promulgate rules more efficiently and frequently than if it relied strictly upon case-by-case rulemaking. After the development of model follow-up rules, case-by-case follow-up will be used when the model rules do not suffice. Finally, in the future EPA will issue significant new use rules on Inventory substances or categories of substances.

PMN Substance of Concern: N-Methanesulfonyl-P-Toluenesulfonamide; PMN #5AHQ-0979-0016

On September 5, 1979, National Starch and Chemical corporation ("National Starch") submitted a PMN for N-methanesulfonyl-p-toluenesulfonamide. According to information supplied by National Starch, the company intends to manufacture annually approximately 400 pounds of the substance for the only known use. National Starch claimed that this use of the chemical was confidential business information ("CBI"), and EPA accepted this claim. When asked by EPA for the maximum potential production volume, National Starch indicated that production would not exceed 1,000 pounds per year.

During its assessment of the potential risks associated with the substance, the Agency found that to the best of its knowledge no reliable toxicity data exists for the subject compound nor for any close structural analogs. Therefore the Agency was unable to evaluate the toxicity of N-methanesulfonyl-p-toluenesulfonamide.

With regard to potential exposure, the Agency determined that exposure would be relatively low taking into consideration the following information supplied by National Starch and conclusions made regarding the substance from the properties of close structural and use analogs:

1. Limited production volume: between 400 and 600 pounds per year.
2. The substance is a crystalline solid with a low vapor pressure.
3. The substance is not likely to be metabolized by the body but rather will pass through the body in its original state.
4. The substance is to be produced in probably two to three "batches" per year; each production cycle requiring less than 48 hours.
5. Approximately five to six workers would be exposed to the substance during manufacture and processing.
6. The substance would be used in low concentrations.
7. The segment of the population using the substance is experienced in using substances of this nature and thus would know how to handle the material appropriately.
8. The product containing the substance carries instructions for porper handling and use.
9. The manner of application of the final product (confidential) is such as to minimize exposure.

For the reasons stated above, EPA determined that it was not necessary to regulate the substance for the use and exposure conditions described in the PMN. As a result, EPA did not extend the notice period, which expired on December 4, 1979. National Starch has been free to commence production since that time. The company submitted a Notice of Commencement of Manufacture, and the substance was added to the Inventory during July 1980, published in the **Federal Register** of August 26, 1980 (45 FR 56909). Therefore, until this rule becomes effective, the substance may be produced without restrictions under TSCA.

EPA Concerns

EPA's decision not to regulate the substance under section 5(e) or 5(f) does not indicate a lack of concern about the substance. In fact, the Agency remains concerned about this substance because of the lack of any information or test data that would allow the Agency reliably to determine or estimate its degree of toxicity. EPA does not presume that this substance is extremely toxic. Similarly, EPA is unable to conclude that it is not toxic. Rather, the

Agency has no knowledge about the substance's toxicity whatsoever.

EPA's concerns based on a lack of toxicity data were mitigated by the fact that according to the information provided by the submitter, the probability and magnitude of exposure during manufacturing, processing, and use are relatively low. However, since the substance is on the Inventory, any person can make the substance under any conditions of manufacture, processing, and use. Moreover, the PMN submitter itself is not bound to the conditions specified in the PMN, and is free to change the use, volume, or manufacture of the substance. (However, the submitter is bound at the time of submission to provide EPA the information required for a PMN, and any intentional falsification or withholding of required information could result in prosecution under 18 U.S.C. 1001 or appropriate enforcement action under TSCA.) In the absence of further action by EPA, the submitter or anyone else may produce the substance for any use without further notifying EPA.

EPA has no information to predict that uses, other than the use described in the PMN, will be developed or that such new qualitative uses will result in changes in exposure conditions. Further, in addition to new qualitative uses, there might be increases in production volume for the use described in the PMN, either by the submitter or by other companies.

The risk that a substance presents to humans or the environment is a function of toxicity and exposure. In this case we know nothing about toxicity, and anticipated exposures for the activities described in the PMN are relatively low. However, if exposures increase in the future, the substance may present risks that cannot be evaluated (by either industry or EPA because there are no toxicity data. EPA has a responsibility to evaluate any risks that might result in the event that this substance is toxic. In particular, EPA believes that consistent with the purposes of TSCA section 5, if exposures increase for this substance, the Agency should either review any additional toxicity data which may have been developed for this substance or analogous substances, or consider whether the substance should be controlled until toxicity data are developed. To accomplish this purpose, EPA proposes to designate as "significant new uses" certain uses of this substance that would result in new or increased exposures.

Proposed Significant New Uses

EPA believes that in general, there are a variety of different ways to define significant new uses pursuant to section 5(a)(2) of TSCA. In deciding what will constititute a significant new use for a particular substance, the Agency will consider all relevant information about the actual or predicted toxicity of the substance and the exposures associated with its proposed and potential uses. In this notice, EPA proposes to define each of the following as a significant new use of this chemical substance: (1) manufacture and processing of the substance for any "qualitative" use other than that described in the PMN; (2) and manufacture or processing of more than 1,000 pounds of the substance for the use described in the PMN. These determinations of significant new uses are intended to apply to this chemical substance only; they do not establish a fixed policy with regard to the reporting triggers which may be utilized in future SNURs. The Agency's bases for each of these "significant new use" determinations in this case are explained below.

(1) *Change in "Qualitative" Use of the Substance.* EPA is proposing to require that any person intending to manufacture or process the PMN substance for a "qualitative new use" submit a "significant new use" notice under § 721.7. A "qualitative new use" is defined in proposed § 721.3 as: the use of a substance, defined by its function and particular commerical or technical application, without regard to the quantity of a substance for that use. EPA has determined that such qualitative new uses are significant because they could present a potential for risk based upon the unknown toxicity of the substance and the new or additional exposures which would be associated with new qualitative uses. Submittal of a significant new use notice would provide the Agency with an opportunity to examine proposed new qualitative uses of this substance, and decide if action should be taken under TSCA section 5 to prohibit the manufacturing and/or processing of the substance for this use.

As discussed above, EPA has evaluated the potential exposures to the PMN substance which would result from the qualitative use intended by the submitter, and the exposures which would occur during manufacture of the substance by the submitter. The Agency determined that these exposures would be relatively low. Based upon this assessment, EPA decided during the PMN review period that regulatory action was not warranted at that time, although the Agency knew nothing about the toxicity of the substance.

During the PMN review period, EPA did not evaluate any other qualitative uses of the substance, because no other uses were claimed by the submitter, and none were known to the Agency. However, now that this substance has been added to the Inventory, there is a possibility that new qualitative uses may develop which were not anticipated by the submitter or EPA. These new qualitative uses may result in exposures which present new potential risks to health and the environment, considering the factors set out in section 5(a)(2) of TSCA. First, the new uses may result in a substantial increase in production volume. The volumes estimated in the PMN for the third year of production are relatively low (400–600 lbs.), and it is quite possible that a new qualitative use will require production in excess of these amounts. At a minimum, a significant increase in production would increase the exposures which the Agency anticipated in its PMN review of the substance. Second, a new qualitative use may present new exposure problems not presented by the qualitative use assessed during the Agency's PMN review of the substance. Although only short term dermal exposure is expected for the submitter's intended qualitative use, other qualitative uses involving this substance may result in higher exposures; exposures by different routes, and exposures which occur more frequently or for longer periods of time. Such changes in exposure could occur if a new qualitative use of the substance resulted in changes in the manner and methods of manufacture, processing, distribution in commerce, use, and disposal. In sum, one or more of the changes in exposure which could result from the new use would result in both the chemical industry and EPA needing to know more about the substance's toxicity to adequately evaluate risks and make informed judgments about the need to take control actions.

As indicated, the proposal would require manufacturers and processors to submit a PMN notice for any qualitative new use. The Agency recognizes that this requirement may result in the submittal of a PMN notice for new qualitative use which the Agency may conclude presents less risk than the National Starch qualitative use. The Agency, however, was unable to devise a formula which would identify adequately any such new qualitative uses and exclude them from the PMN submittal requirement. The Agency was unable to do so because the toxicity of the PMN substance is unknown and unpredictable, and because the Agency's decision not to act on the

National Starch PMN involved judgments which could not be reduced to a formula. The Agency expressly solicits comment on whether such a formula can be devised, including any suggestions for "cut off" formulas which commentors believe will adequately accomplish the Agency's objectives. However, the Agency notes that the consequences of having no "cut off" formula are less severe than the consequences of an inadequate cut-off formula—the entrance on the market place of new qualitative uses posing significant risk concerns without necessary Agency review. If the Agency is correct that an adequate cut-off formula cannot be devised, it has no doubt that it has authority to impose a broad PMN reporting requirement such as the one included in the proposal. To conclude otherwise would effectively prevent the Agency from imposing PMN requirements on new qualitative uses in cases where industry failure to develop sufficient data have prevented the Agency from developing a "cut off" formula. Congress intended industry to bear the burden of developing data to access TSCA chemicals, not the Agency. An implicit corollary of the TSCA burden of proof concept is that the industry—and not the Agency and the public—bear the consequences of failing to meet this burden.

(2) *Increase in Volume of Production for the Use Described in the PMN.* EPA proposes to designate production by any one person of more than 1,000 pounds of the substance per year for use in the manner described in the PMN as a "significant new use" of the substance. In the PMN, the submitter stated that he would manufacture a total of approximately 400 to 600 pounds per year of the substance by the third year. The submitter subsequently indicated to EPA that 1,000 pounds per year was its most optimistic estimate of total production for any year. Therefore, because it would be approximately twice the submitter's best third-year projection and would exceed his most optimistic long-run production estimate, production of over 1,000 pounds in any one year would represent a significant expansion in volume.

Congress intended production volume to be a major factor in the determination of what is a significant new use for a substance. Projected volume of manufacture and processing is one of the relevant factors listed in section 5(a)(2) that EPA must consider in making its findings that a use is a "significant new" use. Further, while section 5(a)(2) states that all relevant factors are to be considered in making a significant new use determination, the legislative history indicates that a change in a single factor could be enough. In this regard, the Conference Report stated that "a significant increase in the projected volume * * *, a significant change in the type or form of human exposure * * *, or a significant increase in the magnitude * * * could be the basis for determining that a use is a significant new use." [1] Finally, use of production volume in this manner is consistent with the intent of section 5(a)(2), because and increase in volume usually will correlate with increased exposure to humans or the environment, and increased exposure is the primary consideration in making a finding of a "significant new use." Especially where there is no information about toxicity, as in this case, exposure factors such as production volume are the focus of EPA's SNUR decisionmaking.

With regard to this substance, the PMN submitter's intended use will result in some exposure to workers at the projected production volumes. An increase in the quantity manufactured for this particular use very likely will increase either the number of workers exposed to the substance in the final product at the same level, or the total numbers of hours the product is used, resulting in greater frequency of exposure to the present number of persons. In either case, it is reasonable to anticipate that there would be increased exposure of humans to the substance.

An expansion in production volume for this use may increase exposure in another way. Conditions of manufacture and processing of the substance could change if production volume expands significantly. This is because the initial production equipment and processes may not, for technical and economic reasons, be the best ones for producing the substance in higher volumes. Thus, if these changes occur in how the substance is produced and handled, the types and levels of exposure also may change, including possible increases in exposure.

Not all increases in production volume are "significant" from the standpoint of increased exposures. Also, it is impossible to predict in quantitative terms the specific changes in exposure that will result from increased production. Generally, it may not be appropriate to require submission of SNUR notices to EPA for marginal changes in volume. Rather, the notices should reflect "significant" changes, and one measure of "significance" is the submitter's own estimates of production volume. Presumably, maximum or "outside" estimates represent the submitter's own best estimates of potential market demand, and thus production volume, for the new substance. Anything exceeding this would be unanticipated by the submitter in making his technical, commercial, and industrial hygiene plans, i.e. it would be "significant" to him in several respects. If it also could lead to significant new exposures, then it may be the basis for a finding of a "significant new use," particularly when there is no information about toxicity.

In this case, the submitter's ultimate production estimate of 1,000 pounds per year is a maximum figure—a range of 400 to 600 pounds is projected as being realistic and most probably for the third year. To allow for moderate increases in volume consistent with the manufacturer's own plans for production and commercialization, EPA proposes to use the 1,000 pound figure as a basis for a finding that a significant change in production occurs. As noted above, in this case increase in production will likely correlate with increase in exposure, so that the selection of the 1,000 pound figure accounts both for the normal growth of the product and increased risks to humans.

EPA proposes that this 1,000 pounds per year amount be applied on a per-person basis—that is, under the proposed SNUR more than 1,000 pounds of the substance could be produced, if several companies manufacture the substance, each making no more than 1,000 pounds per year. The Agency considered making the 1,000 pounds figure an aggregate one, so that total U.S. poduction in any one year could not exceed 1,000 pounds without notification to EPA. However, EPA is not proposing this requirement for three reasons:

1. To implement such a rule EPA might need to develop some type of "allocation" or "rationing" system, requiring some manufacturers to submit a notice based on the cumulative production of the substance by a number of different persons. Although such an approach may be appropriate for some production volume SNURs, it is neither necessary nor appropriate to do so here, particularly in light of the next two points.

2. Based upon information gathered during EPA's review of the PMN it is likely that this company will be the only producer of the PMN substance fot his use.

3. The other proposed SNUR "trigger"—requiring a notice prior to manufacture for any other qualitative

[1] H.R. Rep. 94-1679, 94th Cong., 2d Sess. 66.

use—provides assurance that other possible exposures will not occur without prior notice to EPA. By taking a comprehensive approach to this SNUR, in terms of the possible exposures that are covered, EPA can set production volume limits at the maximum levels projected by the PMN submitter and still ensure that significant increases in exposure will not take place before EPA has reviewed them. Under the proposed rule, a person would be required to sumbit a notice at least 90 days before manufacturing or processing the substance for the significant new use. In the case of the production volume trigger, this would mean the notice must be filed at least 90 days prior to the point when the 1,000 pound trigger would be exceeded, and the 1,000 pound level could not be exceeded until the SNUR notice period expired.

In EPA's proposed rule, the calculation of when a person would exceed the 1,000 pound level is made for each calendar year on an individual basis, without regard to the production for previous years. However, EPA is also considering substituting a moving two-year average for the calculation made on a year-by-year basis. Under this method a person would average his production for the current year with that of the previous year, and would only be subject to the reporting requirement at least 90 days prior to the time when the average of the current year and the preceding year exceed 1,000 pounds. For example, a person could produce 1,500 pounds of the substance in 1983 if his production had been 500 pounds or less in 1982.

Use of a two-year average might more closely approximate the realities of production of low-volume specialty chemicals. Fluctuations in annual production levels that result in an occasionally very high or very low annual figure seem to be common. Thus, depending on inventory levels, cost and availability of feedstocks, or availability of production equipment, a single year's production can be much greater or less than previous or succeeding years. However, such changes may not signal significant growth.

EPA can foresee two possible disadvantages to a production volume trigger based on a two-year moving average. First, some significant growth scenarios would be identified only one year after the growth had actually exceeded the 1,000 pound level. For example, if production equalled 200 pounds in 1981, and 1,700 pounds in 1982 as part of planned significant growth, EPA might not receive a notice until 1983. A second concern is that a two-year average may pose some difficulty in enforcement actions. EPA requests comment on these problems, and the overall utility of the two-year average in cases like this one.

Persons Subject To Section 5(a)(1)(B)

Section 5(a)(1)(B) states that no person shall manufacture or process a substance for a significant new use unless that person submits a notice in accordance with section 5(a). This suggests that any significant new use rule applies automatically to both manufacturers and processors. However, EPA does not interpret this provision in this manner; instead, the Agency believes that it has authority to and should adjust the coverage of manufacturers and processors in the rule in order to eliminate duplication, or reduce unnecessary burdens, where it has a reasonable basis for doing so.

In this case, EPA is proposing that both manufacturers and processors be required to give notice of significant new uses as defined in proposed § 721.75(a), that is, for qualitative new uses. Both manufacturers and processors are capable of initiating, either singly or in concert, the actions which may result in significant new exposures in conjunction with manufacturing or processing the substances for qualitative new uses. For example, if a person manufactures the substance, and sells it to a person who processes it for a qualitative new use, increased exposures may result from the independent actions of either the manufacturer or processor at their respective stages of the chemical's life cycle. In this case, the reporting responsibility should fall on both persons, who may submit either separate notices reflecting forthcoming changed exposures at each stage, or a combined notice reflecting all stages of the substance's life-cycle.

EPA is proposing that only the persons who intend to manufacture in excess of 1,000 pounds per annum of the substance for the use proposed in the PMN be required to submit a notice. Under this proposal, it would theoretically be possible for a single person to process more than 1,000 pounds of the substance for the originally proposed use without notifying EPA. He could do this by purchasing the substance from two or more different manufacturers, each of whom manufactured less than the 1,000 pounds which would trigger significant new use reporting. However, this eventuality is unlikely; in addition, once a given amount of the substance has been manufactured, the fact that processing occurs at one site rather than several does not significantly affect total exposure. EPA requests comment on whether the 1,000 pound trigger should be applied to processors as indirect means of limiting aggregate manufacture of the substance.

Required Information

As indicated in § 721.7, EPA is not at this time proposing any notice form or other special information requirements for notices submitted under this Part. Instead, the Agency is proposing that any such notices comply with the explicit requirements of section 5 of TSCA. In particular, this includes the requirement to submit the information and data described in section 5(d)(1). EPA's policy with regard to what test or other health and safety data a person should include in a notice is discussed in the next section of this notice; other issues concerning information submittal requirements under section 5(d)(1) are discussed immediately below.

EPA previously has proposed forms and other requirements which will be applicable to notices for new chemical substances, submitted under section 5(a)(1)(A) published in the **Federal Register** of January 10, 1979 (44 FR 64572), reproposed in the **Federal Register** of October 16, 1979 (44 FR 59764). EPA at this time is not proposing similar detailed rules for notices of significant new uses for several reasons.

The Agency still believes that forms and rules for reporting under section 5 are useful and necessary, in the long run. EPA has been receiving PMN's for new chemical substances since July 1979 under an Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564). Experience under this policy, which among other things stated that the PMNs should include information and data required by the law, has been mixed. A few notices have been quite complete; others, while meeting the statutory minimums, have been so brief and informative as to hamper EPA's initial review, although in almost all cases the submitters later were willing to supplement the PMN to some degree in response to specific questions posed by the Agency. In short, the past few months have generally reinforced EPA's original view that an efficient and effective section 5 premanufacture notification review program, especially one that may have to process a significantly greater number of notices than it has in this early phase, needs rules and forms to standardize the submittal of information. In line with this determination, EPA is continuing with efforts to develop a form or forms for significant new use notification, as one of the many facets of developing

general rules and procedures for "follow-up" of new chemical substances. When these rules are proposed, the Agency also will propose that the information requirements extend to any significant new use rules for individual substances which are in effect at that time. However, EPA will not be prepared to propose these rules until 1981.

EPA believes that, with an exhaustive examination of significant new use information requirements pending, it is not necessary or useful to devote resources to a detailed consideration of these requirements in the context of a SNUR for a single chemical substance. The number of notices likely to be submitted under this rule should be rather low, and therefore assessing notices which are not in a standard format, or which EPA must request the submitter to supplement to some degree, should not constitute a serious burden on the program.

Pending development of detailed reporting rules for notices submitted under SNURs, EPA believes persons should submit notices on the basis of EPA's Interim Policy for Premanufacture Notices published in the **Federal Register** of May 15, 1979 (44 FR 28564). Although the Interim Policy document was not drafted specifically to include significant new use notices, EPA has reviewed the Interim Policy and determined that the guidance it provides is generally applicable. However, for the purposes of this proposed SNUR, EPA is supplementing the Interim Policy with the following additional guidance.

First, persons would not be required to submit information and data that were included in the original PMN. For example, if a person submits a SNUR notice because he intends to manufacture 2,000 pounds of the substance for the use described in the PMN, he would focus on the volume increase and need not provide further deatiled descriptions of the use. However, to the extent that the estimated exposures differed significantly from those in the PMN, this information must be corrected and updated.

Second, EPA would urge persons to submit more specific and detailed information on the human exposures and environmental release that result from any significant new use of the substance. Information on these topics will allow EPA to focus on these new uses at a level of detail consistent with its conclusion that they are "significant."

EPA requests comments on additional guidance which the Agency should provide when this rule is promulgated.

Health and Safety Studies

In addition to submitting information required by section 5(d)(1)(B) and (C) of the Act concerning the submittal of data related to health and environmental effects, these sections require the submittal of health and environmental effects data that are known to or reasonably ascertainable by the submitter but do not require the submitter to perform additional testing. EPA has proposed its interpretation of these requirements under proposed 40 CFR 720.23 published in the **Federal Register** January 10, 1979 (44 FR 2270), and the Agency's final rules on this subject would apply to any section 5(a)(1)(B) notices submitted under this SNUR.

Any notice submitted under this rule would describe a proposed use of this substance that involves signficant exposure to humans or the environment. As discussed above, at this time EPA is unable to conclude anything about the substance's toxic properties, and this lack of information is one of the reasons for issuing this SNUR. If exposures change or increase, so will possible risks, and it is this possibility that is the basis for EPA's concerns about production and use of the chemical.

Because of these potential risks from the increased exposures indicated by the proposed SNUR triggers, EPA strongly encourages any person who submits a notice under this SNUR to include information on the substance's toxic properties. EPA is planning to publish premanufacture testing guidance in the near future. Persons subject to this SNUR are urged to refer to the testing guidance for EPA's recommendations concerning data needed for assessment of risk presented by new chemicals or significant new uses of existing chemicals.

Procedures for Filing SNUR Notices

EPA is not, in this notice, proposing any procedures for the processing of notices which may be submitted under this rule. Instead, the proposed rule focuses only on the most essential elements of this SNUR, including definition of significant new uses, description of types of persons subject to the requirements, and special exemption procedures. As discussed above, EPA has begun to develop general rules on the subject of "follow-up," under the authorities of section 5(a)(2) and section 8(a). This rulemaking will parallel the initial PMN rulemaking, addressing any overall procedural issues in the implementation of SNUR requirements and review of notices. When these rules are proposed, EPA will indicate that certain portions of them—including information requirements, disposition procedures, etc.—would apply to any SNURs promulgated on a case-by-case basis prior to the effective date of the general follow-up rules. (The general rules would also apply to subsequent case-by-case significant new use rules unless the individual rule specifically stated otherwise.)

Pending completion of that rulemaking, persons submitting SNUR notices should rely on EPA's Interim Policy for guidance. The present PMN Interim Policy (44 FR 28564) addresses a variety of topics including submitter identification, notice certification, section 5(d)(2) **Federal Register** notices and procedures for asserting confidentiality claims. EPA is considering supplementing and modifying this policy, based on experience with PMNs thus far. EPA requests comments on any special procedures that should be developed for significant new use notices.

Procedures for Informing Persons of the Existence of This Significant New Use Rule

One practical problem that EPA must confront in implementing this proposed rule is the task of informing persons that certain uses of the substance are subject to a significant new use rule. A discussion of the Agency's proposed methods follows. EPA requests suggestions for additional methods of disseminating this information.

EPA will follow the formal mechanisms for notice that a new regulation has come into effect. First, the final rule will be published in the **Federal Register**. Second, because the rule is one of continuing applicability and effect, it will be codified in Title 40 of Code of Federal Regulations (CFR), which is revised annually.

In addition to these formal notice mechanisms, EPA is exploring the possibility of using the Inventory of existing chemical substances or associated documents to inform persons of the existence of this SNUR. The Agency contemplates placing a footnote on the Inventory by the chemical identity of this substance. This footnote could refer the user to a statement that the substance was subject to a SNUR; this would notify the person of the requirement, and lead him to contact EPA for further information. In the alternative, the footnote could refer the user to an Inventory Appendix which would give a **Federal Register** or CFR citation of the rule.

EPA believes that use of the Inventory in this manner would be an effective

way of informing persons about the rule. Any person who intends to manufacture a substance which he has not manufactured before should check the Inventory to determine if the substance is listed, in order to determine whether or not to file a PMN for a new chemical substance. If he does find the substance on the Inventory, but it is subject to a SNUR, he will be put on notice of this fact, and can take further actions to determine whether he would be subject to the section 5(a)(1)(B) reporting requirement.

Finally, to help ensure that all persons potentially subject to the rule are put on notice, EPA is considering imposing on the original manufacturer the duty of informing persons purchasing the substance from him of the existence of the significant new use rule. The requirement to give notice could also be extended to other situations in which the original manufacturer becomes aware that another person intends to manufacture, process, or use the substance— especially situations in which the original manufacturer has a commercial interest in the new use, as in sale of production rights or production technology.

EPA authority to impose such a requirement would be based on the terms of the SNUR, which make it unlawful to manufacture or process a substance for a significant new use as defined by the Agency. Inherent in this requirement is the responsibility of a manufacturer or processor to know something about the uses being made of a substance, or at least to inform persons for whom the substance is being manufactured or processed that certain uses are subject to a SNUR.

Confidentiality of Proposed Use

In its PMN, the manufacturer asserted a claim of confidentiality with respect to the qualitative use of the new chemical substance, and EPA has acquiesced in this claim. The confidentiality of the use poses significant problems for the implementation of this rule, in which significant new uses of the substance are at least partially defined by the use proposed in the PMN. EPA's proposed resolution of the problem, and alternative approaches which were considered are discussed below.

EPA is proposing that the confidential description of the use not be published in the final rule, § 721.75. Instead, under § 721.11 of the proposal, a person who intends to manufacture or process the substance (the chemical identity of which is not confidential) for any use may ask EPA if that use is the same as the existing one. However, EPA will provide this information only if the requester indicates that he has a *bona fide* intent to manufacture or process the substance for that purpose. The proposed rule sets out the information EPA would require a person to submit in order to establish *bona fide* intent. Use of this procedure will prevent fishing expeditions by competitors, while allowing persons with legitimate intentions to determine whether a section 5(a)(1)(B) notice is required. On the other hand, use of such an approach does moderately increase the burden on persons intending to manufacture or process the substance. This approach for responding to inquiries concerning use description is similar to the procedure utilized in the Inventory Rules (40 CFR 710.7(g)) to enable EPA to respond to *bona fide* inquiries concerning the identities of confidential substances on the Inventory.

EPA examined the alternative of using the authorities of section 14(a) to disclose the proposed use of the substance for the purposes of this rulemaking and in the final rule itself. The Agency believes such a disclosure could be based on the authority of section 14(a)(4), which states that otherwise confidential information "may be disclosed when relevant in any proceeding" under the Act. This rulemaking is clearly such a "proceeding" and the qualitative use description, an essential part of the rule, is clearly "relevant." However, EPA is not proposing to disclose specific use information in this case. Section 14(a)(4) qualifies the Agency's rights to disclose by stating that disclosure "shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA's tentative conclusion is that, because the identity of the substance is not confidential, maintaining confidentiality in this case except where *bona fide* intent to manufacture is shown may not unduly hamper the ability of persons to participate in this rulemaking or to comply with the rule when promulgated. This determination, however, is based on the facts of this particular case; the Agency is not proposing a general policy of maintaining confidentiality for essential elements of section 5 rulemaking, and believes that on different facts section 14(a)(4) would justify broader disclosure. EPA specifically requests comments on how it should handle confidentiality issues in this and future SNURs.

EPA Review of Notice

EPA intends to process and review any section 5(a)(1)(B) notices submitted under this proposed rule in a manner similar to premanufacture notices for new chemical substance. When a notice is received, EPA will publish a summary in the **Federal Register** in accordance with 5(d)(2). The review period for the notice will run 90 days from EPA receipt of the notice; under section 5(c) this period may be extended up to an additional 90 days for "good cause." The submitter may not manufacture or process the substance for the significant new use until the review period, including extensions, has expired. As with a PMN for a new chemical substance, EPA will use the notice as a point of departure for assessment, supplementing the information submitted with it with other available data to the extent necessary and possible.

The Agency has a variety of means of addressing concerns raised by such a notice. Section 5(e) specifically provides for EPA to regulate the substance, under certain conditions, pending the development of information necessary to evaluate the health and environmental effects of the substance. In addition, section 5(f) provides authority for EPA to control exposures which result in an unreasonable risk to health or the environment. EPA may also refer the information to other EPA offices and other Federal agencies, if these offices would be helpful in evaluating new uses of chemical substances and controlling them when appropriate.

Section 5(g) is the only part of section 5 which mandates special treatment of SNUR notices. This provision states that, at the end of the notification period for a significant new use, EPA must publish in the **Federal Register** a statement of the reasons for not initiating an action under section 6 or section 7 to control the substance. EPA has not determined the appropriate contents or level of detail for this notice, and requests public comment on the purposes this notice should serve.

Modification of Reporting Requirement Based on Notices

EPA is not proposing, and does not believe it would be appropriate to proposed, a sunset provision that would terminate, on the basis of passage of time alone, the signficant new use reporting requirement. On the other hand, the Agency believes that there may be several circumstances, arising from the submittal of notices, which will lead to modification of the requirements proposed today.

First, when a notice is submitted which describes a significant new use, EPA will be able to review the use to determine whether any control

measures are necessary. Once the Agency has had its review opportunity, the use reported would arguably not be "new" any longer, and EPA believes that in general, the requirement to submit PMNs for such specific new uses should be lifted once the submitter begins to manufacture or process for that particular use. In these cases, the Agency proposes that the significant new use rule itself be modified or annotated automatically—that is, without following rulemaking procedures. The justification for such an approach is simple. Addition of a particular use to a list of existing uses would not be a discretionary activity. Rather, it would be akin to the automatic addition to the Inventory of a new chemical substance upon EPA's receipt of a Notice of Commencement of Manufacture. This would mean essentially that for each substance subject to a SNUR there would be a list of uses not subject to the SNUR which EPA would supplement automatically as new uses were reviewed, unless EPA acted to prohibit the use. However, establishing a list of non-SNUR uses may not be necessary in all cases, depending on how the reporting triggers are defined.

While the Agency would not have discretion to prevent a new use from being added to the list of "existing" uses, in some cases it might want to propose that certain changes in that use themselves be considered as significant. For example, EPA might not be concerned if a person proposed to manufacture 1,500 pounds of the substance for qualitative new use X, but might wish to review the use in the future if the total production rose to 10,000 pounds, or if some aspect of that use changed. The requirement to report these changes could result from a narrow description of the qualitative use added to the existing use list, e.g., "manufacture of 1,500 lbs. for qualitative use X." In other cases, further rulemaking under section 5(a)(2) might be appropriate. In addition to modifying the SNUR, EPA may follow up on particular new uses in other ways, including issuance of section 8 reporting rules.

Of course, submittal of a section 5 notice for a significant new use may result in a more substantial modification of the significant new use rule. If, for example, a notice contains information sufficient to show that a substance is of very low toxicity, the class of "significant" new uses subject to reporting may be narrowed to very high exposure situations, or eliminated entirely.

Cost Analysis

According to the manufacturer of the PMN chemical, its production (or processing) of the PMN chemical is not expected to exceed the "trigger" level stated in the SNUR. Therefore, the manufacturer is not required to do anything at this time, and should not incur any direct costs as a result of this SNUR.

However, in the event that production (or processing) of the chemical is intended to exceed the "trigger" level, then the manufacturer or processor will be required to submit the information included in section 5(d)(1) in accordance with EPA's Interim PMN Policy. The cost of submitting a notice under EPA's Interim Policy has not been determined. However, the Agency did propose a PMN form in October 1979, and the cost of filling out and submitting that form was estimated to range from $1,155 to $8,900. EPA believes the cost of submitting a notice under the Interim Policy has in most cases been in the lower part of this range.

The cost estimate for completing the revised PMN form cited above did not include the cost for asserting and substantiating confidentiality claims. The costs for claiming and substantiating confidentiality claims on EPA's proposed form estimated by EPA's contractor ranged from $900–$6,400. Although EPA has not prepared an assessment of the cost PMN submitters have actually been incurring in asserting and substantiating confidentiality claims under the Interim Policy for PMNs, EPA believes it has been only a small percentage of the costs estimated for the Agency's October 16, 1979 reproposed form.

EPA has not estimated the costs a submitter might incur in developing test or other data on the substance subject to SNUR notice. Although the SNUR does not require that the person perform additional testing EPA expects that some level of additional information, which may include testing will be generated. However, it is impossible for EPA to estimate the level of costs which may result.

The cost also does not include any indirect costs that may result from the imposition of the SNUR. These indirect costs may result from business decisions against the use of the PMN chemical due to increased uncertainties about the economic viability of the chemical for levels of production (or processing) exceeding the trigger level, and the uncertainty of using a chemical that may be subject to future Agency requirements, i.e., testing requirements or regulatory controls, under section 5(e) and (f) of TSCA. These uncertainties may affect the total market for the PMN chemical. While the Agency acknowledges that these indirect costs may exist, it also realizes that it is extremely difficult (if not impossible) to estimate the extent of these costs and their possible impacts at this time.

Rulemaking Record

The following documents constitute the administrative record of this rule (docket number OPTS 50013). Except to the extent that confidential business information has been masked, all documents are available to the public in the OPTS Reading Room, 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays, Room E–447, 401 M St., SW, Washington, D.C. 20460. This record includes basic information considered by the Agency in developing the proposed rule. EPA will supplement the record with additional information as it is received. The record includes the following categories of information:

1. The PMN submitted by National Starch, and other supplementary written materials.

2. The **Federal Register** notice of receipt of the PMN.

3. Records of all communications and meetings between EPA personnel and National Starch.

4. Any factual information the Agency considered in developing this rule.

5. Comments received on this notice.

EPA will identify the complete rulemaking record on or before the date of promulgation, as prescribed by section 19(a)(3) of TSCA, and will accept additional materials for inclusion in the record at any time between this notice and that designation. The final rule will also permit persons to point out any errors or omissions in the record.

Regulatory Analysis

EPA has determined that this document does not contain a proposal for which the Agency is required to conduct a Regulatory Analysis under Executive Order 12044.

Regulatory Development

EPA has determined that the proposal contained in this document is a specialized regulation. Specialized regulations are not subject to the procedural requirements of E.O. 12044, and are not subject to the uniform regulation development procedures promulgated by EPA and published in the **Federal Register** of May 29, 1979 (44 FR 30988).

Dated: November 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed that a new Part 721 be added to Chapter I of Title 40 as follows:

PART 721—SIGNIFICANT NEW CHEMICAL USE

Subpart A—General Provisions

Sec.
721.1 Scope.
721.3 Definitions.
721.5 Persons who must report.
721.7 Notice requirements and procedures.
721.11 Information for persons demonstrating a *bona fide* intent to manufacture, import, or process.
721.15 Exemptions and exclusions.

Subpart B—New Uses for Specific Chemical Substances

721.175 N-methanesulfonyl-p-toluenesulfonamide.

Authority: Sec. 5 of the Toxic Substances Control Act, Public Law 94-469 (90 Stat. 2003 (15 U.S.C. 2601 *et seq.*)).

Subpart A—General Provisions

§ 721.1 Scope.

This Part identifies activities with respect to certain chemical substances which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act (TSCA). In addition, it specifies the persons subject to the reporting requirements, procedures for exclusions in certain cases, and the information to be reported in a notice.

§ 721.3 Definitions.

The definitions in section 3 of TSCA, 15 U.S.C. section 2602, apply for this rule. In addition, the following terms are defined:

(a) "EPA" means the U.S. Environmental Protection Agency.

(b) "Importer" or "person who intends to import" means anyone who intends to import any chemical substance, in pure form or as part of a mixture or article, into the customs territory of the U.S. and includes:

(1) The person liable for the payment of any duties on the merchandise, or any authorized agent on his behalf (as defined in 19 CFR 1.11).

(2) The consignee.

(3) The importer of record.

(4) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR Part 141.20.

(5) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144. For the purpose of this definition the Customs territory of the U.S. consists of the 50 states, Puerto Rico, and the District of Columbia.

(c) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer and include(s), among other things, such "manufacture" of any amount of a chemcial substance or mixture:

(1) For commercial distribution, including for test marketing.

(2) For use by the manufacturer including use for product research and development, or as an intermediate. Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture. Such byproducts and impurities may, or may not in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemcial product for a commercial purpose.

(d) "Qualitative use" means the use of a substance, defined by its function and particular commercial or technical application, without regard to the quantity of the substance for that use.

(e) "Person" means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, and State or political subdivision thereof, any municipality, and interstate body, and any department, agency, or instrumentality of the Federal Government.

(f) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing any amount of a chemical substance or mixture is included. If a chemical or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

§ 721.5 Persons who must report.

(a) *General.* The following persons must submit a notice under the provisions of section 5(a)(1)(B) of TSCA and of this Part:

(1) Any person who intends to manufacture in the United States for commercial purposes any chemcial substance listed in Subpart B of this Part, for any significant new use of that substance specified in Subpart B of this Part.

(2) Any person who intends to import into the United States for commercial purposes, other than as part of an article, any chemical substance listed in Subpart B of this Part, for any significant new use of that substance specified in Subpart B of this Part.

(3) Any person who intends to process in the United States for commercial purposes any substance listed in Subpart B of this Part for any significant new use of that substance specified in Subpart B of this Part.

(b) [Reserved]

§ 721.7 Notice requirements and procedures.

Each person who is required to submit a significant new use notice under this Part must submit the notice at least 90 calendar days before commencing an activity specified in § 721.5 with respect to that use. The submitter must comply with any applicable requirement of section 5(b) of TSCA, and shall include the information and data specified in section 5(d)(1).

§ 721.11 Information for persons demonstrating a bona fide intent to manufacture, import, or process.

(a) If an important factor in the description of a use determined to be a significant new use is subject to confidential treatment, a person who intends to manufacture, import, or process that substance may ask EPA whether his intended use of the substance is subject to this Part. If the answer to the inquiry would require EPA to reveal otherwise confidential information, EPA will answer such an inquiry only if the Agency determines that the person has a *bona fide* intent to manufacture, import, or process the substance for the use with regard to which inquiry is made.

(b) If inquiry is made concerning the particular use or uses of the substance, to establish the *bona fide* intent the person must submit to EPA:

(1) A signed statement that the person intends to manufacture, import, or process the substance for the indicated purposes.

(2) A description of the research and development activities he has conducted to date.

(c) EPA will compare the use information submitted with information on existing uses and will inform the submitter whether a notice of significant new use is required if the person intends to manufacture, import, or process the substance for that purpose.

(d) A disclosure of the use description of a substance to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance for that particular use will not be considered a disclosure of confidential information.

(e) EPA will provide a final response to an inquiry under these procedures within 45 days after the Agency's receipt of a complete submission under paragraph (b) of this section.

§ 721.15 Exemptions and exclusions.

The exemptions and exemption authorities of sec. 5(h) of TSCA apply without modification to any significant new uses defined in this Part.

Subpart B—New Uses For Specific Chemical Substances

§ 721.175 N-methanesulfonyl-p-toluenesulfonamide.

EPA has determined that the following are "significant new uses" of the chemical substance N-methanesulfonyl-p-toluenesulfonamide:

(a) Use of the substance as other than confidential qualitative use, unless the new qualitative use is excluded under § 721.15.

(b) Manufacture or import of an amount of the substance in excess of 1,000 pounds per annum for use as a confidential qualitative use.

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Part VI

Environmental Protection Agency

Standards of Performance for New Stationary Sources: Beverage Can Surface Coating Industry

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD FRL-1534-1]

Standards of Performance for New Stationary Sources; Beverage Can Surface Coating Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed beverage can surface coating operations. The proposed standards would limit VOC emissions from beverage can surface coating to those resulting from the use of waterborne coatings.

The standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that surface coating operations within beverage can manufacturing plants contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed beverage can surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

DATE: *Comments:* Comments must be received on or before February 5, 1981.

Public Hearing: A public hearing will be held on January 6, 1981 beginning at 9:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by December 30, 1980.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate if possible) to Central Docket Section (A-130), Attention: Docket Number A-80-4, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing: The public hearing will be held at EPA Environmental Research Center Auditoruim (ERC), Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Deanna Tilley, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

Background Information Document. The background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to *Beverage Can Surface Coating Operations, Background Information for Proposed Standards,* EPA-450/3-80-036a.

Docket. Docket No. A-80-4, which contains supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for coping.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would apply to all new, modified, and reconstructed beverage can surface coating operations. The proposed standards define a beverage can as any two-piece steel or aluminum container or any three-piece steel container in which soft drinks or beer (including malt liquors) are packaged. Containers in which fruit or vegetable juices are packaged are excluded. Existing facilities would not be subject to the standards unless they undergo a modification or reconstruction as defined in 40 CFR 60.14 or 60.15. The standards would limit VOC emissions from the surface coating of two-piece beverage cans to 0.29 kilogram of VOC per litre of coating solids from each exterior base coating operation except clear base coating, 0.46 kg of VOC per litre of coating solids from each overvarnish coating operation and each clear base coating operation, and 0.89 kg of VOC per litre of coating solids from each inside spray coating operation. VOC emissions from the surface coating of three-piece cans would be limited to 0.50 kg of VOC per litre of coating solids from each exterior base coat operation, 0.50 kg of VOC per litre of coating solids from each interior base coat operation, 0.46 kg of VOC per litre of coating solids from each overvarnish coating operation, and 0.64 kb of VOC per litre of coating solids from each inside spray-coating operation. VOC emissions from the surface coating of metal sheets for steel or aluminum ends would be limited to 0.50 kg of VOC per litre of coating solids from each interior coating operation and 0.50 kg of VOC per litre of coating solids from each exterior coating operation. Each affected facility would consist of a coating application station, flashoff area, and curing oven.

The proposed emission limits are based on the emission levels obtainable through the use of best available waterborne coatings. The standards could also be achieved through the use of solvent-borne coatings in combination with an emission control system.

The performance test specified in the proposed standards requires the calculation of a volume-weighted average of the mass of VOC per volume of coating solids used each calendar month for each affected facility. Procedures for making these calculations are included in the proposed standards. Data on VOC and coating solids content, density, and volume of each of the coatings used, and volume and density of each diluent VOC used for each affected facility during each calendar month are necessary in conducting the monthly performance tests. Information provided by coating manufacturers, or analysis performed using Reference Method 24, is the source of coating formulation data. Coating and diluent VOC consumption data are obtained from the owner's or operator's records. Reference Method 25 would be used to determine the percentage reduction of VOC emissions achieved through the use of an emission control device. Both reference methods are promulgated in the **Federal Register** of October 3, 1980 (45 FR 65956).

The performance test and compliance provisions include procedures for conducting the performance test when only coatings with VOC content equal to or less than the proposed emission limiktations are used, when some coatings with VOC content greater than proposed emission limitations are used, and when a capture system and a control device are required for compliance.

An affected facility is in compliance when the volume-weighted average mass of VOC per volume of coating solids applied, calculated on a calendar month basis, is equal to or less than the proposed emission limitations.

The proposed standards would specify monitoring requirements only when a capture system and emission control device are used to comply with the proposed standards. For incineration systems the proposed standards require continuous monitoring of incinerator temperatures.

The proposed standards would require that the owner or operator

maintain at the source for a period of at least two years records of all data, calculations, and test results necessary to support the calculations of volume-weighted average of the total mass of VOC per volume of coating solids used in each calendar month for each affected facility.

The proposed standards would require reporting the results of the initial performance test and thereafter reporting each month in which an affected facility is not in compliance, by the tenth day of the following month. Affected facilities using a capture system and an incinerator would be required to report, quarterly, all periods during which the average temperature, while can are being processed, is significantly below the average temperature of the device during the most recent performance test.

Summary of Environmental, Energy, and Economic Impacts

Environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between the impacts from a facility complying with the proposed standard and the impacts for a facility complying with a typical State Implementation Plan (SIP) emission standard. In beverage can surface coating operations, the incremental differences will depend, in some cases, on the control levels required by revised SIPs. Revision to most SIPs are currently in progress.

Many existing beverage can surface coating operations are located in areas that are considered nonattainment areas for purposes of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. In revising their SIPs, most States are expected to use the Control Technique Guideline (CTG) document, *Control of Volatile Organic Emissions from Existing Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks* (EPA–450/2–77–088 [CTG]). Therefore, the incremental impacts are measured from the CTG-recommended emission levels.

The environmental, energy, and economic impacts of the proposed standards are based on the anticipated growth of the industry discussed in Chapter 7 of the Background Information Document. Other projections exist that would change the impact assessments. For example, some industry sources project the demise of the three-piece beverage can over the next five years. Others indicate that while use of three-piece beverage cans will drop, they will still represent a significant share of the market. The latter projection was used in assessing the impact of the proposed standards.

In addition to achieving reductions in emissions beyond that required by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity to avoid situations in which some States may attract industries by having less stringent air pollution standards relative to other States. Standards of performance also improve the efficiency of case-by-case determinations of best available control technology (BACT) for new facilities locating in attainment areas and of lowest achievable emission rates (LAER) for new facilities locating in nonattainment areas, by providing a starting point for the basis of these determinations. This results from the process for developing standards of performance, which involves a comprehensive analysis of alternative emission control methods. Detailed cost and economic analyses of various regulatory alternatives are presented in the supporting documents.

The proposed standards would reduce VOC emissions by approximately 32 percent from the CTG baseline emission level. For plants coating two-piece beverage cans, the proposed standard would result in a 47-percent reduction in VOC emission from the exterior base coat operation, a 15 percent emission reduction from the overvarnish coating operation, and a 26-percent emission reduction from the inside spray coating operation. For plants coating three-piece beverage cans, VOC emissions from the exterior base coat operation would be reduced by 8 percent. Emissions from the interior base coat operation, overvarnish coating operation, and inside spray coating operation would be reduced by 5, 13, and 82 percent, respectively. VOC emissions from the exterior and interior coating operation for steel or aluminum end sheets would be reduced by 2 and 60 percent, respectively. Annual nationwide VOC emissions would be reduced by about 4,800 Mg (5,280 tons) by 1986.

Little or no incremental water pollution impact from new, modified, or reconstructed beverage can surface coating operations would result from implementation of the proposed standards. In addition, those plants discharging toxic pollutants listed under Section 307 of the Water Act could be subject to pretreatment requirements also under development.

The proposed standards would also have little or no incremental solid waste impact.

Based on industry growth projections, application of the proposed standards would result in a net energy reduction of about 36,000 gigajoules in 1985. The net energy reductions result from the use of less coating per can because of higher solids content of the waterborne coatings upon which the standards are based.

The proposed standards are expected to have little economic impact on the beverage can industry. The proposed standards contain at least one control option for each affected facility whose cost is equal to or less than the cost of compliance with the baseline level of control.

Rationale

Selection of Source

Industrial coating operations are a significant source of VOC emissions, accounting for about 2 million Mg of VOC each year. Beverage can surface coating operations are among the largest individual operations producing VOC emissions in the industrial coating category, contributing an estimated 77,000 Mg of VOC emissions in 1977. This represents about 4 percent of total VOC emissions from all industrial surface coating operations.

Studies have been conducted to investigate the effect standards of performance would have on nationwide VOC emissions from stationary sources. Can surface coating operations are ranked second on a list of 59 sources considered for control, published August 21, 1979 (44 FR 49222). Beverage cans represent over half of the can production in the United States today and are the fastest growing segment of the can industry, with a projected annual growth of 5.5 percent. Food cans have shown a slight decline in shipments between 1976 and 1979. Projected annual growth through 1990 is estimated to be less than 1 percent. Little, if any, modification or reconstruction of food can plants is expected during this period. Food cans are predominately three-piece. As the two-piece can captures a greater share of the beverage market, three-piece capacity now used for beverage cans will become available for the manufacture of food cans. This increased availability should reduce the requirements for upgrading food can lines and the number of facilities that would be subject to the modification and reconstruction provisions of 40 CFR 60. Consequently, food cans are not included in the proposed standards. Should the situation change, consideration will be given to the development of standards for food cans.

VOC are the major air pollutants emitted from beverage can surface coating operations and result primarily from the use of organic solvents. Particulate matter generated from this surface coating process is minimal. Technology is currently available to reduce VOC emissions from beverage can surface coating operations. The use of waterborne coatings, the use of solvent-borne coatings coupled with an add-on emission control device, or the use of other control options would reduce VOC emissions by approximately 32 percent from all new, modified and reconstructed sources. Consequently, beverage can surface coating operations have been selected for the development of a new source standard of performance.

Selection of Pollutant

Volatile organic compounds are the primary air pollutants emitted from beverage can surace coating operations. Although some can coating operations may emit particulate matter, the quantity generated is not significant. VOC are defined as any organic compound which participates in atmospheric photochemical reactions, or which is measured by a reference method, or which is determined by procedures specified under any subpart. Photochemical oxidants result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, necrosis of plant tissue, and deterioration of some synthetic materials. Further information of these effects can be found in the U.S. Environmental Protection Agency (EPA) document entitled *Air Quality Criteria for Ozone and Other Photochemical Oxidants* (EPA–600/8–78–004). Therefore, only VOC were selected for inclusion in the proposed standards.

Sources of VOC Emissions at Beverage Can Plants

In beverage can surface coating operations, VOC emissions result from the use of coatings containing organic solvents that evaporate during the drying process. For the purpose of establishing standards and determining compliance, all VOC contained in a coating are assumed to evapoate during the coating process. Industry estimates that well over 90 percent of the VOC consistently evaporates during the coating process. Therefore, this assumption is considered to be valid. VOC content of coatings are generally specified by the coating supplier and calculated by a material balance of the coating ingredients. Manufacturers of beverage cans employ a wide variety of coatings to protect the contents of the can and to protect the beverage can from the environment. Typical coatings applied to beverage cans include expoxies, epoxy-acrylics, acrylics, and polyester enamels. These coatings generally contain organic solvents such as ketones, esters, ethers, and aromatics.

Surface coatings are applied to beverage cans in a series of operations, depending on the type can to be manufactured. In the manufacture of two-piece cans, surface coatings are usually applied to beverage can bodies in three steps: (1) application of an exterior base coat, (2) application of an overvarnish coating, and (3) application of an inside spray coating. Each coating operation is followed by an oven cure, except where radiation-curable overvarnish coatings are applied. A coating may be applied to the exterior bottom of the can either as part of the overvarnish coating or inside spray coating operation. Two coats of inside spray are usually applied to steel two-piece cans, while aluminum two-piece cans usually require only one inside spray coat. The two inside spray coats for steel two-piece cans may be applied wet-on-wet or with an intervening oven cure. Aluminum ends for two-piece cans are formed from precoated metal coils or sheets. When made from precoated coals, the only operation resulting in VOC emission at the beverage can line is the application of end-sealing compound. In the production of three-piece cans, coating operations include the sequential application of an interior base coat, an exterior base coat, and an overvarnish coating to the steel sheets from which beverage can bodies are formed. After formation of the can body, the seam is protected by an inside and outside seam coating. The formed can is then coated with an inside spray. Interior and exterior coatings are also applied to the stock from which the steel ends used in the manufacture of three-piece cans are formed and from which aluminum ends used with three-piece and two-piece cans are formed. End-sealing compound is applied to the formed ends.

Except for inside spray operations for two-piece and three-piece beverage cans, transfer efficiencies approaching 100 percent are achieved. For inside spray operations transfer efficiencies of at least 90 percent are consistently achieved. Transfer efficiency is defined as the ratio of the amount of coating solids adhering to the coated surface to the amount of coating solids consumed. Because of the high and consistent transfer efficiencies experienced in beverage can surface coating operations, it was not deemed necessary to explicitly consider this parameter in the compliance procedures. However 90 percent transfer efficiencies were used in estimating emissions from inside spray.

Data provided by the Can Manufacturers Institute (CMI) indicate that VOC emissions from 1976 coating operations for both two-piece and three-piece cans were distributed in the following manner. Base coating operations accounted for 39 percent of total VOC emissions; overvarnish coating operations for 4 percent, inside spray operations for 38 percent, and end-sealing operations for 10 percent of total VOC emissions. The application of side seam coatings to three-pice cans accounted for 4 percent of total VOC emissions from surface coating operations. Analysis of the CMI data indicates that VOC emissions from miscellaneous sources, such as cleanup operations and the storage or handling of coatings and solvents, accounted for approximately 5 percent total VOC emissions.

Based on information contained in the permit application for a newly constructed two-piece beverage can plant using waterborne coating, distribution of emissions is estimated to be 10 percent from exterior base coat operations, 19 percent from lithography/overvarnish application, 1 percent from bottom-end coating, 55 percent from inside spray operations and 15 percent from the application of end-sealing compound to aluminum ends.

Data for a three-piece beverage can facility applying solvent-borne coatings without add-on controls indicate that the experior and interior base coat operation account for 48 percent (24 percent for each operation) of total plant VOC emissions. Another 15 percent is attributed to the overvarnish coating operation, and 15 percent is also generated from the inside spray coating operation. End-sealing operations account for 20 percent of total VOC emissions from the plant. The application of side-seam coatings account for only 2 percent of VOC emissions.

Analysis of each emission source resulted in the exclusion from the proposed standards of side-seam coating operations for three-piece cans, bottom-coating operations for two-piece cans, misscellaneous VOC emission source (cleanup operations and storage or handling of coatings and solvents) and end sealing operations. VOC emissions from side-seaming operations for three-piece cans account for 2 to 4 percent of total plant emissions.

Emissions from bottom-coating operations for two-piece cans are estimated to be about 1 percent of all VOC emissions from two-piece can lines. While emissions from cleanup operations are potentially significant where solvent-borne coatings are used, their significance has decreased and will continue to decrease as waterborne coatings replace solvent-borne coatings. Emissions from the storage and handling of coatings and solvents are considered negligible because of the wide use of sealed containers or closed coating circulation systems. While low-solvent end-sealing compounds that meet or exceed the CTG requirements are being tested, requisite qualification testing has not been accomplished. For this reason, emissions from the application of end-sealing compounds are excluded from the standards at this time.

Selection of Affected Facilities

The choice of the affected facility for this standard is based on the Agency's interpretation of Section 111 the Act, and judicial construction of its meaning.[1] Under Section 111, the NSPS must apply to "new sources;" "source" is defnied as "any building, structure, facility, or installation which emits or may emit any air pollutant" [Section 111(a)(3)]. Most industrial plants, however, consist or numerous pieces or groups of equipment which emit air pollutants, and which might be viewed as "sources." EPA therefore uses the term "affected facility" to designate the equipment, within a particular kind of plant, which is chosen as the "source" covered by a given standard.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards in the particular industrial context involved. The Agency must do this by examining the situation in light of the terms and purpose of Section 111. One major consideration in this examination is that the use of a narrower definition results in bringing replacement equipment under the NSPS sooner; if, for example, an entire plant were designated as the affected facility, no part of the plant would be covered by the standard unless the plant as a whole is "modified." If, on the other hand, each piece of equipment is designated as the affected facility, then as each piece is replaced, the replacement piece will be a new source subject to the standard. Since the purpose of Section 111 is to minimize emissions by the application of the best demonstrated control technology (considering cost, other health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that the relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition. The application of these factors is discussed below.

Four alternatives for the designation of an affected facility were considered in the development of the proposed standards. These alternatives include (1) designation of specific equipment such as the coating application station, flashoff area, and curing oven as separate affected facilities; (2) designation of each coating operation as an affected facility; (3) designation of an entire surface coating line as an affected facility; and (4) designation of the entire plant as the affected facility.

If each emission point (specific coating equipment) were designated as a separate affected facility, separate emission limits would have to be prescribed for each piece of equipment. However, each component of a coating operation is so closely linked, both physically and operationally, that separate emission limits for each piece of equipment would present technical and economic burdens on the plant owner or operator. In the manufacture of beverage cans, a coater and associated flashoff area and curing oven may be used to apply different types of coatings, each having a different allowable emission level, e.g., clear and pigmented base coat for two-piece cans or three-piece steel sheets. Designation of the emission points as the affected facility would require that the standards be based on either the highest VOC content coating that could be used or on an industry average of VOC content. This would penalize coaters that, for reasons of product performance, must use a coating with an above-average VOC content. In addition enforcement would be difficult because of the measurement problems associated with isolating the VOC emissions from each piece of equipment.

Treating an entire can line or an entire plant—multiple can lines—as an affected facility has the advantage of providing flexibility in approaches to compliance and ease of enforcement. It has the disadvantage of permitting compliance by the elimination of one or more coating steps and associated emissions without requiring the remaining operations to employ the best system of continuous emission reduction. Also, designation of an entire plant or line as an affected facility would require a much higher capital expenditure to trigger reconstruction considerations. A modification or reconstruction to any part of an existing line or plant could subject the entire surface coating operation (or the entire line or plant) to the provisions of the proposed standard.

Designating each coating operation as an affected facility would simplify enforcement and recordkeeping requirements. Although the equipment comprising each coating operation is closely associated, VOC emissions from coatings used in each operation can be readily separated for the purposes of enforcement and recordkeeping. In addition, the impact of modification and reconstruction provisions is considered more reasonable, as compared to the designation of the entire line or plant as the affected facility. A modification or reconstruction to an individual existing coating operation would not subject all other coating operations on the line or in the plant to the provisions of the proposed standards. Defining each coating operation as including all VOC emissions generated from the application of the coating through the curing process would ensure that the best system of continous emission reduction will be applied to all coating operations. Designation of a coating operation, e.g., equipment and coating, would accommodate situations in which the same equipment is used to apply different types of coatings, each having a different allowable emission level. While such a designation would result in additional affected facilities, no specific enforcement problems would result because coating usage and production data at the plant level are maintained from each type of coating.

The following coating operations have been selected as the affected facilities for control by the proposed standards, because these coating operations account for the bulk of VOC emissions from the beverage can surface coating process, and because control techniques exist for reducing VOC emissions from these operations.

For the manufacture of two-piece beverage cans, the affected facilities are each exterior base coat operation, overvarnish coating operation, and inside spray-coating operation. For the manufacture of three-piece beverage cans, the affected facilities would include each exterior base coat

[1] The most important case is *ASARCO, Inc.* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978).

operation, interior base coat operation, overvarnish coating operation, inside spray coating operation, and each interior and exterior coating operation for steel ends. For the manufacture of two- or three-piece beverage cans, each interior and exterior aluminum-end sheet coating operation would also be designated as affected facilities.

Selection of Basis of Proposed Standards

Emission control techniques

Two general emission control techniques have been identified as demonstrated emission reduction systems for beverage can surface coating operations: (1) low VOC content coatings, and (2) solvent-borne coating systems with emissions capture and control devices.

Elimination of the exterior base coat was also considered; however, this approach was rejected because it is not applicable to all beverage can surface coating operations. Numerous exceptions would be required, especially for merchant can plants, with each plant requiring a separate analysis. In some instances, base coats are required to provide corrosion resistance, especially where the packaged product is shipped by water transportation or stored in high-temperature, high-humidity areas. Elimination of a coating, however, is not precluded as a means of compliance with the proposed emission limitations if the owner or operator can use this option to meet the proposed emission limit for that operation.

Low VOC content coatings. Low VOC content coatings applicable to the can industry include waterborne materials, no-varnish ink, and UV-curable overvarish. Waterborne coatings have been demonstrated in the beverage can industry for all coating operations with the exception of end-sealing compounds. Research and development on water-based end sealants is being actively pursued. Discussions with vendors and canmakers indicate that acceptable water-based end-sealants will be available and demonstrated within two years.

VOC emissions from waterborne coatings (or other type coatings) are dependent on the solvent-to-solids ratio of the coating, thickness of film applied, units produced per hour, and the surface area of each unit. A variety of waterborne coatings is available. VOC content of waterborne coatings obtained from coating and beverage can manufacturers are summarized in Chapter 4 and Appendix C of the BID. For comparative purposes, equivalent VOC contents expressed as kg per litre of coating less water are also included in the BID. Discussions with the industry and examination of the literature indicate that the trend in beverage can surface coating is toward the use of waterborne coatings. With few exceptions, beverage can manufacturers either have converted or are in the process of converting from solvent-borne coatings to waterborne because of ease of control and cost considerations. All major canmakers, both merchant and capture, have reported plans to convert existing solvent-borne lines to waterborne, and indicate that all future facilities will use waterborne coatings.

No-varnish inks are specially formulated inks which cure with gloss and scuff resistance properties that, in some cases, eliminate the need for an overvarnish coating. The elimination of a coating step results in a decrease in solvent emissions from that operation to zero. However, cans made with no-varnish inks may not provide the corrosion resistance required when the filled cans are stored in high-humidity, high-temperature environments, or shipped by water transportation. Also, the use of no-varnish inks may not provide the mobility required in some existing filling lines. In these cases, beverage-can surface coaters may choose to apply an over-varnish coating. During the past year the use of no-varnish inks has dropped dramatically. One merchant canmaker reports a drop from 80 percent in 1979 to 5 percent in early 1980.

The use of ultraviolet (UV) curing has received a great deal of attention in recent years. UV curing is a radiation-initiated polymerization process for curing industrial finishes and printing inks. This technology has been used for "drying" inks applied in the can and packaging industries, and for curing fillers and coatings in the plywood and particle-board industry. In the beverage can industry, UV curing is used with specially prepared inks and to a lesser extent with overvarnishes for both two-piece and three-piece cans. UV-curable materials essentially contain no VOC. Emissions are relatively insignificant and result only from polymerization that occurs during the curing process. However, the use of UV curing is not applicable to all beverage can surface coating operations and, in fact, the trend is away from their use.

While high-solids coatings (approximately 80-percent solids), powder coatings, and coatings that can be applied by electrodeposition are in use for some industrial surface coating operations, their use in the beverage can industry is still in the experimental stage.

Emission control systems. Although carbon adsorption has been used to control VOC emissions from some industrial processes, its effectiveness on beverage can surface coating operations has not been demonstrated. The opinion of the beverage can industry is that carbon adsorption could be used to control VOC emissions, but that it would be prohibitively expensive because of the high temperatures of the gas stream to be controlled. The gas streams would have to be cooled several hundred degrees prior to entering the adsorption unit. This would necessitate an elaborate and energy-intensive cooling system. However, should the use of carbon adsorption become applicable to the industry in coming years, its use would not be precluded and provisions for determining compliance are included in the proposed standards.

The only emission control system that has been demonstrated as effectively controlling VOC emissions from beverage can surface coating operations is incineration. Both thermal and catalytic incinerators have been used successfully with solvent-borne coatings on both two-piece and three-piece beverage can lines. Thermal incinerators can achieve at least a 90 percent reduction in VOC emissions when operated at a temperature of about 750° C (1,400° F). However, large amounts of supplemental fuel may be required to raise the exhaust gases to incineration temperature. If heat recovery units are installed with the incinerator, the energy consumption may be reduced. Where control is required, the increasing cost of natural gas is driving the industry towards the use of waterborne coatings.

Catalytic incinerators are also capable of achieving VOC emission reductions in excess of 90 percent. Their use requires substantially less energy than the thermal incinerator because of the lower incineration temperature. If heat recovery is used in conjunction with the catalytic units, they become more attractive economically. However, there are restrictions on the applicability of catalytic incinerators because many of the coatings used in beverage can industry contain components that may foul or mask the catalyst. This may greatly reduce the active catalyst life, resulting in higher incinerator operating costs. Consequently, the use of catalytic incinerators is normally limited to those plants that use only a few different coating formulations with ingredients that do not have an adverse effect on the catalyst.

Regulatory alternatives

Based on the analysis of beverage can surface coating emission sources and pollutants, and with consideration of the environmental, energy, and economic impacts resulting from application of the control technology discussed above, three regulatory alternatives were selected for consideration. While the use of solvent-borne coating and appropriate emission control systems is an available control option, the trend in the industry is toward the use of waterborne coatings. With few exceptions, can plants constructed in the past five years use waterborne coatings. One canmaker who constructed solvent-borne lines within the past five years has recently announced plans to convert to waterborne coatings because of increasing energy costs. In addition, practically all major beverage can makers have either converted existing solvent-borne lines to waterborne or are in the process of doing so. Because of the industry trend to waterborne coatings, primarily because of energy considerations, the regulatory alternatives emphasize the use of best available waterborne coatings. However, for those operations where waterborne coatings may not provide the desired coating finish, some manufacturers may choose to use solvent-borne coatings in combination with thermal or catalytic incineration. This option is not precluded under the regulatory alternatives as long as equivalent emissions are equal to or less than those attainable from the use of waterborne coatings.

Regulatory Alternative I is to forego development of a New Source Performance Standard (NSPS) for beverage can surface coating operations. Under this alternative, emissions from beverage can plants would be controlled by State Implementation Plans (SIPs). Existing beverage can plants located in ozone nonattainment areas woud be subject to emission limitations based on recommendations in the control technique guideline (CTG) document for beverage can surface coating operations. New plants located in ozone nonattainment areas would be required to limit emissions to the lowest achievable emission rate (LAER) and new plants in attainment areas to best available control technology (BACT). The emission limits recommended in the CTG were based on the use of the best waterborne coatings available at that time. Since publication of the CTG, waterborne coatings with lower VOC content have been developed and commercialized.

Regulatory Alternative II is based on emission levels that would result from the use of best available waterborne coatings for all coating operations and water-based materials for end-sealing operations.

Regulatory Alternative III is identical to Regulatory Alternative II with the exception that no-varnish inks or UV-curable overvarnishes would be required in lieu of waterborne coatings for overvarnish coating operations.

Environmental impact

The environmental impact of each regulatory alternative was computed as the VOC emission reduction that would be achieved relative to the emissions allowed under State regulations based on the recommended CTG limits.

Regulatory Alternative I (no NSPS) is the baseline. The current level of VOC emissions from existing plants would be maintained, and new plants would be required to meet the same emission limits.

The implementation of Regulatory Alternative II (waterborne coatings) would result in an overall VOC emission reduction of about 4,800 Mg per year in the fifth year of applicability of the proposed standard, a 32 percent reduction from Regulatory Alternative I for new facilities. Specifically, VOC emissions from two-piece beverage can surface coating operations (exterior base coat, overvarnish coating and inside spray coating) would be reduced by 4,100 Mg in the fifth year, a 32 percent decrease from the baseline level of emissions. VOC emissions from three-piece beverage can sheet coating operations (interior base coat, exterior base coat, and overvarnish coatings) would be reduced by 54 Mg, an 8 percent reduction from the baseline emissions. VOC emissions from inside spray operations for three-piece cans would be reduced by 310 Mg in the fifth year, a reduction of 52 percent from the baseline. Emissions from the interior and exterior coatings applied to the sheets from which aluminum or steel ends are formed would be reduced by 333 Mg, a 52 percent decrease from the baseline.

The application of Regulatory Alternative III (waterborne coatings in combination with no-varnish inks or UV-curable overvarnish coatings) would result in a VOC emission reduction of about 6,200 Mg per year in the fifth year, as compared to the baseline. VOC emissions from two-piece can-coating operations would be reduced by 5,400 Mg in the fifth year, a 42 percent reduction from baseline. VOC emissions from three-piece can sheet-coating operations (interior, exterior, and overvarnish coatings) would be reduced by 150 Mg in the fifth year, a 23 percent reduction from the baseline. Emissions from the inside spray coating operation would be reduced by 311 Mg, the same reduction that would be achieved by Regulatory Alternative II. VOC emissions from the coating of steel or aluminum sheet stock for ends reduced by 333 Mg., the same reduction that would be achieved by Regulatory Alternative II.

No impact on water pollution, solid waste disposal, or noise pollution as compared to baseline levels is expected to occur from either Regulatory Alternative II or III.

Energy impact

The application of can coatings requires energy in the form of electricity, natural gas and, in some instances, other fossil fuels. Electricity is used to power coating equipment, sheet and can conveyors, ventilating blowers at the coater and flashoff areas, oven circulating and exhaust blowers, and incineration system blowers. Natural gas is used as fuel for drying and curing ovens.

Regulatory Alternative II (waterborne coatings) would result in an annual overall decrease in energy requirements of about 36,000 gigajoules in the fifth year. This net energy reduction results from the use of less coating per can because of higher solids content of the waterborne coatings upon which Regulatory Alternative II is based. The use of less coating reduces the amount of VOC and water that must be evaporated in the curing oven and therefore reduces energy requirements. The fifth-year impact would be a decrease in energy consumption equivalent to 34 million cubic feet of natural gas per year. Energy requirements for two-piece can coating operations would be reduced by 27,000 GJ by 1985, a 2 percent reduction from the baseline. Energy requirements for three-piece can sheet-coating operations (interior base coat, exterior base coat, and overvarnish coating) would be reduced by 4,500 GJ, a 5 percent reduction from the baseline. Energy requirements for the inside spray coating operation would be reduced by 1,000 GJ, a 2 percent reduction. Energy requirements for the coating of sheet stock for aluminum or steel ends would be reduced by 4,200 GJ by the fifth year, a 2 percent reduction. If solvent-borne coatings and incineration are used to attain the proposed standards, energy requirements for a two-piece can line would be increased by 160 percent over the base case and for a three-piece can

line by 140 percent. These percentages represent increases of energy requirements for the coating operations, not the entire can line.

The application of Regulatory Alternative III (waterborne coatings and no-varnish inks or UV-curable overvarnish coatings) would result in an annual decrease in energy requirements of about 920,000 gigajoules in the fifth year. The greatest part of the net energy reduction under this regulatory alternative results from the use of no-varnish inks or UV-curable overvarnish coatings. Two-piece can coating energy requirements would be reduced by 880,000 GJ, a 35 percent decrease from the baseline requirements. Energy requirements for three-piece can sheet-coating operations and forming operations (inside spray coating) would be reduced by 32,000 GJ and 1,000 GJ, respectively, a 36 and 2 percent decrease, respectively. Energy requirements for end coating operations would be reduced by 4,200 GJ in the fifth year, a 2 percent reduction, the same reduction as would be achieved by Alternative II. If solvent-borne coatings and incineration are used to attain the proposed standard, energy requirement for a two-piece can line would be increased by 73 percent over the base case and for a three-piece can line by 120 percent.

Economic impact

A discounted cash flow approach was used to analyze the economic impact of each regulatory alternative. Impacts are estimated for four types of beverage can production facilities: (1) three-piece sheet-coating operations, (2) three-piece can-forming (inside spray) operations, (3) steel and aluminum end coating operations, and (4) two-piece aluminum or steel can fabrication operations. Because the costs of applying end-sealing compound to steel or aluminum ends are essentially the same for solvent- and water-based materials, no economic impact analysis was considered necessary.

The regulatory alternatives assume current levels of capital requirements, annualized costs, and product prices (i.e., current return on investment [ROI]) would be maintained.

No economic impacts on the beverage can industry are expected to occur under Regulatory Alternative II or III. Among the control options considered for each production facility, there is at least one whose cost is equal to or less than the cost of complying with the baseline level of control. The use of low-solvent coatings upon which Regulatory Alternatives II and III are based does not require any capital expenditures over the base case and also requires less energy to evaporate VOC and water in the curing oven. If no standards were developed (Regulatory Alternative I), economic analysis shows that firms buiding new production facilities have an economic incentive to achieve a greater level of control than is currently required by the SIP's. However, if an owner or operator chooses to use solvent-borne coatings with add-on controls, an economic impact would result. This impact is discussed below.

The use of incineration would have an effect on product price or return on investment (ROI), and would require an additional capital outlay by three-piece can makers. Under Regulatory Alternative II, firms building new facilities involved in the production of three-piece cans (sheet coating operations, can forming operations, and end coating operations) would have to increase the output price by 1 percent, or absorb the additional costs and accept a cut in the rate of return from 1 to 10 percentage points. Under Regulatory Alternative III, output prices would increase about 1 percent If the additional costs were passed along to the customer. The ROI impacts would be roughly similar to those occurring under Regulatory Alternative II. Under both alternatives, adopting the incineration options would increase the capital requirements by approximately 10 percent for each of the three types of production facilities.

The use of incineration would also have an economic impact on two-piece canmakers. For either Regulatory Alternative II or III, if the additional costs were absorbed, ROI would decline from 2 to 6 percentage points, depending on plant size. Additional capital outlays would amount to between 2 and 5 percent of the capital required to meet the SIP level of control.

Some canmakers may elect to use solvent-borne coatings and incineration because of customer specifications or other reasons. In these cases, capital and operating costs would be higher than in the base case. While some negative economic impacts would result, they are considered acceptable and would not adversely affect the industry.

Selection of Best System of Continuous Emission Reduction

Although Regulatory Alternative III would result in greater reductions in VOC emissions and energy requirements than Regulatory Alternative II, implementation of Regulatory Alternative III would require the use of UV-curable coatings or no-varnish inks for overvarnish coating operations. However, UV-curable coatings and no-varnish inks cannot provide surface qualities and corrosion resistance necessary to meet all customer usages, and industry data indicate a trend away from the use of these coating. Furthermore, analysis of the industry indicates the infeasibility of segmenting the industry into discrete units that can or cannot use no-varnish inks or UV-curable overvarnishes. Because these coatings are not applicable to all segments of the industry, this alternative was not selected as the basis of the proposed standards.

Under Regulatory Alternative II, the use of waterborne coatings for all surface coating operations would reduce VOC emissions by about 4,800 Mg per year in the fifth year of applicability, a 32 percent reduction from the baseline represented by Regulatory Alternative I. No other adverse environmental impacts would result from implementation of this alternative. Energy requirements would be reduced by about 36,000 GJ/yr in the fifth year, a 2 percent reduction from the baseline. No adverse economic impact would result from application of Regulatory Alternative II unless the plant owner or operator chose to incinerate VOC emissions to achieve the proposed emission limits based on the use of waterborne coatings. Increased capital and operating costs associated with incineration are considered acceptable. Based on the assessment of environmental, energy, and economic impacts, Regulatory Alternative II was selected as the best system of continous emission reduction for the basis of the proposed standard.

Selection of Format for the Proposed Standards

A number of formats could be used to limit VOC emissions from beverage can surface coating operations. The format must be compatible with any of the compliance techniques that may be used in the industry and with any new techniques that might be developed in coming years. Standards for the control of VOC emissions could be expressed in terms of (1) the concentration of VOC in exhaust gases, (2) the mass of emissions per unit of production, (3) the mass of emissions per volume of coating applied, less water, (4) the mass of emissions per volume of coating solids applied, or (5) an overall percentage reduction.

One advantage of standards expressed in terms of the concentration of VOC in the exhaust gases would be that only a single sample would be needed to determine compliance. However, the concentration format would have several disadvantages. Emission testing would be necessary,

regardless of the compliance technique; emission tests would be required for every stack that exhausts gases to the atmosphere. Although the general provisions of 40 CFR 60 prohibit the addition of dilution air to exhaust gases, the presence of dilution air would be difficult to detect with certainty. Also, there are no currently available test methods to directly measure VOC concentrations in exhaust streams.

With a standard expressed in terms of mass of VOC per unit of production, compliance would be relatively simple to demonstrate when waterborne coatings are used, but would be more difficult with the use of a capture system and emission control device. For waterborne coatings a weighted averaged of the VOC content of each coating used would be determined and multiplied by the volume used over a given time period. This value would be divided by the production during that same time period to give the VOC emissions per unit of production. When emission control devices are used, the VOC emissions could be determined by stack test and the emissions could again be divided by the production to yield the VOC emissions per unit of production. However, a standard expressed in terms of production would require extensive recordkeeping provisions for production data. This format would not be very flexible in accommodating the range of coating thicknesses that are used by the industry to meet the requirements of the many types of beverage cans produced by the industry, especially in the case of merchant can plants. This format would penalize those coaters that, for reasons of product performance, must use an above-average coating thickness.

Standards expressed in terms of mass of VOC emissions per volume of coating, less water, have the advantage of being compatible with the format used in the CTG and are currently being adopted by most States. Furthermore, they have been accepted by both canmakers and coating suppliers.

Standards expressed in terms of the mass of VOC emissions per volume of coating solids overcome the problems associated with the first two formats. Stack testing would not be required unless add-on controls were used. Furthermore, it is applicable in those cases where a coater may choose to eliminate a coating step, substitute no-varnish inks, or use a radiation-curable coating.

A format requiring an overall percentage reduction is not compatible with compliance by the use of waterborne coatings because it would not directly give credit to those facilities which use coatings with low-solvent content.

For these reasons, the format selected for the proposed standard is expressed in terms of the mass of VOC per volume of coating solids.

Selection of Numerical Emission Limits

The numerical limits selected for the proposed standards are based on the use of waterborne coatings for all surface coating operations. Waterborne coatings are available and in use for all beverage can surface coating operations. In selecting numerical emission limits, the range of VOC contents of currently available coatings either in use or under qualification, the extent of such use, and the applicability to all beverage can surface coating requirements were considered. Numerical emission limits are not based on the lowest VOC-content coating identified but rather on the coating considered to the applicable for all requirements within each coating process. Emission limits and rationale for these selections are presented below.

Lower VOC-content waterborne coatings for the exterior base coat, other than clear base coats, for two-piece steel or aluminum cans range from 0.23 kilogram to 0.36 kilogram per litre of coating solids. One widely used coating has a VOC content of 0.29 kilogram per litre of solids. This coating is considered typical and therefore 0.29 kilograms VOC per litre of solids was selected as the proposed emission limitation for two-piece can exterior base coating operations. Clear base coats for two-piece beverage cans are similar to overvarnish and are therefore subject to the same emission limits as for the overvarnish coating operation.

Lower VOC-content overvarnishes for two-piece cans, three-piece steel sheets and clear base coats for two-piece steel and aluminum cans range from 0.26 to 0.50 kilogram VOC per litre of coating solids. Overvarnishes and clear base coatings must be compatible with a wide range of inks that are used to give beverage cans the distinctive appearance required for product recognition. In order to provide flexibility and compatibility with a wide range of inks, the proposed emission limitation for overvarnish and clear base coat operations was based on a commercially available coating with a VOC content of 0.46 kilograms per litre of solids.

Waterborne inside sprays currently in use or under qualification for two-piece beverage cans contain from 0.83 to 0.95 kilograms of VOC per litre of coating solids. One coating, which has a VOC content of 0.89 kilograms per litre of solids, accounts for 75 percent of the waterborne usage. Therefore this coating was used as the basis of the proposed emission limitation for two-piece inside spray—0.89 kilograms VOC per litre of coating solids.

For three-piece can inside spray, a lower VOC-content material can be used because a lance-type spray device applies the coating to the inside of the body shell before the bottom is attached. One three-piece can inside spray containing 0.64 kilogram VOC per litre of coating solids was identified as under qualification by a major beverage can manufacturer. Two lower VOC-content coatings, 0.58 and 0.61 kilograms per liter of coating solids were also identified as under consideration for qualification, but were not selected as the basis of the standards because of their status.

Materials with low solvent-borne content used for three-piece can sheet interior base coating commercially available or under qualification have a VOC content of 0.50 to 0.53 kilogram per litre of coating solids. The 0.50 coating is commercially available and is being used by at least one beverage can maker. Consequently, 0.50 kilograms VOC per litre of solids was selected as the proposed emission limitation for interior base coating of steel sheets for three-piece cans.

Two materials, both with 0.50 kilograms VOC per litre of coating solids, are commercially available for exterior base coating of steel sheets for three-piece cans. These coatings were selected as the basis for sheet exterior base coating. The proposed emission limitation was established at 0.50 kilograms VOC per litre of coating solids.

For both exterior and interior coating of steel or aluminum end sheets, coatings with VOC content of 0.48 to 0.52 kilograms per litre of coating solids were identified as being in use or under qualification. A coating with a VOC content of 0.50 was identified as being in commercial use for the exterior coating operation. Consequently, the proposed emission limitation for exterior coating of end stock was based on the coating in commercial use and set at 0.50 kilogram VOC per litre of coating solids. The average 0.50 kilogram per litre of coating solid of the coating being qualified for interior coating of end sheet stock was selected as the proposed emission limitation.

Although the majority of end-sealing compounds currently in use throughout the industry is solvent-based, many States have adapted regulations which require beverage can surface coating lines to meet the emission limitations

recommended in the CTG. New higher solids solvent-based compounds that meet the CTG emission limitations are being evaluated by the beverage can surface coating industry for both soft drinks and beer. Water-based end-sealing compounds with even lower emissions are at about the same stage of development. These compounds use water as the carrier, with the only VOC content in the form of pH adjusters or oils. The few problems experienced have been attributed to lack of experience in application of the water-based material and in storage and handling of the ends after application of the end-sealing compound.

The Administrator believes that these end-sealing compounds will be fully tested and applicable for use on beverage cans within two years because the new end-sealing compounds require a qualification period of 12 to 18 months. Consequently, to allow for the completion of these qualification studies, no standard will be proposed for the application of end-sealing compounds at this time. A standard will be proposed after the higher solids solvent-based or the water-based end-sealing compounds have been qualified for use in the beverage can industry. It is anticipated that this will occur by 1982. This action is consistent with the qualification testing schedules currently underway as part of the CTG programs.

Modification/Reconstruction Considerations

The history of steady growth by the beverage can industry has led many owners and operators to look for ways to increase production capacity. Increased production capacity is usually accomplished by increasing line speed, adding a new line, or building a new plant. Many manufacturers have found that the design speed of existing beverage can coating operations could be increased by replacing or modifying the drive motors, electrical controls, or both. All such changes that result in a capital expenditure, as defined in 40 CFR 60.14, would subject the existing facility to the provisions of the proposed standards, if the modification causes increased emissions. However, the control techniques on which the proposed standards are based can be applied to existing beverage can coating operations that undergo a modification. A conversion would require only minor changes in the coating equipment. The use of this control technique as a retrofit on existing coating operations is well documented in the literature.

Existing beverage can surface coating operations undergoing a reconstruction, as defined in 40 CFR 60.15, would also be subject to the proposed standards. As previously discussed, the conversion to waterborne coating could be accomplished with only minor changes in coating equipment.

Selection of Monitoring Requirements

Although there are no monitoring requirements for affected facilities that use waterborne coatings, monthly performance tests are required as specified in the following section. For affected facilities that use a capture system and control device, monitoring requirements are specified in addition to monthly performance testing.

Monitoring requirements are included in standards of performance to provide a means for ensuring proper operation and maintenance of emission control systems and to provide plant and enforcement personnel with sufficient data to determine compliance with the proposed standards. In the case of the beverage can surface coating industry, monitoring is required only when a capture system and incineration are used to comply with the standards. Two types of emission control systems can be used, incineration and carbon adsorption. Monitoring is required only for incineration systems.

The proposed standards would require the plant owner or operator to measure the incinerator operating temperature during each test of incinerator efficiency. Monitoring would then consist of recording the temperature parameters on a continuous basis. For those facilities using catalytic incineration, the plant owner or operator would be required to continuously monitor the gas temperature, both upstream and downstream of the catalyst bed, as a decline in the temperature difference between the inlet and exhaust or a decline in the temperature before the catalyst would be indicative of a reduction in a catalyst activity.

Selection of Performance Test Methods

The selection of a format for the proposed standards in terms of mass of VOC per volume of coating solids limits the choice of performance test methods to a mass balance of all coatings and diluent VOC-solvent used during the test period. Where a capture and emission control system are used, capture and destruction or removal efficiencies are required for the mass balance to determine VOC discharged to the atmosphere. Choice does exist, however, in the manner of obtaining the input data for the mass balance and the frequency of testing.

The performance test may be done on a one time basis upon startup or it can be done on a recurring basis. Requiring only an initial performance test on startup reduces the workload on the owner or operator but is not as effective for ensuring continual compliance as periodic performance testing. On the other hand, periodic performance testing imposes additional recordkeeping requiements. However, the data required for periodic performance testing are collected and maintained by the source as part of production and inventory records. Periodic performance testing provides a better enforcement tool and the additional effort is considered reasonable. Because most can makers maintain the coating data on a calendar month basis, requiring periodic performance testing on a monthly basis is considered reasonable.

The data required for a mass balance performance test include mass or volume and density of each coating and diluent solvent used, volume percent solids in each coating used, and weight percent VOC in each coating used. Mass or volume of each coating and diluent solvent used is obtainable from company records; density and weight percent VOC from analyis using Reference Method 24, or from data provided by the coating supplier. Volume percent solids must be obtained from coating suppliers.

The use of coating supplier data results in the minimum cost to the owner or operator because the data are generally available in the form of a coating specification sheet. However, the procedures used in determining the weight and volume percent composition can vary. Some suppliers base their coating specifications on a theoretical method, e.g., use of ASTM 2369 to determine weight fraction volatile matter and solids and theoretical weight fraction of water to determine weight fraction of VOC. Volume fraction of solids is determined by calculations using the theoretical density of either VOC or solids.

The use of Reference Method 24 to provide data required in determining the VOC content of a coating has the advantage of using the same procedures for all coating suppliers, thereby providing a common basis for comparison. However, volume fraction solids cannot be directly determined using Reference Method 24, coating supplier data being specified for this parameter.

Consequently, the use of data provided by the coating supplier is specified as the source of coating information required for the performance test. However, Reference Method 24 "Determination of Volatile Matter, Water Content, Density, Volume

Solids, and Weight Solids of Surface Coatings" would serve as the primary source of data from which the VOC content of the coatings would be determined for the purposes of enforcement.

Industry data indicate the major can manufacturers would probably achieve compliance with the proposed standards through the use of waterborne coatings. With few exceptions, beverage can coating facilities constructed during the past 5 years were designed for the use of waterborne coatings. In addition, all major manufacturers have converted or are in the process of converting to waterborne coatings. However, a small number of owners or operators may elect to achieve compliance with the proposed emission limits through the use of a capture ststem and emission control device to reduce VOC emissions from solvent-borne coatings. The use of an emission control system necessitates a test method to determine he destruction efficiency and the concentration of VOC in the exhaust gases in and out of the incinerator. Data obtained by Reference Method 25, "Determination of Total Gaseous Nonmethane Organic Emission as Carbon," would be used to calculate the destruction efficiency of incinerators. Reference Method 1 would be used for sample and velocity transverse, Reference Method 2 for velocity and volumetric flow rate, Reference Method 3 for gas analyses, and Reference Method 4 stack gas moisture.

Table 1.—*Distribution of VOC Emissions*

Coating operation	Emission distribution	
	Coater/ flashoff	Curing oven
2-piece aluminum or steel cans:		
Exterior base coat operation	0.75	0.25
Overvarnish coating operation	.75	.25
Inside spray coating operation	.80	.20
3-piece steel cans:		
Exterior base coat operation	.10	.90
Interior base coat operation	.10	.90
Overvarnish coating operation	.10	.90
Inside spray coating operation	.80	.20
Steel ends:		
Exterior coating operation	.10	.90
Interior coating operation	.10	.90

No standard method exists to determine the capture efficiency of an emission control system. The owner or operator would be required to use a procedure acceptable to the Administrator, which may include the use of the emission distributions between the coater and oven specified in the standards.

Limited information is available on the distribution of emissions between the cure oven and coater/flashoff. The owner or operator of an affected facility may use the emission distributions shown in Table 1 or may use other values acceptable to the Administrator. The values shown in Table 1 are based on information presented in the CTG, *Control of Volatile Organic Emissions from Existing Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks;* data from tests conducted by EPA and State agencies; and discussions with industry. Industry representatives agree that the values in Table 1 are representative of the industry. Comments on the emission distributions shown in Table 1 are invited. These values can be used to simplify the determination of control system capture efficiency.

Impacts of Reporting Requirements

A reports impact analysis for the beverage can surface coating industry was prepared in response to the U.S. Environmental Protection Agency (EPA) guidelines for implementing Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the proposed standards and by those appearing in the General Provisions of 40 CFR Part 60. Included in the analysis are the rationale for the selection of the proposed requirements, an evaluation of the major alternatives considered prior to the selection of the proposed requirements, and a description of the information required by the General Provisions and by the proposed standards. A copy of the reports impact analysis is included in Subcategory II–I of the beverage can docket (EPA Docket No. OAQPS A–80–4).

Based on the reports impact analysis, a total of 12 industry person-years would be required to comply with the recordkeeping and reporting requirements through the first five years of applicability.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the Addresses section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for beverage can surface coating operations was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and test methods.

Comments are invited on the designation of individual coating operations as the affected facilities. Comments are also invited on the use or development of high-solids or water-based end-sealing compounds and on the emission distribution shown in Table 1. Any comments submitted to the Administrator on these issues, however, should contain specific information and data pertinent to an evaluation of the magnitude and severity of its impact and suggested alternative courses of action that would reduce or eliminate this impact.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111 (a)(1)].

Although there may be emission control technology available that can

reduce emissions below those levels required to comply with standard of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act required (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3) for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

(A) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard [Section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in Section 169(1)] employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIP's) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reduction than those required by standards of performance for new sources.

Finally States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the Background Information Document.

Dated: November 19, 1980.

Douglas M. Costle,
Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

It is proposed that 40 CFR Part 60 be amended by adding a new Subpart WW as follows:

Subpart WW—Standards of Performance for the Beverage Can Surface Coating Industry

Sec.

60.490 Applicability and designation of affected facility.
60.491 Definitions.
60.492 Standards for volatile organic compounds.
60.493 Performance test and compliance provisions.
60.494 Monitoring of emissions and operations.
60.495 Reporting and recordkeeping requirements.
60.496 Test methods and procedures.

Authority.—Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411 and 7601(a)], and additional authority, as noted below.

Subpart WW—Standards of Performance for the Beverage Can Surface Coating Industry

§ 60.490 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in beverage can surface coating, beverage can sheet coating, and beverage can end coating lines: each interior base coat operation, over-varnish coating operation, inside spray coating operation, aluminum- or steel-end interior coating operation, and aluminum- or steel-end exterior coating operation.

(b) The provisions of this subpart apply to any affected facility which is identified in paragraph (a) of this section and commences construction, modification, or reconstruction after November 26, 1980.

§ 60.491 Definitions.

(a) All terms which are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

"Aluminum end" means the aluminum top end for three- and two-piece beverage cans.

"Beverage can" means any two-piece steel or aluminum container or three-piece steel container in which soft drinks or beer, including malt liquor, are packaged. The definition does not include containers in which fruit or vegetable juices are packaged.

"End interior coating operation" means the system on each beverage can surface coating or sheet coating line used to apply a coating, which isolates the contents of the beverage can, to the steel or aluminum sheets from which ends for two-piece and three-piece beverage can are manufactured. The end interior coating operation consists of the coating application station, flashoff area, and curing oven.

"End exterior coating operation" means the system on each beverage can surface coating or sheet coating line used to apply a protective coating to the aluminum or steel sheets from which the ends for two-piece and three-piece beverage cans are manufactured. The end exterior coating operation consists

of the coating application station, flashoff area, and curing oven.

"Exterior base operation" means the system on each beverage can surface coating or sheet coating line used to apply a coating to the exterior of a two-piece beverage can body or to the steel sheets from which three-piece beverage can bodies are made. The exterior base coat provides corrosion resistance and a background for lithography or printing operations. The exterior base coat operation consists of the coating application station, flashoff area, and curing oven. The exterior base coat may be pigmented or clear (unpigmented).

"Interior base coat operation" means the system on each beverage can surface coating or sheet coating line used to apply a coating to the steel sheets from which three-piece beverage can bodies are formed. The interior base coat is the first layer of the protective coating which isolates the contents of a three-piece beverage can from the metal can body. The interior basecoat operation consists of the coating application station, flashoff area, and curing oven.

"Inside spray coating operation" means the system on each beverage can surface coating line used to apply a coating to the interior of a two- or three-piece beverage can body. This coating provides a protective film between the contents of the beverage can and the metal can body. The inside spray coating operation consists of the coating application station, flashoff area, and curing oven. Multiple applications of an inside spray coating are considered to be a single coating operation.

"Overvarnish coating operation" means the system on each beverage can surface coating or sheet coating line used to apply a coating over ink that reduces friction for automated beverage can filling equipment, provides gloss, and protects the finished beverage can body from abrasion and corrosion. The overvarnish coating is applied to the steel sheets from which three-piece beverage can bodies are made and to two-piece beverage can bodies. The coating operation consists of the coating application station, flashoff area, and curing oven.

"Steel end" means the beverage can ends which are formed from surface coated steel sheets for three-piece cans.

"Three-piece can" means any beverage can which consists of a surface coated steel body, a bottom, and a top. The three-piece can is manufactured from a surface coated rectangular sheet that is rolled into a tubular body and soldered, welded, or cement sealed at the seam to form a beverage can body. One end is attached to the can body by roll seaming during the manufacturing process, and the other end is attached during the filling process.

"Two-piece can" means any beverage can that consists of a body manufactured from a single piece of steel or aluminum and a top. Coatings for a two-piece can are usually applied after fabrication of the can body.

"VOC content" means all volatile organic compounds (VOC) that are in a coating. VOC are expressed in terms of kilograms of VOC per litre of coating solids.

(b) Notations used under § 60.493 of this subpart are defined below:

C_a = concentration in gas stream in vents after control device (parts per million as carbon)
C_b = concentration in gas stream in vents before control device (parts per million as carbon)
D_c = coatings density (kilograms per litre)
D_d = diluent VOC-solvents density (kilograms per litre)
D_r = density of VOC solvent recovered by an emission control device (kilograms per litre)
E = emission control device efficiency, inlet versus outlet (fraction)
F = capture efficiency, captured and routed to one control device versus total emissions (fraction)
G = volume-weighted average of VOC content of coatings consumed in a calendar month (kilograms per litre of coating solids)
H_e = fraction of VOC emitted at the coater and flashoff areas captured by a collection system
H_h = fraction of VOC emitted at the cure oven captured by a collection system
L_c = volume of coating, as received (litres)
L_d = volume of diluent VOC-solvent added to coating (litres)
L_r = volume of VOC-solvent recovered by an emission control device (litre)
L_s = volume of coating solids (litres)
M_d = mass of diluent VOC-solvent (kilograms)
M_o = mass of VOC-solvent in coating, as received (kilograms)
M_r = mass of VOC-solvent recovered by emission control device (kilograms)
N = volume-weighted average of VOC emission to atmosphere in a calendar month (kilograms per litre of coating solids)
Q_a = volumetric flow rate in vents after control device (dry standard cubic meters per hour)
Q_b = volumetric flow rate in vents before control device (dry standard cubic meters per hour)
R = overall reduction efficiency from all control systems for an affected facility (fraction)
S_e = fraction of VOC in coating and diluent VOC-solvent emitted at the coater and flashoff area for a coating operation
S_h = fraction of VOC in coating and diluent solvent emitted at the cure oven for a coating operation
V_s = volume fraction of solids in coatings, as received
W_o = weight fraction of VOC-solvent in coatings, as received.

§ 60.492 Standards for volatile organic compounds.

On or after the date on which the initial performance test required by § 60.8(a) is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge of VOC emissions to the atmosphere that exceed the following volume-weighted calendar-month average emissions:

(a) 0.29 kilogram of VOC per litre of coating solids from each two-piece can exterior base coat operation, except clear base coat;

(b) 0.46 kilogram of VOC per litre of coating solids from each two-piece can clear base coat operation and from each overvarnish coating operation;

(c) 0.50 kilogram of VOC per litre of coating solids from each three-piece can sheet base coating operation and each aluminum- or steel-end sheet coating operation;

(d) 0.89 kilogram of VOC per litre of coating solids from each two-piece can inside spray coating operation; and

(e) 0.64 kilogram of VOC per litre of coating solids from each three-piece can inside spray coating operationn.

§ 60.493 Performance test and compliance provisions.

(a) Sections 60.8 (d) and (f) do not apply to the performance test procedures required by this subpart.

(b) The owner or operator of an affected facility shall conduct an initial performance test as required under Section 60.8(a) and thereafter a performance test each calendar month for each affected facility according to the procedures in this section.

(c) The owner or operator shall use the following procedures for determining monthly volume-weighted average emissions of VOC in kilograms per litre of coating solids.

(1) An owner or operator shall use the following procedures for any affected facility which does not use a capture system and a control device to comply with the emission limit specified under § 60.492.

(i) Calculate the volume-weighted average of the total mass of VOC per volume of coating solids used during each calendar month for each affected facility, except as provided under § 60.493(c)(1)(D). Each monthly calculation is considered a performance test. The owner or operator shall determine the composition of the coatings by formulation data supplied by the manufacturer of the coating or by an analysis of each coating, as received,

using Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coating to determine the VOC content of coatings using Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine the volume of coating and the mass of VOC-solvent used for thinning purposes from company records on a monthly basis. If a common coating distribution system serves more than one affected facility or serves both affected and existing facilities, the owner or operator shall estimate the volume of coating used at each facility by using the average dry weight of coating, number of cans, and size of cans being processed by each affected and existing facility or by other procedures acceptable to the Administrator. The weighted average of the total mass of VOC per volume of coating solids used each calendar month will be determined by the following procedures.

(A) Calculate the mass of VOC used ($M_o + M_d$) during each calendar month for each affected facility by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}$$

[$\Sigma L_{dj} D_{dj}$ will be 0 if no VOC solvent is added to the coatings, as received.]

Where: n is the number of different coatings used during the calendar month and m is the number of different diluent VOC-solvents used during the calendar month.

(B) Calculate the total volume of coating solids used (L_s) in each calendar month for each affected facility by the following equation:

$$L_s = \sum_{i=1}^{n} L_{ci} V_{si}$$

where: n is the number of different coatings used during the calendar month.

(C) Calculate the volume-weighted average mass of VOC per volume of solids used (G) during the calendar month for each affected facility by the following equation:

$$G = \frac{M_o + M_d}{L_s}$$

(ii) Calculate the volume-weighted average of VOC emissions discharged to the atmosphere (N) during the calendar month for each affected facility by the following equation:

$N = G$

(iii) Where the value of the volume-weighted average of mass of VOC per volume of solids discharged to the atmosphere (N) is less than or equal to the applicable emission limit specified under § 60.492, the affected facility is in compliance.

(iv) For each affected facility that uses only coatings, as received, which individually have a VOC content equal to or less than the limit specified under § 60.492 and does not add VOC to the coating during the distribution or application process, the owner or operator may demonstrate compliance by determining the formulation of the coatings from data determined using Reference Method 24 or data provided by the manufacturer of the coating. If required by the Administrator, the owner or operator shall determine the composition of any coating, as applied, by using Reference Method 24 or an equivalent or alternative method. Where the value of the VOC content of each coating used is equal to or less than the applicable emission limit specified under § 60.492, the affected facility is in compliance.

(2) An owner or operator shall use the following procedures for any affected facility that uses a capture system and a control device that destroys VOC (e.g., incinerator) to comply with the emission limit specified under § 60.492.

(i) Calculate the volume-weighted average of the total mass of VOC per volumn of coating solids (G) used during each calendar month for each affected facility as described under § 60.493(c)(1)(i).

(ii) Calculate the volume-weighted average of VOC emissions discharged to the atmosphere (N) during each calendar month by the following equation:

$N = G \times [1-R]$

For the initial performance test the overall reduction efficiency (R) shall be determined as prescribed in A, B, and C below. In subsequent months, the owner or operator may use the most recently determined overall reduction efficiency (R) for the performance test providing control device, and capture system operating conditions have not changed. The procedure in A, B, and C, below, shall be repeated when directed by the Administrator or when the owner or operator elects to operate the control device or capture system at conditions different from the initial performance test.

(A) Determine the fraction (F) of total VOC emitted by an affected facility that enters the control device using the following equation:

$F = S_e H_e + S_h H_h$

where H_e and H_h shall be determined by a method that has been previously approved by the Administrator. The owner or operator may use the values of S_e and S_h specified in Table 1 or other values determined by a method that has been previously approved by the Administrator.

(B) Determine the destruction efficiency of the control device (E) using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation.

$$E = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi} - \sum_{j=1}^{m} Q_{aj} C_{aj}}{\sum_{i=1}^{n} Q_{bi} C_{bi}}$$

Where: n is the number vents before the control device, and m is the number of vents after the control device.

(C) Determine overall reduction efficiency (R) using the following equation:

$R = EF$

(iii) If the volume-weighted average of mass of VOC emitted to the atmosphere for each calendar month (N) is less than or equal to the applicable emission limit

specified under § 60.492, the affected facility is in compliance. Each monthly calculation is a performance test.

Table I.—*Distribution of VOC Emissions*

Coating operation	Emission distribution	
	Coater/ flashoff (S_s)	Curing oven (S_o)
2-piece aluminum or steel cans:		
Exterior base coat operation	0.75	0.25
Overvarnish coating operation	.75	.25
Inside spray coating operation	.80	.20
3-piece steel cans:		
Exterior base coat operation	.10	.90
Interior base coat operation	.10	.90
Overvarnish coating operation	.10	.90
Inside spray coating operation	.80	.20
Steel ends:		
Exterior coating operation	.10	.90
Interior coating operation	.10	.90

(3) An owner or operator shall use the following procedure for any affected facility which uses a capture system and a control device that recovers the VOC (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.492.

(i) Calculate the volume-weighted average of the total mass of VOC per volume of coating solids (G) used during each calendar month for each affected facility as described under § 60.493(c)(1)(i).

(ii) Calculate the total mass of VOC recovered (M_r) during each calendar month using the following equation:

$$M_r = L_r D_r$$

(iii) Calculate overall reduction efficiency of the control device (R) for each calendar month for each affected facility using the following equation:

$$R = \frac{M_r}{M_o + M_d}$$

(iv) Calculate the volume-weighted average mass of VOC emitted to the atmosphere (N) for each calendar month for each affected facility using the following equation:

$$N = G(1 - R)$$

(v) If the weighted average of VOC emitted to the atmosphere for each calendar month (N) is less than or equal to the applicable emission limit specified under § 60.492, the affected facility is in compliance. Each monthly calculation is a performance test.

§ 60.494 Monitoring of emission and operations.

The owner or operator of an affected facility that uses a capture system and an incinerator to comply with the emission limits specified under § 60.492 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below:

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, a temperature measurement device shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to the manufacturer's specifications. The device shall have an accuracy the greater of ±0.75 percent of the temperature being measured expressed in °C or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent continuous record is produced.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.495 Reporting and recordkeeping requirements.

(a) Each owner or operator of an affected facility shall include the following data in the initial compliance report required under § 60.8(a):

(1) Where only coatings which individually have a VOC content equal to or less than the limits specified under § 60.492 are used, and no VOC is added to the coating during the application or distribution process, the owner or operator shall provide a list of the coatings used for each affected facility and the VOC content of each coating calculated from formulation data determined using Reference Method 24 or supplied by the manufacturers of the coatings.

(2) Where one or more coatings which individually have a VOC content greater than the limits specified under § 60.492 are used or where VOC are added or used in the coating process, the owner or operator shall report for each affected facility the volume-weighted average of the total mass of VOC per volume of coating solids.

(3) Where compliance is achieved through the use of incineration, the owner or operator shall include in the initial performance test required under § 60.8(a) or subsequent performance tests at which destruction efficiency is determined the combustion temperature (or the gas temperature upstream and downstream of the catalyst bed), the total mass of VOC per volume of coating solids before and after the incinerator, capture efficiency, and the destruction efficiency of the incinerator used to attain compliance with the applicable emission limit specified under § 60.492. The owner or operator shall also include a description of the method used to establish the amount of VOC captured by the capture system and sent to the control device.

(b) Following the initial compliance report, each owner or operator of an affected facility shall report, within ten calendar days, each instance in which the volume-weighted average of the total mass of VOC per volume of coating solids, after the control device if a capture device and control system are used, is greater than the limit specified under § 60.492.

(c) Where compliance with § 60.492 is achieved through the use of incineration, the owner or operator shall continuously record the incinerator combustion temperature during coating operations for theremal incineration or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration. For thermal incinerators the owner or operator shall report quarterly all 3-hour periods during which the average temperature (when cans are being processed) of the device was more than 28° C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.493. For catalytic incinerators, the owner or operator shall report quarterly all 3-hour periods during which the average temperature of the device immediately before the catalyst bed, when cans are being processed, is more than 28° C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.493, and all 3-hour periods during which the average temperature difference across the catalyst bed, when cans are being processed, is less than 80 percent of the average temperature difference of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.493. Negative reports are required. The owner or operator shall submit negative reports, quarterly, if there were no periods of reportable temperature differences.

(d) Each owner or operator subject to the provisions of this subpart shall

maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.496 Reference methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided in § 60.8, shall be used to conduct performance tests.

(1) Reference Method 24 or an equivalent or alternative method approved by the Administrator for the determination of formulation data from which the VOC content of the coatings used for each affected facility can be calculated. In the event of dispute, Reference Method 24 shall be the reference method.

(2) Reference Method 25 or an equivalent or alternative method for the determination of the VOC concentration in the effluent gas entering and leaving the incinerator for each stack equipped with an emission control device. The owner or operator shall notify the Administrator 30 days in advance of any State test using Reference Method 25. The following reference methods are to be used in conjunction with Reference Method 25:

(i) Method 1 for sample and velocity traverses,

(ii) Method 2 for velocity and volumetric flow rate,

(iii) Method 3 for gas analysis, and

(iv) Method for stack gas moisture.

(b) For Reference Method 24, the coating sample must be a 1-litre sample collected in a 1-litre container at a point where the sample will be representative of the coating material.

(c) For Reference Method 25, the sampling time for each of three runs must be at least 1 hour. The minimum sample volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The Administrator will approve the sampling of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that the testing of representative stacks would yield results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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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

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

71357 10–28–80 / Atlantic butterfish fishery; implementation of management plan

Deadlines for Comments On Proposed Rules for the Week of November 30 through December 6, 1980

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation—

64588 9–30–80 / Pea Crop Insurance regulations; comments by 12–1–80

Food and Nutrition Service—

65932 10–3–80 / Food Stamps; performance reporting and sanction/incentive system; comments by 12–3–80

Food Safety and Quality Service—

71364 10–28–80 / Polychlorinated biphenyls in food, feed, agricultural pesticide and fertilizer facilities; comments by 12–4–80

Rural Electrification Administration—

64596 9–30–80 / Revision of REA Bulletin 181–3; accounting interpretations for rural electric borrowers; comments by 12–1–80

Soil Conservation Service—

65603 10–3–80 / Small Watershed Protection and Flood Prevention Act; intent to review regulations, policies and procedures; comments by 12–1–80

ALASKA NATURAL GAS TRANSPORTATION SYSTEM, OFFICE OF FEDERAL INSPECTOR

73081 11–4–80 / Reimbursement of costs from sponsoring companies; comments by 12–4–80

ARTS AND HUMANITIES NATIONAL FOUNDATION

65635 10–3–80 / Employers part-time career employment; comments by 11–30–80

CIVIL AERONAUTICS BOARD

71365 10–28–80 / Airlines filing tariffs stating prices as maximum amounts; comments by 12–1–80

73086 11–4–80 / Classification and exemption of air taxi operators; comments by 12–4–80

COMMERCE DEPARTMENT

Census Bureau—

65250 10–2–80 / Miscellaneous amendments to the Foreign Trade Statistics Regulations; comments by 12–1–80

[Corrected at 45 FR 68965, 10–17–80]

Maritime Administration—

66167 10–6–80 / Research and development grant and cooperative agreements regulations; comments by 12–5–80

National Oceanic and Atmospheric Administration—

64996 10–1–80 / Atlantic groundfish fishery; comments by 12–1–80

65641 10–3–80 / Foreign fishing in the Northern Pacific Ocean and Bering Sea; catch documentation and reporting procedures; comments by 12–2–80

DEFENSE DEPARTMENT

Army Department—

73103 11–4–80 / Privacy Act systems of records; amendment of exemption rule; comments by 12–4–80

Engineers Corps—

62732 9–19–80 / Amendment of regulations for controlling certain activities in waters of the United States; comments by 12–1–80

70511 10–24–80 / Florida navigation locks regulations; comments by 11–30–80

National Security Agency—

71373 10–28–80 / Privacy Act systems of records; exemption rules; comments by 12–1–80

EDUCATION DEPARTMENT

Office of the Secretary—

73514 11–5–80 / Minority Institution Science Improvement Program (MISIP); grant regulations; comments by 12–5–80

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

74505 11–10–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comments by 12–5–80

73692 11–6–80 / Treatment under the incremental pricing program of natural gas used as boiler fuel to raise steam which forms an integral step in the manufacturing process for fertilizer, agricultural chemicals, animal feed, and food; comment period extended to 12–1–80

[Originally published at 45 FR 13122, 2–28–80]

ENVIRONMENTAL PROTECTION AGENCY

72708 11–3–80 / Acephate; proposed tolerance in or on mint hay; comments by 12–3–80

72221 10–31–80 / Air programs, Idaho; primary nonferrous smelter order to Bunker Hill Co.; comments by 12–1–80

72219 10–31–80 / Air quality implementation plan, Idaho; control of sulfur dioxide emissions from Bunker Hill Co. lead and zinc smelter; comments by 12–1–80

65630 10–3–80 / Air quality implementation plan, Missouri, approval, promulgation, and designation of areas; comments by 12–2–80

69271 10–20–80 / California, air quality; sulfur-dioxide nonattainment area boundaries for Kern County; comment period extended to 12–1–80

[*See also* 45 FR 55231, 8–19–80 and 45 FR 60931, 9–15–80]

72217 10–31–80 / Consideration of Ohio Implementation Plan revision; comments by 12–1–80

73440 11–4–80 / Guidelines for development and implementation of State solid waste management plans; comments by 12–4–80

60929 9–15–80 / Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act; comments by 11–30–80

62851 9–22–80 / Importation of motor vehicles and motor vehicle engines; comments by 12–3–80

70917 10–27–80 / Michigan air quality implementation plan; comment period extended to 11–30–80

[*See also* 45 FR 59329, 9–9–80]

70287 10–23–80 / Oklahoma; Submission for approval of interim authorization plan, Phase I, hazardous waste management plan; comments by 12–2–80

65633 10–3–80 / Pesticide use violations; procedures governing rescission of State primary enforcement responsibility; comments by 12–2–80

65633 10–3–80 / Pesticide use violations; rescission of States' primary enforcement responsibility; comments by 12–2–80

71364 10–28–80 / Polychlorinated biphenyls in food, feed, agricultural pesticide and fertilizer facilities; comments by 12–4–80

65262 10–2–80 / Receipt of revision to Lake, Great Basin Unified, Modoc, Imperial and San Bernardino Air Pollution Control Districts; comments by 12–1–80

72215 10–31–80 / Request for comments on deadline for remedying of conditionally approved portions of Ohio State Implementation plan; comments by 12–1–80

73520 11–5–80 / Revision of the Delaware State Implementation Plan; comments by 12–5–80

68403 10–15–80 / Rulemaking petition to require that generators and transporters of small quantities of hazardous waste comply with manifest, packaging, labeling and recordkeeping requirements; comments by 12–1–80

72709 11–3–80 / Solid waste disposal facilities and practices, criteria for classification; comments by 12–3–80

64856 9–30–80 / State implementation plans; approval of 1982 ozone and carbon monoxide plan revisions for areas needing an attainment date extension; comments by 12–1–80

71818 10–30–80 / State Solid Waste Management Plans, guidelines for development and implementation; comments by 12–1–80

73601 11–5–80 / Strychnine; preliminary notice of determination concluding the rebuttable presumption against registration of pesticide products; availability of position document; comments by 12–5–80

72232 10–31–80 / Water pollution; ink formulating; point source category effluent limitations guidelines; comments by 12–1–80

72232 10–31–80 / Water pollution; paint formulating; point source category effluent limitations guidelines; comments by 12–1–80

FEDERAL COMMUNICATIONS COMMISSION

37468 6–3–80 / Availability of additional FM frequencies and modification of procedures used in assigning such channels; reply comments by 12–1–80

[*See also* 45 FR 17602, 3–19–80 and 45 FR 26390, 4–18–80]

63516 9–25–80 / Conversion of radiation patterns for AM Broadcast Stations; reply comments by 12–2–80

69499 10–21–80 / FM broadcast station in Alliance, Nebr.; proposed changes in tables of assignments; comments by 12–2–80

69502 10–21–80 / FM broadcast station in Hilton Head Island, S.C.; proposed changes in table of assignments; comments by 12–2–80

69501 10–21–80 / TV broadcast stations in Madisonville, Owensboro and Princeton, Ky., proposed changes in tables of assignments; comments by 12–2–80

69497 10–21–80 / TV broadcast station in Rio Grande City, Tex.; proposed changes in table of assignments; comments by 12–2–80

64981 10–1–80 / TV broadcast station in Santa Barbara, Calif.; changes in table of assignments; reply comments by 12–5–80

FEDERAL HOME LOAN BANK BOARD

66798 10–7–80 / Graduated payment adjustable mortgage; comments by 12–1–80

66801 10–8–80 / Shared appreciation mortgage; comments by 12–1–80

FEDERAL TRADE COMMISSION

65255 10–2–80 / Darworth Co.; consent agreement with analysis to aid public comment; comments by 12–1–80

65252 10–2–80 / Murata Manufacturing Co., Ltd.; consent agreement with analysis to aid public comment; comments by 12–1–80

[Corrected at 45 FR 67360, 10–10–80]

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service—

64978 10–1–80 / Records management; stationery standards; comments by 12–1–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

65619 10–3–80 / Medical devices; labeling and restrictions to assure safe and effective use; comments by 12–2–80

71364 10–28–80 / Polychlorinated biphenyls in food, feed, agricultural pesticide and fertilizer facilities; comments by 12–4–80

Health Care Financing Administration—

71821 10–30–80 / Medicaid program; deeming of income between spouses; comments by 12–1–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

73272 11–4–80 / Section 8 and Section 23 Housing Assistance Payments Program; amendment of fair market rent schedules for existing housing; comments by 12–3–80

65258 10–2–80 / Siting of HUD-assisted project in locations with marginal or unacceptable air quality; comments by 12–1–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

58171 9–2–80 / Endangered and threatened wildlife; review of three southeastern fishes; comments by 12–1–80

Heritage Conservation and Recreation Service—

66179 10–6–80 / Energy conservation by recipients of Federal assistance; comments by 12–5–80

Indian Affairs Bureau—

72699 11–3–80 / Accounting procedures, internal; Indian moneys, proceeds of labor and special deposits; comments by 12–3–80

Land Management Bureau—

68506 10–15–80 / Grazing administration and trespass on public land; comments by 12–1–80

National Park Service—

73518 11–5–80 / Restrictions on consumption of alcoholic beverages within Valley Force National Historical Park; comments by 12–5–80

Surface Mining Reclamation and Enforcement Office—

74513 11–10–80 / Kansas regulatory program, resubmission; comments by 11–26–80

71816 10–30–80 / Surface coal mining reclamation operations, State or Federal programs; comments by 12–1–80

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

65258 10–2–80 / Review of collection of civil claims; comments by 12–1–80

INTERSTATE COMMERCE COMMISSION

73106 11–4–80 / Feeder railroad development program implementation; comments by 12–4–80

75717 11–17–80 / Gateway restrictions and circuitous route limitations, elimination; comments by 12–2–80

68696 10–16–80 / Procedures to permit carriers to reroute traffic automatically for 30 days when necessary for reason beyond carriers' control; comments by 12–1–80

67272 10–9–80 / Public forum on interstate motor carrier study, Washington, D.C. (open), 11–25–80

JUSTICE DEPARTMENT

Drug Enforcement Administration—

64572 9–30–80 / Exempt chemical preparation containing controlled substances; comments by 12–1–80

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

65640 10–3–80 / Federal acquisition regulations; safeguarding classified information in industry, contractor team arrangements, and defense production and research and development pools; comments by 12–3–80

LABOR DEPARTMENT

Labor Management Standards Enforcement Office—

65926 10–3–80 / Labor organizations; election enforcement procedures; comments by 12–2–80

PENSION BENEFIT GUARANTY CORPORATION

65259 10–2–80 / Allocation of residual assets; comments by 12–1–80

PERSONNEL MANAGEMENT OFFICE

65603 10–3–80 / Political participation by Federal employees in local elections; partial exemption from Hatch Act restrictions for residents of New Carrollton, Md.; comments by 12–2–80

POSTAL SERVICE

73518 11–5–80 / Domestic Mail Manual; definition of the terms "newspaper" and "periodical publication"; comments by 12–4–80

73103 11–4–80 / International express mail rates to Argentina; comments by 12–4–80

SECURITIES AND EXCHANGE COMMISSION

71776 10–30–80 / Debt securities, establishing ceiling limitations on the amount; comments by 11–30–80

74505 11–10–80 / Financial and Operational Combined Uniform Single ("FOCUS") Report; revision of form and filing requirements; comment period extended to 11–30–80

[*See also* 45 FR 62092 9–18–80]

71811 10–30–80 / Report of sales of securities; comments by 12–5–80

72685 11–3–80 / Securities resales; amount limitation, manner of sale and notice requirements; lessening of restrictions; comments by 12–1–80

SMALL BUSINESS ADMINISTRATION

66174 10–6–80 / Proposed business loan policy; comments by 12–5–80

TRANSPORTATION DEPARTMENT

Federal Highway Administration—

74940 11–13–80 / Bikeway design and construction criteria; comment period extended from 11–3–80 to 12–3–80

[*See also* 45 FR 51720, 8–4–80]

51625 8–4–80 / Consideration of revision of regulations for transportation of migrant workers; comments by 12–2–80

National Highway Traffic Safety Administration—

70282 10–23–80 / Highway safety innovative project grants program; comments by 12–1–80

Research and Special Programs Administration—

69272 10–20–80 / Hazardous materials; withdrawal of certain Bureau of Explosives authority delegations and miscellaneous amendments; comments by 12–5–80

Urban Mass Transportation Administration—

56742 8–25–80 / Section 5 operation assistance regulations, comments by 12–1–80

TREASURY DEPARTMENT

Alcohol, Tobacco, and Firearms Bureau—

69249 10–20–80 / Distilled Spirits Tax Revision Act of 1979, implementation; comment period extended to 12–1–80

[*See also* 44 FR 71612, 12–11–79 and 45 FR 54087, 8–14–80]

Customs Service—

64601 9–30–80 / Importation of motor vehicles and motor vehicle engines under the Clean Air Act; comments by 12–3–80

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74521 11–10–80 / Volunteer payments and services; treatment by governmental program; comments by 12–10–80

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

67307 10–10–80 / Export livestock; addition to lists of ports of embarkation for animals; comments by 12–9–80

67052 10–9–80 / Veterinary Services policy and procedures in cooperative programs concerning the eradication of Exotic Newcastle Disease from populations of birds including poultry; comments by 12–8–80

Commodity Credit Corporation—

66471 10–7–80 / 1981 Crop Flaxseed Price Support Propram; comments by 12–8–80

Federal Grain Inspection Service—

70425 10–23–80 / Elimination of mandatory requirements for inbound weighing of grain at export elevators; comments by 12–8–80

Food and Nutrition Service—

66447 10–7–80 / Special supplemental food program for women, infants, and children; comments by 12–8–80

74384 11–7–80 / Summer food service for children; comments by 12–7–80

Rural Electrification Administration—

66472 10–7–80 / Architectural services contract; proposed revision to REA form 220; comments by 12–8–80

CIVIL AERONAUTICS BOARD

66473 10–7–80 / Air carriers; removal of certificate restrictions; reply comments by 12–8–70

63500 9–25–80 / Charters; use of insurance policies to satisfy financial security requirements and use of letters of credit as an arrangement for protecting charter passengers' payments; reply comments by 12–9–80

67357 10–10–80 / Small communities; guidelines for increasing essential service by certified airlines; comments by 12–9–80

COMMERCE DEPARTMENT

Economic Development Administration—

67062 10–9–80 / Clarification of requirements concerning certain types of projects which EDA may fund under the Public Works and Development Facilities Program; final rule; comments by 12–8–80

National Oceanic and Atmospheric Administration—

66460 10–7–80 / Emergency regulations modifying threatened sea turtle resuscitation procedures; comments by 12–8–80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

66632 10–7–80 / Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analyses (Average Fuel Costs); comments by 12–8–80

Economic Regulatory Administration—

67355 10–10–80 / Motor gasoline; retailer price rule and fixed cents per gallon markups; comments by 12–9–80

ENVIRONMENTAL PROTECTION AGENCY

67564 10–10–80 / Air programs ambient air quality monitoring data reporting & surveillance provisions for lead; comments by 12–9–80

74518 11–10–80 / Air quality, Louisiana; volatile organic compound emissions in designated nonattaintment areas, comments by 12–10–80

74516 11–10–80 / Air quality, New Mexico; approval of implementation plan, nonattaintment areas; comments by 12–10–80

74515 11–10–80 / Air quality, North Carolina; approval of implementation plan, 1979 CO revisions; comments by 12–10–80

73976 11–7–80 / Availability for review of Arizona's Hazardous Waste Management Program Phase I interim authorization application; comments by 12–11–80

73977 11–7–80 / Availability for review of California's application for interim authorization of Plan I of its Hazardous Waste Management Program; comments by 12–9–80

73972 11–7–80 / Consideration of Ohio State Implementation Plan for carbon monoixde and ozone; comments by 12–8–80

73969 11–7–80 / Consideration of revision to Ohio State Implementation Plan; comments by 12–8–80

74737 11–12–80 / Implementation plan revision relating to Georgia Power Plant, Harllee Branch; comments by 12–12–80

66736 10–7–80 / Pesticide Programs data call-in; initiation of pilot program; comments by 12–8–80

73975 11–7–80 / Proposed alternative Ohio State Implementation Plan compliance schedule for a power plant in Coshocton, Ohio; comments by 12–8–80

73521 11–5–80 / Standards of performance for new stationary sources; organic solvent cleaners; comments by 12–8–80

[*See also* 45 FR 39766, 6–11–80 and 45 FR 56373, 8–25–80]

68328 10–14–80 / Steam Electric Power Generating Point Source Category; pollutant discharge limitations; comments by 12–9–80

73521 11–5–80 / Vermont application for interim authorization, Phase I; Hazardous Waste Management Program; comments by 12–10–80

FEDERAL COMMUNICATIONS COMMISSION

59351 9–9–80 / AM stereophonic broadcasting; comments by 12–9–80

63011 9–23–80 / Cable television systems and postponement of divestiture requirement; comments by 12–8–80

71628 10–20–80 / Changes in the corporate structure and operations of COMSAT; comments by 12–12–80

64991 10–1–80 / FM broadcast stations in Bath and Hammondsport, N.Y.; changes in table of assignments; reply comments by 12–10–80

64993 10–1–80 / FM station in Blairsville, Pa.; changes in table of assignments; reply comments by by 12–10–80

64984 10–1–80 / FM broadcast stations in Brookville and Versailles, Ind.; changes in table of assignments; reply comments by 12–10–80

63533 9–25–80 / FM Broadcast Station's in Casper, Wyo.; changes in table of assignments; reply comments by 12–8–80

64994 10–1–80 / FM broadcast station's in Denison, Tex.; changes in table of assignments; reply comments by 12–10–80

63532 9–25–80 / FM Broadcast Station's in Farmville and Appomattox, Va.; changes in table of assignments; reply comments by 12–8–80

64988 10–1–80 / FM broadcast stations in Hastings, Nebr.; changes in table of assignments; reply comments by 12–10–80

64985 10–1–80 / FM broadcast station's in Hays, Kans.; changes in table of assignments; reply comments by 12–10–80

63531 9–25–80 / FM broadcast station in Madras, Oreg.; changes in table of assignments; reply comments by 12–8–80

63530 9–25–80 / FM broadcast station in Munising, Mich.; changes in table of assignments; reply comments by 12–8–80

64990 10–1–80 / FM broadcast station in McCook, Nebr.; changes in table of assignments; reply comments by 12–10–80

64981 10–1–80 / FM broadcast station in Visalia, Calif.; changes in table of assignments; reply comments by 12–10–80

76717 11–20–80 / FM quadraphonic broadcasting; comments period extended to 12–10–80

[Originally published at 45 FR 55491, 8–20–80]

65639 10–3–80 / Maritime radio services; public coast stations operating on frequencies below 27,500 kHz, establishment limitation removed; comments by 12–10–80

74523 11–10–80 / MTS and WATS market structure; interstate telecommunications services; Alaska submarket; comments by 12–8–80 and 12–10–80

[*See also* 45 FR 55777, 8–21–80 and 45 FR 61646, 9–17–80]

FEDERAL COMMUNICATIONS COMMISSION

76498 11–19–80 / Overseas communications services regulations; comments by 12–12–80

65637 10–3–80 / Radio stations, table of assignments; FM broadcast station in International Falls, Minn.; reply comments by 12–8–80

64987 10–1–80 / TV broadcast station in Paintsville, Ky.; changes in table of assignments; reply comments by 12–10–80

64983 10–1–80 / TV broadcast station in Fort Pierce, Fla.; changes in table of assignments; reply comments by 12–10–80

FEDERAL MARITIME COMMISSION

75244 11–14–80 / Status of bulk commodities; comments by 12–12–80

FEDERAL RESERVE SYSTEM

71575 10–29–80 / Securities of member State banks; comments by 12–12–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

59540 9–9–80 / Establishment of conditions under which over-the-counter (OTC) anthelmintic drugs products, which destroy pinworms, are generally recognized as safe and effective and not misbranded; comments by 12–8–80

[Corrected at 45 FR 65609, 10–3–80]

INTERIOR DEPARTMENT

Fish and Wildlife Service—

59909 9–11–80 / Endangered and threatened wildlife and plants; proposal to determine "Isotria medealoides" (small whorled pagonia) to be an endangered species; comments from Governors of affected States by 12–10–80

Surface Mining Reclamation and Enforcement Office—

67361 10–10–80 / Oklahoma; permanent program submission under the Surface Mining Control and Reclamation Act of 1977; comments by 12–9–80

67372 10–10–80 / Tennessee, permanent program submission under the Surface Mining Control and Reclamation Act of 1977; comments by 12–9–80

INTERSTATE COMMERCE COMMISSION

70030 10–22–80 / Elimination of Annual Report Form TCS for motor carriers of property; comments by 12–8–80

76718 11–20–80 / Motor common carriers of household goods; operational rules; comments on or before 12–11–80

74488 11–10–80 / Railroad consolidation procedures, time revisions; comments by 12–10–80

NATIONAL CREDIT UNION ADMINISTRATION

75224 11–14–80 / Share accounts and share certificate accounts; comments by 12–10–80

NUCLEAR REGULATORY COMMISSION

76446 11–19–80 / Action plan developed as a result of the Three Mile Island accidents; comments by 12–12–80

NUCLEAR REGULATORY COMMISSION

74493 11–10–80 / Application review fees; comments by 12–8–80

70874 10–27–80 / Technetium-99 and low-enriched uranium as residual contamination in smelted alloys; exemption and licensing requirements; comments by 12–11–80

70166 10–22–80 / Utility Management and Technical Resources; Report NUREG/CR–1656; comments by 12–8–80

POSTAL SERVICE

38419 6–9–80 / Poisons and controlled substances—nonmailability; comments by 12–8–80

[*See also* 45 FR 20118, 3–27–80 and 45 FR 26983, 4–22–80]

TRANSPORTATION DEPARTMENT

Coast Guard—

70918 10–27–80 / Tankships; hatch covers on cargo tanks; comments by 12–11–80

70920 10–27–80 / Uninspected vessels of 200 gross tons or more, removal of affirmative minimum manning requirement; comments by 12–11–80

Federal Aviation Administration—

67283 10–9–80 / Flight crewmember flight and duty time limitations and rest requirements; comment period extended to 12–10–80

[*See also* 44 FR 53316, Aug. 11, 1980]

67100 10–9–80 / Petition for rulemaking of Rosenbalm Aviation, Inc. to exempt large, cargo-only aircraft from installing ozone control equipment or using ozone avoidance procedures; comments by 12–10–80

Urban Mass Transportation Administration—

60306 9–11–80 / Project management procedures for grantees; comments by 12–8–80

70412 10–23–80 / Urban initiatives program; comments by 12–8–80

TREASURY DEPARTMENT

Internal Revenue Service—

67360 10–10–80 / Income tax; definition of a private foundation; comments by 12–9–80

Next Week's Meetings

ACTUARIES, JOINT BOARD FOR THE ENROLLMENT

74094 11–7–80 / Advisory Committee on Actuarial Examinations, Washington, D.C. (closed), 12–2–80

AGING FEDERAL COUNCIL

74048 11–7–80 / Washington, D.C. (open), 12–1 through 12–3–80

AGRICULTURE DEPARTMENT

Forest Service—

74953 11–13–80 / State and Private Forestry Advisory Committee, Washington, D.C., (open), 12–4 and 12–5–80

Science and Education Administration—

74525 11–10–80 / Committee of Nine, New Orleans, La. (open), 12–4–80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

75025 11–13–80 / Dance Panel, Washington, D.C., (partially open), 12–4 and 12–5–80

75026 11–13–80 / Expansion Arts Panel (Summer Projects and Tour Events), Washington, D.C., (closed), 12–1 through 12–3–80

75369 11–14–80 / Humanities Panel, Washington, D.C. (closed), 12–1 through 12–5–80

76276 11–18–80 / Humanities Panel Meetings, Washington, D.C., (closed), 12–3 through 12–5–80

75026 11–13–80 / Literature Panel (Literary Magazines and Small Presses), Washington, D.C., 12–5 and 12–6–80 Media Arts Panel (Production: Radio), Washington, D.C., (partially open), 12–1 and 12–2–80

75026 11–13–80 / Media Arts Panel (Production: Radio), Wash., D.C. (closed), 12–1 and 12–2–80

76275 11–18–80 / Music Panel (Jazz Section), Washington, D.C., (closed), 12–5 and 12–6–80

75026 11–13–80 / Office for Partnership Panel (State Programs), Washington, D.C., (partially open), 12–3 through 12–5–80

75026 11–13–80 / Special Projects Panel (Folk Arts), Washington, D.C., (partially open), 12–6 through 12–9–80

75027 11–13–80 / Visual Arts Panel (Artists Spaces, Ongoing Workshops), Washington, D.C., (closed), 12–3 through 12–6–80

CIVIL RIGHTS COMMISSION

74953 11–13–80 / Colorado Advisory Committee, Longmont, Colo. (open), 12–2–80

COMMERCE DEPARTMENT

International Trade Administration—

75251 11–14–80 / Electronic Instrumentation Technical Advisory Committee, Washington, D.C. (partially open), 12–2–80

75252 11–14–80 / Management-Labor and Importers and Retailers' Textile Advisory Committees, Washington, D.C. (open), 12–3–80

National Oceanic and Atmospheric Administration—

74958 11–13–80 / Gulf of Mexico Fishery Management Council, Jacksonville Beach, Fla., (open), 12–3–80

74958 11–13–80 / Gulf of Mexico and South Atlantic Fishery Management Councils, Jacksonville Beach, Fla. (open), 12–1 and 12–2–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

75732 11–17–80 / Mid-Atlantic Fishery Management Council, Scientific and Statistical Committee, Philadelphia, Pa. (open), 12–3–80

74744 11–12–80 / New England Fishery Management Council, Danvers, Mass. (open), 12–3–80

74951 11–13–80 / North Pacific Fishery Management Council; High Seas Salmon Fishery Management Plan; proposed amendments and regulations for 1981 season, Renton, Wash., 12–6–80 Anchorage, Alaska (open), 12–9–80

[*See also* 45 FR 70525–70526, 10–24–80]

75732 11–17–80 / Pacific Fishery Management Council and its Scientific and Statistical Committee, Sacramento, Calif (partially open), 12–2 through 12–4–80

National Telecommunications and Information Administration—

72243 10–31–80 / Public Telecommunications Facilities Program, Grant Appeals Board, Washington, D.C. (open), 12–5–80

COMMODITY FUTURES TRADING COMMISSION

76504 11–19–80 / State Jurisdiction and Responsibilities under the Commodity Exchange Act Advisory Committee, Washington, D.C. (open), 12–4–80

CONSUMER PRODUCT SAFETY COMMISSION

72781 11–3–80 / Indoor Air Quality Research Needs, Leesburg, Va. (open), 12–3 through 12–5–80

76505 11–19–80 / Product Safety Advisory Council, Washington, D.C. (open), 12–4 and 12–5–80

DEFENSE DEPARTMENT

Army Department—

75273 11–14–80 / Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Blood Products and Preservation, San Francisco, Calif. (partially open), 12–5–80

75273 11–14–80 / National Board for the Promotion of Rifle Practice, Executive Committee, Washington, D.C. (open), 12–5–80

74747 11–12–80 / ROTC Affairs Advisory Panel, Washington, D.C. (open), 12–2–80

Engineers Corps—

75273 11–14–80 / Chief of Engineers Environmental Advisory Board, Atlanta, Ga. (open), 12–2 through 12–5–80

Office of the Secretary—

70303 10–23–80 / DoD Advisory Group on Electron Devices Advisory Committee, Culver City and Pasadena, Calif. (closed), 12–1 through 12–3–80

73120 11–4–80 / Science Board Task Force on EMP Hardening of Aircraft, Arlington, Va. (closed), 12–3 and 12–4–80

70039 10–22–80 / Wage Committee, Washington, D.C. (closed), 12–2–80

EDUCATION DEPARTMENT

76223 11–18–80 / Education of Disadvantaged Children National Advisory Council, (open), 12–3 and 12–4–80

ENERGY DEPARTMENT

69541 10–21–80 / National Petroleum Council, Arctic Oil and Gas Resources, Coordinating Subcommittee, Dallas, Tex. (open), 12–5–80

73729 11–6–80 / National Petroleum Council, Arctic Oil and Gas Resources Committee, Environmental Protection Task Group, Los Angeles Calif. (open), 12–3–80

ENERGY DEPARTMENT

70041 10–22–80 / National Petroleum Council, Exploration Task Group of the Committee on Arctic Oil and Gas Resources, San Francisco, Calif. (open), 12–2–80

72781 11–3–80 / Indoor Air Quality Research Needs, Leesburg, Va. (open), 12–3 through 12–5–80

Economic Regulatory Administration—

74749 11–12–80 / Mt. Tom Generating Station, Unit 1; scoping meeting, Holyoke, Mass. (open), 12–4–80

Federal Energy Regulatory Commission—

76746 11–20–80 / Revision of Rules of Practice and Procedure Advisory Committee, Review of Hearing Procedures Subcommittee, Washington, D.C. (open), 12–1–80

[*See also* 45 FR 70077, 10–22–80]

ENVIRONMENTAL PROTECTION AGENCY

63912 9–26–80 / Gene-Tox Program, Conference, Washington, D.C. (open), 12–3 through 12–5–80

72781 11–3–80 / Indoor Air Quality Research Needs, Leesburg, Va. (Open), 12–3 through 12–5–80

73133 11–4–80 / National Air Pollution Control Techniques Advisory Committee, Raleigh, N.C. (open), 12–2 and 12–3–80

74772 11–12–80 / Science Advisory Board, Toxic Substances Subcommittee, Washington, D.C. (open), 12–2 and 12–3–80

73539 11–5–80 / Science Advisory Board, Technology Assessment and Pollution Control Committee, (closed), Washington, D.C., 12–2–80

FEDERAL HOME LOAN BANK BOARD

73849 11–6–80 / Meeting, Washington, D.C. (open), 12–1, 12–2, and 12–3–80

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service—

74996 11–13–80 / Preservation Advisory Committee, Steering Subcommittee, New York, N.Y., (open), 12–4–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug, Abuse, and Mental Health Administration—

74776 11–12–80 / Mental Health National Advisory Council, Rockville, Md. (open), 12–1 and 12–2–80

Food and Drug Administration—

75324 11–14–80 / Cardiovascular and Renal Drugs Advisory Committee, Rockville, Md. (open), 12–1 and 12–2–80

75325 11–14–80 / Radiopharmaceutical Drugs Advisory Committee, Rockville, Md. (open), 12–4 and 12–5–80

65676 10–3–80 / Technical Electronic Product Radiation Safety Standards Committee, Rockville, Md. (open), 12–3 and 12–4–80

Human Development Services Office—

75238, 75328 11–14–80 / White House Conference on Aging, Technical Committee, Washington, D.C. (open), 12–1 and 12–2–80 (2 documents)

76516 11–19–80 / White House Conference on Aging, Technical Committee on Employment, Washington, D.C. (open), 12–3 and 12–4–80

76516 11-19-80 / White House Conference on Aging, Technical Committee on Family, Social Services and other Support Systems, Washington, D.C. (open), 12-5 and 12-6-80

National Institutes of Health—

74064 11-7-80 / Board of Scientific Counselors of the National Eye Institute, Bethesda, Md. (partially open), 12-1-80

68466 10-15-80 / General Clinical Research Centers Committee, Bethesda, Md. (open and closed), 12-1 and 12-2-80

74063 11-7-80 / Large Bowel and Pancreatic Cancer Review Committee, Bethesda, Md. (partially open), 12-4 and 12-5-80

74063 11-7-80 / Microbiology and Infectious Diseases Advisory Committee, Bethesda, Md. (partially open), 12-4-80

HOUSING AND URBAN DEVELOPMENT

72781 11-3-80 / Indoor Air Quality Research Needs, Leesburg, Va. (open), 12-3 through 12-5-80

IMMIGRATION AND REFUGEE POLICY, SELECT COMMISSION

75825 11-17-80 / Meeting, Irvington, Va. (closed), 12-5 and 12-6-80

INTERIOR DEPARTMENT

Land Management Bureau—

71437 10-28-80 / Carson City District Grazing Advisory Board, Yerington, Nev. (open), 12-3-80

65049 10-1-80 / Fairbanks District Advisory Council, Ft. Wainwright, Alaska (open), 12-2-80

71688 10-29-80 / Grazing Advisory Board, Ely, Nev. (open), 12-3-80

71437 10-28-80 / Lakeview District Advisory Council, Lakeview, Oregon (open), 12-2-80

73807 11-6-80 / Las Cruces District Advisory Council, Las Cruces, N. Mex. (open), 12-4-80

73808 11-6-80 / Outer Continental Shelf Advisory Board, Alaska Regional Technical working Group Committee, Anchorage, Alaska (open), 12-4 and 12-5-80

73802 11-6-80 / Roswell District Advisory Council, Roswell, N. Mex. (open), 12-2-80

73808 11-6-80 / Socorro District Advisory Council, N. Mex., 12-3 and 12-4-80

National Park Service—

72299 10-31-80 / Cape Cod National Seashore; off-road vehicle use, availability of management analysis alternatives, Boston, Mass., 12-1-80, Eastham, Mass., 12-2-80 (both sessions open)

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

76552 11-19-80 / International Food and Agricultural Development Board, Washington, D.C. (open), 12-5-80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

74797 11-12-80 / Aeronautics Advisory Committee, Informal Advisory Subcommittee, Hampton, Va. (open), 12-2 and 12-3-80

74797 11-12-80 / NASA Advisory Council, Subcommittee on Aviation Safety, Moffett Field, Calif. (open) 12-2 and 12-3-80

NATIONAL SCIENCE FOUNDATION

Ocean Science Advisory Committee, Review of the Biological Investigations of Hydrothermal Vents, Ad Hoc Subcommittee, Washington, D.C. (closed), 12-1 and 12-2-80

NUCLEAR REGULATORY COMMISSION

76305 11-18-80 / Procedures and Administration Subcommittee, Washington, D.C. (open), 12-3-80

76556 11-19-80 / Reactor Safeguards Advisory Committee, Subcommittee on NRC Reactor Safety Research Program, Washington, D.C. (partially closed), 12-3-80

76305 11-18-80 / Reliability and Probabilistic Assessment, Subcommittee, Washington, D.C. (open), 12-3-80

OCEANS AND ATMOSPHERE NATIONAL ADVISORY COMMITTEE

76555 11-19-80 / Meeting, Washington, D.C. (partially closed), 12-4 and 12-5-80

OCCUPATIONAL SAFETY AND HEALTH, NATIONAL INSTITUTE

72781 11-3-80 / Indoor Air Quality Research Needs, Leesburg, Va. (open), 12-3 through 12-5-80

SMALL BUSINESS ADMINISTRATION

74803 11-12-80 / Small and Minority Business Ownership Advisory Committee, Las Vegas, Nev. (open), 12-5-80

SOCIAL SECURITY NATIONAL COMMISSION

76555 11-19-80 / Meeting, Washington, D.C. (open), 12-4 through 12-6-80

STATE DEPARTMENT

75413 11-14-80 / International Investment, Technology, and Development Advisory Committee, Washington, D.C. (open), 12-2-80

76564 11-19-80 / Private International Law Committee, Study Group on International Child Abduction, San Francisco, Calif. (open), 12-6-80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

75826 11-17-80 / Hazardous materials safety, Silver Spring, Md. (open), 12-3 through 12-5-80

70365 10-23-80 / High Altitude Pollution Program Scientific Advisory Committee, Washington, D.C. (open), 12-3 through 12-5-80

75040 11-13-80 / Radio Technical Commission for Aeronautics (RTCA) Special Committee 139 on Airborne Equipment Standards for Microwave Landing System (MLS), Washington, D.C. (open), 12-3 through 12-5-80

Federal Highway Administration—

75828 11-17-80 / National Advisory Committee on Outdoor Advertising and Motorist Information, Chicago, Ill. (open), 12-4 and 12-5-80

Federal Railroad Administration—

70366 10-23-80 / Locomotive test program, Washington, D.C., 12-3-80

National Highway Traffic Safety Administration—

59245 9-8-80 / Automotive fuel economy contracts' coordination meeting, Arlington, Va., 12-1 and 12-2-80

Next Week's Public Hearings

COMMERCE DEPARTMENT

National Oceanic and Atmosphere Administration—

67404 10-10-80 / North Pacific Fishery Management Canal, Renton, Wash. and Kodiak, Alaska, 12-6-80

CONSUMER PRODUCT SAFETY COMMISSION

76018 11-17-80 / Coal and wood burning appliances; performance provisions and technical data supplied to consumer, Washington, D.C., 12-2-80

DEFENSE DEPARTMENT

Navy Department—

68704 10-16-80 / Navy Discharge Review Board, Atlanta, Ga., New Orleans, La.; and Tampa, Fla.; 12-1 thru 12-6-80

60468 9-12-80 / Naval Discharge Review Board: Atlanta, Ga., New Orleans, La., and Tampa, Fla., 12-1 through 12-15-80

ENERGY DEPARTMENT
71498 10–28–80 / Coordinated State Grant Programs, San Francisco, Calif., 12–3 and 12–4–80
72733 11–3–80 / Medium Btu Industrial fuel gas demonstration project Memphis, Tenn., 12–3–80
Economic Regulatory Administration—
70968 10–27–80 / Designing methods for distributing petroleum during a shortage and selecting standby distribution mechanisms, Washington, D.C., 12–2–80
[*See also* 45 FR 63909, 9–26–80]
76214 11–18–80 / Petroleum allocation and price regulations; crude oil entitlements, domestic price control access, Wash., D.C.
[First published at 45 FR 72552, 10–31–80]
74494 11–10–80 / Retailer price rule for motor gasoline, San Fransico, Calif., 12–2–80
ENVIRONMENTAL PROTECTION AGENCY
72702 11–3–80 / Interstate air pollution abatement; sulfur dioxide within the N.Y.-N.J.-Conn. metropolitan area; New York, N.Y. 12–3 and 12–4–80
73521 11–5–80 / Vermont application for interim authorization, Phase I; Hazardous Waste Management Program, Montpelier, Vermont, 12–5–80
INTERIOR DEPARTMENT
Fish and Wildlife Service—
68886 10–16–80 / Proposal to determine Borax Lake Chub to be an endangered Species and Borax Lake, Harney Co., Oregon to be its critical habitat, Burns, Oregon, 12–2–80
70198 10–22–80 / Proposed determination of critical habitat for the Hawksbill Sea Turtle in Puerto Rico, Puerto Rico, 12–2 through 12–4–80
70192 10–22–80 / Proposed listing with endangered status and critical habitat for the Monito Gecko, Puerto Rico, 12–2 and 12–3–80
Land Management Bureau—
74074 11–7–80 / Consideration of draft environmental impact statement on Energy Transportation Systems Inc., Various cities in La., Ark., and Okla., 12–1, 12–3 and 12–4–80
Surface Mining Reclamation and Enforcement Office—
73512 11–5–80 / Abandoned Mine Lands Reclamation Program, Charleston, W. Va, 12–4–80
71371 10–28–80 / Abandoned Mine Lands Reclamation Program, Zanesvile, Ohio, 12–1–80
INTERNATIONAL TRADE COMMISSION
70159 10–12–80 / Peanuts, shelled or not shelled, blanched, or otherwise prepared or preserved (except peanut butter), Washington, D.C., 12–1–80
LABOR DEPARTMENT
Pension & Welfare Benefit Programs Office—
74512 11–10–80 / Multiple employer pension plans; individual benefit reporting and recordkeeping; Washington, D.C. 12–4–80
NATIONAL TRANSPORTATION SAFETY BOARD
73832 11–6–80 / Pipeline accident investigation, Edgewood, Ky., 12–2–80
NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
76710 11–20–80 / Life estate leases, Rocky Ridge, Ariz., 12–6–80
NUCLEAR REGULATORY COMMISSION
72371 10–31–80 / Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), environmental matters, Houston, Tex., 12–2 and (if necessary) 12–3–80
TRANSPORTATION DEPARTMENT
Federal Railroad Administration—
73847 11–6–80 / Consolidated Rail Corp. (Amtrak), 11–6–80 changed to 12–2–80
TREASURY DEPARTMENT
Internal Revenue Service—
65625 10–3–80 / Investment credit for energy property, Washington, D.C., 12–4–80

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**. A complete cumulative listing through Public Law 96.483 was published in the Reader Aids section of the issue of Wednesday, November 5, 1980.

Last Current Listing October 24, 1980

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

DEADLINES FOR COMMENTS ON PROPOSED RULES
77036 11–21–80 / USDA/FmHA—Community facility loans and development grants for community domestic water and waste disposal systems; comments by 1–21–81
76701 11–20–80 / WRC—Protection and management of historic and cultural environment; comments by 1–12–81
APPLICATIONS DEADLINES
75731 11–17–80 / Commerce/MBDA—Management and technical assistance projects in San Francisco, apply by 12–18–80
77112 11–21–80 / ED—Minority Institutions Science Improvement Program (MISIP); apply by 1–30 and 3–2–81
76505 11–19–80 / ED—Organizational Processes in Education; apply by 12–11–80 or 4–9–81
75746 11–17–80 / ED—Women's Educational Equity Act Program, development of educational material and model programs; apply by 1–27–81
77139 11–21–80 / HHS/HDSO—Aging program, research development projects; apply by 1–23–81
77144 11–21–80 / HHS/Secretary—Poverty Research Center, grant applications; apply by 1–30–81
76534 11–19–80 / HUD/CPD—Community Development Block Grant Program; extension to 11–3–80 of submission dates for preapplications for Pittsburgh, Pa.
OTHER ITEMS OF INTEREST
76517 11–19–80 / HHS/Sec'y—Technical assistance demonstration grants and contracts; delegation of authority
76716 11–20–80 / NSF—Improving Government regulations; semiannual regulations agenda

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: December 5 and 19, January 16 and 30; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202–523–5235.