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Vol. 47 No. 98
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Register

Thursday
May 20, 1982

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Environmental Protection Agency

Bridges

Coast Guard

Buses

Interstate Commerce Commission

Cable Television

Copyright Office

Coal Mining

Surface Mining Reclamation and Enforcement Office

Colleges and Universities

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Federal Highway Administration

Flood Insurance

Federal Emergency Management Agency

Foreign Currencies

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Health Planning

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Highway Safety

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

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Editor's Note:

The list of subjects on the cover is designed to assist those users who review the Federal Register for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the Federal Register covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523-5240 (not a toll free number).

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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 905

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 6, Amdt. 9]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action lowers the minimum grade requirements for domestic shipments of Florida white and pink seedless grapefruit and imports of white and pink seedless grapefruit from Improved No. 2 (external) and U.S. No. 1 (internal) to U.S. No. 2 Russet. These changes recognize current and prospective demand for such grapefruit and are consistent with the remaining crop in the interest of growers and consumers.

EFFECTIVE DATE: May 17, 1982, for Florida pink seedless grapefruit. May 24, 1982, for Florida white seedless grapefruit.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural

Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

The regulation with respect to Florida white and pink seedless grapefruit is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida.

The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Citrus Administrative Committee, and upon other available information.

The minimum grade requirements specified herein reflect the Committee's and the Department's appraisal of the need to revise the grade requirements applicable to Florida white and pink seedless grapefruit in recognition of the diminishing available supplies of such grapefruit. The committee reports an increased market demand for the remaining white and pink seedless grapefruit supply. Specification of these requirements assures that the available supply of marketable fruit reaches the consumer.

Under Section 8e of the Act (7 U.S.C. 608e-1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for the domestically produced commodity. Thus, the grade requirements for imported white and pink seedless grapefruit will also change to conform to the grade requirements for domestic shipments of Florida white and pink seedless grapefruit. It is hereby found that this regulation will tend to effectuate the declared policy of the Act.

It is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to

effectuate the declared purposes of the Act to make this regulatory provision effective as specified. This amendment relieves restrictions on shipments of Florida white and pink seedless grapefruit and imports of seedless grapefruit.

To minimize disruption as much as possible and still bring this marketing order into compliance with the Secretary's guidelines for fruit, vegetable, and specialty crop marketing orders, issued January 25, 1982, this regulation is being issued with the understanding that the Citrus Administrative Committee will initiate certain actions in 1982. These actions are necessary so that operations under the program will conform with the guidelines. These guidelines state that orders containing quality provisions like the Florida citrus order, should not be used as a form of supply control. In evaluating quality control programs, emphasis is placed on (1) whether quality controls have varied significantly from season to season or within seasons, (2) whether the percentage of product meeting minimum quality standards has been declining, or (3) whether the standards have been tightened over the years. In addition, to conform with the guidelines, marketing orders should provide for periodic referenda.

List of Subjects in 7 CFR Part 905

Marketing Agreements and Orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

Accordingly, it is found that the provisions of § 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6 (46 FR 60170; 60411; 61441; 47 FR 589; 5912; 5699; 6248; 7203; 10065), should be and are amended by revising Table I paragraph (a), applicable to domestic shipments to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Grapefruit:			
Seedless, except pink	May 24, 1982 to August 22, 1982	U.S. No. 2 Russet	3 1/8
	On and after August 23, 1982	Improved No. 2	3 1/8
Seedless, pink	May 17, 1982 to August 22, 1982	U.S. No. 2 Russet	3 1/8
	On and after August 23, 1982	Improved No. 2	3 1/8

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

Dated: May 14, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-13806 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 908

[Valencia Orange Reg. 691; Valencia Orange Reg. 690, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 21-27, 1982, and increases the quantity of such oranges that may be so shipped during the period May 14-20, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective May 21, 1982, and the amendment is effective for the period May 14-20, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: Findings. This rule has been reviewed under Secretary's Memorandum 1512-1, and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and

information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on May 18, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is good.

It further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. § 908.991 is added as follows:

§ 908.991 Valencia orange regulation 691.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 21, 1982, through May 27, 1982, are established as follows:

- (a) District 1: 408,000 cartons;
- (b) District 2: 392,000 cartons;
- (c) District 3: Unlimited cartons.

2. § 908.990 Valencia Orange Regulation 690 (47 F.R. 20553), is hereby amended to read:

§ 908.990 Valencia orange regulation 690.

- (1) District 1: 561,000 cartons;
- (2) District 2: 539,000 cartons;
- (3) District 3: Unlimited cartons.

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

Dated: May 19, 1982.

Russell L. Hawes

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

[FR Doc. 82-14062 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220 and 221

[Docket No. R-0372]

Securities Credit Transactions; Revision of Criteria for Initial and Continued Inclusion on the List of OTC Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its criteria for inclusion on the List of OTC Margin Stocks ("Over The Counter List"). These amendments will (1) permit inclusion of securities of certain foreign issuers, (2) eliminate alternative market value criterion and make the price and capital criteria mandatory, (3) reduce the initial listing capital and publicly-held share criteria, and (4) reduce the continued listing price and capital criteria. These changes are the result of recent developments in the securities, particularly the OTC market, and staff experience administering the OTC List.

DATE: Effective date June 12, 1982.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, or Robert Lord, Attorney, Division of

Banking Supervision and Regulation (202) 452-2781.

SUPPLEMENTARY INFORMATION: On November 24, 1981, the Board published for comment (46 FR 57532) a proposal to amend its criteria for initial and continued inclusion on the list of OTC Margin Stocks ("OTC List"). Brokers and dealers may not extend credit on stocks which are traded over-the-counter unless such stocks appear on the OTC List. Loans by banks and other lenders that are used to purchase stocks appearing on the OTC List are subject to the Board's margin requirements if the loans are secured by margin stock.

In its announcement, the Board proposed to revise OTC List criteria in three important respects. First, equity securities of foreign issuers and American Depositary Receipts would, for the first time, be eligible for OTC List inclusion. Second, certain alternative criteria with respect to price and capital were to be made mandatory. Third, a proposal was made to relax capital and price criteria to more closely resemble the listing requirements of major stock exchanges.

In its action today, the Board adopts revisions to OTC List criteria in substantially the same form as proposed. Specifically, the OTC List criteria are amended to (1) permit the inclusion of securities of foreign issuers registered with the Securities and Exchange Commission, (2) eliminate the alternative market value criterion and make the price and capital criteria mandatory, (3) reduce the initial listing capital and publicly-held share criteria to \$4 million and 400,000 shares, respectively, and (4) reduce the continued listing price and capital criteria to \$2 and \$1 million, respectively.

In response to public commentary, the price requirement for continued listing adopted by the Board today is higher than that originally proposed for comment but lower than that in the existing rule. The Board wishes to make clear that its action today with respect to the inclusion of foreign issuers on the OTC List is limited to those issuers who have actually registered with the Securities and Exchange Commission or file reports comparable to those filed by domestic companies.

In order to give brokers and service bureaus time to adjust their programs to reflect changes in the OTC List, the Board will hereafter publish the OTC List two weeks in advance of its effective date. This change was suggested by many commenters.

The Board wishes to make clear that no existing OTC margin stock which

ceases to meet new OTC List criteria will be immediately removed from the OTC List as a result of these amendments; the Board intends to "grandfather" such stocks for two years. Interested persons should also be aware that special consideration for inclusion on the List will be given to companies which voluntarily file an application to delist their securities from a national exchange and are trading in NASDAQ. Such a procedure will prevent any interruption in the marginability of certain securities.

In July 1969, pursuant to the Over the Counter Market Act of 1968 (Pub. L. 90-437), the Board adopted criteria which, if met by issuers of over-the-counter stocks, would result in the stocks being placed on the OTC List and hence afforded the same treatment as exchange listed stocks for purposes of the Board's margin rules. This meant that once on the OTC List, over-the-counter stocks were eligible for margin trading. In addition to criteria for initial eligibility for the OTC List, criteria for continued eligibility for inclusion on the OTC List were also established by the Board in 1972.

Changes in the OTC List criteria made today are the result of a review of recent developments in the securities markets, particularly the OTC market, staff experience with the administration of the OTC List and the public commentary. Each change is discussed below.

Foreign Issuers Now Eligible for OTC List Inclusion

Issuers eligible for inclusion on the OTC List will no longer have to be organized under the laws of the United States or a State. Foreign issuers were precluded from OTC List eligibility in the past because of the relative lack of access to such issuers' financial information. The strengthened disclosure rules of the Securities and Exchange Commission now make it possible to obtain comprehensive and up to date financial information on many foreign issuers. Because of these improvements, it is no longer necessary to restrict OTC List candidates to domestic issuers. Foreign as well as domestic issuers must, however, be registered or file comparable reports with the Securities and Exchange Commission in order to be eligible for inclusion on the OTC List.

Eliminating Alternate Criteria and Making Price and Capital Criteria Mandatory

Another change in OTC List criteria involves the alternative requirements with respect to the size and character of

the issue and issuer. Prior to these amendments, a stock could fail one of the three criteria of a \$5.00 minimum price, \$5 million capital, or \$5 million in market value and still be placed on the OTC List. The criterion requiring an aggregate market value of \$5 million is of limited value in determining OTC List eligibility since it only affects stocks worth between \$5 and \$10 per share. During the past two years, for example, only seven percent of the stocks added to the OTC List failed the aggregate market value test. Accordingly, the retention of this test is no longer justified.

The remaining alternate criteria for both initial and continued inclusion on the OTC List—relating to price per share and minimum capital—are now made mandatory. Doing so will lessen the effect of systemic fluctuations which have indirectly been affecting the size and composition of the OTC List.

The Board originally proposed to lower the price and capital criteria for continued listing from \$3 and \$2.5 million to \$1 and \$1 million, respectively. Some public comment, however, reflected the view that the proposed criteria may encourage the use of speculative credit. The Board has decided, therefore, to adopt a higher continued listing price criterion than that proposed. The new criterion will still be lower than the criterion existing before these amendments. The capital criterion for initial and continued listing has been reduced to \$4 million and \$1 million, respectively. The initial listing price per share criterion will remain at \$5. The continued listing price per share criterion has been reduced to \$2. The initial listing publicly held share criterion has been reduced to 400,000 shares. These changes will make the Board's OTC List criteria more comparable to the listing criteria of the American Stock Exchange.

List of Subjects in 12 CFR Parts 207 and 221

Banks, banking, Credit, Federal Reserve System, Margin, Margin Requirements, Reporting requirements, Securities.

List of Subjects in 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin Requirements, Investments, Reporting requirements, Securities.

Accordingly, pursuant to Secs. 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g, 78w), the Board amends Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively) as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. Section 207.5 is amended by revising paragraphs (d)(1), (4) and (7) through (9), (e)(1) and (4) through (7) to read as follows:

§ 207.5 Supplement.

(d) * * *

(1) The stock is registered under section 12 of the Act (15 U.S.C. 781), is issued by an insurance company subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 780(d)).

(4) The issuer or a predecessor in interest has been in existence for at least three years.

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(8) The minimum average bid price of such stock, as determined by the Board, is at least \$5 per share, and

(9) The issuer has at least \$4 million of capital, surplus, and undivided profits.

(e) * * *

(1) The stock continues to be registered under section 12 of the Act (15 U.S.C. 781), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), or if issued by a closed-end investment management company such issuer continues to be subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 780(d)).

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public.

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers,

directors, or beneficial owners of more than 10 percent of the stock.

(6) The minimum average bid price of such stocks, as determined by the Board, is at least \$2 per share, and

(7) The issuer has at least \$1 million of capital, surplus, and undivided profits.

PART 220—CREDIT BY BROKERS AND DEALERS

2. Section 220.8 is amended by revising paragraphs (h) (1), (4) and (7) through (9), (i) (1) and (4) through (7) to read as follows:

§ 220.8 Supplement.

(h) * * *

(1) The stock is registered under section 12 of the Act (15 U.S.C. 781), is issued by an insurance company subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 780(d)).

(4) The issuer or a predecessor in interest has been in existence for at least three years.

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(8) The minimum average bid price of such stock, as determined by the Board, is at least \$5 per share, and

(9) The issuer has at least \$4 million of capital, surplus, and undivided profits.

(i) * * *

(1) The stock continues to be registered under section 12 of the Act (15 U.S.C. 781), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), or if issued by a closed-end investment management company such issuer continues to be subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 780(d)).

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public.

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(6) The minimum average bid price of such stocks, as determined by the Board, is at least \$2 per share, and

(7) The issuer has at least \$1 million of capital, surplus, and undivided profits.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

3. Section 221.4 is amended by revising paragraphs (d) (1), (4) and (7) through (9), (e) (1) and (4) through (7) to read as follows:

§ 221.4 Supplement.

(d) * * *

(1) The stock is registered under section 12 of the Act (15 U.S.C. 781), is issued by an insurance company subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 780(d)).

(4) The issuer or a predecessor in interest has been in existence for at least three years.

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock.

(8) The minimum average bid price of such stock, as determined by the Board, is at least \$5 per share, and

(9) The issuer has at least \$4 million of capital, surplus, and undivided profits.

(e) * * *

(1) The stock continues to be registered under section 12 of the Act (15 U.S.C. 781), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 781(g)(2)(G)), or if issued by a closed-end investment management company such issuer continues to be subject to registration pursuant to section 8 of the Investment

Company Act of 1940 (15 U.S.C. 80a-8), is an American Depositary Receipt of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)).

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public.

(5) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 per cent of the stock.

(6) The minimum average bid price of such stock, as determined by the Board, is at least \$2 per share, and

(7) The issuer has at least \$1 million of capital, surplus, and undivided profits.

Final Regulatory Flexibility Analysis

The initial regulatory flexibility analysis indicated that because the proposals to amend OTC List criteria involved a mixture of relaxing and tightening changes, it was not easy to judge the overall impact on small domestic entities—primarily those small-sized corporations whose stocks are traded in the over-the-counter market.

No comments were received which would lead the Board to conclude that the adoption of these amendments would have a significant economic impact on a substantial number of small entities.

By order of the Board of Governors of the Federal Reserve System, May 12, 1982.

William W. Wiles,
Secretary of the Board.

[FR Doc. 82-13492 Filed 5-19-82; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 931

Improving Coastal Management in the United States

Correction

In FR Doc. 82-13359, appearing at page 21009, in the issue of Monday, May 17, 1982, make the following correction:

On page 21024, in the first column, remove the heading Subpart C—[Removed] appearing after the table of Contents for Subpart D;

On page 21024, in the first column, before paragraph 1., add:

§ 931.140 through § 931.152 (Subpart L) [Removed]

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-18737; File Nos. S7-855, 856, 922 and 923]

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Amendments to net capital rule.

SUMMARY: The Commission is amending parts of its net capital and customer protection rules for broker-dealers. The amendments will alter the haircuts under the net capital rule on most debt securities, preferred stock and redeemable securities of certain registered investment companies. The amendments will also affect the treatment of securities borrowing and fails to deliver by brokers-dealers under both rules. Finally, the Commission is adopting a new provision in the net capital rule designed for a unique class of broker-dealer generally known as municipal securities broker's brokers.

EFFECTIVE DATE: June 25, 1982.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Division of Market Regulation (202) 272-2372, 500 N. Capitol Street, Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: In January 1982, the Commission announced the adoption and proposal of amendments to the net capital and customer protection rules that, taken together, would significantly revise the capital requirements for broker-dealers.¹ The amendments as adopted or proposed for comment represented the Commission's conclusion, following a comprehensive examination of the financial responsibility requirements applicable to broker-dealers and the capacity of the securities industry to avoid operational and financial problems encountered in the "Paperwork Crisis" of the late 1960's, that those capital requirements could be revised without creating undue risks to investors.

The amendments that were adopted by the Commission in January 1982,

generally, reduced by half (from 4% to 2%) the percentage requirement of net capital for those broker-dealers which have elected the alternative method of calculating net capital, allowed the use of revolving subordinated loans, moderated the treatment of short securities differences and allowed elimination from the Reserve Formula² of securities borrowed from customers under certain circumstances. The amendments that were proposed in January 1982 included changes in the percentage deductions ("haircuts") from the market value of certain securities in the proprietary accounts of broker-dealers in computing capital requirements; changes in the treatment of municipal securities that have no ready market; changes in the treatment of fail to deliver contracts that allocate to fail to receive contracts ("matched fails") under the Reserve Formula; and changes in the time period before a deduction must be taken for fail to deliver contracts. The Commission also proposed to amend the customer protection rule to change the treatment of securities borrowed by broker-dealers from persons other than brokers, dealers, or municipal securities dealers under the possession or control requirement of that rule. The effective date of the amendments that were adopted by the Commission in January 1982 was delayed until May 1, 1982.

Following the Commission's actions in January 1982, self-regulatory organizations and the Commodities Futures Trading Commission (the "CFTC") have taken action affecting the capital requirements of many broker-dealers. The New York Stock Exchange (the "NYSE") adopted a rule proposal reducing the early warning levels, thereby reducing, as a practical matter, the net capital required of member firms. The Board of Directors of the National Association of Securities Dealers, Inc. (the "NASD") has approved a substantially similar rule and has submitted that rule to its membership for approval. The CFTC has proposed for comment amendments that would substantially parallel the amendments to the net capital rule adopted by the Commission.

The Commission is adopting the amendments proposed in January 1982, modified, as discussed below, to account for certain of the comments received. The Commission, however, declines to revisit at this time, as several commentators suggested, certain issues considered in January 1982. In view of the significant reduction in overall

¹ Securities Exchange Act Releases Nos. 18417-18420 (Jan. 13, 1982), 47 FR 3512 (Jan. 25, 1982).

² 17 CFR 240.15c3-3a.

capital requirements, the Commission has determined not to revisit the liquidity concept of the net capital rule as applied to the treatment of exchange seats and unsecured receivables (which are now treated as not readily convertible into cash).³ The Commission will, however, continue to explore alternatives with the securities industry. The Commission believes that a balance must be struck by increasing deductions for some of the items in the net capital calculation to reflect the changing economic and market conditions.

The Commission has received thoughtful and helpful comments from the securities industry in its efforts to update the financial responsibility rules. The Securities Industry Association (the "SIA"), some of its members, the various self-regulatory organizations, broker-dealers and others have assisted in the analysis of relevant issues by supplying data, views and recommendations appropriate to the Commission's undertaking. The Commission believes that the success of its public dialogue with the securities industry in this matter, which began in 1979, is evident in the rules as adopted today. The Commission hopes this dialogue will continue as other issues of public concern are explored.

I

The Haircuts

A broker-dealer arrives at its net capital by deducting from its net worth (calculated in accordance with generally accepted accounting principles)⁴ the value of assets not readily convertible into cash, and also certain percentages of the market value of securities carried in its accounts. The amount of the haircuts for debt securities (including short term notes) depends on the nature of the issuer, the time to maturity of the security and, for securities of non-governmental issuers, the ratings of nationally recognized statistical rating services. In general, the haircuts for debt securities were designed to take into account the historical market fluctuations of each type of instrument and its associated market.

Relatively recent events in the debt market have caused the Commission to question the adequacy of the present haircut provisions for debt securities generally. Interest rates rose to unprecedented heights in the 1979-80 period, causing precipitous declines in

the values of already issued debt instruments. The Commission is concerned that individual firms have an adequate capital cushion to cover potential market risks in light of the volatility of the current markets.

In Securities Exchange Act Release No. 17209,⁵ the Commission proposed for comment amendments to the haircut schedules for Government securities, municipal securities and nonconvertible debt securities. Also, in an effort to make its financial responsibility rules more compatible with sound business practices, the Commission solicited comment on the degree to which the haircut provisions should deal with hedges among various classes of debt instruments. Through the comment process the Commission expected to develop criteria for hedging which would be objective, clear and easily determinable.

As discussed in its October 1980 Release, data provided to the Commission tended to confirm doubts as to the adequacy of the present haircut provisions. The data were compiled from records accumulated by brokerage firms in the ordinary course of dealing in debt securities. In one of its January 1982 Releases,⁶ the Commission repropose for comment the haircuts on debt securities and proposed for comment a rather sophisticated hedging schedule as to Government securities. It also proposed for comment changes in haircuts for preferred stock and for redeemable securities of certain registered investment companies.

A. Government Securities

Haircut Schedules. The net capital rule currently requires, in the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, deductions from net worth equal to a percentage of the net long or short position in each category described in subparagraph (A) of the haircut provisions of the rule. There is no deduction for securities having less than one year to maturity. The deduction for securities having one year but less than three years to maturity is 1 percent; that for securities having three years but less than five years to maturity is 2 percent; that for securities with five years or more to maturity is 3 percent.

The data submitted to the Commission by the SIA in 1979 indicated that these haircuts were inadequate in measuring the risk in

carrying the securities, particularly those securities with less than one year to maturity and those with five years or more to maturity. That data showed that the majority of monthly changes in market value were greater than the existing haircuts and that, for some months, the month-end to month-end price movements were considerably greater than the existing haircuts. For example, in 26 of the 49 months in the survey, Treasury bills maturing in 6 months moved in price between one tenth of 1% to over 1%. In one month, Treasury bills maturing in nine months moved 1.50% and in February 1980, 1.90%. Finally, in 39 of 49 months, Treasury bills maturing in 12 months moved between one tenth of 1% and 2.51% (February 1980). In each case, however, the rule required no haircut.

The data for bonds with 2 years, 5 years, 10 years, 20 years and 30 years to maturity showed the same discrepancies between the haircuts and the price fluctuations as securities having 1 year or less to maturity. For example, in 3 different months within a 6 month period, Treasury bonds maturing in 30 years declined substantially: 7.06% in February 1980, 8.82% in January 1980 and 9.16% in October 1979. Yet, the required haircut for these securities is only 3%. Based largely on these data and other data later submitted to the Commission, the Commission proposed in its January 1982 Release to alter the haircuts on Government securities.

In an effort to recognize more realistic hedging approaches by brokers-dealers, the Commission also proposed for comment a sophisticated hedging provision as initially presented by the SIA and modified by the Commission. The computation process includes the "weighting" of subcategory haircuts in determining the overall haircut for the category. Permitting only a partial offset of haircuts among subcategories within each category is necessary to account for the increasing fluctuation in prices and yields as the differences in dates to maturity of the long and short positions increase. At the same time, however, permitting a partial offset of haircuts among subcategories recognizes that the market risks of holding both positions are historically less than the total deduction that would be required with respect to each position if the haircut schedule did not permit hedging of securities in different subcategories. Thus, for example, a long position consisting of \$1 million of three month Treasury bills does not entirely offset a short position consisting of \$1 million in six month Treasury bills, but the haircut required on both positions is less than

³ The Commission understands, however, that the staff has issued an interpretation allowing a broker or dealer to net receivables from and payables to another broker or dealer for net capital purposes.

⁴ This means, among other things, using the accrual method of accounting.

⁵ Securities Exchange Act Release No. 17209 (Oct. 9, 1980), 45 FR 69911 (Oct. 22, 1980).

⁶ Securities Exchange Act Release No. 18418 (Jan. 13, 1982), 47 FR 3521 (Jan. 25, 1982).

the sum of the haircuts required if the positions were viewed separately.

The hedging formula also prescribes a safety factor that is a percentage of the lesser of the aggregate net long or short positions within each category. By including the safety factor in the haircut computation for each category, the computation takes into consideration the degree to which the various security positions act as hedges for each other. Since the haircuts for the subcategories reflect only the manner in which the market value of the individual security positions within a particular subcategory fluctuate, the safety factor adds a measure of how the market value of the subcategories vary with each other.⁷ The SIA determined that the safety factor for the haircut schedule based on an analysis of 30-day price fluctuations would be 48%. For ease of computation and to provide an added measure of safety in the case of portfolios with a heavy concentration in a particular subcategory, the Commission has increased the safety factor to 50%.

The Commission also included in the proposed amendments a provision whereby a broker-dealer can elect to recognize some cross category hedges. Under that provision, an electing broker-dealer could exclude the market values of a long or short security from one category and one from another category provided that such securities have maturity dates: (1) Between 9 months and 15 months and within 3 months of one another; (2) Between 2 years and 4 years and within 1 year of one another; or (3) Between 8 years and 12 years and within 2 years of one another. The electing broker-dealer, however, would be required to include the net market value of the two securities in the category for the security with the longer date to maturity.

Moreover, the Commission proposed to amend the Government securities haircut provisions to permit brokers-dealers to exclude long or short positions in Government securities that are hedged by certain futures contracts.⁸

To qualify, the futures contract must be traded on a regulated market and must provide for the delivery of a Government security with a maturity date that would be within a specified range of the maturity date of the long or short Government securities position that the broker-dealer seeks to exclude.

Finally, the Commission proposed, as an alternative to the principal haircut procedure, a simplified procedure for computing applicable haircuts to satisfy the concerns of commentators that the rule continue to provide a simple and direct method for computing required deductions from net capital. That procedure would require an electing broker-dealer to apply the percentage deduction provided in the schedule to the value of each net long or short position in Government securities in the 12 subcategories, and would prohibit any hedging between subcategories or adjacent categories. By netting long or short positions within subcategories, however, the rule would continue to permit some risk-reducing hedges by electing brokers-dealers.

The Commission received few comments regarding the proposed amendments. Most who commented stated that the haircuts on Government securities should not be increased except as to those having a maturity of less than one year. Indeed, the SIA recommended that the haircuts be decreased for all Government securities having a maturity of more than one year, except in two subcategories. The commentators contend that the markets for these securities (and presumably they are referring to Treasury notes and bonds) are highly liquid. They assert that a weekly volatility analysis is more appropriate than the monthly volatility analysis relied upon by the Commission because the average inventory turnover in the market among dealers in Government securities is 1.5 days. They state that the proposed haircuts will cause firms to reduce unnecessarily their Government securities inventory. This, in turn, will diminish the industry's ability to serve the unprecedented demand for liquidity and stability in the Government securities market.

With respect to hedging, although the commentators commended the Commission for incorporating a hedging framework in the proposed rule, they suggest that the Commission's proposed hedging mechanism did not go far enough. They contend that it would be consistent with the goal of providing relief for hedged positions to permit netting among securities in different subcategories (within the same category). In addition, they assert that

further netting with futures, forwards and "ratio trading" should be allowed.

Bear Stearns, a reporting government dealer,⁹ submitted its own proposal. The proposal would set up 12 categories of maturity ranges, similar to those in the Commission's proposal, but would substantially alter the hedging provisions. Bear Stearns, in its proposal, presumes that all Government securities have some relationship to one another. Therefore, Bear Stearns contends that the rule should allow a dealer to reduce its haircut by netting one category against any of the other 12 categories including those in the shortest maturity band against those in the longest maturity band.

The haircut for the netted categories would be determined by a predesigned formula which it represents is based on an historical analysis of the relationship of the securities in the two categories. The netting would involve a so-called hedging "ratio" which establishes the amount of the shorter-term position which must be maintained to provide an effective hedge against the longer-term position; e.g., for every dollar of positions in category 3, two dollars of contrapositions in category 2 would be needed as an effective hedge.

The Commission acknowledges the responsible recommendations of the securities industry in the Commission's effort to adopt an appropriate haircut schedule for Government securities. Many broker-dealers have devoted substantial amounts of time to assist the Commission by compiling relevant data and by making alternate recommendations. The primary issues remaining for discussion are the basis for higher haircuts and the hedging formula.

The higher haircuts are prompted by the higher price volatility in the market for Government securities and the fact that the present haircuts do not adequately reflect the risks inherent in this increased volatility. The commentators do not dispute these facts. Instead, they contend that the use of the 30-day volatility data period in establishing the haircuts was not appropriate.

The Commission, however, believes that the 30-day period is appropriate since the rule was designed, among other things, to ensure a conservative measurement of the risks in holding positions. The rule cannot account for a particular broker-dealer's trading or hedging strategy. Moreover, the argument of the commentators presumes

⁷ The safety factor was derived by analyzing the covariance coefficients of each security position to formulate the safety factor in terms of a percentage of the lesser of the aggregate haircut on the long positions or the aggregate haircut on the short positions within a given category.

⁸ Exchange listed options on debt securities will be factored into the formula as the options begin trading. A separate haircut schedule as to the GNMA options has already been approved. See letter from the Division of Market Regulation to the Chicago Board Options Exchange, Inc., dated Sept. 29, 1981. The Commission continues to solicit comment and analysis on the impact of this development.

⁹ A reporting dealer is one which submits reports to the Federal Reserve Bank of New York.

that the net capital rule is a "going concern" measure of liquidity, which overlooks the fact that the rule was designed to ensure that a firm can be liquidated to an equity. Hence the Commission must treat securities positions on a more conservative basis than a broker-dealer might view them in its everyday operations.

Although the Commission believes that the haircuts should be raised as proposed in its release, it recognizes that there is a class of Government securities dealers, which report to the Federal Reserve Bank of New York, that should not be subject to the full impact of the increased haircuts, not only because these dealers turn over their inventory of Government securities within several days, but because they have undertaken certain affirmative obligations to the Federal Reserve System ("the System"). These reporting Government securities dealers must report on a regular basis their trading volume, positions and financing arrangements. They are also expected to participate in Treasury auctions and underwrite new issues of Treasury securities, particularly in troubled markets when there may be insufficient bids to meet the Treasury's cash needs. The dealers are also expected to make a market in certain new issues of Treasury securities. In sum, they are an essential part of the network through which United States monetary policy is maintained.

The Commission believes that these facts constitute sufficient reasons to lessen the haircuts for those reporting Government dealers that actually transact business with the System, provided they maintain a specified minimum net capital to ensure that their dealer activities do not impair the remainder of their business. Thus, the Commission has determined that such reporting Government securities dealers would be required to take only 75% of the haircut on Government securities positions, provided the dealer maintains in excess of \$50,000,000 in tentative net capital.

Based on the comments and information before it, the Commission has determined to adopt the substance of the proposed hedging formula as modified to make it more compatible with actual securities industry trading strategies. As the Commission has previously noted, however, the rule cannot possibly reflect the most sophisticated hedging techniques of traders in Government securities. The hedging provisions will, however, be amended so that a broker-dealer will be deemed to be long or short the value of

the security which is deliverable against a futures contract for a Government security where the broker-dealer has an open futures contract held in a proprietary account. The contract must be traded on a contract market as defined in the rules of the Commodity Futures Trading Commission.¹⁰ The hedging formula will also be amended so that when a position in a lower haircut category is utilized to offset a position in a higher haircut category, the difference in the market value should remain in the category for the position with the greater dollar value. The January 1982 proposal would have required the net market value of the two securities to be included in the category with the longer date to maturity.

The hedging schedule proposed by Bear Stearns will be the subject of further study and analysis of the underlying assumptions and data. The Commission requests comment on that proposal from interested persons.^{10a}

Repurchase, Reverse-Repurchase and Matched Repurchase Agreements

In Securities Exchange Act Release No. 18418, the Commission proposed to amend the net capital rule to clarify the treatment of repurchase, reverse-repurchase and matched repurchase agreements. In response to the proposal, the Commission received helpful comments from the NYSE, the SIA and others.

The NYSE suggested that the Commission continue to apply the tangible net asset test as established in informal staff advice.¹¹ The Commission agrees with the NYSE that the creditworthiness of the persons dealing with the broker-dealer is an important factor in determining whether to charge the entire deficit. There is, however, insufficient support for the \$16,000,000 threshold figure as suggested by the NYSE. The Commission, therefore, declines to continue use of the tangible net asset test. The Commission notes, however, that in circumstances where the broker-dealer has reason to believe that a party to either a repurchase or reverse-repurchase agreement will not comply with its obligations under the agreement, the broker-dealer must treat the contract, for net capital purposes, as dishonored. Accordingly, in the case of

a reverse-repurchase agreement, the broker-dealer must deduct the full deficit from net worth. In the case of a repurchase agreement which is part of a matched repurchase agreement, the broker-dealer must treat the security which is the subject of the agreement as a proprietary position and, as in the case of a repurchase agreement which is not part of a matched repurchase agreement, must deduct the appropriate haircut from net worth in computing net capital.

The Commission received other suggested changes to the rule which it believes should be incorporated into the proposed provisions. The rule will accordingly be amended to provide that, for those reverse-repurchase agreements that mature in 90 days or less, the entire deficit in an account or in related accounts that exceeds 5% of tentative net capital must be deducted from net worth. The original proposal would have aggregated the total deficits of all reverse-repurchase agreements with 90 calendar days or less to maturity and required their deduction from net worth if the total exceeded 5% of tentative net capital. The rule will be further clarified to indicate that it requires a deduction of only the loss (deficit in an account) and not a profit (gain in an account). Finally, because subparagraphs (c)(2)(iv)(F)(2)(ii) and (iv), as proposed in January 1982, could have been construed to require a deduction of an amount in excess of the total deficit in certain reverse-repurchase agreements, the provision will clearly state that the computing broker-dealer need not deduct more from net worth than the total deficit, in a reverse-repurchase agreement.

The Commission expresses its concerns about the high leverage achieved by a broker-dealer through repurchase agreements for which there is no net capital charge. The present rule amendment does not adequately address the problems raised by these transactions. Indeed, some may argue with great force that, as the time to maturity of a reverse-repurchase agreement decreases, the percentage of the deficit which must be charged should increase, not decrease. The Commission intends to continue studying the repurchase matters and requests information and comments from interested persons.

B. Municipal Securities

In its January 1982 Release, the Commission proposed to increase the haircuts for certain intermediate and long term municipal securities. The Commission also proposed for comment

¹⁰ See 17 CFR 1.3 (1980).

^{10a} Copies of Bear Stearns' proposal are available to interested persons at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

¹¹ The net asset test (\$16,000,000) is used to determine the extent to which a deduction should be taken for a deficit with respect to a reverse-repurchase agreement. See, NYSE, Interpretation Handbook: Regulation Surveillance 139-40 (1980).

a modified version of the "presumed marketability" test devised by the NASD as an alternative to the ready market test now in effect for all other securities.¹²

In response to the proposals, the Commission received many thoughtful comments from members of the industry, certain industry groups, self-regulatory organizations and others.¹³ Although the Commission was not soliciting comment with respect to the appropriateness of the specified percentage deductions,¹⁴ most comments received questioned the appropriateness of the deductions. In addition, a number of comments disputed the necessity for the presumed marketability test.

1. Haircuts on Municipal Securities

The Commission proposed to increase the haircuts for municipal securities having at least two but less than five years to maturity from 3% to 5% and for municipal securities having five or more years to maturity from 5% to 7%.

The need for the increased haircuts was based largely on data supplied to the Commission by industry sources which indicated that the existing haircuts for municipal securities were not adequate to cover price fluctuations in the municipal bond market in recent years. The data were supplied by broker-dealer firms dealing in municipal debt securities and included data over a 49 month period from February of 1976 through February of 1980. Prices were extracted from the Bond Buyer Municipal Index ("BBI"). Among other things, the data showed that municipal bond prices moved 8.58 percent in October 1979 and 11.05 percent in February 1980.

Most commentators opposed the Commission's proposal to raise haircuts on municipal securities.¹⁵ The SIA conceded that recent volatility in the municipal securities marketplace justified increases in the haircuts for municipal securities. On the basis of the relative price movements of 30

municipal bonds, however, the SIA recommended haircut increases more modest than those recommended by the Commission. More specifically, the SIA proposed that the haircut for municipal bonds with at least two but less than five years to maturity be increased from 3% to 3.5%, that a separate haircut category be created for municipal bonds with at least five but less than ten years to maturity and that the haircut be 5% and, finally, that the haircut for municipal bonds with at least ten years to maturity be increased from 5% to 5.5%.

As to the justification for the proposed increases, some commentators questioned the Commission's use of the BBI as a means of demonstrating volatility in the municipal securities marketplace. These commentators suggested that, since the BBI is only a general indicator of the price movements of municipal securities,¹⁶ it alone is not sufficient to justify the increases proposed. The PSA argued that a 30-day time period to measure price fluctuations is inappropriate since, according to a survey of 50 PSA members, the average turnover of inventory among those members is 12 days in periods of high volatility.

The PSA also argued that the Commission, by narrowly focusing on volatility, ignored important self-correcting mechanisms¹⁷ which help to maintain the financial integrity of firms during volatile period. Due to the anticipated adverse impact of the Commission's proposal as outlined below, the PSA, as well as the MSRB, believes that a greater justification for the proposed increases is necessary.

As to the impact of the proposed haircut increase many commentators pointed out that such increases will reduce the ability of municipal securities firms to carry inventory and will therefore impair liquidity in the secondary market.¹⁸ They argue that

impairing liquidity in the secondary market will ultimately raise the borrowing cost of issuers of municipal securities. Moreover, many regional firms, as well as the PSA, commented that the proposed increases in haircuts discriminate against smaller firms and will have anti-competitive effects in the industry.

The PSA suggested that the Commission withdraw its proposal to increase the haircuts for municipal securities or at least adopt more moderate increases for these securities. The PSA, as well as the MSRB, also suggested that the Commission create additional haircut categories for municipal securities which would, in their view, more clearly reflect the realities of the municipal securities marketplace.

The arguments as to increased haircuts do not adequately deal with the extended periods of sharp volatility in the municipal securities marketplace since 1979. It should be noted that the present haircut schedule was devised in a period when municipal securities prices were subject to significantly less fluctuation. The Commission believes the contention as to the appropriateness of the 30-day volatility analysis does not address all of the areas of Commission concern dealing with inventory risk. The Commission has set forth reasons in its January Release for use of a 30-day period. In addition, the Commission believes it is not possible for any municipal securities dealer to determine with precision how long it will have to maintain a position in inventory. Every dealer of course, seeks to turn over its inventory as rapidly as possible. In any event, estimates by various broker-dealers that they hold positions for an average of 12 business days during periods of high volatility is neither determinative nor persuasive in this context.

The 30-day period is useful because it represents a reasonable margin of safety for liquidation of inventory positions which cannot be duplicated by an estimated turnover rate. Haircuts are designed to measure future risk. Moreover, the net capital rule does not assume the "going concern" nature of the broker-dealer. It attempts to ensure that the firm will liquidate to an equity at a particular point in time and provides a cushion to protect investors against unanticipated adverse events.

In addition, the commentators' concerns with respect to use of the BBI

reduce the positioning capacity of municipal securities dealers by approximately \$600 million, assuming an average 6 percent haircut.

¹² The Commission, due to the lack of sufficient information to formulate an appropriate provision, declined, at least for the present, to distinguish between rated and unrated municipal securities for purposes of applying haircuts under the rule.

¹³ The Commission received comments from, among others, 32 members of the municipal securities industry.

¹⁴ See Exchange Act Release No. 18418, 47 FR 3521 (Jan. 25, 1982) at 3521.

¹⁵ Many comments were also received from a specialized type of municipal broker-dealer known as a brokers' broker. Unlike other members of the municipal industry, the brokers' brokers were concerned, not with the level of the increased haircuts or the presumed marketability test but, rather, with the Commission's proposals regarding fails to deliver and fails to receive. That matter is discussed later in this release.

¹⁶ The BBI is a general indicator of historical price movements in the municipal bond market. It is based, not on actual price movements of actual securities, but rather, is derived from averages of estimates made by market professionals of the yield levels at which a specified list of issuers could sell 20-year maturity new issues generally.

¹⁷ For example, the PSA points out that, in response to volatile markets, firms will make substantial downward adjustments in inventory and dealers will maintain greater spreads.

¹⁸ The PSA pointed out that, at the end of the fourth quarter of 1980, municipal dealers doing a public business and carrying customer accounts held an aggregate of \$2.373 billion in municipal securities. The PSA went on to point out that, assuming that 75 percent of this aggregate amount had maturities of two years or more, the additional amount of capital required to support their inventory would be approximately \$36 million if the haircut levels are raised as proposed. The removal of \$36 million of capital, the PSA argues, would

are somewhat misplaced. In determining volatility in the municipal securities marketplace in connection with amendments adopted herein, the Commission relies, not only on the BBI, which is widely used by broker-dealers to detect historical movements in municipal securities, but also on data supplied by the SIA, as well as data obtained from a municipal bond evaluation service. These data traced the price movements of actual issues of municipal securities and led to the same conclusion as the BBI data.

Finally, an impact analysis reveals that the effect of the proposed changes in municipal securities haircuts on the securities industry as a whole will be modest. While, as expected, municipal securities dealers dealing primarily in municipal securities will be disproportionately affected by the proposed increases,¹⁹ the Commission's impact analysis showed that these firms carried more excess net capital proportionately than the rest of the securities industry.²⁰ As a result, the overall net capital position of municipal securities dealers should not be significantly impaired.²¹

It appears to the Commission that most of the higher haircuts as to municipal securities will be absorbed by the larger NYSE firms which have elected the alternative method of computing net capital. Because of the recent reduction, from 4% to 2%, of the percentage of net capital required to be maintained by those firms electing the alternative method of computing net capital and because of other adjustments to the financial responsibility rules which, overall, will reduce by hundreds of millions of dollars the required level of net capital for those firms, the Commission believes that it would be imprudent to ignore the recent steep increases in volatility in the municipal marketplace. Accordingly, the Commission believes that an increase in the level of haircuts for municipal securities is entirely justified.

¹⁹ Obviously, this is because the ratio of municipal haircuts to total net capital for sole municipal securities dealers is generally high relative to the rest of the securities industry.

²⁰ For year end 1981, the average NASD member had excess net capital equal to approximately 300 percent of required net capital while the average sole municipal securities dealer had excess net capital equal to approximately 470 percent of required net capital.

²¹ As noted previously, for the year end 1981, the average municipal securities dealer had excess net capital in an amount equal to approximately 470 percent of required net capital. Even assuming that the municipal haircuts were raised to the level originally proposed in Securities Exchange Act Release No. 18418, excess net capital of these firms would still approximate 430 percent of required net capital.

Nonetheless, the Commission recognizes that it may not be appropriate to treat 5 year municipal bonds identically with 20 year municipal bonds for haircut purposes. Unfortunately, up to now, the Commission has not had sufficient data to justify creation of additional categories. After the January 1982 proposal, however, it obtained from the municipal securities industry additional data on price movements of selected municipal securities of intermediate maturity which allows the refinement of the category for municipal securities having 2 years or more to maturity.

On the basis of this additional data, the Commission has determined that applying a 7% haircut to all municipal securities having 5 years or more to maturity appears to be overly conservative. Municipal securities with 5 years to maturity generally exhibited less volatility than municipal securities with 20 years or more to maturity. Accordingly, the Commission is revising the percentage deductions to take account of this increased volatility of municipal securities as the length to maturity increases. The Commission is also revising the haircuts applicable to municipal securities having a maturity of 2 years or more based on the additional data.

These revisions will reduce the impact of the increased municipal securities haircuts on municipal securities dealers, who have inventory positions in such securities with maturities between 2 and 20 years.

2. Market Value of Municipal Securities

Rule 15c3-1(c)(2)(vii) requires broker-dealers to deduct from net worth in computing net capital 100% of the carrying value of securities in their proprietary or other accounts for which there is no "ready market." Under subparagraph (c)(11)(i) of the rule, a "ready market" includes a recognized established securities market where there exist independent bona fide offers to buy and sell. Recognizing the unique structure of the municipal securities marketplace, however, the Commission decided to suspend, by interpretation, application of the ready market provision to municipal securities pending development of appropriate marketability criteria for municipal securities.²²

Since almost six years had lapsed since the interpretation was issued, the Commission, in Securities Exchange Act

²² Securities Exchange Act Release No. 11854 (Nov. 20, 1975). In this release, the Commission requested public comment on developing market criteria for municipal securities.

Release No. 17209, again requested comment regarding appropriate criteria to determine the market value of municipal securities for net capital purposes where the securities were the subject of quotations only by the computing broker-dealer.

In its January 1982 Release, the Commission proposed for comment a modified version of the presumed marketability criteria developed by the NASD as follows:

Municipal securities dealers should value their municipal securities inventories at market, or if such values are unavailable, at cost for a period of 30 calendar days following settlement date. Thereafter, in the absence of further price or transaction data, a municipal firm would mark down or reduce the value of such positions by 5% per month until its capital value declined to 50% of its originally assigned value. At that point, the position would be valued at zero and considered a non-marketable security for net capital purposes.

Although the SIA endorsed the concept of presumed marketability, the PSA, the MSRB and many others who commented on this aspect of the Commission's proposal voiced their opposition to the adoption of a presumed marketability test.²³ Some commentators stated that the presumed marketability test was arbitrary, rigid and inappropriate for the municipal securities marketplace.²⁴ The MSRB stated that, because of the sheer volume and diversity of issues in the municipal marketplace,²⁵ formulas for determining the market value of municipal securities are not very useful.²⁶

An accounting firm commented that adoption of the presumed marketability provision would result in municipal securities being valued differently for generally accepted accounting principles and net capital purposes. In their opinion, ability to hypothecate the

²³ The PSA expressed its belief that the present practice of not applying the ready market provision to municipal securities has worked relatively well. The PSA believes that the broker-dealer quoting the security "maintains" the secondary market for issues and provides the necessary liquidity in the market. In the PSA's view, regional municipal dealers would be penalized by application of the ready market provision.

²⁴ The MSRB pointed out that there are many other ways of obtaining price verification for municipal securities. Unfortunately, none of them is satisfactory for issues which have no ready market.

²⁵ According to the MSRB there are approximately 47,000 issuers having 1,500,000 issues outstanding.

²⁶ In addition, the MSRB as well as an accounting firm, pointed out that adoption of the presumed marketability test may well induce firms to effect "accommodation trades" solely for the purpose of price validation. This, of course, would be fraudulent.

securities should be sufficient evidence of marketability.

As to the effects of adoption of the presumed marketability test, many commentators pointed out that the proposal discriminates against small regional dealers who may be the only market maker for a certain issue. As with the haircut proposal, they state that adoption of a presumed marketability test will reduce liquidity in the secondary market and raise the borrowing cost of issuers. In this regard, the MSRB states that the increased costs to regional firms may very well cause some of them to curtail their activities.

The Commission has in the past encouraged the industry to find a solution to the vexing problem of the valuation of municipal securities held in inventory for more than 30 days, which have no ready market in the usual sense. The problem remains that there are instances when the examining staffs of the Commission and the self-regulatory organizations have been unable to substantiate the valuation of specific municipal securities assigned by particular municipal dealers. More importantly, some broker-dealers were found to have capital problems after an examination because they were overvaluing securities which had no "ready market."

On the basis of information available to the Commission, it appears that, because of the relatively few issues that are held in inventory for substantial periods of time in excess of 30 days, the adverse effects of adoption of the presumed marketability test have been overstated. The presumed marketability test only comes into effect after 30 days and then only if the broker-dealer cannot establish the market value of the security involved, by reference to last sales data, legitimate quotes from other broker-dealers who are willing to buy the security or pledge of the securities under a bank loan to a bank lender.

In view of the comments received, however, the Commission has made some adjustments to the proposed test. More specifically, instead of being denied any value for inventory positions after the market value has declined to 50% of its originally assigned value, broker-dealers will be allowed to continue to reduce the value, for purposes of the rule, by 5% per month until the value reaches zero.²⁷

²⁷ The wording of the presumption will also be altered to make clear that the valuation is for net capital purposes only and that a ready market for the securities can still be established if the securities are actually collateral for a bank loan. See Rule 15c3-1(C)(11)(ii).

The presumed marketability test, as revised, is as follows:

Municipal securities dealers should value their municipal securities inventories at market, or if such values are unavailable, at cost for a period of 30 calendar days following settlement date. Thereafter, in the absence of further price or transaction data, a municipal firm would markdown or reduce the value of such positions by 5% per month until its capital value declined to zero. At that point, the position would be considered a non-marketable security for net capital purposes.

C. Preferred Stock

The net capital rule currently requires in the case of cumulative, nonconvertible preferred stock a deduction of 20% of the market value of the greater of the long or short position. In its January 1982 Release, the Commission proposed to reduce from 20% to 10% the haircut for nonconvertible preferred stocks which are rated in one of the four highest categories by at least two of the nationally recognized statistical rating organizations. Under this proposal, all other issues of preferred stock would be treated as commonstock and receive a haircut of 30%. For firms using the alternative method, however, the haircut would be reduced to 15%.

This proposal resulted from a determination by the Commission that, since higher rated preferred stock presented little risk of non-payment of dividends when due, allowing preferential treatment to higher rated preferred stock more accurately reflected the degree of risk involved. At the same time, the Commission determined that, since the financial health of an issuer affects its ability to pay dividends on its preferred stock, lower rated preferred stock should be treated more like equity securities.

While the Commission received comments from the NASD and others endorsing the proposed revisions for preferred stock, it received no comments opposing the proposal. Accordingly, the Commission finds that the proposed treatment of preferred stock is a reasonable alternative to the present treatment of preferred stock and adopts the provision as proposed.

D. Securities of Certain Registered Investment Companies

In light of the proposed changes in the haircut schedules for certain debt securities, the Commission believed it appropriate to adjust the haircut provisions relating to redeemable securities issued by registered investment companies investing in such debt securities. In its January 1982

Release, the Commission proposed to amend the net capital rule to provide for (1) a deduction of 2% of the market value of the greater of the long or short position of redeemable securities of a registered investment company whose assets consist of investments restricted to certain debt securities with one year or less to maturity ("the 2% haircut") ("money market funds"); (2) a deduction of 7% of the greater of the market value of the long or short position of redeemable securities of a registered investment company whose assets consist of investments in long-term debt securities (other than corporate debt securities) with one year or more to maturity ("the 7% haircut"); and (3) a deduction of 9% of the market value of the greater of the long or short position of redeemable securities of a registered investment company whose assets consist of investments in long-term debt securities including nonconvertible debt securities ("the 9% haircut").²⁸

In response to the proposal, the NASD commented that the permissible investments of a registered investment company qualifying for the lower 2% haircut are unnecessarily restrictive. More specifically, the NASD argued that, by restricting the permissible assets of the registered investment company to cash or securities or money market instruments with one year or less to maturity which are described in paragraphs (c)(2)(vi)(A) through (C) or (E) of the rule, the Commission may unintentionally be excluding securities of otherwise bona fide money market funds from the lower haircut provision.²⁹ In the NASD's view, this provision should be structured to make reference to any generally acceptable definition of a money market fund, perhaps one contained in another Commission rule.

Also in this connection, the NASD pointed out that it would be difficult for a broker-dealer to determine whether a certain investment company in whose securities the broker-dealer had invested qualified for the 2% haircut at any particular point in time. This is due to the fact that most broker-dealers have no effective means of determining

²⁸ The Commission's also proposed to amend the rule to clarify that it applies only to "redeemable" securities of registered investment companies.

²⁹ For example, the NASD points out that paragraph (c)(2)(vi)(E) limits qualifying commercial paper to that rated in one of the three highest categories by at least two of the nationally recognized statistical rating organizations. The NASD goes on to point out that proposed Rule 2a-7 under the Investment Company Act recognizes that unrated instruments may be perfectly appropriate for a money market fund portfolio, subject to certain safeguards.

whether all of the assets of a particular investment company are restricted to the prescribed debt instruments with one year or less to maturity. As a solution, the NASD suggested that the Commission use a dollar weighted average maturity of the fund's portfolio as a means of determining whether a certain fund qualifies as a "money market fund" under the rule. The NASD points out that an average maturity figures are regularly published and readily available to broker-dealers and regulators.

The Commission recognizes that its original proposal as to the permissible investments of a registered investment company whose redeemable securities qualify for the lower 2% haircut may have been overly restrictive. Apparently, there are investments which are entirely suitable for investment companies commonly known as "money market funds" that may not come within the confines of a permissible investment as originally proposed by the Commission. Unfortunately, however, due to the rapidly changing nature of investment company activities, the Commission has as yet been unable to develop a comprehensive definition of a "money market fund."³⁰ Rather, the Commission, in reviewing registration statements of investment companies, has employed various criteria in determining whether a certain investment company is justifiably holding itself out to the public as a "money market fund."

Despite the lack of an explicit Commission rule, the Commission has determined to revise its proposal to provide that a broker-dealer may take the lesser 2% haircut on redeemable securities of a registered investment company which is commonly known as a "money market fund." This should alleviate the NASD's concern regarding the unintended exclusion of redeemable securities of otherwise bona-fide "money market funds" and should also provide broker-dealers and others with a degree of certainty in determining whether a particular investment company in whose securities the broker-dealer has invested qualifies as a "money market fund" under this provision.³¹

³⁰ Rule 434d of the Securities Act of 1933 (the "Act") makes reference to a "money market fund" for purposes of determining whether an advertisement is deemed to be a prospectus under Section 10(b) of the Act for purposes of Section 5(b)(1) of the Act. The rule does not, however, establish criteria that an investment company must meet in order to hold itself out to the public as a "money market fund."

³¹ For purposes of this provision, a broker-dealer may rely upon the representations made by an investment company in its prospectus stating

The Commission received no adverse comment regarding the proposed 7% and 9% haircuts for redeemable securities of registered investment companies which invest in long-term debt securities. In the Commission's view, these increased haircuts are necessary to reflect the increased volatility in the long-term debt market in recent years. Accordingly, the Commission is adopting the 7% and 9% haircuts as proposed and the 2% haircut as revised.

E. Nonconvertible Debt Securities

Rule 15c3-1(c)(2)(vi)(F) requires, in the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and that are rated in one of the four highest categories by at least two of the nationally recognized statistical rating organizations, haircuts ranging from 1% for those securities with less than one year to maturity to 7% for securities with five years or more to maturity.

In its January 1982 Release, the Commission, on the basis of available data, proposed to increase the haircuts on nonconvertible debt securities ranging from 2% for those securities with less than one year to maturity to 9% for those securities with five years or more to maturity. The Commission believed that it was appropriate to propose increased percentage haircuts in the schedule of maturities categories in order to reflect more accurately the volatility of nonconvertible debt securities.

In the same release, the Commission proposed amendments that would allow broker-dealers to reduce applicable haircuts on nonconvertible debt securities that are hedged by certain debt obligations of the United States or agencies thereof. The proposed amendments would permit a reduction in the applicable haircut on a nonconvertible debt securities position when hedged by a position in securities issued by the U.S. Government with certain dates to maturity and would eliminate the haircut otherwise applicable to the Government security. The Commission proposed these amendments to establish a basis for closer examination of the relationship among various securities positions and the extent to which market risks can be reduced through hedging strategies.

The Commission received few comments regarding the proposed amendments. All the commentators recommended that the Commission further refine the proposed amendments by permitting broker-dealers to hedge

generally that its investment policy is to invest in money market instruments.

nonconvertible debt securities with Government securities futures and forward contracts. In addition, the commentators recommended that the Commission permit the hedging between two nonconvertible debt securities with similar maturity dates.

The commentators, however, did not provide the Commission with sufficient relevant data that would substantiate their claim that the aforementioned hedging strategies should be recognized by the Commission. The Commission is willing to address this matter in the future if it can obtain data upon which to make an informed decision. The Commission, therefore, specifically requests commentators to submit relevant data concerning the price spreads of nonconvertible debt securities that are hedged by either U.S. Government futures³² or other nonconvertible debt securities with similar maturity dates. The Commission also invites commentators to submit relevant data on price spreads involving other hedging strategies so as to enable the Commission to establish hedging criteria that are objective, clear and easily determinable for reducing any required haircuts on nonconvertible debt securities.

The Commission also invites comment on a recommendation by one broker-dealer that certain privately placed nonconvertible securities issued by large corporations without registration under the Securities Act be exempted from the provisions of paragraph (c)(2)(vii) of the net capital rule, which requires the deduction from net worth of 100% of the market value of securities which cannot be publicly offered or sold. The firm argues that these securities are marketable through an extensive institutional market.

On the basis of the foregoing, the Commission adopts the amendments as proposed which increase the haircuts on nonconvertible debt securities, but at the same time reduce the applicable haircuts on those securities that are hedged by positions in U.S. Government securities.

Borrowing and Lending of Securities by Broker-Dealers and Related Requirements

A. Introduction and Background

Brokers-dealers frequently borrow securities from institutions that are not ordinarily retail customers of the borrowing broker-dealer, but who are treated as customers of the borrowing

³² The Commission will defer indefinitely any consideration of using forward contracts for hedging purposes under the net capital rule.

broker-dealer under the customer protection and net capital rules. Broker-dealers borrow securities, including U.S. Government obligations, in order to complete short sales and to avoid fails to deliver to other broker-dealers or institutions due to delayed deliveries (fails to receive) by others. Securities are also borrowed to relend to other broker-dealers. The ability of broker-dealers to borrow and lend securities facilitates the smooth operation of the market for securities by reducing the level of incomplete transactions. The securities borrowing process also enables financial institutions to convert their securities portfolios into short term funds, thereby increasing the return to such institutions from these securities.

With the explosion of institutional and other trading activity over the last few years, the proliferation of trading strategies incorporating short sales of stock in combination with options, and the heightened activity of risk arbitrage and convertible arbitrage trading, there has been an enormous growth in broker-dealer requirements to borrow securities. December 1981 FOCUS filings by 392 NYSE member firms reported a total of over \$8 billion in securities borrowed at year end.

Rule 15c3-3 under the Securities Exchange Act of 1934 requires, among other things, that a broker-dealer obtain and thereafter maintain possession or control of all fully paid or excess margin securities held for the account of customers.³³ For purposes of Rule 15c3-3, the term "customer" includes any person or entity, such as a financial institution, that lends securities to a broker-dealer, whether or not it maintains an investment or trading account with that broker-dealer. Thus, it would appear that the only securities available for lending would be securities that are held by the broker-dealer as collateral for margin accounts.

Although borrowing and relending securities from financial institutions and others could be viewed as violating Rule 15c3-3, the Commission staff has taken the position, on a no-action basis, that it will raise no question as to non-compliance with the possession or control requirement of Rule 15c3-3(b), provided the borrower provides a written agreement containing certain specific terms covering the securities subject to the loan. However, because the "Formula for the Determination of the Reserve Requirements of Brokers and Dealers" (the "Reserve Formula") of Rule 15c3-3 draws no distinction between securities held for the account of retail customers and securities

obtained from persons pursuant to a collateralized loan, the market value of securities borrowed from others than retail customers, including financial institutions, are includable in the Reserve Formula.

In its January 1982 Release,³⁴ the Commission set forth a proposed amendment to exempt from the possession or control requirements those securities that are borrowed in accordance with the proposed amendment. The proposed amendment would allow the borrowing of customers' fully paid and excess margin securities, but would permit such borrowings only on transactions where there is a written agreement between the broker-dealer and the lender, which, in addition to other provisions:

(1) Requires that the written agreement entered into at the time of the loan specifically identify the securities to be loaned and the basis of compensation therefore;

(2) Requires 100% collateral, either in cash or in U.S. Treasury bills or notes;

(3) Requires, if the value of the borrowed security exceeds 105% of the value of the collateral, the delivery of additional collateral to satisfy the deficiency; and

(4) Requires the physical possession of the collateral be transferred to the lender or to his appointed agent.

In the same release, the Commission, as an interim measure, announced an interpretation of the customer protection rule which would reduce the reserve and net capital requirements of certain broker-dealers by excluding from the Reserve Formula debit and credit items that are related to securities borrowed from customers and financial institutions. To qualify for exclusion from the Reserve Formula, the securities must be borrowed pursuant to a written agreement and the broker-dealer must (1) deliver collateral in the form of cash or Government securities equal to at least 100 percent of the value of the securities; and (2) undertake to deliver additional collateral to satisfy the entire deficiency in the event that the market value of the securities exceeds by five percent the value of the collateral. Thus, securities borrowed in conformity with these requirements should be treated as if borrowed from a broker-dealer or municipal securities dealer.

Furthermore, for purposes of allocating funds associated with these securities in the Reserve Formula, a broker-dealer may treat lenders of securities as being non-customers, so long as the broker-dealer complies with the requirement of

proposed paragraph (b)(3) of Rule 15c3-3.

B. Discussion

In general, the majority of the comments received commended the Commission on its attempt to liberalize the conditions under which broker-dealers are permitted to borrow securities from customers as well as financial institutions. However, most of the commentators were critical of the conditions under which such borrowings would be permitted by the proposed rule as being too restrictive, fails to recognize fully general industry practice, and would create operational handicaps. Those commentators suggested that the proposal should, therefore, be reconsidered by the Commission. The commentators' primary concerns center around the Commission's refusal to expand the scope of acceptable collateral to include, among other things, irrevocable letters of credit. In addition, the majority of the commentators suggested that the Commission should reconsider the provisions that require: (1) Mark to the market; (2) transfer of actual possession of the collateral to the lender; and (3) a separate written agreement for each borrowing and lending transaction. In sum, the comments fall into two general classes, one relating to the written agreements and applicable disclosures and the second relating to the loan collateral, including delivery of additional collateral.

1. *Written Agreement and Notice Provisions.* Proposed Rule 15c3-3(b)(3)(i) requires that borrowers and lenders enter into a written agreement at the time of the loan identifying the securities to be loaned and the basis for compensation. Subparagraph (b)(3)(iii) requires that the agreement contain a provision disclosing that the securities lender may not be afforded protection under the Securities Investor Protection Act of 1970 ("SIPA") and therefore the collateral would constitute the first source of satisfaction of the borrower's obligation.

The commentators stated that most institutional lenders have written master agreements with the borrowing broker-dealers so that any given loan is covered not only by an established relationship but by a general contract specifying the terms of the loan, acceptable collateral and the rights of the lender in the event of default. Seldom, however, do these agreements identify the specific securities involved, and even where the compensation rates are specified, they are usually subject to renegotiation as warranted by changing

³³ See 17 CFR 240.15c3-3(b)(1).

³⁴ Securities Exchange Act Release No. 18420 (Jan. 13, 1982), 47 FR 3534 (Jan. 25, 1982).

money rates, market conditions, expected duration of the loan, and the supply and demand for a specific security. These master agreements are normally executed at about the time of the initial transaction between the borrowing broker-dealer and the lender. However, sometimes the formal agreement is executed shortly thereafter. Thus, the commentators assert that there is no need for the agreements to specify each security loaned and the rates on each loan.

The commentators share the Commission's concern that the lenders be aware of their prospective status as "non-customers" for purposes of SIPA. They disagree, however, on the proposed means to accomplish this goal. Several broker-dealers maintain that mandatory disclosures regarding a lender's rights would only add unnecessary paperwork and expense and would not supply any relevant new information not known to the lender or the borrowing broker-dealer. One broker-dealer and the SIPA, on the other hand, proposed that the Commission adopt a rule which requires that the lender receive a notice from the borrowing broker-dealer contemporaneously with the first loan transaction between the parties. The notice would state that stock loan transactions are not customer transactions covered by SIPA and that the collateral would constitute the lender's primary source of satisfaction in case of default by the borrowing broker-dealer. Under this formulation, the borrowing broker-dealer would be responsible for conveying this information in a manner it determines appropriate.

The Commission agrees that there need be only one written agreement, which must be supplemented by a separate statement or confirmations specifying the securities actually loaned to the broker-dealer. The agreement to lend should be separate from other account agreements and should be executed at or before the first transaction. It should specify the rights and obligations of the parties in detail as to the borrowed securities, including applicable provisions dealing with mark to the market and the return of the borrowed securities. The written agreement should also set forth in bold type that the lender of the borrowed securities may not be protected by SIPA and that any collateral received by the lending entity may be its sole source of protection in the event of default by the broker-dealer. The Commission believes that the inclusion of this last statement

will not create any substantial increase in paperwork for broker-dealers.

2. Collateral Provisions. Most of the commentators opposed all of the Commission's proposals as to the collateral delivery and mark to the market requirements. In essence, the commentators stated that a broker-dealer should be able to deliver to the lender whatever collateral the parties agree upon, including secured or unsecured irrevocable letters of credit. They also oppose the mark to the market provisions. They do so, not because marks to the market are not standard practice, but rather because, in their view, the lender should initiate the mark. That is to say, the customer should be on guard and protect its own interests. Finally, the commentators disagreed with the Commission's expressed concern as to the leverage inherent in the securities borrowing process.

The securities borrowed proposal was designed to curtail the leverage inherent in the securities borrowing process. Broker-dealers contend that this fear is illusory.

The Commission believes that the leverage in the securities borrowing process is undeniable. The commentators contend that if they use the funds retained from the process in a speculative manner, the net capital rule will require some charge. They also contend that obtaining cash through securities borrowing is not different than borrowing on an unsecured basis.

Neither point appears to completely answer the Commission's concerns. There are clearly instances where the broker-dealer will take no net capital charge for the use of money obtained from the securities borrowing process. In addition, as a general rule, broker-dealers do not borrow money on an unsecured basis for any extended period of time, except through subordinated loans. Finally, in many instances, the broker-dealer will have no balance sheet accountability for the securities borrowed if it provides no asset collateral in return for them.

While the Commission continues to believe that the securities lender should be given full cash (or its equivalent) collateral for the securities loaned, it does not want to restrict the business of borrowing and lending securities, some portion of which is used to complete legitimate short sales or fails to deliver. Therefore, the rule proposal will be revised so that if a broker-dealer delivers a letter of credit as collateral to the lending party, it must charge its net capital 1% of the market value of the securities borrowed. In effect, broker-

dealers will be authorized (if Regulation T permits)³⁵ to deliver letters of credit, secured or unsecured.³⁶ The rule will still compel the firm to turn over the collateral physically to the lender and mark to the market. The definition of collateral will be broadened to include all forms of cash, Treasury bills or notes as well as letters of credit. The Commission also requests comments from broker-dealers, self-regulatory organizations and other interested members of the public discussing the impact the 1% surcharge will have on the securities borrowing business. The Commission will monitor the effects of the securities borrowing program for the next year and will at that time determine whether any alterations to the rules are necessary.³⁷

III

Fails to Deliver

In Securities Exchange Act Release No. 18419, the Commission proposed for comment an amendment to a staff interpretation of Rule 15c3-3 which would allow a broker-dealer to exclude both fails to receive³⁸ and fails to deliver³⁹ which allocate to one another ("matched fails") from the Reserve Formula. The net capital rule would, however, be amended so that fails to deliver excluded by allocation would be subject to a capital charge of 1 percent of the contract value of the fail to deliver.⁴⁰ The Commission also

³⁵ 12 CFR 220.6(h).

³⁶ The Commission notes that requests have been made that letters of credit be allowed to be used to secure primary capital contributions in the business of broker-dealers. While the Commission has not determined the issues, the staff has taken the position that promises to pay (or receivables on the broker-dealer's books) secured by letters of credit must be deducted from net worth in computing net capital. They otherwise have no value in determining the net capital of a broker-dealer.

³⁷ If customer margin securities are used as collateral for the letter of credit, the value of the securities borrowed must be entered as a credit in the Reserve Formula.

³⁸ A "fail to receive" arises when a buying broker-dealer has not taken delivery from the selling broker-dealer as of settlement date. A fail to receive is a liability which the buying broker-dealer must satisfy when the securities are delivered.

³⁹ A "fail to deliver" arises when the selling broker-dealer fails to deliver the certificates in proper form at the agreed upon settlement date to the buying broker-dealer. A fail to deliver is an asset since it represents monies due to the firm for sales of securities.

⁴⁰ The Commission's response in its letter to M.S. Wien & Co., Inc. dated July 15, 1976 (the "Wien letter") and in similar letters to other broker-dealers, as noted later in this release, will no longer be applicable and are withdrawn. Under the Wien letter, broker-dealers who do primarily a dealer business and who have substantial amounts of fails to receive versus fails to deliver which are not allocable to customers may under certain conditions

proposed to amend the net capital rule to reduce the time period before which a deduction under subparagraph (c)(2)(ix) of the rule must be taken for a fail to deliver.

A. Matched Fails

The commentators generally supported the proposal to exclude "matched fails" from the Reserve Formula. Many commentators, however, objected to the imposition of the 1 percent charge on excluded fails to deliver.

The NASD argued that the 1 percent capital charge is unduly harsh and unwarranted, particularly since a substantial number of their members had been netting their fails in reliance on a staff no-action letter without the additional burden of the 1 percent charge. The NASD also asserted that the 1 percent charge will not provide retail firms additional incentive to close-out fails to deliver. First, firms with retail business would still be able to operate with "dangerously low" minimum net capital by simply switching from the alternative to the basic method of computing net capital, thereby avoiding the 1 percent charge on excluded fails to deliver. Second, the net capital rule already provides such an incentive through the "aged fails to deliver" haircut provision, Rule 15c3-1(c)(2)(ix). The NASD maintained that this provision works well to reduce fails to a level commensurate with the capability of industry facilities to close-out and complete open trades. The NASD suggested that the Commission develop specific proposals to address the particular universe of firms which would be allowed to operate with lower minimum net capital absent the 1 percent capital charge, rather than impose the additional 1 percent capital charge on all broker-dealers using the alternative method of computing net capital.

The Commission has reviewed the comments received and has determined that imposition of the 1 percent capital charge on the contract value of the excluded fails to deliver is necessary in order to ensure that firms which have a substantial amount of formula debits that consist of fails to deliver excluded from the Reserve Formula will maintain a sufficient minimum level of net capital. The net capital rule establishes minimum levels of capital in an effort to assure that firms have sufficient liquid assets to meet obligations to customers

and other broker-dealers as they come due. The rule operates to place an outer limit upon the amount of leverage or risk that broker-dealers may incur. Members of the securities industry do not dispute that the maintenance of sufficient capital requirements is an essential regulatory discipline which ensures both investor and broker-dealer confidence in the securities industry; rather, they argue that the 1 percent capital charge is excessive and therefore unwarranted, particularly with respect to those firms for which the Wien letter was designed.

The Commission, however, is not persuaded by these arguments. First, the Commission has recently reduced by one-half, from 4% to 2%, the minimum percentage of net capital required under the alternative method. This represents a very substantial reduction in the "capital cushion" required to be maintained by broker-dealers who compute net capital under the alternative method. Since under the alternative method, a broker-dealer's net capital requirement is a function of its customer debit items, to permit broker-dealers to exclude fails to deliver (a debit item) which allocate to fails to receive (a credit item) from the Reserve Formula without the additional 1% capital charge could allow many firms to be dangerously overleveraged.

Second, firms which do business primarily with other professionals have the highest percentage of matched fails to deliver. While these firms generally have the least direct customer exposure, they should, nonetheless, maintain sufficient net capital to meet their obligations to other broker-dealers, thereby ensuring continued confidence in the integrity of the securities industry. It is, therefore, not determinative whether the 1% capital charge will provide additional incentive to close-out fails to deliver, though it appears that it will provide such an incentive to some degree. Moreover, broker-dealers with relatively few matched fails will not be significantly affected by the additional 1% capital charge.⁴¹ Upon review, after experience, the Commission believes that the Wien letter fails to provide adequate net capital requirements for broker-dealers on the alternative method. Therefore, the Wien interpretation should be and is withdrawn.⁴² Finally, the Commission

⁴¹ According to an NASD survey, matched fails constituted only 16.3% of total fails to deliver for firms doing a general securities business. Thus, retail oriented firms include approximately 85% of their fails in the Reserve Formula.

⁴² The Commission notes that M. S. Wien, Inc. failed in September 1981, and is presently being liquidated pursuant to SIPA.

agrees with the SIA's suggestion that the interpretation should be amended to exclude from the Reserve Formula securities borrowed (that presumably have been used to clear a fail to deliver) that allocate to a fail to receive.⁴³

For purposes of the allocation procedure under Rule 15c3-3, the Commission announces the amendment of the Division of Market Regulation's interpretation in Securities Exchange Act Release No. 11497. The new interpretation is as follows:

(1) Fails to receive which are allocable to long positions in the proprietary or other accounts of the broker or dealer or to fails to deliver of the same quantity and issue may be excluded from the computation of the Reserve Formula;

(2) Fails to deliver which are allocable to short positions in the proprietary or other accounts of the broker or dealer or to fails to receive of the same quantity and issue may be excluded from the computation of the Reserve Formula;

(3) Securities borrowed which are allocable to fails to receive may be excluded from the computation of the Reserve Formula.⁴⁴

In addition, the Commission, for the reasons stated above, believes that the 1% charge on matched fails is appropriate and amends the rule accordingly. The change will also be imposed on securities borrowed which are excluded from the formula because of the allocation interpretation.

B. Aging Period

In Securities Exchange Act Release No. 18419, the Commission proposed that the time period for aging a fail to deliver be cut gradually from 11 business days to 5 business days (or from 21 business days to 15 business days in the case of municipal securities).⁴⁵ In addition, it proposed that the net capital rule be amended to provide authority to the designated examining authority (the "DEA") to grant, upon application, and under

⁴³ The Commission notes that securities failed to receive for which the broker-dealer has a receivable related to securities borrowed are excluded from aggregate indebtedness pursuant to subparagraph (c) (1) (iii) of Rule 15c3-1.

⁴⁴ Some broker-dealers complain that it is difficult to back out matched fails from the Reserve Formula. The interpretation does not, however, require them to do so. They may choose to comply with the interpretation before amended.

⁴⁵ The proposal provided that this time period be lowered in 2 nine month steps, from 11 business days (21 business days for municipal securities to 7 business days) (17 business days for municipal securities) during the first nine months after adoption and then to 5 business days (15 business days for municipal securities) after the second nine months.

net the fails and exclude them from the Reserve Formula. There was no additional capital charge on fails to deliver excluded from the formula under the Wien interpretation.

appropriate circumstances, an extension of those time periods for a period up to 5 business days before requiring percentage deductions for "aged" fails under the net capital rule. Among other things, the firm must be able to show that the fail had not been disavowed in some way.

The majority of commentators generally objected to the proposal to accelerate the aging of fails to deliver. Both the NASD and the SIA questioned whether the 5 business day aging period realistically reflected the clearing period for fixed income securities and foreign securities transactions.⁴⁶ One broker-dealer stated that the aging proposal favors large trading firms doing a listed business while penalizing the small trading firms who trade over-the-counter with many non-clearing firms located across the nation. The NASD and the SIA suggested that the existing aging schedule remain in place until further study and analysis of industry practices and capabilities supports the need for specific changes.

The NYSE noted that, while much has been done to expedite the clearing process and the vast majority of deliveries are completed within 5 business days, overly restrictive time limits may be detrimental to domestic brokers and dealers vis-a-vis their foreign competition. The NYSE maintained that the 5 business day aging proposal was unnecessarily stringent and would have a particularly harsh impact on the bond business and the secondary market in new issues. The SIA and NYSE stated that the current aging period satisfactorily reflects the credit risk presented by fails and should not be changed.⁴⁷

⁴⁶ One trading firm noted that ex-clearing house transactions resulting from customer preference and transactions in foreign securities that trade ex-clearing house are seldom resolved within 5 business days. Similarly, one retail firm stated that based on its experience in dealing with foreign correspondent banks and brokers, the existing time frames for aged fails in foreign securities were restrictive and should be lengthened to 14 business days.

⁴⁷ The NYSE suggested that the Commission state explicitly in the rules that open transactions in continuous net settlement clearing systems which are marked to market daily and subject to constant clearing house supervision are not subject to the aging provisions. We agree with its statement. In addition, it suggested that the new rules specifically state the circumstances under which the DEA may extend the time period before a deduction must be taken for aged fails to deliver. For example, they asserted that the authority should be broad enough to grant appropriate relief in such instances where, for example, delays occur as a result of a customer or operational problem, a snowstorm or other acts of God, or a postal strike. The Commission, however, believes it appropriate to defer further action at this time and will instead rely on the staff to develop appropriate criteria with the industry by interpretation or by no-action letters.

A broker-dealer asserted that the reduction in the aging period for excluded fails to deliver which involve only broker-dealers is unnecessary. It argued that broker-dealer firms with relatively large percentages of matched fails do not present a concern with respect to the protection of public customers. They questioned whether the reduction in the aging period would provide any incentive or leverage to broker-dealers to obtain resolution of the fails from their retail customers. However, they suggested that, assuming some reduction in the aging period is necessary, matched fails be specifically excluded from the general reduction in the aging period. They believed that this approach would reduce the aging period on customer-related fails generally without penalizing firms which have few retail customers. Alternatively, they suggest that matched fails allocable to transactions with other broker-dealers be excepted from the general reduction in the aging period.

The municipal securities dealers asserted that a reduction in the aging period for fails to deliver of municipal securities would be punitive since most events which result in fails are beyond their control. They also pointed to the uniqueness of the municipal securities market.

The Commission believes that the 5 business day aging period realistically reflects the clearing period for most non-municipal securities. It recognizes, however, that transactions in certain types of securities, such as foreign securities, certain fixed income securities and new issues, may not generally clear within 5 business days from settlement date. Therefore, the Commission suggests that broker-dealers with fails to deliver in such securities consult with the staff which will, under appropriate circumstances, permit adjustments to the aging period on a no action basis.⁴⁸ In addition, the rules provide that, upon an appropriate showing that an extension is warranted, the DEA may grant an extension of time up to 5 business days before the required percentage deductions for "aged" fails must be taken. A second extension may be granted under unusual circumstances.

The Commission notes that the dramatic improvements in the operational condition of securities firms since the 1968-70 "Paperwork Crisis" have resulted in a marked decline in fails to deliver as a percentage of total

⁴⁸ For example, the staff has taken a no-action position with respect to trades effected on the Associated Australian Stock Exchanges which do not clear for 15 business days.

assets and trading volume. The decline is due in part to the substantial improvements in the clearance and settlement of securities transactions.⁴⁹ The Commission believes that the acceleration of the aging period will provide additional incentives to broker-dealers to obtain prompt resolution of fails to deliver, and thereby increase the overall efficiency of the clearance and settlement systems.

We have reviewed the comments received with respect to municipal securities. The Commission notes that the Municipal Securities Rulemaking Board (the "MSRB") has taken substantial steps toward improving the overall efficiency of the municipal securities clearing systems. While the MSRB has not supported the revision, it is clear that the Board is firmly committed to the continued development of more advance systems for the comparison, clearance, and settlement of transactions in municipal securities.⁵⁰ In recognition of this commitment, the Commission has determined not to implement its proposal to shorten the time period for aging a municipal fail to deliver from 21 to 15 business days for at least six months. Thereafter, the Commission will reconsider whether the aging period should be reduced and review the progress made toward the development of an automated clearing system for municipal securities, and the improvement of the overall clearance systems for municipal securities. In furtherance of this aim, the Commission is requesting that the MSRB furnish a

⁴⁹ The Securities Reform Act of 1975 (the "1975 Amendments") added a new Section 17A to the Exchange Act requiring registration of entities involved in the securities handling process, including clearing corporations, securities depositories and transfer agents. Since 1975, the Commission has approved numerous rules regarding the operation of clearing agencies. This has resulted in improvements in their systems and methods of operation and increased participation by broker-dealers and other financial institutions in the clearing system.

⁵⁰ The MSRB has worked extensively with the Depository Trust Company and the National Securities Clearing Corporation to this end. It appears that the development of such systems depend heavily on the use of a CUSIP-like security identification numbering system for purposes of data entry, comparison, and generation of instructions. The MSRB recognizes that if the industry is to adapt successfully to the use of such systems, some means must be found of coordinating the industry's current trading and delivery practices with the need to identify securities by their appropriate security identification number. Therefore, trading must be conducted in a manner that is sufficiently specific to permit identification of the precise security identification number needed for proper instructions to these advanced comparison and clearance systems. Deliveries must also be made in accordance with the identification number of the specific securities.

report to the Commission by January 1, 1983 reporting on the progress it has achieved to that date and supplying an evaluation of what further steps will be required to bring the municipal securities clearance and settlement system into parity with the rest of the securities industry.

C. Municipal Bond Brokers

The Commission has received persuasive opposition to its proposed treatment of fails from a specialized type of municipal securities firm generally known as "municipal bond brokers" or "brokers' brokers."⁵¹ The brokers' brokers maintain that their functions and operations differ significantly from those of other broker-dealers. Due to the very limited and indirect customer exposure inherent in the brokers' broker's business, they request that the Commission adopt special net capital rules for brokers' brokers which are more appropriate to their unique function.

The brokers' brokers objected to the reduction in the time period allotted for aged fails to deliver and the imposition of the 1% capital charge on excluded fails to deliver. They maintained that these proposed amendments were unwarranted and would substantially reduce the liquidity of the municipal securities trading market without materially increasing the protection of the investing public. Moreover, they asserted that the combined effect of the 1% charge and the acceleration of the aging period for fails to deliver will force a substantial number of the brokers' brokers out of business.

Brokers' brokers act exclusively as undisclosed agents in the purchase and sale of municipal securities for registered broker-dealers or registered municipal securities dealers. They have no "customers" as defined in Rule 15c3-1(c)(6). Because they act only as "agents", brokers' brokers do not maintain inventories in municipal securities. All trades by brokers' brokers are offsetting transactions which are executed simultaneously for other securities professionals. They act as middlemen for these professionals who do not want their identities disclosed. Thus, the brokers' brokers are dependent on their dealer clients to make delivery to them in order to complete the trades and close-out the fails.

Unlike the general practice in the equities securities industry, municipal securities brokers' transactions are effected by physical delivery of the

certificates rather than by computerized book entries between members of a clearing agency. Brokers' brokers use a registered clearing agency or bank as agent to handle the receipt and delivery of the securities. The agent pays for the securities after receipt and verification and then redelivers them to the brokers' broker. Upon reverification, the agent is paid and the brokers' account is credited. However, because of delivery time limits, agents may be unable to redeliver all securities received for the account of a brokers' broker on the same day. In those instance, the brokers' broker must borrow funds to carry the securities overnight.

The brokers' brokers asserted that the adoption of the 1 percent capital charge on all excluded fails to deliver will force brokers' brokers to revoke their election to compute net capital under the alternative method. However, they noted that computing net capital under the basic method would impose a similar hardship on brokers' brokers because they would be required to include overnight bank loans used to carry half completed transaction in their calculation of aggregate indebtedness. Counsel to a group of brokers' brokers argued that if the 1 percent charge is adopted to include all fails and brokers' brokers are not specifically exempted, overnight bank loans for municipal securities failed to deliver should be excluded from aggregate indebtedness for one business day.⁵²

Moreover, many of the brokers' brokers maintained that the 1 percent charge unreasonably affects firms that have previously relied on the Wien letter to exclude matched fails by subjecting them to an additional 1 percent capital charge. The MSRB claimed that, contrary to the expressed intent of the release, the withdrawal of the Wien letter and the adoption of the 1 percent charge on excluded fails would actually increase the capital and reserve requirements for brokers' brokers.⁵³

In addition, the MSRB pointed out that fails to deliver are generally among the most secure assets of a broker-dealer.⁵⁴

⁵¹ Another brokers' broker suggested that brokers' brokers should use the aggregate indebtedness method for computing net capital.

⁵² PSA, noting the absence of any discussion of the 1 percent charge in the Regulatory Flexibility Analysis, suggested that the Commission defer making a determination of the amount of the capital charge until it has more accurately assessed its impact.

⁵³ However, two brokers' brokers currently have claims with the trustee of A. E. Pearson & Co. One entity which clears and finances trades in municipal securities in the securities industry, pointed out that it had never suffered any loss from the failure of any brokers' broker or the failure of any seller to or buyer from a brokers' broker to honor their municipal securities trade obligations.

The MSRB asserts that the risk that the contra-party might refuse to or be unable to honor the "fail to deliver" contract is far more theoretical than real since the incidence of dishonored fails to deliver contracts is extremely low.

The brokers' brokers maintained that the acceleration of the time period for aged fails to deliver is wholly ineffective in expediting the settlement of municipal securities transactions. Since municipal bond brokers act only as agent for the buyer and seller, both of which are securities professionals, they assert that there exists apart from Rule 15c3-1(c)(2)(ix) sufficient financial incentives for the parties to settle each trade in a timely manner.

In addition, they argued that the brokers' brokers have absolutely no control over aged fails. They pointed out that the nature of the municipal securities business, including the lack of automation in the transaction process, the cumbersome necessity for hand delivery of certificates and the difficulty of conducting buy-ins,⁵⁵ renders futile the attempts of the brokers' broker to speed the settlement of municipal securities transactions.

The Commission has reviewed the comments received and determined that, in light of the unique functions and operations of the brokers' brokers, it is appropriate to adopt special net capital requirements for municipal brokers' brokers which will require them to compute net capital pursuant to the aggregate indebtedness method. In recognition of the problem created by overnight bank loans for municipal securities failed to deliver, and in view of the high minimum net capital requirement discussed below, the Commission has determined that it is appropriate to allow brokers' brokers to exclude such loans from their aggregate indebtedness for one business day.

Because of their important role in the municipal securities business, brokers' brokers should maintain a substantial minimum net capital, as they appear to be responsible for a trade from execution through delivery and payment. They are liable for trading errors as well. In addition, brokers' brokers incur risk as a result of fails to deliver and fails to receive. High volume periods create aggravated fails and, in turn, proportionally increase risk. "When issued" municipal bonds likewise increase the brokers' brokers

⁵⁵ It was noted by several brokers' brokers that substitute bonds are difficult to find, primarily because of the very thin floating supply and numerous serial maturities of municipal securities. The scarcity of substitute bonds makes buy-ins and borrowing of securities virtually impossible.

⁵¹ PSA notes that there are currently 19 brokers' brokers.

exposure, and consequently the risk of loss.

The Commission is adding a new elective paragraph (a)(8) to Rule 15c3-1, which will require brokers' brokers at maintain to all times net capital of not less than \$150,000. Under the provisions of paragraph (a)(8), a 1% capital charge, however, will be imposed on the contract value of all failed to deliver contracts which are outstanding 21 business days or more. Brokers' brokers, however, will not be subject to the aged fail to deliver requirement of Rule 15c3-1(c)(2)(ix) nor will they be required to take a capital charge on fails to receive outstanding longer than 30 calendar days as specified in paragraph (c)(2)(iv)(E) of Rule 15c3-1.

Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (the "Analysis") in accordance with the Regulatory Flexibility Act ("RFA") (5 USC 604) regarding the proposed amendments to the net capital rule and the customer protection rule.

As indicated in the Initial Regulatory Flexibility Analysis, the amendments were proposed as part of the Commission's review of the broker-dealer financial responsibility rules. The proposed amendments, among other things, were intended to reflect changing economic and business practices in the securities industry.

The Commission received few comments specifically addressing its Initial Regulatory Flexibility Analysis. It also received a number of comments, primarily from members of the municipal securities industry, generally opposing the Commission's proposals regarding the revised net capital treatment of municipal securities and failed to deliver contracts.

Some of the comments received focused on changes in the treatment of municipal securities. The commentators contended that the increase in haircuts for municipal securities and implementation of the presumed marketability test were unwarranted and would adversely affect the municipal marketplace. They also argued that the proposed changes discriminated against smaller regional firms. With respect to the Commission's proposals regarding the revised treatment of failed to deliver contracts, many commentators, including the PSA and a specialized type of municipal securities firm known as a brokers' broker, opposed imposition of the 1% charge on failed to deliver contracts excluded from the reserve formula and contended that reduction of the time

period before aged failed to deliver contracts were required to be deducted from net worth was unwarranted. More specifically, the PSA, noting that the Commission failed to assess the impact of the 1% charge on excluded fails in its Initial Regulatory Flexibility Analysis, contended that this charge will increase the capital requirements for certain broker-dealers.⁵⁴

Aside from the revised net capital treatment of municipal securities and failed to deliver contracts (and to some extent the proposed percentage increases in the haircuts for Government securities), however, the Commission's proposals were generally well received.

As noted in the Initial Regulatory Flexibility Analysis, the Commission recognizes the need to formulate compliance and reporting requirements that take into account the economic impact on small brokers and dealers. In this regard, RFA directs the Commission to consider significant alternatives to the proposed amendments that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small brokers and dealers. As discussed in the Initial Regulatory Flexibility Analysis, however, the Commission believes that it would be inconsistent with the purposes of the Exchange Act to exempt, categorically, any small brokers and dealers from the proposed provisions of these amendments.

Nonetheless, in response to the comments received and on the basis of data developed in the course of the rulemaking process, the Commission has made a number of modifications to its original proposals which should provide net capital relief for certain broker-dealers, particularly municipal securities brokers and dealers and brokers' brokers. These alternatives include, among other things, a simplified method of computing haircuts on Government securities, certain hedging techniques for Government securities which will allow broker-dealers to utilize certain risk-reducing combinations so as to reduce their capital requirements, creation of additional haircut categories for municipal securities, modification

⁵⁴ While the Commission recognized that imposition of the 1% charge on excluded fails will increase the capital requirements for certain broker-dealers (particularly, those broker-dealers operating under the alternative method which had been excluding matched fails pursuant to the Wien interpretation), it appears that the overall impact on municipal securities dealers should be small since most have elected to compute their net capital the basic method. Apparently, the 1% charge on excluded fails will severely impact brokers' brokers which compute their net capital under the alternative method. However, the Commission has created a new provision for brokers' brokers which should alleviate the problems presented.

and clarification of the presumed marketability test and creation of a separate provision for brokers' brokers.⁵⁵

A copy of the Analysis may be obtained by contacting Michael A. Macchiaroli, Division of Market Regulation, U.S. Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 at (202) 272-2372.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3) and 23(a) thereof, 15 U.S.C. 78o(c) and 78w(a), the Commission is amending §240.15c3-1 in Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the amendments is necessary in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate to provide safeguards with respect to the financial responsibility of brokers and dealers.

List of Subjects in 17 CFR 240

Reporting requirements, Securities.

Text of Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

1. By adding paragraphs (a)(8), (c)(2)(iv)(F) and (G) and (f)(5)(iv) to §240.15c3-1, and revising paragraphs (c)(2)(vi)(A), (B)(2), (D), (F) and (H) and (c)(2)(ix) of 240.15c3-1 to read as follows:

§240.15c3-1 Net capital requirements for brokers or dealers.

* * * * *

(a) * * *

(8) *Municipal Securities Broker's Brokers.* (i) A municipal securities brokers' brokers, as defined in subsection (ii) of this paragraph (a)(8), may elect not to be subject to the limitations of paragraph (c)(2)(ix) of this section provided that such brokers' broker complies with the requirements set out in subsections (iii), (iv) and (v) of this paragraph (a)(8).

(ii) The term municipal securities "brokers' broker" shall mean a

⁵⁵ Changes have been made to that part of Appendix D dealing with "revolving subordination agreements" to correct an error in the prior release and to clarify the intent of the provision.

municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no "customers" as defined in this rule and who does not have or maintain any municipal securities in its proprietary or other accounts.

(iii) In order to qualify to operate under this paragraph (a)(8), a brokers' broker shall at all times have and maintain net capital of not less than \$150,000.

(iv) For purposes of this paragraph (a)(8), a brokers' broker shall deduct from net worth 1% of the contract value of each municipal failed to deliver contract which is outstanding 21 business days or longer. Such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security.

(v) For purposes of this paragraph (a)(8), a brokers' broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity. In no event may a brokers' broker exclude any overnight bank loan attributable to the same municipal securities failed to deliver contract for more than one business day. A brokers' broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by Rule 15c3-1(c)(2)(iv)(E).

(c) ***

(2) ***

(iv) ***

(F)(1) For purposes of this subparagraph:

(i) The term "repurchase agreement" shall mean an agreement to sell securities subject to a commitment to repurchase from the same person securities of the same quantity, issuer and maturity;

(ii) The term "reverse-repurchase agreement" shall mean an agreement to purchase securities subject to a commitment to resell to the same person securities of the same quantity, issuer, and maturity; and

(2)(i) In the case of a reverse-repurchase agreement, the deduction shall be equal to a percentage of the difference between the contract price for resale of the securities under a reverse-

repurchase agreement and the market value of those securities (if less than the contract price), determined on the basis of the date to maturity of the reverse-repurchase agreement, as of the net capital computation date, as follows:

(A) 7 days or less: 0 percent.

(B) 8 days to 14 days: 5 percent.

(C) 15 days to 30 days: 10 percent.

(D) 31 days to 60 days: 25 percent.

(E) 61 days to 90 days: 50 percent.

(F) 91 days or more: 100 percent.

(ii) If the market value of the securities subject to the reverse-repurchase agreement declines to below 50 percent of the contract price for resale under that agreement, the applicable deduction shall equal 100 percent of the difference between the contract price for resale of the securities under the agreement and the market value of those securities.

(iii) A deduction on account of reverse-repurchase agreement may be offset by any margin or other deposits held by the broker or dealer on account of the reverse-repurchase agreement or by any excess market value of the securities over the contract price for the resale of those securities under any other reverse-repurchase agreement with the same person.

(iv) A broker or dealer shall deduct an amount equal to the excess of the difference between the contract prices for resale of the securities under reverse-repurchase agreements and the market value of the securities (if less than the contract prices) in any single account (or related accounts) if in the aggregate the differences exceed 5 percent of net capital before the application of paragraphs (c)(2)(vi), or (f)(3) of this section, or Appendix A to 17 CFR 240.15c3-1.

(v) The required deduction under this subsection (2) shall not exceed 100 percent of the difference between the contract price for resale of the securities and the market value of those securities.

(G) *Securities borrowed.* 1 percent of the market value of securities borrowed collateralized by an irrevocable letter of credit.

(vi) ***

(A)(1) In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

Category 1

(i) Less than 3 months to maturity—0 percent.

(ii) 3 months but less than 6 months to maturity—1/2 of 1 percent.

(iii) 6 months but less than 9 months to maturity—3/4 of 1 percent.

(iv) 9 months but less than 12 months to maturity—1 percent.

Category 2

(i) 1 year but less than 2 years to maturity—1 1/2 percent.

(ii) 2 years but less than 3 years to maturity—2 percent.

Category 3

(i) 3 years but less than 5 years to maturity—3%.

(ii) 5 years but less than 10 years to maturity—4%.

Category 4

(i) 10 years but less than 15 years to maturity—4 1/2%.

(ii) 15 years but less than 20 years to maturity—5%.

(iii) 20 years but less than 25 years to maturity—5 1/2%.

(iv) 25 years or more to maturity—6%.

Brokers or dealers shall compute a deduction for each category above as follows: Compute the deductions for the net long or short positions in each subcategory above. The deduction for the category shall be the net of the aggregate deductions on the long positions and the aggregate deductions on the short positions in each category plus 50% of the lesser of the aggregate deductions on the long or short positions.

(2) A broker or dealer may elect to deduct, in lieu of the computation required under paragraph (c)(2)(vi)(A)(1) of this section, the applicable percentages of the market value of the net long or short positions in each of the subcategories specified in paragraph (c)(2)(vi)(A)(1) of this section.

(3) In computing deductions under paragraph (c)(2)(vi)(A)(1) of this section, a broker or dealer may elect to exclude the market value of a long or short security from one category and a security from another category, *Provided, That:*

(i) Such securities have maturity dates:

(A) Between 9 months and 15 months and within 3 months of one another.

(B) Between 2 years and 4 years and within 1 year of one another; or

(C) Between 8 years and 12 years and within 2 years of one another.

(ii) The net market value of the two excluded securities shall remain in the category of the security with the higher market value.

(4) In computing deductions under paragraph (c)(2)(vi)(A)(1) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(A)(1) of this section, long or short positions in securities issued by

the United States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account. The provisions of Appendix B to Rule 15c3-1 (17 CFR 240.15c3-1b) will in any event apply to the positions in futures contracts.

(5) In the case of a Government securities dealer which reports to the Federal Reserve System, which transacts business directly with the Federal Reserve System, and which maintains at all times a minimum net capital of at least \$50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) or (f)(3) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75% of the deduction otherwise computed under subparagraph (c)(2)(vi)(A).

(B)(1) * * *

(2) In the case of any municipal security, other than those specified in paragraph (c)(2)(vi)(B)(1), which is not traded flat or in default as to principal or interest, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

- (i) Less than 1 year to maturity—1%.
- (ii) 1 year but less than 2 years to maturity—2%.
- (iii) 2 years but less than 3½ years to maturity—3%.
- (iv) 3½ years but less than 5 years to maturity—4%.
- (v) 5 years but less than 7 years to maturity—5%.
- (vi) 7 years but less than 10 years to maturity—5½%.
- (vii) 10 years but less than 15 years to maturity—6%.
- (viii) 15 years but less than 20 years to maturity—6½%.
- (ix) 20 years or more to maturity—7%.

(D)(1) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets consist of cash or money market instruments and which is generally known as a "money market fund," the deduction shall be 2% of the market value of the greater of the long or short position.

(2) In the case of redeemable securities of an investment company

registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments of any maturity which are described in paragraph (c)(2)(vi) (A) through (C) or (E) of this section, the deduction shall be 7% of the market value of the greater of the long or short positions.

(3) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in paragraphs (c)(2)(vi) (A) through (C) or (E) and (F) of this section, the deduction shall be 9% of the market value of the long or short position.

(F)(1) In the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

- (i) Less than 1 year to maturity—2%.
- (ii) 1 year but less than 2 years to maturity—3%.
- (iii) 2 years but less than 3 years to maturity—5%.
- (iv) 3 years but less than 4 years to maturity—6%.
- (v) 4 years but less than 5 years to maturity—7%.
- (vi) 5 years or more to maturity—9%.

(2) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof and that have maturity dates of within—3 months, if the nonconvertible debt security has a maturity date of less than 15 months; 6 months, if the nonconvertible debt security has a maturity date of greater than 15 months but less than 2 years; 1 year, if the nonconvertible debt security has a maturity date of greater than 2 years but less than 5 years; and 5 years, if the nonconvertible debt security has a maturity of 5 years or more. The electing broker or dealer shall also exclude the hedging short or long securities position from the applicable haircut category under paragraph (c)(2)(vi)(A) of Rule 15c3-1 (240.15c3-1(c)(2)(vi)(A)), but shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as

specified in each of the categories below:

- (i) Less than 1 year to maturity—1%.
- (ii) 1 year but less than 2 years to maturity—1½%.
- (iii) 2 years but less than 3 years to maturity—2½%.
- (iv) 3 years but less than 4 years to maturity—3%.
- (v) 4 years but less than 5 years to maturity—3½%.
- (vi) 5 years or more to maturity—4½%.

(H) In the case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which is rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations and which are not in arrears as to dividends, the deduction shall be 10% of the market value of the greater of the long or short position.

(ix) Deducting from the contract value of each failed to deliver contract which is outstanding 5 business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security which would be required by application of the deduction required by paragraph (c)(2)(vi) or, where appropriate, paragraph (f) of this section. Such deduction, however, shall be increased by any excess of the contract price of the failed to deliver contract over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the fail but not to exceed the amount of such deduction; *Provided*, however, That until January 1, 1983, the deduction provided for herein shall be applied only to those fail to deliver contracts which are outstanding 7 business days or longer (21 business days or longer in the case of municipal securities). The designated examining authority for the broker or dealer may, upon application by the broker or dealer, extend for a period of up to 5 business days, any period herein specified where it is satisfied that the extension is warranted. The designated examining authority upon expiration of the extension may extend for one additional period of up to 5 business days, any period herein specified when it is satisfied that the extension is warranted.

- (f) * * *
- (5) * * *

(iv) Deduct from net worth in computing net capital 1% of the contract value of all failed to deliver contracts or securities borrowed which were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, 17 CFR 240.15c3-3a.

2. By revising paragraph (c)(5) of § 240.15c3-1d to read as follows:

§ 240.15c3-1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3-1).

(c) * * *

(5)(i) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3-1, a broker or dealer shall be permitted, on no more than three occasions, in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer, if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a-11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or, if immediately prior to entering into such subordination agreement, either (A) the aggregate indebtedness of the broker or dealer exceeds 1000 percentum of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3-1, or (B) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital is less than 5% of aggregate debits computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (C) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3-1. Such temporary subordination agreement shall be subject to all the other provisions of this Appendix D.

(ii) A broker or dealer shall be permitted to enter into a revolving subordinated loan agreement which provides for prepayment within less

than one year of all or any portion of the Payment Obligation thereunder at the option of the broker or dealer upon the prior written approval of the Examining Authority for the broker or dealer. The Examining Authority, however, shall not approve any prepayment if:

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 900 percentum of its net capital or its net capital would be less than 200 percentum of the minimum dollar amount required by 17 CFR 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than 6% of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a or if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or its net capital would be less than 200% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3-1 or

(B) pre-tax losses during the latest three-month period equalled more than 15% of current excess net capital.

Any subordination agreement entered into pursuant to this subdivision (ii) shall be subject to all the other provisions of this Appendix D. Any such subordination agreement shall not be considered equity for purposes of subsection (d) of section 15c3-1, despite the length of the initial term of the loan.

3. By adding paragraph § 240.15c3-3(b)(3) to read as follows:

§ 240.15c3-3 Customer protection-reserves and custody of securities.

(b) Physical possession or control of securities.

(3) A broker or dealer shall not be deemed to be in violation of the

provisions of paragraph (b)(1) of this section regarding physical possession or control of fully-paid or excess margin securities borrowed from any person, provided that the broker or dealer and the lender, at or before the time of the loan, enter into a written agreement that, at a minimum;

(i) Sets forth in a separate schedule or schedules the basis of compensation for any loan and generally the rights and liabilities of the parties as to the borrowed securities;

(ii) Provides that the lender will be given a schedule of the securities actually borrowed at the time of the borrowing of the securities;

(iii) Specifies that the broker or dealer (A) must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral, consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable of credit issued by a bank as defined in section 3(a)(6) (A)-(C) of the Securities Exchange Act which fully secures the loan of securities, and (B) must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in proviso (iii) (A) above to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

(iv) Contains a prominent notice that the provisions of the Securities Investor Protection Act of 1970 may not protect the lender with respect to the securities loan transaction and that, therefore, the collateral delivered to the lender may constitute the only source of satisfaction of the broker's or dealer's obligation in the event the broker or dealer fails to return the securities.

By the Commission.

Dated: May 13, 1982.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-13819 Filed 5-19-82; 8:45 am]

BILLING CODE 8010-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 430

Ground Water Protected Area; Pennsylvania; Amendment To Allow for Immediate Action Under Emergency Conditions

AGENCY: Delaware River Basin Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The Commission announces that it has taken final action amending its ground water protected area regulations for southeastern Pennsylvania as provided for in Commission Resolution Number 82-5. The amendment adds a new section authorizing the Executive Director, with the concurrence of the Pennsylvania member of the Commission, to take immediate action to grant a permit under emergency conditions when circumstances do not permit full review and determination in accordance with the regulations.

EFFECTIVE DATE: April 27, 1982.

ADDRESS: Delaware River Basin Commission, 25 State Police Drive, Post Office Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Gerald M. Hansler, Executive Director, Delaware River Basin Commission, Post Office Box 7360, West Trenton, New Jersey 08628, 609-883-9500.

SUPPLEMENTARY INFORMATION: On March 10, 1982, the Commission announced a proposal to amend its ground water protected area regulations for southeastern Pennsylvania so as to provide for immediate permit action under emergency conditions. The proposed amendment was disseminated widely throughout the Delaware River Basin and was the subject of a public hearing by the Commission held on March 30, 1982. Notice of the hearing and text of the proposed amendment were published at 47 FR 11763 (March 18, 1982). Testimony was received and considered by the Commission but no substantial changes in the draft resolution were made as a result of the hearing. The amendment was adopted on April 27, 1982 as Resolution Number 82-5. Copies of Resolution 82-5 may be obtained from the Delaware River Basin Commission upon written request.

List of Subjects in 18 CFR Part 430

Water supply, Ground water protection.

PART 430—GROUND WATER PROTECTION AREA; PENNSYLVANIA

Therefore the Commission's Ground Water Protection Area Regulations: Pennsylvania, 18 CFR Part 430, are amended as follows:

Add a new § 430.24 *Emergencies*, to read as follows:

§ 430.24 Emergencies.

In the event of an emergency requiring immediate action to protect the public health and safety or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit full review and determination in accordance with these regulations, the Executive Director, with the concurrence of the Pennsylvania member of the Commission or his alternate, may issue an emergency permit authorizing an applicant to take such action relating to these regulations as the Executive Director may deem necessary and proper. In such cases, the applicant shall be fully responsible for protecting existing ground water users, as prescribed in § 430.19 of these regulations. The Executive Director shall report at the next meeting of the Commission on the nature of the emergency and any action taken under this section.

W. Brinton Whitall,
Secretary.

May 12, 1982.

[FR Doc. 82-13761 Filed 5-19-82; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF STATE

22 CFR Part 41

[Dept. Reg. 108.820]

Nonimmigrant Classification of Students

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department is amending its regulations on the nonimmigrant visa classification of alien students to implement section 2(a) of the Immigration and Nationality Act Amendments of 1981, 95 Stat. 1611. Section 41.45 is amended to limit F-1 classification to aliens destined to full courses of study in language training programs or at academic institutions designated in the law. A new § 41.68 establishes an M-1 classification for aliens coming to the United States for full courses of study at an established vocational or other recognized nonacademic institution (other than

language training program) and an M-2 classification for an alien spouse or minor children accompanying or following to join an alien classified M-1. The new M-1 and M-2 classification symbols are added to § 41.12 and conforming amendments are made in the table of contents.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Legislation and Regulations Division, Visa Services. (202) 632-1900.

SUPPLEMENTARY INFORMATION: A proposed rulemaking was published in the Federal Register on March 23, 1982 (47 FR 12359). The only public comment received included a recommendation that F-1 classification be accorded to an alien not having sufficient knowledge of English to undertake a full course of study, if the accepting institution will enroll the alien in a combination of academic courses and English instruction (not necessarily tutoring) which will constitute a full course of study. This recommendation is adopted. A similar provision is added to § 41.68(a)(3) to permit M-1 classification if the accepting vocational institution will enroll the alien in courses of instruction in English incidental to principal instruction in vocational courses which, when taken together, will constitute a full course of study. Other minor technical and clarifying changes are being made.

List of Subjects in 22 CFR Part 41

Visas, Students, Aliens.

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Part 41 is amended as follows:

§ 41.12 [Amended]

1. In the list of classification of symbols in § 41.12, amend line 17 (Student) to read "Student—Academic or Language Training Program".

2. In the list of classification of symbols in § 41.12, after line 40 (Spouse of minor child * * * L-2), insert the following:

Class	Citation	Symbol to be inserted in visa
Vocational or other recognized nonacademic student.	101(a)(15)(M); 95 Stat. 1611 DM-1..	
Spouse or minor child of alien classified M-1.	95 Stat. 1611	M-2.

3. Revise § 41.45 and the undesignated center heading preceding it to read as follows:

Students—Academic, Language Training Programs

§ 41.45 Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(F)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend, and has been accepted for attendance by, a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(F)(i) of the Act, as evidenced by the presentation of Form I-20A-B (Certificate of Eligibility) properly and completely filled out and signed by the alien and by an official of a designated school official the accepting school (the Form I-20A, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or institution providing language training has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide those expenses;

(3) Has sufficient scholastic preparation and knowledge of the English language (unless the alien is going to an institution exclusively to participate in an English language training program) to enable the undertaking of a full course of study given in the English language which the accepting institution is equipped to offer, or the institution (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or (ii) will enroll the alien in a combination of academic courses and English instruction which will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of the student status (consular officers are authorized in borderline cases to require the posting of a bond with the Attorney General in a sufficient sum to insure that upon the alien's conclusion of studies, or upon the alien's failure to maintain student status, or any status subsequently acquired under section 248 of the Act, the alien will depart from the United States). If the alien is otherwise qualified for classification as a nonimmigrant student under this section, but intends to study the English language exclusively while in the United States, such alien may be classified as a nonimmigrant student under the provisions of section 101(a)(15)(F)(i) of the Act even though no credits are given by the institution for such study. The approved school must be equipped to offer a full course of study in the English language and must have accepted the applicant expressly for that course.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(F)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien: (1) Is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and (2) intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

4. Immediately before § 41.66 add a new undesignated center heading to read "Fiancee or Fiance".

5. Immediately before § 41.67 add a new undesignated center heading to read "Executives, Managers, and Specialists".

6. Immediately after § 41.67 add the following new undesignated center heading and section to read as follows:

Students—Vocational

§ 41.68 Students in established vocational or other recognized nonacademic institutions, other than in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(M)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend and has been accepted for attendance solely for the purpose of pursuing a full course of study (other than a language training program) by an established vocational or other

recognized nonacademic institution in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(M)(i) of the Act, as evidenced by the presentation of Form I-20M-N (Certificate of Eligibility) properly and completely filled out and signed by the alien and by a designated school official of the accepting institution (the form I-20M, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated vocational or other recognized nonacademic institution which has issued the document has been approved by the Attorney General for the attendance of nonimmigrant students pursuant to section 101(a)(15)(M)(i) of the Act and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide for those expenses;

(3) Has sufficient knowledge of the English language to enable such an alien to undertake a full course of study in the accepting institution, or, if knowledge of the English language is inadequate to enable such alien to pursue a full course of study given in the English language, the accepting institution is equipped to offer, and (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or (ii) will enroll the alien in courses of instruction in English incidental to principal instruction in vocational courses which, when taken together, will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of student status.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(M)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien: (1) is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and (2) intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

(Sec. 104, 86 Stat. 174 (8 U.S.C. 1104); sec. 109(b)(1), 91 Stat. 847)

Dated: May 13, 1982.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 82-13812 Filed 5-19-82; 8:45 am]

Billing Code 4710-06-M

Bureau of Consular Affairs

22 CFR Part 42

[Dept. Reg. 108.821]

Ineligible Classes of Immigrants— Illiterates

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department is amending section 42.91(a)(25)(ii) of its regulations relating to the eligibility of illiterate aliens to receive immigrant visas. This action is taken to reconcile the Department regulations with an opinion issued by the Attorney General's Office of Legal Counsel construing the language and intent of section 212(b) of the Immigration and Nationality Act. Technical corrections are also made in subparagraph (i) of section 42.91(a)(25).
EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Chief, Legislation and Regulations Division, Visa Services. (202) 632-1900.

SUPPLEMENTARY INFORMATION: Present regulations in section 42.91(a)(25)(ii) allow an illiterate alien, who is found to be ineligible to receive a visa under the provisions of section 212(a)(25) of the Immigration and Nationality Act, to benefit from the automatic waiver of that ground of ineligibility provided in section 212(b) of the Act if such alien is being accompanied by an admissible spouse or son or daughter whose immigrant status was conferred by the illiterate alien.

A recent review by the Attorney General's Office of Legal Counsel of the Department's interpretation of section 212(b) resulted in the issuance of an opinion by that Office. The opinion concluded that the present interpretation is erroneous and that section 212(b) should be construed as permitting a literate principal immigrant alien to use the automatic waiver provided by section 212(b) as a facilitative means to the immigration of an accompanying illiterate parent, grandparent, spouse, son or daughter, rather than as a means for an illiterate principal alien to receive an immigrant visa by virtue of a derivative accompanying literate spouse or son or daughter. Sons and daughters under age sixteen are not subject to the literacy

requirement in any event. Compliance with 5 U.S.C. 553 of the Administrative Procedure Act, as to notice of proposed rulemaking and delayed effective date, and with the requirements of E.O. 12291 are not practicable in this instance because the amendment conforms the regulations with an opinion issued by the Attorney General's Office of Legal Counsel.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

List of Subjects in 22 CFR Part 42

Visas, Immigration, Illiteracy.

Accordingly, § 42.91(a)(25) is amended by:

1. Amending "212(a)(27)" in line 2 of subparagraph (i) to read "212(a)(25)";
2. Amending "resident" in line 5 of subparagraph (i)(d) to read "residence";
3. Amending "persecution" in lines 3 and 4 of subparagraph (i)(e) to read "persecution"; and
4. Revising paragraph (a)(25)(ii) to read:

§ 42.91 Aliens ineligible to receive visas.

(a) Aliens ineligible under the provisions of section 212(a) of the Act.

* * * * *

(25) *Illiterates.* * * *

(ii) An individual who is a United States citizen, or a lawful permanent resident of the United States, or an accompanying alien independently qualified for and eligible to receive an immigrant visa, may confer upon a son or daughter, regardless of age, a spouse, parent or grandparent the benefits of the exemption from the literacy requirement provided for in section 212(b) of the Act.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

Dated: May 13, 1982.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 82-13809 Filed 5-19-82; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 79-31, Notice 4]

Traffic Safety In Highway and Street Work Zones; Separation of Opposing Traffic

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on traffic control design requirements for two-lane, two-way traffic on one roadway of a normally divided highway in highway and street work zones. The FHWA has decided not to stipulate further traffic control design requirements in this situation or to place stringent requirements on edge-of-pavement excavations. This will allow greater flexibility to develop traffic control detail tailored to the particular circumstances on each project. This amendment is intended to place the primary responsibility for determining the appropriate traffic control details for each project on the State and local highway agencies.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth L. Ziems, Office of Highway Operations, (202) 426-4847, or Mr. Stanley H. Abramson, Office of the Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are between 7:45 a.m. and 4:15 p.m., e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA modified its regulation on traffic safety in highway and street work zones on September 17, 1979 (44 FR 53739), by issuing an emergency final rule requiring separation of opposing traffic on federally-assisted construction projects where two-lane, two-way traffic is maintained temporarily on one roadway of a normally divided highway. This situation is referred to as a two-lane, two-way traffic operation and abbreviated as "TLTWO."

Discussion of Comments

Comments on the emergency rule were received from 16 States, 4 cities, 1 county, 4 organizations, and 2 citizens. Responses varied, with 3 commenters expressing agreement with the rule, the majority, 15, suggesting modification of the rule, and 9 expressing complete opposition to the rule by requesting it be rescinded or deferred. The FHWA decided not to rescind or defer application of the existing rule because of the adverse effects that such action was expected to have on highway safety (i.e., high accident rate with resulting deaths, injuries, and property damage).

The three most frequently requested modifications were prompted by: (1) problems associated with mandatory placement of positive barriers in transition zones (from one-way to two-way operation) when a positive barrier is not placed continuously throughout the TLTWO, (2) concern with the requirement for separation of opposing

traffic on other than freeway type facilities such as urban streets with low speed limits, and (3) concern with the requirement for separation of opposing traffic in short-term work zones.

A notice of proposed rulemaking (NPRM) was published on October 16, 1980, (45 FR 68663) in the Federal Register, proposing to amend the emergency final rule in response to the concerns expressed above.

In the NPRM, positive barriers would not have been required just in transition zones if not placed throughout the TLTWO. Separation of opposing traffic would not have been required for low-speed facilities, typically urban streets and arterials, as the FHWA had no evidence that head-on collisions were occurring on such facilities in these TLTWO's. Separation of opposing traffic in short-term work zones (those where two-way operations will not exist overnight) would have been required, but the use of positive barriers for separation would not have been required.

In the NPRM, positive barriers would have been used to separate opposing traffic when dictated by individual project conditions. Use of separation devices other than positive barriers would have required conditions where the added risk was considered minimal on each Federal-aid project where opposing traffic must be separated. Consideration was to include the obvious benefits of positive barriers physically preventing head-on collisions and the difficulty of maintaining separation devices other than positive barriers, especially at night. Head-on collisions have occurred where separation devices, other than positive barriers, were provided but continuing maintenance was inadequate, sometimes due to an extremely high loss rate of these separation devices overnight. Another consideration was that workers maintaining the devices must venture into the traveled lanes often, whereas positive barriers require little maintenance. The NPRM was intended to give flexibility to allow the use of separation devices other than positive barriers throughout the TLTWO, including transitions, when conditions such as time and length of exposure, type of traffic, and facility warranted. Yet the NPRM was also intended to strengthen the requirement to provide positive barriers when dictated by individual project conditions.

The NPRM stipulated that the length of a TLTWO normally should not exceed 3 miles and would have restricted the length to 5 miles. Impatience and inattentiveness of the

driver are two major factors believed to contribute to head-on collisions in this situation, and these two factors tend to increase in proportion to the length of the TLTWO. The longer the segment the more difficult it is to provide proper maintenance of separation devices. Also the possibility of an accident or a disabled vehicle causing severe congestion in the restricted segment is increased with its length. The proposed 5-mile limit was considered adequate to allow contractor flexibility in various types of work activity.

Under the NPRM, the traffic control plan (TCP), required for all projects by § 630.1010(a)(2), would have specified that the geometrics of the median crossovers for TLTWO's generally meet standards equal to or approaching the standards of the existing facility. Recent research (Identification of Traffic Management Problem in Work Zones, FHWA 1979) indicates that where crossovers are provided in a construction zone, a considerable number of injury-causing accidents occur, with substandard geometrics being the major contributing factor.

Supplemental signing has been used to some extent with good results in reducing drivers' impatience and frustration by advising of the length of TLTWO remaining in the construction zones. Therefore, the NPRM indicated that the TCP should require such signing at appropriate intervals. However, the NPRM would not have mandated such signing.

Where dropoffs are to be created at the edge of travel lanes because of construction work on a project, the FHWA believed action was needed to require protection for motorists and highway workers. The NPRM, therefore, would have required that the TCP include provisions for mitigating the hazard, such as a wedge of fill material to form a shoulder, if the dropoff was expected to cause loss of control of an errant vehicle and if the dropoff was to remain overnight.

Thirty-four States, three counties, four organizations, and three firms commented on the proposed rule. This is approximately double the response to the emergency rule and came after a year's experience with the emergency rule. Twenty-nine States, three counties, three organizations, and one firm expressed significant concerns with some part of the NPRM. Only one State and one organization were satisfied with the NPRM requirements. An additional seven commenters requested only minor revisions.

Five commenters strongly resisted the concept of addressing design details in a nationwide rule. The majority of the 44

commenters interpreted the NPRM to virtually mandate use of positive barriers for separation devices and gave many reasons why this would be too rigid. A few of the major reasons given included (1) prohibitive cost, (2) restricted width, (3) elimination of engineering judgment, (4) previous experience with other methods, (5) need to verify cost effectiveness, and (6) need for relief for such conditions as short-term work and lack of passing opportunities when warranted under unusual conditions. Twelve commenters indicated that the State or local agency responsible for the project should determine whether separation devices are needed for a TLTWO and, if so, the type of devices to be used. Eight States and one organization requested further guidance on choosing separation devices. Four States endorsed the concept of separation devices for TLTWO, but each had different interpretations of the NPRM regarding use of positive barriers.

Other items in the NPRM met with less resistance. Eleven commenters stated that exceptions are needed for the 5-mile limit on TLTWO's. Two commenters opposed the minimum design requirement for crossovers. Only minor comments were received on the suggestion for supplemental signing.

Eleven commenters opposed the edge-of-pavement dropoff requirement. Eight others agreed with the basic concept but had a wide range of interpretation. All of the latter eight requested further specific guidelines.

The concerns most frequently expressed by commenters with the NPRM were: tremendous project cost to comply, lack of flexibility needed for individual project circumstances, the inability to comply or the impracticality of complying in all cases, lack of analytical support that the problem is great enough for such stringent requirements, need for clarification and more specific guidelines if the NPRM is adopted, and the belief that State highway agencies (SHA's) may be vulnerable to litigation because of vague wording in the NPRM.

Discussion of Final Rule

Based upon the response to the NPRM and the emergency rule, the FHWA has reevaluated the need for Federal regulation in this area. In making this reevaluation, the FHWA also considered the experience of the States under the emergency rule, recent research findings, and the principles contained in Executive Order 12291, Federal Regulation.

Among the alternative approaches to protecting the safety of the traveling public and construction workers in TLTWO's on Federal-aid construction projects, the FHWA has determined that a regulation containing a general nationwide requirement with provision for exceptions in appropriate instances would involve the least net cost to society. In addition, the FHWA will provide information in the handbook portion of "Work Zone Traffic Control Standards and Guidelines" ¹ to assist SHA's and FHWA field offices in the development of traffic control plans which address TLTWO's and related problems in an appropriate manner. The FHWA does not have sufficient information to provide technical guidance on edge-of-pavement dropoffs at this time, but currently has a study underway on this subject.

Although it is difficult to choose between the competing needs of uniformity and flexibility, the FHWA believes that this rule will mandate action in all cases where it is necessary to protect the safety of motorists and workers, and at the same time, provide an appropriate degree of flexibility which recognizes the particular needs of each locality and the ability of State and local highway officials to exercise sound engineering judgment on a project-by-project basis.

The emergency rule, the NPRM and the high profile given to the problem of traffic safety in highway and street work zones by the FHWA have focused the attention of Federal, State, and local officials on the problem, particularly with respect to TLTWO's and edge-of-pavement dropoffs. This final rule maintains that focus, but clearly places the authority for implementation at the project level.

This final rule permits TLTWO only after other available methods of traffic control have been carefully considered. The emergency rule permitted TLTWO only when other methods of traffic control were determined to be infeasible. As a result of experience with the use of separation devices in TLTWO's, the FHWA has determined that there may be instances where a properly separated TLTWO could be preferable to other feasible types of traffic control in work zones.

Under this final rule, the TCP must include provisions for the separation of

opposing traffic where the TLTWO is to be used. The requirement for separation of opposing traffic may be waived in only three instances. The first is where the TLTWO is located on an urban type street or arterial where operating speeds are low. This exception was included in the NPRM. The second exception was included in the emergency rule and applies where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway. The third exception permits the FHWA to approve the nonuse of separation devices based on unusual project circumstances such as gaps for cross roads, or on narrow bridges or in narrow tunnels.

This final rule retains the FHWA's original prohibition on the use of striping and complementary signing in place of separation devices such as drums, cones, vertical panels, and positive barriers. This provision has been rewritten to make it clear that center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for the separation of opposing traffic in a TLTWO.

All other references to specific traffic control techniques and devices that were included in either the emergency rule or the NPRM have not been included in this final rule. The FHWA will provide additional information for issuing guidance on these items (except for edge-of-pavement dropoffs, where a study is underway) in the update to the handbook portion of "Work Zone Traffic Control Standards and Guidelines." The references include the following:

- Selection of types of separation devices (including positive barriers),
- Use of impact attenuation (i.e., crash cushion) devices and flared barriers,
- Determination of length of TLTWO,
- Design of crossovers, and
- Use of supplementary signing and marking.

List of Subjects in 23 CFR Part 630

Grant programs—transportation, Highway safety, Highways and roads—program administration.

PART 630—PRECONSTRUCTION PROCEDURES

In consideration of the foregoing, Subpart J of Part 630, Chapter I, Title 23, Code of Federal Regulations, is amended by revising paragraph (a)(5) of § 630.1010 to read as follows:

§ 630.1010 Contents of the agency procedures.

(a) * * *

(5)(i) Two-lane, two-way operation on one roadway of a normally divided highway (TLTWO) shall be used only after careful consideration of other available methods of traffic control. Where the TLTWO is used, the TCP shall include provisions for the separation of opposing traffic except:

(a) Where the TLTWO is located on an urban type street or arterial where operating speeds are low;

(B) Where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway; or

(C) Where FHWA approves nonuse of separation devices based on unusual circumstances.

(ii) Center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for separation purposes.

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation is available for inspection in the public docket and may be obtained by contracting Mr. Kenneth L. Ziems, Office of Highway Operations, at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular A-85 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

(23 U.S.C. 109(b), 109(d), 315, and 402(a); 49 CFR 1.48(b))

Issued on: May 7, 1982.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 82-13558 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-22-M

23 CFR Parts 771, 790, and 795

[FHWA Docket No. 82-5, Notice 2]

Environmental Impact and Related Procedures: Public Hearings and Location/Design Approval; Environmental Action Plans

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

¹ "Work Zone Traffic Control Standards and Guidelines" is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (DPO Stock No. 050-001-00175-8). It is published by the FHWA and contains Part VI of the "Manual on Uniform Traffic Control Devices" and the "Traffic Control Devices Handbook, Part VI."

SUMMARY: This document rescinds the regulation on the development of environmental Action Plans and makes corresponding changes in the regulation on environmental impact and related procedures and the regulation on public hearings and location/design approval in order to eliminate unnecessary duplication of environmental procedures.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Ali F. Sevin, Office of Environmental Policy (202/426-0107), or Mr. Edward V. A. Kussy, Office of the Chief Counsel (202/426-0791), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 109(h) of Title 23, United States Code (U.S.C.), which was added by the Federal-Aid Highway Act of 1970, required the Secretary to promulgate guidelines designed to assure that possible adverse, economic, social, and environmental effects of highways are fully considered and that project decisions are made in the best overall public interest.

The Process Guidelines were FHWA's response to section 109(h) and are now codified in Part 795 of Title 23, Code of Federal Regulations (CFR). They are also contained in Volume 7, Chapter 7, section 1 of the Federal-Aid Highway Program Manual (FHPM 7-7-1). The guidelines call for each State to develop an Action Plan which describe the organization to be used and the processes to be followed in the development of Federal-aid highway projects.

The Process Guidelines/Action Plan approach, implemented during a period when State highway departments were gaining familiarity with the environmental analysis process, has accomplished its objective. The National Environmental Policy Act (NEPA) process, as recently revised by FHWA to incorporate the Council on Environmental Quality (CEQ) regulations (45 FR 71968, October 30, 1980), perpetuates the fundamentals of the Process Guidelines. Only in the area of public hearings and public involvement do the Process Guidelines/Action Plan provide significant additional elements to the highway decisionmaking process not presently included in the NEPA process. Therefore, the FHWA is rescinding its present regulation on Process Guidelines/Action Plans and cancelling the companion FHWA directive (7-7-1). At the same time, the regulation on

environmental impact and related procedures (23 CFR Part 771) is being amended to preserve the substance of the provisions now contained in Part 795 regarding the approval of alternative public involvement procedures. The rescission of Part 795 also requires a technical amendment to 23 CFR Part 790, "Public Hearings and Location/Design Approval."

The FHWA initially sought comments on 23 CFR Part 795 through a Federal Register notice published at 46 FR 21620 (April 13, 1981), on the costs, benefits, issues, and degree of controversy of the Process Guidelines/Action Plan requirements. The responses indicated that costs and controversy are not significant, but that while the Process Guidelines/Action Plan program has been effective, it is no longer needed since its goals have been met. Also, comments received emphasized the need to simplify and eliminate duplicative regulations. Approximately 80 percent of the State highway agencies responded and these comments were given careful consideration in the decision to rescind 23 CFR Part 795.

On February 11, 1982, a notice of proposed rulemaking was published in the Federal Register (47 FR 6287) proposing rescission of 23 CFR Part 795. A total of 28 written comments were received in the docket regarding the proposed rule. Twenty-three of these comments were from State transportation agencies with 21 of them supporting the proposed action; one expressed neutrality and one opposed the proposal. Four of the remaining 5 comments were from 3 private organizations and 1 Metropolitan Planning Organization (MPO) all opposing the proposal. One comment from a county highway department was in support of the action. The thrust of the transportation agency comments was that rescission would: (1) Permit greater flexibility to meet State operational needs, (2) Minimize red tape and duplication without essentially changing the procedures for identification, evaluation, consideration, and mitigation of social, economic, and environmental (SEE) effects of highway projects, (3) Reduce unnecessary paperwork and eliminate needless expense and unwarranted procedural delays, and (4) Consolidate sources of environmental guidance and regulation. As a result of one State transportation agency comment, several areas in the preamble and the final rule have been revised editorially to clarify the intent of the regulation regarding public hearing requirements and public involvement procedures for those States who elect to retain their approved Action Plans.

One commentator stated that the congressional intent of section 109(h) is with the specific manner in which decisions are reached for proposed projects on the Federal-aid system and that this is far different from the environmental reporting requirements in the NEPA or even the use of a systematic interdisciplinary approach.

The action to rescind Part 795 and consolidate nonduplicative requirements will not deemphasize the full intent of section 109(h) including the congressional intent regarding decisions on highway projects. Current NEPA procedures as implemented by the FHWA assure that SEE factors, including public involvement, are well integrated into the highway decisionmaking process from project planning through construction. Basically, the NEPA process provides a framework for the highway project development process. Interwoven into the entire process are extensive steps to evaluate the SEE effects. This process is now being effectively used to assure that both NEPA and section 109(h) requirements are being met throughout all the highway project development stages.

This same commentator agreed with the consolidation of the NEPA and section 109(h) regulations, but disagreed with the conclusion that the present NEPA procedures adequately capture the fundamentals of the Process Guidelines because essentially no part of the Process Guidelines is contained in the NEPA procedures. It was suggested that the Process Guidelines be incorporated as an Appendix to the NEPA procedures.

On February 24, 1982, FHWA issued explanatory, nonregulatory guidance on the NEPA process, including section 109(h), to its field offices and project applicants (47 FR 10698, March 11, 1982). Part of this guidance involves the preparation of a Record of Decision which contains an explanation and discussion of the balancing of values underlying the Federal decision on the project reviewed under NEPA. Although we do not consider it appropriate to reinstitute the Process Guidelines as an Appendix to the NEPA procedures, the Guidelines will certainly be available to those States which desire to refer to them.

The same commentator expressed concern over how FHWA will encourage States to continue to use the Action Plan approach in those instances where the States have derived benefits from this approach and would like to optionally continue to operate under such plans.

A paragraph has been added to the preamble below which describes the guidance and technical assistance which FHWA plans to provide to its field offices and the States. Additionally, a number of States commenting on the proposed rule indicated that they plan to retain the Action Plan document as part of their State operating procedures. A followup informal inquiry made by FHWA in connection with the rulemaking also confirmed that a vast majority of the State highway agencies will continue to maintain their Action Plan documents or similar documents after the Federal requirement is lifted.

This same commentor further expressed concern that in the spirit of eliminating regulations we do not seriously undermine various legal provisions passed by Congress.

In connection with this rulemaking, the legislative history of section 109(h) has been reviewed. In our opinion, the action being taken today is consistent with congressional intent and does not alter FHWA environmental policy. One State highway agency recommended adding language to clarify the final rule with respect to States operating under Certification Acceptance (23 CFR 640). Accordingly, a new paragraph (d) has been added to § 771.109 and § 790.2(a) has been revised to provide this clarification in the final rule.

The same State also recommended that the 30 days advance notice of a public hearing required by the FHWA in § 771.123(h) be revised to agree with the minimum 15 day requirement contained in the CEQ regulation (40 CFR 1506.6(c)(2)).

This recommendation is not being adopted in the final rule, but is currently under consideration for possible incorporation into future revisions of 23 CFR 771.

The comment from an MPO favored retention of the current Federal requirement for Action Plans because it is performed well by a particular State highway agency and because the Action Plan provided local officials the only opportunity available to hear, annually, the entire scope of the Federal/State highway projects in the MPO's area.

After review of this State's Action Plan, we concluded that there is no reason to believe that rescission of the Action Plan requirement will affect the way in which this particular State highway agency provides opportunities for input from the public and local planning officials to its highway system development program. Moreover, this State's current Action Plan shows that the practice of conducting annual meetings throughout the State for the public and regional and local planning

directors existed prior to the Federal requirement for an Action Plan.

One commentor opposed rescission of the Action Plan regulation because it would diminish the role of citizen participation.

The rescission of Part 795 does not diminish the public participation procedures of State highway agencies. Alternative provisions for substituting public involvement/public hearing procedures in State Action Plans, in lieu of the detailed public hearing requirement in 23 CFR Part 790, have been in effect since December 30, 1974. These provisions have encouraged the adoption of a greater variety of community involvement techniques such as informal meetings, briefings, or workshops to be used together with formal public hearing procedures. The overall result has been a more complete, acceptable, and effective community involvement program. For those States that have adopted such procedures (40 States to date), the approvals made by FHWA (prior to the effective date of this amendment) remain valid. The remaining States are still required to follow 23 CFR Part 790. Changes in such procedures will require FHWA acceptance in accordance with the provisions of § 771.111 in this final rule.

Further, rescission of Part 795 does not represent a deemphasis of the identification, evaluation, consideration, and mitigation of SEE effects of highway projects. It does not eliminate the Section 109(h) requirements, but rather recognizes NEPA as the core of Federal environmental requirements and acknowledges the experience gained under NEPA, its uniform application by Federal agencies and its embodiment of the principles and spirit of 23 U.S.C. 109(h). The successful operation of State Action Plan programs is recognized and these streamlined procedures will allow States to continue to use Action Plans as a State document with greater individual flexibility for their operational needs. Those States which derive benefits from Action Plans are encouraged to continue to operate under such plans on an optional basis.

Section 109(h) will be complied with through the procedures contained in 23 CFR Part 771. Many States now use their NEPA-related procedures to comply with Section 109(h). In approving new or different public involvement procedures under the amended procedures promulgated today, FHWA will continue to assure that adequate public involvement, consistent with NEPA and 23 U.S.C. 128, will be provided.

The FHWA will also continue to provide appropriate nonregulatory guidance to FHWA field offices and to

the State highway agencies on consideration of SEE impacts and on public involvement. This information will be disseminated in a variety of forms including reports, case studies, conferences, workshops, and training courses on topics such as social impacts and public involvement, noise and air quality, ecology and water quality, archeology and historic considerations, and other environmental impact areas.

This regulatory change does not require the States to take any specific action. Alternate public involvement/public hearing and other procedures approved by FHWA for use in lieu of those set forth in 23 CFR Part 790, pursuant to the provisions of 23 CFR Part 795, remain in effect and can still be utilized by the State. Further, this amendment should not be interpreted to reduce flexibility to seek and obtain acceptance of alternate procedures. If the current regulations (Part 795) permit approval of any particular procedures (such as, for example, those relating to location/design approval), the amendments being made today should also be interpreted to permit such alternative procedures to be approved in the future. For any State relying on the Action Plan as an element of its Certification Acceptance Statement, it may continue to do so or develop alternative procedures acceptable to FHWA.

Since rescission of 23 CFR Part 795 will not change FHWA environmental policy, and in view of the fact that the Action Plan regulation has been the subject of public review and comment, the FHWA has determined that this amendment should be effective on the date of issuance.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. The economic impacts of this action are considered to be minimal. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. An evaluation of the Action Plan procedures is available for inspection in the public docket and may be obtained by contacting Mr. Sevin at the address provided above under the heading "FOR FURTHER INFORMATION CONTACT."

(23 U.S.C. 109(h), 128, 138, and 315; 49 CFR 1.48(b)). (Catalog of Federal Domestic Assistance Program Numbers 20.005, Highway Research, Planning, and Construction; 20.509, Public Transportation for Nonurbanized Areas;

23.003, Appalachian Development Highway System; 23.008, Appalachian Local Access Roads. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program.)

List of Subjects in 23 CFR Parts 771, 790, and 795

Environmental impact statements, Environmental protection, Grant programs—transportation, Highways and roads.

Issued on: May 11, 1982.

R. D. Morgan,

Associate Administrator for Engineering and Traffic Operations, Federal Highway Administration.

In consideration of the foregoing, Chapter I of Title 23, CFR, is amended as set forth below.

PART 795—PROCESS GUIDELINES (FOR THE DEVELOPMENT OF ENVIRONMENTAL ACTION PLANS) [REMOVED]

1. Part 795, "Process Guidelines for the Development of Environmental Action Plans" is hereby removed from Chapter I.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

§ 771.101 [Amended]

2. In § 771.101, add the following sentence to the end of the section, "This regulation also sets forth procedures to comply with 23 U.S.C. section 109(h)."

3. In § 771.109, paragraph (d) is added to read as follows:

§ 771.109 Applicability and responsibilities.

(d) States operating under an approved certification in accordance with 23 CFR Part 640 may substitute for projects which are the subject of such certification, State laws, regulations, directives, and standards which meet the objectives in this regulation in lieu of §§ 771.113(a)(2) and 771.113(b).

4. In § 771.111, revise the title of the section to read, "Early coordination, public involvement, and project development" in the table of sections as well as in the main body of the text. Also, in § 771.111, redesignate paragraph (h) as (i) and add a new paragraph (h) to read as follows:

§ 771.111 Early coordination, public involvement, and project development.

(h) In lieu of the procedures required by 23 CFR Part 790, a State may, to comply with 23 U.S.C. section 128, adopt

public involvement/public hearing and other procedures, subject to FHWA acceptance, which include provisions for one or more public hearings to be held at a convenient time and place, or the opportunity for hearing(s) to be afforded, on any Federal-aid project which requires the acquisition of significant amounts of right-of-way; or substantially changes the layout or functions of connecting roadways or of the facility being improved; or has a significant adverse impact on abutting real property, or otherwise has a significant social, economic, environmental or other effect. The public involvement/public hearing procedures accepted hereunder must assure reasonable notice to the public of the hearing opportunity as well as the availability of explanatory information. These procedures must be fully coordinated with the NEPA process. Approvals made by FHWA prior to May 11, 1982, of procedures for use in lieu of Part 790 remain valid. Changes in such procedures require FHWA acceptance.

5. In § 771.119, revise the second sentence of paragraph (b) and revise paragraph (e) to read as follows:

§ 771.119 Environmental assessments.

(b) * * * The applicant will accomplish this through an early coordination process (i.e., procedures under § 771.111), or through a scoping process. * * *

(e) When a public hearing is required, the environmental assessment (EA) will be prepared in advance of the notice of public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accord with 23 CFR 771.111(h). The Urban Mass Transportation Administration (UMTA) has a public hearing requirement in all applications for capital and operating assistance.

6. In § 771.123, amend paragraph (b) by revising the third sentence as set forth below. Amend paragraph (h) by removing the third sentence; as revised, paragraph (h) reads as set forth below:

§ 771.123 Draft environmental impact statements.

(b) * * * For FHWA, scoping is normally achieved through the public

and agency involvement procedures required by § 771.111 and through other early coordination activities. * * *

(h) The draft environmental impact statement (DEIS) shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all DEIS's. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accord with 23 CFR 771.111(h). If a public hearing is required, the DEIS shall be available for a minimum of 30 days in advance of the public hearing. The availability of the DEIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent.

PART 790—PUBLIC HEARINGS AND LOCATION/DESIGN APPROVAL

7. In § 790.2, existing paragraph (a) is revised to read as follows:

§ 790.2 Applicability.

(a) The provisions of this part apply to the extent that alternative procedures have not been accepted or provided for by FHWA under Part 640 or Part 771.

[FR Doc. 82-13762 Filed 5-19-82; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 204, 220, 221, 222, 226, 227, 233, 235, 237, and 240

[Docket No. R-82-921]

Mutual Mortgage Insurance and Rehabilitation Loans; Negotiated Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of effective date for final rule.

SUMMARY: This document announces the effective date for the final rule published

in the **Federal Register** on April 20, 1982 (47 FR 16776) which amended the authority of the Secretary, pursuant to section 332 of the Housing and Community Act of 1980, to prescribe maximum interest rates for FHA programs by permitting a limited number of section 203 mortgages to be closed at a negotiated rate which may exceed the FHA ceiling. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published April 20, 1982, at 47 FR 16776, is May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 17, 1982.

Richard Lasner,
Assistant General Counsel for Regulations.

[FR Doc. 82-13802 Filed 5-19-82; 8:45 am]

BILLING CODE 4210-27-M

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-82-992]

List of Attorneys-in-Fact

AGENCY: Government National Mortgage Development Association, HUD.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact.

Attorneys-in-fact are authorized to act for the Government National Mortgage Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs.

EFFECTIVE DATE: July 17, 1982.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General

Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

PART 300—GENERAL

1. Paragraph (c) of § 300.11 is amended by removing the following name to the current list of attorneys-in-fact:

§ 300.11 [Amended]

Name	Region
Gregory Gianpetro	Philadelphia, PA.

(Sec. 309(d) of the National Housing Act, 12 U.S.C. Section 1723a(d), and Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: May 3, 1982.

Warren A. Lasko,
Executive Vice President, Government
National Mortgage Association.

[FR Doc. 82-13760 Filed 5-19-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD5-82-02R]

Marine Event; Norfolk Harborfest,
Elizabeth River, Norfolk and
Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for the City of Norfolk Harborfest Regatta. These regulations are considered necessary to control vessel traffic within the immediate vicinity of the Regatta due to the confined nature of the waterway and the expected congestion at the time of the Regatta. The intended effect is to restrict general navigation in the area for the safety of spectators and participants in the event.

DATES: This rule is effective from 10 a.m. e.d.s.t. to 10:30 p.m. e.d.s.t. on 11 June 1982; from 10 a.m. e.d.s.t. until 10 p.m. e.d.s.t. 12 June 1982 and from 11 a.m. e.d.s.t. until 10 p.m. e.d.s.t. 13 June 1982.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ronald T. Via, Commander (b), Chief, Boating Affairs Branch, Fifth Coast Guard District, 431

Crawford Street, Portsmouth, Virginia 23705 (804-398-6202).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days from the date of publication. The regulations are published as a final rule since there was insufficient time to publish a notice of proposed rule making prior to the event and the regulations are needed in order to protect life and property.

This regulation has been determined not to be a major rule in accordance with E.O. 12291.

Drafting information: The principal persons involved in drafting this final rule are LCDR Ronald T. Via, Project Manager, Fifth Coast Guard District, Boating Affairs Branch, and LCDR David J. Kantor, Assistant Legal Officer, Fifth Coast Guard District.

Discussion of the rule: The annual City of Norfolk Harborfest is scheduled to be held on 11-13 June 1982 at the Norfolk waterfront. Numerous water events, including ski shows, boat races, and military demonstrations, are scheduled to take place on the Elizabeth River. In addition, approximately 400 spectator craft are expected to attend the festival. As a result, it will be necessary to designate a portion of the Elizabeth River as a "regulated area" to promote safety of life during Harborfest.

List of Subjects in 33 CFR Part 100.

Marine Safety, navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows: By adding a new § 100.35-501 to read as follows:

§ 100.35-501 City of Norfolk Harborfest.

(a) The following area is designated a "regulated area" during the regatta: Those waters of the Elizabeth River and its branches from shore to shore and bounded by the Midtown tunnel on the north, the Downtown tunnel on the south, and the Berkley Bridge on the east.

(b) Regulation: (1) Except for participants in the Norfolk Harborfest or persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately upon being directed to do so by any Coast

Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by any Coast Guard officer or petty officer.

(3) Any spectator vessel may anchor outside of the area specified in paragraph (a) of this section; or in special anchorages designated by the Patrol Commander.

(4) The Coast Guard Patrol Commander is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the reviewing platform at Town Point; and

(5) These regulations and other applicable laws and regulations shall be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

(Sec. 1, Pub. L. 60-102 Stat. 69, 46 U.S.C. 454; sec. 6(b)(1), Pub. L. 89-670, 90 Stat. 937, 49 U.S.C. 1655(b)(1); 33 CFR 100.35, 49 CFR 1.46(b))

Dated: May 7, 1982.

T. J. Wojnar,

Acting Captain, U.S. Coast Guard, Fifth Coast Guard District.

[FR Doc. 82-13801 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD0381-034]

Drawbridge Operation Regulations; Passaic River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Bergen County, New Jersey, the Coast Guard is changing the regulations governing the Union Avenue drawbridge across the Passaic River, mile 13.2 at Rutherford, NJ by requiring that 8 hours advance notice of opening be given between midnight and 8 a.m. The regulation change is being made because of a steady decrease in requests for opening of the draw during that time. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment becomes effective on July 6, 1982.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, Bldg. 135A, Governors Island, New York 10004 (212-688-7994).

SUPPLEMENTARY INFORMATION: On June 8, 1980 the Coast Guard published a proposed rule in the Federal Register for this regulation (46 FR 30354). The Commander, Third Coast Guard District also published this proposal as a Public Notice (3-453) dated August 31, 1981. Interested persons were requested to submit comments by July 23, 1981 and October 2, 1981, respectively. Two comments were received, both responding to the public notice.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ernest J. Feemster, Project Manager and LCDR Frank E. Couper, Project Attorney, Third Coast Guard District Aids to Navigation Branch and District Legal Office, respectively.

DISCUSSION OF COMMENTS: The two comments to the public notice offered no objection to the proposed regulation. Bridge opening logs have shown a steady decrease in requests for openings from midnight to 8 a.m. and in early 1980 numbered less than two openings per month. The Coast Guard decided to issue this regulation after considering all comments and available information. The regulation will not be overly restrictive to either the mariner or to vehicles and should result in no significant change to any operations.

SUMMARY OF FINAL EVALUATION: These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by redesignating § 117.200(a)(4) (v), (vi), and (vii) as paragraphs (a)(4) (vi), (vii), and (viii), respectively and adding a new § 117.200(a)(4)(v) to read as follows:

§ 117.200 Newark Bay, Passaic and Hackensack Rivers, N.J., and their navigable tributaries; bridges.

(a) * * *

(4) * * *

(v) Union Avenue Bridge, mile 13.2, Passaic River. The draw shall open on signal from 8 a.m. to midnight. From midnight to 8 a.m. the draw shall open if at least eight hours notice is given.

(Sec. 5, 28 Stat. 362, as amended, Sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: April 29, 1982.

J. S. Gracey,

Vice Admiral, Coast Guard, Commander Third Coast Guard District.

[FR Doc. 82-11618 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[Docket No. CGD3-82-04-R]

Safety Zones: Philadelphia, PA During the Tall Ships Parade of Sail

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone regulations establishes a portion of the waters of the Delaware River, Philadelphia, PA at Penns Landing as a stationary safety zone. This zone is established to provide sufficient maneuvering room for participants of the "Tall Ships Parade of Sail". Additionally this amendment establishes a 50 yard moving safety zone around each of the participating parade vessels for the duration of the Tall Ships Parade of Sail event. These moving safety zones to be placed in effect upon each vessel taking their respective predesignated anchoring positions in the Marcus Hook, Mantua Creek and Kaignes Point/Gloucester City anchorages of the Delaware River. Termination of the individual moving safety zones shall be effected upon each vessels' entry into the Penns Landing Park safety zone.

EFFECTIVE DATE: This amendment is effective June 17, 1982.

FOR FURTHER INFORMATION CONTACT: Captain D. B. Charter, Captain of the Port, Philadelphia, U.S. Coast Guard Base, Gloucester City, NJ 08030, (609) 456-1370, during normal working hours 7:30 AM to 4:30 PM Monday through Friday.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a Notice of Proposed Rule

Making as authorized by 5 U.S.C. 553(b)(3)(B), since the amount of time available makes such a procedure impracticable. Extensive local public notice has been given. This amendment is a non-significant rule under DOT Order 2100.5, dated May 22, 1980. Evaluation under that order is not warranted because the impact is expected to be minimal. This amendment is also a non-major rule under Executive Order 12291, and as such it is not subject to the regulatory impact analysis and review mandated by that Executive Order. Finally, this amendment is exempt from review by the Office of Management and Budget by the authority of OMB letter dated March 10, 1982, to the General Counsel, Department of Transportation.

Drafting Information: The principal persons involved in drafting this rule are LT F. Kevin KOOB Project Manager; Captain of the Port, Philadelphia, U.S. Coast Guard Base, Gloucester City, NJ; and LCDR James J. D'Alessandro, Project Attorney, Legal Office, Third Coast Guard District, New York, NY.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Waterways.

PART 165—SAFETY ZONES

In consideration of the foregoing, Part 165 of Title 33 of the Code of Federal Regulations is amended by adding § 165.333 to read as follows:

§ 165.333 **Penns Landing Park, Delaware River, Philadelphia, PA and tall ships parade of sail participants.**

The waters of the Delaware River inclusive of the area midchannel and westward to the Pennsylvania shore between the Benjamin Franklin Bridge at LAT 39°57'10"N, LONG 75°08'11"W and Pier 30 South at LAT 39°56'20"N, LONG 75°08'20"W are established as a Safety Zone from 1000 EDST to 1500 EDST on June 17, 1982. In addition a moving safety zone is hereby established for each of the Tall Ships Parade of Sails Participants extending 50 yards on each quarter of subject vessel from the time that vessel leaves its designated anchorage until it enters the stationary safety zone described above.

(86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46(n)(4); 33 CFR 165.10)

Dated: April 21, 1982.

D. B. Charter Jr.,

Captain, Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 82-13616 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 80-2]

Compulsory License for Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting interim amendments to §§ 201.11 and 201.17, as amended on June 27, 1978 and July 3, 1980 respectively. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Notices of Identity and Signal Carriage Complement and Statements of Account, and the submission of statutory royalty fees.

The effect of the amendments is to modify the filing requirements and royalty fee calculations necessitated by changes in the rules and regulations of the Federal Communications Commission. The amendments are issued on an interim basis in order to permit their immediate application while allowing full public comment.

DATES: The interim regulations are effective on May 20, 1982.

Comments should be received before July 1, 1982.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirements that the

cable systems comply with provisions regarding recordation of Notices of Identity and Signal Carriage Complement and Notices of Change of Identity or Signal Carriage Complement under section 111(d)(1), and deposit of Statements of Account and statutory royalty fees under section 111(d)(2).

On January 5, 1978, the Copyright Office published in the Federal Register (43 FR 958) new §§ 201.11 and 201.17 of its regulations governing the form, content, and filing of the Notices, Statements of Account, and statutory royalty fees. The Copyright Office emphasized in the preamble to the regulations that (43 FR 958):

... We are dealing with an entirely new area of copyright law in which all parties concerned lack practical experience. Moreover, future actions by the Copyright Royalty Tribunal and the Federal Communications Commission can be expected to affect the theory and application of our rules. Accordingly, these regulations must be considered somewhat experimental and subject to reconsideration as circumstances and experience develop.

On June 27, 1978, the Copyright Office announced in the Federal Register (43 FR 27827) the adoption of Statement of Account forms and published amendments to its regulations (37 CFR 201.17) to reflect changes necessitated by the new forms.

Further experience with these regulations led the Copyright Office to publish in the Federal Register on July 3, 1980 (45 FR 45270) certain clarifying and technical amendments to its regulations (37 CFR 201.17) governing the form, content, and filing of Statements of Account.

During the July 3, 1980 rulemaking proceeding, the Copyright Office received several comments suggesting substantive revisions to the regulations and Statement of Account forms (45 FR 45273):

Based on their experience reviewing the Statements of Account submitted during the first three accounting periods, copyright owners noted in their comments particular areas where they feel further information and/or clarifications are needed. These areas principally concern the designation of local and distant stations, classification of Canadian and Mexican stations, and problems resulting from the filings submitted on behalf of joint "individual" cable systems. In addition, some copyright owners proposed changes that they contend would streamline the royalty calculation steps required on forms CS/SA-2 and CS/SA-3.

Comments on behalf of the cable operators, on the other hand, suggested that a good deal of the information required on the Statements of Account for the purpose of assisting copyright owners and the Copyright Royalty Tribunal in the distribution of cable royalties

is, in fact, unnecessary. They also advocated a review of our definition of "gross receipts for the basic service of providing secondary transmissions of primary broadcast transmitters" based on recent technological advances and new marketing strategies affecting the types of services now available for a single monthly fee.

Although these issues were outside the scope of that rulemaking, the Copyright Office stated that it believes "that some of these developments do warrant a review of our cable regulations and Statement of Account forms at an appropriate time." (45 FR 45273).

Since that time, several administrative actions have been taken affecting the cable television compulsory license mechanism. First, on September 11, 1980, the Federal Communications Commission [FCC] published in the Federal Register (45 FR 60186) its decision to remove the cable television distant signal limitations and syndicated program exclusivity rules from the FCC regulations. The Court of Appeals for the Second Circuit upheld the authority of the FCC to repeal these rules in *Malrite v. FCC*, 652 F.2d 1140 (2d Cir. 1981) and the Supreme Court has denied a petition for certiorari on this issue in *National Association of Broadcasters v. FCC*, No. 81-522, 50 U.S.L.W. 3547 (Jan. 11, 1982). Second, on September 23, 1980, the Copyright Royalty Tribunal published in the Federal Register (45 FR 63028) its determination of the 1978 cable royalty distribution. The Court of Appeals for the D.C. Circuit generally upheld the Tribunal's royalty distribution in *NAB v. CRT, et al.*, No. 80-2273 (D.C. Cir. April 9, 1982); *NPR v. CRT, et al.*, No. 80-2281 (D.C. Cir. April 9, 1982); *Major League Baseball, NBA, NHL and NASL v. CRT, et al.*, No. 80-2284 (D.C. Cir. April 9, 1982); *CBC v. CRT, et al.*, No. 80-2290 (D.C. Cir. April 9, 1982); and *ASCAP v. CRT, et al.*, No. 80-2298 (D.C. Cir. April 9, 1982). Finally, on January 5, 1981, the Copyright Royalty Tribunal published in the Federal Register (46 FR 892) its adjustment of the compulsory license royalty rates. This determination presently is on appeal in the courts.

The Copyright Office decided that these administrative determinations warranted attention and provided an adequate basis for a review of the cable television regulations and Statement of Account forms. To this end, the Copyright Office, on June 10, 1981, published in the Federal Register (46 FR 30649) a Notice of Public Hearing to be held on July 28, 1981, intended to elicit comments, views, and information regarding these matters.

Over the last year, the issue of whether or not the cable television compulsory license should be retained, modified, or eliminated has been addressed during hearings in both the Senate and the House of Representatives. The Notice specified that the Copyright Office public hearing "is not intended as an alternative forum for consideration of legislative issues presently before the Congress." (46 FR 30650).

During the July 28, 1981, public hearing, the Copyright Office received testimony and written submissions from two cable television operators and representatives of the Motion Picture Association of America (MPAA), the National Cable Television Association (NCTA), and professional sports. The Copyright Office also received nine written comments from other interested parties in response to the Notice of Public Hearing. Because the Commission's actions have an immediate impact on the responsibilities of cable systems under the copyright compulsory license, the Office has decided to issue regulations concerning this impact effective today on an interim basis. This will permit cable systems to comply with their statutory obligations while permitting full public comment on the regulations. Final regulations will be issued after the close of the comment period. In addition, proposed regulations pertaining to the other issues addressed during the Office's July public hearing will be forthcoming in the near future.

Because the Commission's actions became effective June 25, 1981,¹ their impact also may affect the amount of statutory royalty fees paid by some cable systems which filed Statement of Account form CS/SA-3 for the accounting period July 1, 1981-December 31, 1981. The Copyright Office intends to adopt a supplemental form to be completed by such cable systems to determine whether or not a supplemental royalty payment should be submitted. However, the Office plans to defer issuance of a supplemental form until a judicial determination is rendered in the appeal of the CRT rate adjustment determinations which may also necessitate certain adjustments to previously submitted royalty payments. The interim regulations are based on a thorough consideration of all testimony given at the July hearing and in supplemental statements filed by interested parties. In accordance with our obligations under section 111(d), the Office has consulted with the Copyright

Royalty Tribunal concerning these changes and additions. A discussion of the interim amendments and major substantive comments appears below.

1. *Summary of the 1980 FCC deregulation.* The cable television copyright compulsory license mechanism is premised on a bifurcation of responsibilities under communications and copyright law. Under this mechanism, the FCC controls signal distribution by cable systems as part of a national allocations policy and protects some exclusive rights as part of this policy. At the same time, the copyright law prescribes the degree and nature of cable operators' liability for the use of copyrighted programming that the FCC rules permit them to retransmit. When a general revision of the copyright law was enacted on October 19, 1976, the FCC had several rules and regulations which limited cable carriage of distant television signals in general and syndicated, sports, and network programming in particular. Those FCC rules and regulations pertinent to this rulemaking are:

(1) Distant signal limitations in general: 47 CFR 76.57(b)-(d); 76.59(b)-(d); 76.61(b)-(e); and 76.63 [referring to 76.61];

(2) Permissible additional carriage of distant specialty programming on a part-time basis: 47 CFR 76.57(d); 76.59(d)(1); 76.61(e)(1); and 76.63 [referring to 76.61(e)(1)];

(3) Permissible additional carriage of distant signals on a part-time late-night basis: 47 CFR 76.57(c); 76.59(d)(3); 76.61(e)(3); and 76.63 [referring to 76.61(e)(3)];

(4) Permissible deletion and substitution of a program carried on a distant signal that "is primarily of local interest to the distant community (e.g., a local news or public affairs program)": 47 CFR 76.61(b)(2); and 76.63 [referring to 76.61(b)(2)];

(5) Required deletion and substitution of syndicated programming pursuant to the syndicated program exclusivity rules [47 CFR 76.151-161]; 47 CFR 76.61(b)(2); and 76.63 [referring to 76.61(b)(2)]; and

(6) Required deletion and substitution of sports programming pursuant to the sports exclusivity rule: 47 CFR 76.67.

All but the last of the abovementioned rules and regulations have been deleted as part of the Commission's 1980 deregulation decision.

2. *Relationship between FCC rules and the distant signal equivalent value.* Paragraph (f) of section 111 of the Copyright Act sets forth the definition of "distant signal equivalent" (DSE), which has been incorporated by reference in § 201.17(f)(3) of the Copyright Office regulations. The DSE is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system, in whole or in part, beyond the local

¹ On this date the judicial stay *pendente lite* of the FCC's deregulation decision was lifted by order of the court in the *Malrite* case.

service area of the primary transmitter of such programming. Cable systems that complete Statement of Account form CS/SA-3 compute their statutory royalty payment on the basis of their total number of DSE's.

Ordinarily, the DSE value of a distant independent station is one and the DSE value of either a distant network station or a distant noncommercial educational station is one-quarter. The DSE definition, however, permits certain modifications in the DSE value of a particular station to reflect limited carriage in accordance with FCC rules and regulations listed in items (2) through (6), as noted above.

In four specified situations, the ordinary DSE value of a distant television station can be reduced in accordance with certain specified formulae. Stated generally, these four situations are: (1) Part-time carriage of distant specialty programming; (2) part-time carriage of distant signals on a late-night basis; (3) part-time carriage of distant signals because of lack of activated channel capacity to retransmit on a full-time basis all signals which the cable system is authorized to carry; and (4) carriage of live non-network programming substituted for a program deleted at the option of the cable systems.

The DSE definition in section 111(f) further specifies two situations where no DSE value shall be assigned for additional carriage of distant programming. These situations are: (1) Carriage of distant programming substituted for a program which is required to be deleted under FCC rules and regulations; and (2) carriage of non-live nonnetwork programming substituted for a program deleted at the option of the cable system.

As part of our July 1981 hearing, the Copyright Office sought comments on what changes, if any, should be made in the Statement of Account forms and Copyright Office regulations concerning the calculation of DSE's as a result of the FCC deregulation. In response to this inquiry, the Copyright Office received testimony and comments from six groups: The NCTA, two major multi-system operators, a group of seven cable system operators, the MPAA and a representative of several professional sports organizations. Three of the cable groups commented generally that no immediate changes need to be made in the Statement of Account forms and Copyright Office regulations. The group of seven cable system operators commented specifically on the impact of the Commission's actions. In addition, both groups of copyright proprietors suggested several changes in both the

forms and regulations. A discussion of these comments with respect to the differing types of affected carriage follows.

a. Permissive substitution and newly authorized substitution.

(1) *Permissive substitution based on FCC rules in effect on October 19, 1976.* As noted earlier, the DSE definition permits the prorating of the DSE value for carriage of live nonnetwork programming substituted at the option of the cable system (Case I). The DSE definition further provides that if the substituted program is a non-live program, no additional DSE value shall be assigned for such carriage (Case II). The DSE definition specifies that both cases of permissive substitute carriage are governed by "the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act" (October 19, 1976). The only FCC rules in effect on that date concerning such carriage pertained to the substitution of a program primarily of local interest to the distant community. Despite the fact that this rule has been deleted, the DSE definition permits proration of a DSE in Case I, and the nonassignment of a DSE value in Case II, for such substitute carriage; this narrow rule remains effective for purposes of the Copyright Act.

(2) *New occasions for substitution based on 1980 FCC deregulation decision.* The representative of several professional sports organizations commented that the Commission's deregulation decision generally offers cable systems greater latitude in making substitutions than that allowed under the FCC rules and regulations in effect on October 19, 1976. The commentator urged the Copyright Office to emphasize in the Statement of Account forms and in its regulations that these newly authorized substitutions must be calculated at the full DSE value of the signal so carried. The Copyright Office agrees with this suggestion. In discussing possible changes in FCC rules, the Report of the Judiciary Committee of the House of Representatives [H.R. REP. NO. 94-1476, 94th Cong., 2d Sess. (1976) at 100] states:

[W]here the FCC rules on the date of enactment of this legislation permit a cable system, at its discretion, to make such deletions or substitutions or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located [and] . . . the substituted or additional program is a "live" program (e.g., a sports event), then an additional value is assigned to the carriage of the distant signal computed as a fraction of one distant signal

equivalent . . . [T]he discretionary exception is limited to those FCC rules in effect on the date of enactment of this legislation. If subsequent FCC rule amendments or individual authorizations enlarge the discretionary ability of cable systems to delete and substitute programs, such deletions and substitutions would be counted at the full value assigned for the particular type of station provided above. [emphasis added.]

(3) *Interim Amendments.* In order to clarify the complex computation process for permissive and newly authorized substitutions, in accordance with the House Judiciary Committee's intentions, the Office has decided to adopt, on an interim basis, a new definition (8) to § 201.17(b) of its regulations to specify that, for purposes of the cable television copyright compulsory license,

the "rules and regulations of the FCC in effect on October 19, 1976," which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and 76.63 (referring to 76.61(b)(2)), deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).

The Office has also adopted interim amendments to § 201.17(f)(3). Finally, we have modified Space I of the Statement of Account forms, the DSE Schedule included in Statement of Account form CS/SA-3, and corresponding provisions in § 201.17 to reflect these decisions.

b. Part-time carriage. Unlike the case of permissive substitutions, the DSE definition dealing with part-time carriage pursuant to the late-night and specialty programming rules of the FCC is not tied to those rules in effect on the date of enactment of the 1976 Copyright Act. Despite the fact that the FCC has now deleted these rules, the NCTA suggests that cable systems should continue to be permitted to prorate the DSE values for such part-time carriage in "voluntary" compliance with the now-deleted rules. The MPAA and the group of seven cable operators, on the other hand, note that the Commission's action voids a cable system's ability to make prorated DSE adjustments for continued part-time late-night and specialty programming carriage.

The Copyright Office has determined that the fifth sentence of the DSE definition in section 111(f) limits the prorating of DSE's for part-time carriage of late-night and specialty programming to cases where these forms of carriage are specified in FCC rules and regulations in effect on the date of such carriage. Therefore, although some

cable operators may wish to continue part-time carriage in voluntary compliance with the deleted FCC part-time rules, the Copyright Office has concluded that it has no statutory authority to permit the continued prorating of DSE's for part-time carriage of late-night and specialty programming.

Accordingly, the Copyright Office has decided to revise §§ 201.17 (e)(9)(vi) and (f)(3) of its regulations, on an interim basis, and modify Spaces G and J in Statement of Account forms CS/SA-2 and 3 and the DSE Schedule included in Statement of Account form CS/SA-3 to eliminate the prorating of DSE values for continued part-time carriage of late-night and specialty programming after June 30, 1981.²

c. *Required deletions.* Prior to the FCC's deregulation, cable systems were required generally to delete certain distant syndicated and sports programming and were permitted to substitute additional programming in its place. As discussed earlier, no DSE value is assigned for programming substituted in place of the deleted programming. As part of its 1980 deregulation, the Commission eliminated its syndicated program exclusivity rules.

The Copyright Office heard testimony from the MPAA and representatives of professional sports noting that this action withdraws one of the possible occasions for required deletion. Furthermore, the commentators suggest that, since the relevant portion of the DSE definition in section 111(f) does not refer to FCC rules and regulations in effect on October 19, 1976, cable systems may no longer avail themselves of the syndicated program exclusivity rules as a basis for substitution without calculation of a DSE for such carriage.

The Copyright Office agrees and has added a new definition (9) to § 201.17(b), on an interim basis, which states that:

For purposes of this section, the "rules, regulations, or authorizations of the FCC", which require a cable system to omit the retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.

This provision makes clear that required deletions, with the nonassignment of a DSE value for programming substituted in place of the deleted programming, now may only be made pursuant to the FCC's sports exclusivity rule which continues to remain in force.

List of Subjects in 37 CFR Part 201

Cable television, Copyright.

Interim Amendments

PART 201—GENERAL PROVISION

Part 201 of 37 CFR, Chapter II, is amended, on an interim basis:

1. By revising § 201.11(c)(1)(iv) (as amended on June 27, 1978) to read as follows:

§ 201.11 Notices of identity and signal carriage complement of cable systems.

* * *

(c) * * *

(1) * * *

(iv) The designation "Signal Carriage Complement", followed by the name and location of the primary transmitter or primary transmitters whose signals are, or are expected to be, regularly carried by the cable system. Carriage of a primary transmitter under FCC rules and regulations in effect on October 19, 1976, which permitted carriage of specific network programs on a part-time basis in certain circumstances [former 47 CFR 76.59(d)(2) and (4); 76.61(e) (2) and (4); and 76.63, referring to 76.61(e) (2) and (4), all of which were deleted June 25, 1981] need not be reported.

* * *

2. By amending § 201.17(b) (as amended on July 3, 1980) by adding new subparagraphs (8) and (9) to read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * *

(b) * * *

(8) For purposes of this section, the "rules and regulations of the FCC in effect on October 19, 1976," which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and § 76.63 [referring to § 76.61(b)(2)], deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).

(9) For purposes of this section, the "rules and regulations of the FCC", which require a cable system to omit the

retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.

* * *

3. By amending § 201.17(e)(9) by revising the introductory text of (e)(9) and (e)(9)(vi) and (viii) (as amended on July 3, 1980) to read as follows:

* * *

(e) * * *

(9) The designation "Primary Transmitters: Television", followed by an identification of all primary television transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, other than primary transmitters of programs carried by the cable system exclusively pursuant to rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting the substitution of signals under certain circumstances, and required to be specially identified by paragraph (e)(11) of this section, together with the information listed below:

* * *

(vi) If that primary transmitter is a "distant" station, a specification of whether the signals of that primary transmitter are carried: (A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or (B) on any other basis. If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.

* * *

(viii) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations in effect on October 19, 1976 which permitted carriage of specific network programs on a part-time basis in certain circumstances [former 47 CFR 76.59 (d)(2) and (4); 76.61(e) (2) and (4); and 76.63, referring to 76.61(e) (2) and (4), all of which were deleted June 25, 1981), carriage of that primary transmitter on that basis need not be

² The intent of the rule change is to clarify that the 1980 FCC deregulation decision impacts on the Statement of Account filing period beginning July 1, 1981, and on subsequent periods. Although the FCC's rule changes actually became effective on June 25, 1981, the Copyright Office has determined that, for reasons of public and administrative convenience, the impact of the FCC's 1980 deregulation decision will be considered in examining Statements of Account filed for the period July 1, 1981–December 31, 1981, and subsequent periods but not earlier. Moreover, since the relevant Copyright Office rules are interpretive of the Act, and do not regulate conduct, they can be applied to filings for an accounting period antedating the effective date of these rules.

reported, and that carriage is to be excluded in computing the distant signal equivalent of that primary transmitter.

4. By revising § 201.17(f)(3) (as amended on July 3, 1980) to read as follows:

(f) * * *

(3)(i) In computing the DSE of a primary transmitter in a particular case of carriage before July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94-553. Four prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried pursuant to the late-night programming rules of the Federal Communications Commission in effect on the date of carriage;

(B) A station is carried pursuant to the specialty programming rules of the Federal Communications Commission in effect on the date of carriage;

(C) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(D) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976.

(ii) In computing the DSE of a primary transmitter in a particular case of carriage on or after July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and which remain in force under that provision. Two prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(B) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the

Federal Communications Commission in effect on October 19, 1976, which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place.

(17 U.S.C. 111, 702)

Dated: May 7, 1982.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 82-13803 Filed 5-19-82; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 57

[A-6-FRL-2099-3]

Approval of State Issued First Primary Nonferrous Smelter Order to the Chino Mines Company, Hurley, New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final approval.

SUMMARY: EPA today announces its approval of a first Primary Nonferrous Smelter Order (NSO) issued to Chino Mines Company (CHINO), Hurley, New Mexico by the State of New Mexico Environmental Improvement Board (NMEIB) on March 20, 1981. Conditional approval of the State NSO was proposed by EPA on August 19, 1981 (46 FR 42084). The NMEIB has corrected the deficiencies noted in the proposal and submitted the corrections according to schedule.

Subsequent to the State's amended submittal, it was brought to EPA's attention that two provisions within the State NSO, sub-sections 5 (c) and (d), are inconsistent with the federal NSO regulations at 40 CFR Part 57, since the sub-sections would allow bypass of the acid plant during scheduled maintenance and during the phasing in and out of process equipment. The Agency is not approving these two provisions because they are not consistent with 40 CFR 57.304, which prohibits acid plant bypass at such times.

Today's action approves the Chino Nonferrous Smelter Order for all provisions except sub-sections 5 (c) and (d) of the Order, on which no action is taken. The NSO except for the two noted sub-sections becomes part of the New Mexico State Implementation Plan by this rulemaking.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: John Hepola, Air Branch, EPA, Region 6, at (214) 767-2742 or FTS 729-2742.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1980, CHINO submitted to the NMEIB an NSO application for its Hurley, New Mexico copper smelter. The NMEIB approved the NSO application on March 20, 1981, and submitted a complete NSO package on April 6, 1981, to EPA for review and approval.

The basic requirements for EPA approval of a NSO are outlined in Section 119 of the CAA and EPA regulations at 40 CFR Part 57. A thorough discussion of the NSO and EPA's reasons for approving it were presented in the Notice of Proposed Rulemaking, cited above, and will not be repeated here. The specific deficiencies and conditions for approval, as proposed in the August 19, 1981, notice are outlined below:

(1) The NMEIB was to include in the NSO by November 1, 1981 the reporting and recordkeeping provisions as required by 40 CFR 57.305(b) and 57.404 (b) and (c); and

(2) The NMEIB was to include in the NSO the Research and Development evaluation and reporting as required by 40 CFR 57.604. The NMEIB submitted the necessary revisions as of October 14, 1981. Based on the Agency's review, EPA has determined that the proposed conditions for approval have been met, and is hereby withdrawing conditional approval.

However, the NSO regulations at 40 CFR 57.301 require the smelter to use an interim level of sulfur dioxide (SO₂) controls (acid plants) unless a waiver of this requirement is granted under Subpart II of the NSO regulations. A smelter not operating under a waiver is required under 40 CFR 57.304 to treat all strong gas streams¹ in an acid plant. Bypassing of strong streams around the acid plant is allowed only during periods of malfunctions, and during start-up of the acid plant following supplementary control system (SCS) curtailment or following scheduled maintenance.

These two sections of the NSO regulations were promulgated to carry out the Congressional intent embodied in Section 119(d) of the Act. In enacting this provision of the Act, Congress

¹ A "strong" gas stream is a stream that contains a concentration of sulfur dioxide that is high enough to maintain the chemical reactions needed for efficient operation of an acid plant.

required the full and efficient treatment of all process strong streams. See 45 FR 42528 ff.25 (June 24, 1980).

EPA is not approving two subsections of the New Mexico NSO which would permit acid plant bypass during additional periods of operation. Subsection 5(c) of the state NSO would allow bypass during the "phasing in and phasing out" of process and air pollution equipment, while 5(d) would allow bypass during "scheduled maintenance." See 46 FR 42087 (August 19, 1981). If those subsections were to be approved, the NSO as a whole would fail to require full treatment of all strong gas streams as intended by Congress in Section 119 and mandated by 40 CFR 57.304.² Because subsections 5(c) and 5(d) are inconsistent with the governing regulations, today's approval does not include these two provisions.

Since no action is being taken on subsections 5(c) and (d) of the Order, they do not become part of the federally-approved NSO. Accordingly, for the purposes of federal enforcement,³ bypass of the acid plant during scheduled maintenance and the phase-in and phase-out of equipment will be considered an excess emission in violation of the NSO and must be reported as such. Bypass will be permitted as provided in subsections 5(a) and (b) of the NSO and 40 CFR 57.304.

Public Comments

Comments were solicited on EPA's proposed action to conditionally approve this first NSO to CHINO. None were received. Therefore, pursuant to Section 119 of the Clean Air Act, EPA is approving all parts of the NSO but for subsections 5(c) and (d) on which EPA is taking no action.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this notice. This action may not be challenged later in the proceedings to enforce these requirements. (See sec. 307(b)(2).)

EPA finds that good cause exists for making this action immediately effective. The effect of this action is to lift the State Implementation Plan sulfur dioxide emission limitation for this smelter until January 1, 1983.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. The reason for this finding is that this action only affects one entity. In addition, this action involves an "order," rather than a rule and therefore is not subject to the requirements of the Regulatory Flexibility Act in any event.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action is not Major because it only affects a single source and will not have an annual impact of over \$100 million.

(Secs. 110 and 119 of the Clean Air Act (42 U.S.C. 7410 and 7419))

List of Subjects in 40 CFR Part 57

Administrative practice and procedure, Air pollution control, Metals, Research.

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

Part 57 of Chapter I, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. Part 57 is amended by adding a new Subpart J to read as follows:

Subpart J—New Mexico

§ 57.1000 Nonferrous Smelter Order for Chino Mines Company.

Authority: Sections 110 and 119 of the Clean Air Act (42 U.S.C. 7410 and 7419).

§ 57.1000 Nonferrous Smelter Order for Chino Mines Company.

(a) Pursuant to the Order Issued March 20, 1981 by the New Mexico Environmental Improvement Board and as amended October 9, 1981 in the matter of the application of Chino Mines Company for a Primary Nonferrous Smelter Order, the following requirements constitute the elements of the NSO. The NSO is not effective beyond January 1, 1983.

(b)(1) Chino is not required to comply with the provisions of the Air Quality Control Regulation ("AQC Reg.") 652.A.1 Non-Ferrous Smelter-Sulfur, during such period as this regulation is in effect.

(2) During the effective period of this regulation, all converter off-gases generated by Chino shall be treated by

an acid plant except as provided by paragraph 5 of this regulation. Chino shall not permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of forty (40) pounds of sulfur for every one hundred pounds of sulfur fed to the smelter, calendar quarterly average.

(3) Except as provided by paragraph 5 of this regulation, the SO₂ in the acid plant tailgas shall not exceed 0.065% by volume, 12-hour running average as measured by the continuous monitoring equipment provided for in paragraph 7 of this Regulation. Chino may not use dilution air to meet this limitation.

(4) Except as provided by paragraph 5 of this regulation:

(i) reverberatory stack SO₂ emissions from the smelter shall not exceed 29,592 pounds per hour, daily average, as measured by the continuous monitoring equipment provided for in paragraph 7 of this regulation; and

(ii) fugitive SO₂ emissions from the smelter shall not exceed 6,350 pounds per hour, calendar quarterly average, to be measured by (A) calculating the total amount of input sulfur for each quarter expressed as SO₂, (B) subtracting the amount of SO₂ captured as sulfuric acid during that period, the amount of SO₂ emitted from the acid plant tailgas and reverberatory stacks, and the amount of sulfur in the slag produced during that period expressed as SO₂, and (C) then dividing the result by the number of hours in the quarter.

(5) Bypassing of the acid plant or emissions in excess of those set forth in paragraphs 3 and 4 above shall constitute violation of this regulation, unless such emissions result from (i) equipment malfunction; (ii) the unavoidable startup and shutdown of process and air pollution control equipment.

(6) Chino shall report excess emissions to the Division in accordance with 40 CFR 57.304. The Division shall promptly transmit appropriate copies of said reports to the Board. To the extent that AQC Reg. 801 requires information which is identical to that required by 40 CFR 57.304, the Division shall promptly transmit appropriate copies of said reports to the Board. To the extent that AQC Reg. 801 requires information which is identical to that required by 40 CFR 57.304, compliance with AQC Reg. 801 shall be deemed compliance with this paragraph.

(7) Pursuant to the provisions of 40 CFR 57.305 and 57.404, Chino shall: (i) upon the effective date of this regulation, begin continuous monitoring to measure SO₂ emissions in the acid plant tailgas and reverberatory furnace

²When the Administrator promulgated 40 CFR 57.304, provisions to allow bypass during scheduled maintenance and phase-in/phase-out periods were rejected explicitly for this reason. See 45 FR 42528-42530.

³Today's action by EPA does not affect the validity of these provisions for purposes of state law.

process off-gas, and (ii) by July 1, 1981, begin continuous monitoring of SO₂ emissions in the captured and vented fugitive gases from the reverberatory furnace and gases bypassed around the acid plant during conditions specified in paragraph 5 of this regulation.

Certification of monitors meeting the performance specification as provided in 40 CFR Part 52, Appendices D and E, shall take place, in the presence of a Division observer within six (6) months of the dates specified above. Chino shall comply with all reporting and recordkeeping requirements contained in 40 CFR 57.305(b) and 57.404 (b) and (c).

(8) Upon the effective date of this Regulation, Chino shall operate its supplementary control system in accordance with the provisions of Chino's Supplementary Control System Operational Manual and 40 CFR 57.402. Certification of monitors meeting the performance specification of 40 CFR Part 53 shall take place, in the presence of a Division observer, within six (6) months of the entry of the Regulation. In addition to the requirements of 40 CFR 57.402, Chino shall:

(i) provide the Division with the name of the auditor (contractor) performing the quarterly audit. The 3-month primary calibration and quarterly audits shall be performed by different individuals. The audits shall be performed utilizing calibration equipment other than that used in the primary calibration;

(ii) provide the Division with audit, calibration, and maintenance information upon request;

(iii) consent to be audited by the Division; and

(iv) provide the Division with the date of purchase of the instruments, and supporting documentation.

(9) Pursuant to Section 74-2-15.1D NMSA 1978, Chino shall prevent the standards contained in AQC Reg. 201, *Ambient Air Quality Standards* ("State Standards") and the National Ambient Air Quality Standards ("NAAQS"), for SO₂ from being exceeded within the smelter's Designated Liability Area ("DLA"), which shall be defined as a circle with a center point at the smelter reverberatory stack and a radius of 7.5 miles and shall exclude any company property with no public access lying therein. A violation of the State Standards or NAAQS within the smelter's DLA shall constitute a violation of this Regulation, unless Chino can demonstrate that such violations were caused by conditions excused as violations of this Regulation, as provided in paragraph 5 of this Regulation, and that it had taken all necessary and appropriate actions to

avoid and minimize such violations, including the operation of its supplementary control system.

(10) Chino shall conduct an active program to review the design and operation of its supplementary control system as provided in 40 CFR 57.402(f). During the term of this Regulation and as part of the program described above, Chino shall install and operate a minimum of two monitoring stations for SO₂ not tied to the supplementary control system. The sites for the monitors, and a schedule for their installation shall be agreed upon by Chino and the Division. Chino shall submit to the Board, with copies to the Division, quarterly reports of the data obtained detailing the results of this review. Such reports shall be due fifteen (15) days after the end of each calendar quarter. The Division shall, if necessary, require Chino to relocate any of the SO₂ monitors and tie them into the supplementary control system. The monitors not tied into the supplementary control system must meet the performance specifications of 40 CFR part 53. Siting criteria for monitors described in this paragraph shall conform to 40 CFR Part 58, Appendix E. Chino shall submit to the Board, with copies to the Division, the final report required by 40 CFR 57.405(b) no later than three (3) months following the termination of this Regulation.

(11) Chino shall meet the fugitive emission control requirements of 40 CFR 57.501 through 503 through completion of the fugitive emissions control requirements of the Schedule of Compliance Order, issued to Chino pursuant to AQS Reg. 510, *Fugitive Particulate Matter Emissions From Nonferrous Smelter*. Chino shall evaluate the impacts of the control measures required under the Schedule of Compliance Order on fugitive SO₂ and on ambient air quality in the smelter's DLA. Chino shall submit to the Board, with copies to the Division, a report of the data obtained detailing results of the evaluation within six (6) months after the effective date of this Regulation. Chino shall either make the demonstration contemplated by 40 CFR 57.502(a) or shall submit the design and study work plan provided for in that section.

(12) Chino shall conduct the research and development program set forth in its Application. Phase I of that program shall be completed within six (6) months after the effective date of this Regulation. Phase II within eighteen (18) months after the effective date, and Phase III within (30) months after the effective date. Reports summarizing the results of Phase I and II shall be

submitted to the Board, with copies to the Division, within one month after the completion of Phase III. Further, Chino shall provide for an independent evaluation of the research and development program pursuant to the provision of 40 CFR 57.604. These reports shall be submitted to the Division and Environmental Protection Agency at least annually and, on any case, upon the completion of significant stages of the program.

(13) At any time during which this Regulation is in effect, the Board may hold a public hearing respecting the availability of technology sufficient to meet AQC Reg. 652. This Regulation shall be terminated if the Board determines, after notice and public hearing, that the conditions upon which this Regulation was based no longer exist. If Chino demonstrates that prompt termination of this Regulation would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result but in no event later than January 1, 1983.

(14) The following documents are hereby incorporated as part of this Regulation:

(i) Supplementary Control System Operating Manual entitled "Kennecott Minerals Company Chino Mines Division Supplementary Control System Operational Manual";

(ii) Written Consent for Designated Liability Area signed by I.G. Pickering, Senior Vice President—Operations—Kennecott Minerals Company.

(iii) Written Consent for Research and Development Program signed by I.G. Pickering, Senior Vice-President—Operations—Kennecott Minerals Company; and

(iv) "Proposed Research and Development Program" submitted by Kennecott Minerals Company.

[FR Doc. 82-12909 Filed 5-19-82; 8:45 am]

BILLING CODE 6580-50-M

40 CFR Part 81

[A-3-FRL-2114-4 Docket Number 107PA-7]

Designation of Areas for Air Quality Planning Purposes, Approval of Redesignation of Attainment Status for the State of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is changing Philadelphia's air quality designation under Section 107 of the Clean Air Act to "better than national standards" for

sulfur dioxide (SO₂). EPA is changing Philadelphia's designation because no violations of SO₂ standards have been recorded in Philadelphia for over three years.

EFFECTIVE DATE: This action will be effective on July 19, 1982 unless someone serves notice within 30 days that he wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glen Hanson of EPA Region III's Air Programs and Energy Branch (address below). Copies of the request for redesignation and accompanying support materials may be examined at the following locations:

U.S. Environmental Protection Agency, Air Programs and Energy Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.
 Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120.
 Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.
 The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond D. Chalmers at the address for EPA Region III above, or telephone (215) 597-8309.

SUPPLEMENTARY INFORMATION: Peter S. Duncan, Acting Secretary of Pennsylvania's Department of Environmental Resources, requested on December 9, 1981, that EPA change Philadelphia's limited "nonattainment" designation for SO₂ to "better than national standards." Mr. Duncan requested this redesignation on behalf of Mr. William Reilly, Philadelphia's Assistant Health Commissioner for Air Management Services.

EPA is approving Pennsylvania's request. EPA's basis for approving the request is that Philadelphia's air quality monitors have reported no violations of SO₂ standards for over three years (1979 to date). In addition, EPA has determined that Philadelphia's monitoring network properly represents the City's SO₂ levels. Finally, EPA has found Philadelphia's SO₂ monitoring to have been conducted properly and the data it has generated to be accurate.

The public is advised that this action will be effective 60 days from the publication date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date.

One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2)).

List of Subjects in 40 CFR Part 81:

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d), 171(2), and 301(a) of The Clean Air Act as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: May 11, 1982.

Anne M. Gorsuch,
 Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Section 81.339 of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations amended by revising the entry for City of Philadelphia in the table entitled "Pennsylvania—SO₂" as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
I. Metropolitan Philadelphia Interstate AQCR: (A) City of Philadelphia				X.

* * * * *
 [FR Doc. 82-13582 Filed 5-19-82; 8:45 am]
 BILLING CODE 6560-50-M

40 CFR Part 86

[Docket No. A-79-14; AMS-FRL-2074-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Amendment to High-Altitude Emission Standards for 1983 Model Year Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: This action amends the high-altitude emission standard for 1983 model year light-duty trucks (LDT's) by extending into the 1983 model year the 1982 exemption for 30 percent of each manufacturer's projected LDT sales from compliance with the high-altitude standards. This action is being taken to ease to compliance burden for the industry and should not have a significant effect on the air quality benefits arising from the high-altitude regulations. In addition, comments are requested on the appropriateness of the high-altitude performance exemption

criteria for 1983 or later model year LDT's

DATES: These regulations are effective as of June 21, 1982. EPA will, however, consider comments on this amendment received within 30 days of publication of this notice.

ADDRESSEES: Copies of material relevant to this rulemaking action are contained in Public Docket No. A-79-14 at the U.S. Environmental Protection Agency, Central Docket Section, (A-130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Maureen D. Smith, U.S. Environmental Protection Agency, Office of Mobile Source Air Pollution Control (ANR-455), 401 M Street, SW., Washington, D.C. 20460, Telephone: (202) 426-2514.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Existing Regulations

Section 202(f) of the Clean Air Act, as amended, authorizes the Administrator to adopt regulations requiring 1981 and later model year light-duty vehicles sold at high altitude to meet standards that

are proportional to low-altitude standards in terms of emission reductions from the 1970 baseline. On October 8, 1980, EPA promulgated proportional standards for 1982 and 1983 light-duty vehicles sold for principal use at high-altitudes. 45 FR 66984. In those regulations, EPA also extended the proportional reduction requirement to light-duty trucks (LDT's) under its section 202(a) (1) and (2) standard-setting authority. Those provisions authorize EPA to consider cost and lead time requirements, both in establishing and amending rules.

In order to avoid high-altitude model availability problems, EPA fashioned the rules to require all vehicles to meet both low- and high-altitude standards, with modification, if necessary. EPA recognized two situations that required limited exemptions from the general rules that light-duty vehicles and trucks be certified to meet both the high- and low-altitude standards. First, the most fuel-economic vehicles that generally perform poorly at high altitude would have difficulty complying with applicable standards. Manufacturers that might otherwise have chosen to remove these models from both low- and high-altitude markets were provided with the opportunity to show unacceptable performance at high-altitude and to receive an exemption to allow certification for sales at low-altitudes only. This performance exemption was made available for passenger cars and LDT's based on performance criteria derived by EPA from data submitted by the manufacturers.

Second, while EPA concluded that adequate lead time generally existed for vehicles to comply with high-altitude standards beginning with the 1982 model year, it realized that the promulgation date of the rule left little time for truck manufacturers, especially those which also produce cars, to complete development and certification for their entire LDT fleets in 1982. There was some concern that the numerous truck configurations to be brought into compliance, as well as the possible limited resources of some truck manufacturers, would create problems for the truck manufacturers. 45 FR 66984, 66991-66992. Therefore, EPA provided a safety margin of one additional model year for each truck manufacturer to bring 30 percent of its projected high-altitude LDT sales into compliance, allowing that portion to be sold in high-altitude areas to avoid possible LDT availability problems. The 30 percent LDT sales exemption [hereinafter "volume-based exemption"] was limited

to 1982 since the additional year of lead time was expected to address the uncertainties of timely 1982 LDT certification.

II. Ford Petition

Ford Motor Company has requested the Administrator to extend the 1982 LDT exemption through the 1983 model year ("Ford petition") on the basis that: (1) The high cost of developing and certifying unique high-altitude calibrations for LDT configurations with very low sales volumes at high-altitudes (50-100 units for many vehicle types that would not be exempted under the performance exemption) is an extremely cost-ineffective approach, which may force Ford to reduce model availability in order to minimize the cost impact; (2) air quality improvements at high altitudes would not be impaired since Ford will make available to its high-altitude customers who purchase an exempt LDT a performance adjustment that provides both acceptable performance and substantially the same emission control as a certified configuration; and (3) the performance exemption criteria do not apply appropriately to LDT's, so that many powertrains that were intended to qualify for exemption (due to poor performance under the high-altitude standards) must be certified to meet high-altitude requirements.

Ford later supplemented its petition with information on the estimated cost to Ford of complying with the 1983 performance exemption criteria.¹ Ford stated that it would have to spend an additional \$1 million in development and testing of 10 new calibrations, in addition to \$1 million in hardware costs, to meet the 1983 requirements. General Motors Corporation (GM) also submitted a request to extend the volume-based exemption to allow GM to avoid a significant part of its engineering development work, contending it would result in a negligible effect on the air quality of high-altitude cities.²

EPA has considered the economic and environmental impacts of denying versus granting Ford's petition, and has decided that extending the volume based exemption for an additional

model year: (1) Will result in substantial savings for the industry and consumers at a time when even relatively small savings are significant; (2) will not impair significantly high-altitude air quality improvements; and (3) will allow EPA the opportunity to investigate the appropriateness of the performance criteria for LDT's and to revise them, if necessary. Therefore, the Agency is extending the 1982 volume-based exemption through the 1983 model year for the reasons discussed more fully below.

III. Basis for Decision

A. Cost Savings

When EPA extended to LDT's the "proportional reduction" requirement applied to 1982-83 high-altitude passenger cars, it recognized that there was a greater magnitude of technical problems associated with LDT compliance than for that of passenger cars. 45 FR 66991 (col. 3). A primary reason for the greater difficulty in bringing all LDT's into compliance with high-altitude standards is that there are many more configurations of LDT's than passenger cars, each requiring a unique calibration. This increases the cost of bringing the whole LDT line into compliance. Further, some LDT configurations may represent only a few hundred sales at high altitudes, so that the cost of developing calibrations and certifying separate LDT configurations cannot be spread out.

Ford has stated that without the volume-based exemption, 10 new calibrations must be developed and certified for sale at high altitudes. The ten calibrations will be used on a total of 10,000 vehicles, with individual configurations having projected volumes as low as 50-100 units at high altitudes.

According to Ford, the cost of developing and certifying each calibration is several hundred thousand dollars per calibration, resulting in a total cost of \$1 million, exclusive of hardware.³

These development and certification costs might be more reasonable if they could be carried forward into future model years; however, more stringent low-altitude LDT standards become effective in the 1984 model year,⁴ which will require new hardware calibration development and certification programs and prevent carryover of 1983 certification data. Thus, requiring the LDT manufacturers to recalibrate and to

¹ Letter from Helen O. Petruskas, Ford, to Laszlo Bockh, Acting Director, Office of Mobile Source Air Pollution Control, EPA, December 14, 1981; letter from D. T. Weaver, Executive Engineer, Certification and Compliance Programs, Ford, to Maureen Smith, EPA, December 21, 1981; Record of January 19, 1982 meeting between Ford and EPA representatives on Ford High-Altitude LDT Petition, Attachment 1.

² Letter from T. M. Fisher, Director, Automotive Emission Control, GM, to the Administrator, EPA, December 22, 1981.

³ Ford petition, p. 2; Record of January 19, 1982 Meeting, Attachment 1.

⁴ 45 FR 63734 (September 25, 1980); 40 CFR 86.064-9 (1981).

certify to high-altitude requirements one-third of their 1983 LDT fleets that will be recalibrated and certified again in 1984, imposes a substantial development and testing burden.

The best approach for relieving some of this certification burden from LDT manufacturers is to continue the 30 percent sales volume exemption into 1983.

Presumably, each LDT manufacturer chose to exempt in 1982 those vehicles which would be the most costly to certify, such as those configurations representing extremely low high-altitude sales. Extending the 1982 exemption would avoid the need to undergo the costs of certifying these LDT configurations for one year; according to Ford, this would save \$1 million. The additional \$1 million savings in hardware costs claimed by Ford results in a total of \$2 million saved for 1983. According to Ford, consumer savings would be even higher.⁵

Thus, the LDT manufacturers would not be required to develop and certify new calibrations that would be applied for only one model year to one-third of their LDT's, but instead, would be able to concentrate their efforts on demonstrating compliance with 1984 model year standards. This is a more efficient approach, especially in view of the insignificant air quality effect anticipated from extending the exemption, discussed below.

B. Environmental Impact

Emissions increase will be insignificant, due to the relatively small number of vehicles involved and the fact that the exemption will cover only one additional model year. The exemption will apply to a maximum of 30 percent of the projected 1983 high-altitude LDT sales, and since only 5.5 percent of annual LDT sales occur in high-altitude areas, this constitutes less than 2 percent of the 1983 LDT fleet.

EPA expects that a portion of the LDT's covered by the exemption will achieve some emission reductions through altitude performance adjustments. EPA has established regulations under Section 215 of the Clean Air Act, requiring manufacturers to submit to EPA instructions for the adjustment or modification of vehicles operated at elevations other than the altitude for which the vehicles were originally designed.⁶ The altitude

adjustment requirement was intended to reduce vehicle emissions at high altitudes, as well as improve fuel economy and driveability.

Although the air quality improvements resulting from the adjustment regulations depend upon vehicle owner participation, EPA expects that many exempt LDT owners will have the adjustments installed to improve the fuel economy and performance of their LDT's for use at high altitudes. The adjustments are generally inexpensive, ranging from \$20 to \$100 (45 FR 66953), and some manufacturers make them available at no additional cost.⁷ While there is no requirement that the high-altitude adjustments reduce vehicle emissions by a specified amount, the adjustments generally provide varying levels of emissions improvement. This improvement, albeit less than that of a certified vehicle,⁸ can be substantial, and is obtained at a much lower cost to both manufacturers and consumers.⁹

C. The Performance Exemption Criteria

Ford asserted in support of its petition that the performance exemption does not remove the need for extension of the volume-based exemption, since the criteria for the performance exemption do not accurately reflect actual LDT performance at high altitudes. In particular, Ford claimed that consideration of vehicle weight alone is meaningful only for passenger cars in determining performance, and that loaded, or "gross" weight must be considered in determining LDT performance. According to Ford, the focus of the exemption criteria for LDT's should be whether a loaded rather than unloaded truck would have acceptable performance if calibrated to meet high-altitude standards.¹⁰

Of course, the applicability of the passenger car performance criteria to LDT's would not be an issue for the 1983 model year if the volume exemption is available in 1983, since the volume exemption applies in lieu of the performance exemption. EPA does plan to investigate this issue, however, since the performance exemption would be available for 1984 and later model LDT's required to meet high-altitude standards.

⁷ Ford has stated that it will offer its LDT performance adjustment as a no-cost warranty item. Record of January 19, 1982 Meeting, Attachment 1.

⁸ Ford estimates that 50-75 percent of the "certified" emission reductions will be achieved by the adjustments.

⁹ Ford has stated that its adjustment for exempt LDT's would cost about \$44 per vehicle, and that the savings to consumers achieved by avoiding certification will exceed \$2 million. Record of January 19, 1982 Meeting, Attachment 1.

¹⁰ Ford petition, pp. 2-3; Record of January 19, 1982 Meeting, Attachment 1.

Therefore, EPA requests from manufacturers and other interested persons comments and any data or other information relevant to the issue of appropriate high-altitude LDT performance criteria. If revision of the performance exemption criteria is warranted, EPA will initiate appropriate rulemaking proceedings.

IV. Summary and Decision

Since it is possible that the performance exemption criteria preclude LDT manufacturers from avoiding the costs of high-altitude certification for 1983 LDT's with unacceptable performance at high altitudes, and in view of the high costs of certifying for 1983 those LDT's that were exempt under the volume-based exemption in 1982, EPA believes that it is appropriate to extend the volume exemption through 1983. This will avoid potential model availability problems at both low- and high-altitudes from manufacturers' efforts to minimize the costs of 1983 certification and the need for LDT manufacturers to develop in 1983 specific calibrations that must be changed again in 1984. There is no reason to believe that these problems are unique to Ford, and indeed, it appears that Ford has identified problems shared by other manufacturers. (As noted earlier, General Motors has expressed support for Ford's petition.)

This decision is based in part on EPA's concern that LDT manufacturers are being subject to additional 1983 certification burdens due to the multitude of truck configurations requiring specific calibrations. This, combined with the limited resources of some LDT manufacturers, warrants some relief from the additional burden. A negligible impact on air quality is anticipated in view of the high probability that most 1983 exempt LDT's will be adjusted to achieve acceptable performance and low emissions.

V. Public Participation

The Agency finds that good cause exists for omitting as impracticable and contrary to the public interest a notice of proposed rulemaking. This finding is based on the facts that (1) the action reduces the economic burden of the emission regulations on the regulated industry, (2) negligible environmental impacts are anticipated, and (3) immediate implementation of the amendments is essential if it is to be utilized in time to permit some cost savings for the 1983 model year. Certification for the 1983 model year already is underway for many vehicle

⁵ Ford stated that consumers would not be required to cover the \$2 million engineering cost nor the variable cost of the unique hardware otherwise required on a certified vehicle. Record of January 19, 1982 Meeting, Attachment 1.

⁶ 45 FR 66952 (October 8, 1980); 40 CFR Subpart Q (1981).

lines, so that vehicle testing either is imminent or has already begun. Therefore, proposing this amendment for comment before allowing manufacturers to take advantage of the cost savings intended by this action would negate the very purpose of the action.

EPA will, however, consider comments on this rule received within 30 days after publication of this notice. In particular, EPA requests manufacturers and other interested persons to submit comments and information on the appropriateness of the current LDT performance criteria within 90 days after publication of this notice. If, as a result of those comments, additional changes to the regulations are appropriate, EPA will consider additional rule changes.

Please submit written comments to: U.S. Environmental Protection Agency, Central Docket Section (A-130), Attn: Docket No. A-79-14, Waterside Mall, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying service.

VI. Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it reduces the economic burden of the existing regulations and will result in an annual effect on the economy of less than \$100 million. Also, this regulation will not result in increased prices or costs to consumers, industries or others, nor should it have adverse effects on competition, employment, investment or productivity.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*,

EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. This rulemaking should reduce the costs of compliance with high-altitude emission requirements for all manufacturers of light trucks. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: May 17, 1982.

Anne M. Gorsuch,
Administrator.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

For the reasons set forth in the preamble, EPA amends 40 CFR Part 86, Subpart A as follows:

In § 86.083-9, (g)(2) is redesignated as (g)(4); (g)(2), (5) and (6) are added; and (g)(3) is revised, to read as follows:

§ 86.083-89 Emission standards for 1983 and later model year light-duty trucks.

* * * * *

(g) * * *

(2) The manufacturer may exempt 1983 model year light-duty trucks from high-altitude emission standards as set forth in paragraph (d) of this section. No specific justification for the exemption need be included in the application for certification. The exemptions may include up to 30 percent of the manufacturer's projected light-duty trucks sales for principal use at designated high-altitude locations for the 1983 model year. For this purpose, the sales percentage will be based on sales projections for individual vehicle configurations to be exempted. Exemptions will cover individual vehicle configurations, or groups of vehicle configurations, as specified by the manufacturer.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will not be considered a violation of section 203(a)(1) of the Clean Air Act.

* * * * *

(5) No exemptions will be granted under paragraph (g)(4) to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2).

(6) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(4) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

[FR Doc. 82-13814 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6246

[I-15360B, I-15366A, I-15380, I-16825]

Idaho; Partial Revocation of Interpretations of Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes five Secretarial Interpretations of the Executive order creating Public Water Reserve No. 107. This action will restore 200.15 acres to full operation of the public land laws including nonmetalliferous mining. All lands affected by this order have been and will remain open to metalliferous mining.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Secretarial Orders of Interpretation Nos. 120, 177, 205, 261, and 284, dated February 10, 1930, February 15, 1933, August 30, 1934, April 10, 1940 and November 23, 1940, respectively, are partially revoked insofar as they affect the following described lands:

Boise Meridian

(I-15360B)

Secretarial Order of Interpretation #177

T. 9 S., R. 29 E.,
Sec. 7, SW $\frac{1}{4}$ SE $\frac{1}{4}$.

(I-15366A)

Secretarial Order of Interpretation #120

T. 10 S., R. 3 W.,
Sec. 1, lot 2.

(I-15380)

Secretarial Orders of Interpretation #261
#264

T. 3 N., R. 46 E.,
Sec. 6, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

(I-16825)

Secretarial Order of Interpretation #205

T. 9 S., R. 1 W.,
Sec. 31, N $\frac{1}{2}$ NE $\frac{1}{4}$.

The areas described aggregate 200.15 acres in Owyhee, Teton and Power Counties.

2. At 7:45 a.m. on June 15, 1982, the above described lands will be open to

operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1 will also be opened to location of nonmetalliferous minerals under the United States mining laws, at 7:45 a.m. on June 15, 1982. The land has been and continues to be open to location of metalliferous minerals and applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, P.O. Box 042, Boise, Idaho 83724.

Garry E. Carruthers,
Assistant Secretary of the Interior.
May 10, 1982.

[FR Doc. 82-13734 filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6247

[NM-45734]

New Mexico; Public Land Order 6067; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document will correct an error in the date of an Executive Order referred to on Public Land Order 6067 of October 28, 1981 (46 FR 81-31230).

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Miguel M. Martinez, New Mexico State Office, 505-988-6211.

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 ordered as follows:

In the notice published as Public Land Order 6067 under serial No. NM-45734 appearing as FR Doc. 81-31230 (filed October 27, 1981), in the October 28, 1981, issue of the *Federal Register*, at page 53166, paragraph 1, line 2 is corrected to read "22, 1924 * * *" instead of "22, 1964 * * *".

Garrey E. Carruthers,
Assistant Secretary of the Interior.
May 10, 1982.

[FR Doc. 82-13733 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6248

[M-042782]

Montana; Partial Revocation of Public Land Order No. 2924

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order as to 127.25 acres of land withdrawn for use as a Forest Service administrative site. It also restores the land to operation of the surface and mining laws. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 15, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

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 ordered as follows:

1. Public Land Order No. 2924 dated January 30, 1963, which withdrew certain land for an administrative site, is hereby revoked, in part, insofar as it affects the following described lands:

Principal Meridian

T. 6 S., R. 16 W.,
Sec. 1, lot 4 and W $\frac{1}{2}$ SW $\frac{1}{4}$.

The area described contains 127.25 acres located in Beaverhead County.

2. At 8 a.m. on June 15, 1982, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, provisions of existing withdrawals, and requirements of applicable laws. All valid applications received at or prior to 8 a.m. on June 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. The public lands described above will be open to mineral location under the mining laws at 8 a.m. on June 15, 1982.

The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
May 10, 1982.

[FR Doc. 82-13732 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6305]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or

federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is

subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the

NFIP and imposes no new requirements or regulations on participating communities.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.
Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Arkansas: Ashley	Hamburg, city of	050005B	Apr. 1, 1981, suspension withdrawn	May 17, 1974 and Oct. 10, 1975.
Florida: Lake	Unincorporated areas	120421B	do	May 26, 1978.
Illinois:				
Williamson	Johnston City, city of	170718C	do	June 28, 1974, Apr. 2, 1976, and Sept. 29, 1979.
Douglas	Tuscola, city of	170195C	do	Nov. 30, 1973, July 9, 1976 and Sept. 12, 1980.
Indiana: Porter	Unincorporated areas	180425B	do	Apr. 14, 1978.
Kansas: Riley	Unincorporated areas	200298B	do	Feb. 15, 1974 and Nov. 22, 1977.
Maine:				
York	Limington, town of	230152C	do	May 31, 1974, Oct. 22, 1976, and Aug. 10, 1979.
Cumberland	Naples, town of	230050B	do	Aug. 9, 1974 and Mar. 11, 1972.
Oxford	Waterford, town of	230343A	do	Feb. 14, 1975.
Massachusetts: Suffolk	Boston, city of	250286C	do	Nov. 22, 1974, Feb. 11, 1977, and June 7, 1977.
Michigan:				
Calhoun	Marshall, city of	260053B	do	May 3, 1974 and June 4, 1976.
Ingham	Williamston, city of	260094B	do	May 3, 1974 and July 30, 1976.
Minnesota: Swift	Appleton, city of	270466B	do	Nov. 16, 1973 and May 14, 1976.
Missouri:				
Harrison	Bethany, city of	290154B	do	Jan. 23, 1974 and Jan. 2, 1976.
Clinton	Trimble, city of	290510A	do	Feb. 7, 1975.
New Hampshire:				
Cheshire	Roxbury, town of	330172A	do	Feb. 14, 1975.
Coos	Lancaster, town of	335277B	do	Apr. 13, 1973, July 1, 1974, and Dec. 12, 1975.
New Jersey: Bergen	Bogota, borough of	340021B	do	May 3, 1974 and Feb. 27, 1976.
New York:				
Erie	Clarence, town of	360232B	do	July 16, 1976.
Cayuga	Weedsport, village of	360132B	do	June 7, 1974 and June 25, 1976.
North Carolina:				
Pitt	Farmville, town of	370190B	do	Apr. 12, 1974 and June 25, 1976.
Johnston	Smithfield, town of	370140B	do	Oct. 29, 1976.
Ohio:				
Ottawa	Elmore, village of	390610B	do	Oct. 18, 1974 and July 11, 1975.
Ottawa	Oak Harbor, village of	390433B	do	Mar. 1, 1974 and Apr. 16, 1976.
Pennsylvania:				
Butler	Cranberry, township of	421217B	do	Sept. 20, 1974 and Apr. 30, 1976.
Blair	Greenfield, township of	421389A	do	Feb. 14, 1975.
Cumberland	North Middleton, township of	420367B	do	July 26, 1974 and May 28, 1976.
Rhode Island: Providence	Pawtucket, city of	440222C	do	July 16, 1971, July 1, 1974 and June 11, 1976.
Texas:				
Bee	Unincorporated areas	480026B	do	Oct. 18, 1974 and Aug. 16, 1977.
Dallas and Tarrant	Grand Prairie, city of	485472B	do	July 6, 1973 and Sept. 10, 1976.
Travis	Unincorporated areas	481026B	do	Mar. 7, 1978.
Wisconsin:				
Racine	Unincorporated areas	550347B	do	May 20, 1977.
Barron	Rice Lake, city of	550016C	do	Dec. 7, 1973, July 30, 1976 and Mar. 16, 1979.
Colorado: Mesa	Collbran, town of	080116B	Apr. 15, 1982, suspension withdrawn	Aug. 30, 1974 and Dec. 26, 1976.
Illinois:				
DuPage	Unincorporated areas	170197B	do	May 13, 1977.
Madison	do	170436B	do	Jan. 31, 1975 and Oct. 1, 1976.
Morgan	Meredosia, village of	170517C	do	Jan. 9, 1974, Apr. 30, 1976, and Aug. 17, 1979.
Will	Unincorporated areas	170695B	do	Apr. 22, 1977.
Kansas: Lyon	Americus, city of	200202A	do	Apr. 16, 1976.
Maine:				
Washington	Baileyville, town of	230304B	do	Jan. 24, 1974.
Cumberland	Harrison, town of	230049B	do	June 21, 1974 and Nov. 12, 1976.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Michigan:				
Kalamazoo	Charleston, township of	260426A	do	July 25, 1975.
Ingham	Williamstown, township of	260095A	do	Aug. 27, 1976.
Minnesota:				
Rice	Dundas, city of	270403A	do	Oct. 25, 1974.
Hennepin	Medicine Lake, city of	270690A	do	Dec. 17, 1976.
Winona	St. Charles, city of	270531B	do	May 24, 1974 and Apr. 4, 1975.
Missouri: Cass	Unincorporated areas	290783B	do	Mar. 14, 1978.
Nebraska: Dakota	Unincorporated areas	310429B	do	June 28, 1977.
New Hampshire:				
Rockingham	Epping, town of	330129B	do	July 19, 1974 and Nov. 15, 1977.
Do	Hampton Falls, town of	330133B	do	Dec. 6, 1974 and June 11, 1976.
Do	Raymond, town of	330140B	do	Aug. 9, 1974 and July 2, 1976.
New Jersey:				
Burlington	Bordentown, township of	340088B	do	June 28, 1974 and Mar. 19, 1976.
Hunterdon	Tewksbury, township of	340516B	do	June 28, 1974 and June 11, 1976.
Monmouth	Tinton Falls, borough of	340318C	do	Apr. 12, 1974, Apr. 23, 1976, and Dec. 31, 1976.
Hunterdon	Union, township of	340242B	do	May 11, 1973 and Aug. 1, 1978.
New York:				
Oswego	Fulton, city of	360649B	do	Oct. 18, 1974 and Nov. 28, 1975.
Ontario	Geneva, city of	360599B	do	May 17, 1974 and Sept. 10, 1976.
Monroe	Mendon, town of	360423B	do	Apr. 12, 1974 and Nov. 26, 1976.
Ulster	New Platz, village of	361544B	do	Jan. 24, 1975.
Rockland	Pomona, village of	360698B	do	Mar. 15, 1974 and July 30, 1976.
Orange	Tuxedo, town of	360631B	do	Apr. 12, 1974.
Oswego	Volney, town of	361268B	do	Nov. 1, 1974 and June 11, 1976.
Ohio: Wood	Portage, village of	390754A	do	Apr. 18, 1975.
Oklahoma:				
Le Flore	Howe, town of	400091A	do	July 2, 1976.
Cherokee	Hulbert, town of	400036B	do	Apr. 12, 1974 and Aug. 20, 1976.
Sequoyah	Moffett, town of	400196A	do	July 16, 1976.
Do	Muldrow, town of	400197B	do	June 28, 1974 and Sept. 17, 1976.
Pennsylvania: Fayette	Perry, township of	421634A	do	Dec. 13, 1974.
Vermont: Washington	Waterbury, village of	500123B	do	May 10, 1974 and Mar. 26, 1976.
Virginia: Washington	Bristol, city of	510022B	do	Mar. 8, 1974 and June 25, 1976.
Washington: Kittitas	Kittitas, town of	530098B	do	June 14, 1974 and Apr. 16, 1976.
West Virginia:				
Kanawha	Belle, town of	540071C	do	Mar. 1, 1974, Apr. 25, 1975 and Oct. 31, 1975.
Do	Marmet, town of	540079B	do	April 12, 1974 and June 11, 1976.
Wisconsin: Rock	Edgerton, city of	550365B	do	Dec. 17, 1973 and June 4, 1976.
Alabama: Tuscaloosa	Tuscaloosa, city of	010203A	Apr. 28, 1982, suspension withdrawn	Oct. 24, 1975.
Pennsylvania: Montgomery	Bryn Athyn, borough of	421899A	Mar. 10, 1976, emergency, Feb. 17, 1982, regular, Feb. 17, 1982, suspended, April 2, 1982, reinstated.	Dec. 20, 1974.
North Dakota:				
McKenzie	Watford, city of	380344A	Apr. 2, 1982, emergency	June 5, 1979.
Cass	Briarwood, city of	380651New	do	do
Missouri:				
Clark	Unincorporated areas	290792A	Apr. 6, 1982, emergency	Sept. 15, 1981.
Perry	do	290280A	do	Oct. 13, 1981.
Virginia: Giles	do	510067B	Oct. 24, 1973, emergency, June 15, 1981, regular, June 15, 1981, suspended, Apr. 9, 1982, reinstated.	Aug. 2, 1974 and Mar. 5, 1976.
Washington: Clark	Vancouver, city of	530027B	June 2, 1972, emergency Aug. 17, 1981, regular, Aug. 17, 1981, suspended, April 16, 1982, reinstated.	Aug. 2, 1974 and Nov. 14, 1975.
Minnesota:				
Fillmore and Olmsted	Chatfield, city of	270125	Apr. 15, 1982, emergency	Aug. 13, 1976.
Polk	Fisher, city of	270366A	Apr. 21, 1982, emergency	Aug. 2, 1974.
Nevada: Lyon	Unincorporated areas	320029A	Apr. 20, 1982, emergency	Jan. 31, 1978.
Ohio: Ashland	do	390759A	do	Feb. 10, 1978.
Pennsylvania:				
Columbia	Jackson, township of	421552	Apr. 26, 1982, emergency	Dec. 13, 1982
Beaver	Hanover, township of	421223A	do	Sept. 6, 1974 and Oct. 1, 1976.
Michigan: Lapeer	Lapeer, township of	260435A	do	Apr. 15, 1977.
Kansas: Marshall	Waterville, city of	200556	do	Aug. 29, 1975.
Washington:				
Pierce	Milton, town of	530294A	Apr. 26, 1982, emergency, Apr. 26, 1982, regular.	Dec. 3, 1976 and Feb. 17, 1982.
Do	Roy, city of	530262B	Apr. 26, 1982, emergency, Apr. 26, 1982, regular.	July 18, 1975, June 21, 1977 and Mar. 15, 1982.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,
Associate Director, State and Local Programs and Support.

[FR Doc. 82-13535 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6306]

List of Communities Eligible for the Sale of Insurance under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP) and eligible for second layer insurance coverage. These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the regular program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural

Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, Subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed

effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area ¹	Hazard area identified
Alabama: Macon County	Macon County ²	010148	750529 emergency, 820401 regular	780106
Arkansas:				
Ashley County	Hamburg, city of	050005	741018 emergency, 820401 regular	740517
Hempstead County	Hope, city of	050087	750703 emergency, 820401 regular	740123
Drew County	Monticello, city of	050074	750403 emergency, 820401 regular	780521
Jackson County	Newport, city of	050103	750620 emergency, 820401 regular	731116
Connecticut:				
Middlesex County	Durham, city of	090185	750715 emergency, 820401 regular	741129
Tolland County	Tolland, city of	090171	750529 emergency, 820401 regular	750131
Florida: Lake County	Lake County ³	120421	781221 emergency, 820401 regular	780526
Georgia: Brooks County	Quitman, city of	130015	731226 emergency, 820401 regular	740329
Illinois:				
McHenry County	Holiday Hills, village of	170936	770808 emergency, 820401 regular	780428
Williamson County	Johnston City, city of	170718	750725 emergency, 820401 regular	740626
Douglas County	Tuscola, city of	170195	751017 emergency, 820401 regular	731130
Indiana:				
Porter County	Porter County ⁴	180425	750905 emergency, 820401 regular	780414
Shelby County	Shelbyville, city of	180236	750414 emergency, 820401 regular	731217
Kansas: Riley County	Riley County ⁵	200298	750623 emergency, 820401 regular	740215
Massachusetts: Suffolk County	Boston, city of	250286	75077 emergency, 820401 regular	741122
Maine:				
York County	Limington, town of	230152	780816 emergency, 820401 regular	740531
Cumberland County	Naples, town of	230050	750709 emergency, 820401 regular	740609
Cumberland County	New Gloucester, town of	230201	760407 emergency, 820401 regular	750321
Oxford County	Waterford, town of	230343	751212 emergency, 820401 regular	750214
Michigan:				
Calhoun County	Marshall, city of	260053	750513 emergency, 820401 regular	740614
Ingham County	Williamston, city of	260094	750724 emergency, 820401 regular	740503
Minnesota: Swift County	Appleton, city of	270466	730126 emergency, 820401 regular	731116
Missouri:				
Harrison County	Bethany, city of	290154	750619 emergency, 820401 regular	740123
Nodaway County	Burlington Junction, city of	290740	760726 emergency, 820401 regular	750711
Clinton County	Trimble, city of	290510	760503 emergency, 820401 regular	750207
North Carolina:				
Pitt County	Farmville, town of	370190	741015 emergency, 820401 regular	740412
Johnston County	Smithfield, town of	370140	750120 emergency, 820401 regular	761029
New Hampshire: Cheshire County	Roxbury, town of	330172	801110 emergency, 820401 regular	750214
New Jersey: Bergen County	Bogota, borough of	340021	750707 emergency, 820401 regular	740531

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area ¹	Hazard area identified
New York:				
Erie County	Clarence, town of	360232	750325 emergency, 820401 regular	740517
Cayuga County	Weedsport, village of	360132	740607 emergency, 820401 regular	740607
Ohio:				
Ottawa County	Elmore, village of	390610	751009 emergency, 820401 regular	741018
Do	Oak Harbor, village of	390433	770428 emergency, 820401 regular	740301
Oregon:				
Jackson County	Jackson County ²	415589	701231 emergency, 820401 regular	780411
Washington County	North Plains, city of	410270	770325 emergency, 820401 regular	780718
Pennsylvania:				
Butler County	Cranberry, township of	421217	740916 emergency, 820401 regular	740920
Blair County	Greenfield, township of	421389	750728 emergency, 820401 regular	750214
Cumberland County	North Middleton, township of	420367	730112 emergency, 820401 regular	740726
Texas:				
Bee County	Bee County ²	480026	741106 emergency, 820401 regular	741018
Travis County	Travis County ²	481026	760129 emergency, 820401 regular	780307
Wisconsin:				
Racine County	Racine County ²	550347	730705 emergency, 820401 regular	770520
Barron County	Rice Lake, city of	550016	750710 emergency, 820401 regular	731207
New York: Albany County	Ravena, village of	361346	791029 emergency, 820402 regular	761022
Colorado: Mesa County	Collbran, town of	080116	750812 emergency, 820415 regular	740830
Illinois:				
Du Page County	Du Page County	170197	730502 emergency, 820415 regular	770513
Madison County	Madison County ²	170436	730806 emergency, 820415 regular	750131
Morgan County	Meredosia, village of	170517	740313 emergency	740109
Illinois: Will County	Will County ²	170695	740422 emergency, 820415 regular	770422
Kansas: Lyon County	Americus, city of ²	200202	750708 emergency, 820415 regular	760416
Maine:				
Washington County	Baileyville, town of	230304	780615 emergency, 820415 regular	0
Cumberland County	Harrison, town of	230049	750501 emergency, 820415 regular	740621
Michigan:				
Kalamazoo County	Charleston, township of	260426	761220 emergency, 820415 regular	750725
Ingham County	Williamstown, township of	260095	770127 emergency, 820415 regular	760827
Minnesota:				
Olmsted County	Dover, city of	270566	820315 emergency, 820415 regular	741101
Rice County	Dundas, city of	270403	750929 emergency, 820415 regular	741025
Hennepin County	Medicine Lake, city of	270690	781221 emergency, 820415 regular	761217
Winona County	St. Charles, city of	270531	750604 emergency, 820415 regular	740524
Missouri: Cass County	Cass County ²	290783	750421 emergency, 820415 regular	780314
Nebraska:				
Dakota County	Dakota County ²	310429	750880 emergency, 820415 regular	770628
Lancaster County	Waverly, city of	310140	750613 emergency, 820415 regular	731217
New Hampshire:				
Rockingham County	Epping, town of	330129	750702 emergency, 820415 regular	740719
Rockingham County	Hampton Falls, town of	330133	751031 emergency, 820415 regular	741206
Rockingham County	Raymond, town of	330140	751015 emergency, 820415 regular	740809
New Jersey:				
Burlington County	Bordenton, township of	340088	750808 emergency, 820415 regular	740628
Monmouth County	Colts Neck, township of	340291	750703 emergency, 820415 regular	740412
Hunterdon County	Tewksbury, township of	340516	750116 emergency, 820415 regular	740628
Monmouth County	Tinton Falls, borough of	340318	750417 emergency, 820415 regular	740412
Hunterdon County	Union, township of	340242	750729 emergency, 820415 regular	740719
New York:				
Oneida County	Bridgewater, village of	360522	760811 emergency, 820415 regular	740517
Oswego County	Fulton, city of	360649	741120 emergency, 820415 regular	741018
Ontario County	Geneva, city of	360599	750218 emergency, 820415 regular	740517
Monroe County	Mendon, town of	360423	750414 emergency, 820415 regular	740412
New York:				
Madison County	Morrisville, village of	360406	761128 emergency, 820415 regular	740308
Ulster County	New Platz, village of	361544	760309 emergency, 820415 regular	750124
Rockland County	Pomona, village of	360688	741213 emergency, 820415 regular	740315
Orange County	Tuxedo, town of	360631	750602 emergency, 820415 regular	740412
Oswego County	Volney, town of	361266	751120 emergency, 820415 regular	741101
Ohio: Wood County	Portage, village of	390754	760506 emergency, 820415 regular	750418
Oklahoma:				
LeFlore County	Howa, town of	400091	761021 emergency, 820415 regular	760702
Cherokee County	Hulbert, town of	400036	750929 emergency, 820415 regular	740412
Creek County	Kiefer, town of	400393	750709 emergency, 820415 regular	760813
Sequoyah County	Moffett, town of	400196	760902 emergency, 820415 regular	760716
Sequoyah County	Muldrow, town of	400197	750731 emergency, 820415 regular	740628
Pennsylvania: Fayette County	Perry, township of	421634	750110 emergency, 820415 regular	741213
Virginia: Independent County	Bristol, city of	510022	760212 emergency, 820415 regular	740308
Vermont:				
Washington County	Waterbury, town of	500123	750721 emergency, 820415 regular	740628
Washington County	Waterbury, village of	500122	750502 emergency, 820415 regular	740510
Washington: Kittitas County	Kittitas, town of	530098	740522 emergency, 820415 regular	740614
Wisconsin: Rock County	Edgerton, city of	550365	750617 emergency, 820415 regular	731217
West Virginia:				
Kanawha County	Belle, town of	540071	750716 emergency, 820415 regular	740301
Kanawha County	Marmet, town of	540079	750612 emergency, 820415 regular	740412
Fayette County	Smithers, town of	540033	750612 emergency, 820415 regular	740517
Lewis County	Weston, city of	540087	741101 emergency, 820415 regular	740405
Total—94.				

¹ Key for reading 5th column (effective date): First two digits designate the year. Middle two digits designate the month. Last two digits designate the day.

² Unincorporated areas.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13536 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Associate Director, State and Local Programs and Support, after consultation with the Chief Executive Officer of each community listed, finds that modification of the proposed Special Flood Hazard Areas (SFHAs) for those communities is appropriate as a result of requests for changes in the interim and/or Proposed Rule.

DATES: These modified SFHAs are in effect as of the dates listed in the fifth column of the attached list and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified SFHA determinations for each community are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief,

Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support has published a notification of the SFHAs in prominent local newspapers for the communities listed below. Ninety (90) days have elapsed since that publication, and the Associate Director has received appeals from the communities requesting changes in the proposed SFHA determinations.

The numerous changes made in the SFHAs on the Flood Insurance Rate Map for each community make it administratively infeasible to publish in this notice all of the SFHA changes contained on the maps. However, this notice includes the address of the Chief Executive Officer where the modified SFHA determinations are available for inspection.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L.

90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.)

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These SFHAs are basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These SFHAs together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified SFHAs shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

§ 65.4 [Amended]

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The changes in the SFHAs listed below are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Pennsylvania: Cameron	Borough of Driftwood (FEMA Docket No. 6225).	<i>Cameron County Echo</i> , Apr. 29 and May 6, 1981.	Honorable Bert Morton, Mayor, Borough of Driftwood, Driftwood, PA 15832.	May 8, 1981	420245C.
Virginia: Arlington	Unincorporated areas (FEMA Docket No. 6225).	<i>North Virginia Sun</i> , May 29, June 5, July 3, and July 10, 1981.	W. V. Ford, County Manager, Arlington County, 1400 North Courthouse Road, Room 204, Arlington, VA 22201.	May 8, 1981 (66-B).	515520A.
Wisconsin: Dane	Village of Black Earth (FEMA Docket No. 6225).	<i>News Sickle Arrow</i> , May 28 and June 4, 1981.	John H. Curtis, Village President, Village of Black Earth, 1210 Mills Street, Black Earth, WI 53515.	May 8, 1981 (66-B).	550079B.
Manitowoc	Village of Mishicot (FEMA Docket No. 6225).	<i>Herald Times Reporter</i> , May 8 and May 15, 1981.	George Krause, Sr., Village President, Village of Mishicot, P.O. Box 122, Mishicot, WI 54228.	May 15, 1981	555566C.
California: Alameda	City of Union City (FEMA Docket No. 6225).	<i>The Daily Review</i> , June 15 and June 16, 1981.	The Honorable Tom Kitayama, Mayor, City of Union City, 34008 Alvarado-Niles Road, Union City, CA 94587.	May 19, 1981 (66-B).	060014A.
Delaware: Sussex	City of Seaford (FEMA Docket No. 6225).	<i>The Seaford Leader</i> , June 10 and June 17, 1981.	Woodrow W. Crosby, City Manager, City of Seaford, City Hall, 302 East King Street, Seaford, DE 19973.	June 2, 1981 (66B).	100048B.
Pennsylvania: Crawford	Borough of Conneaut Lake (FEMA Docket No. 6225).	<i>Meadville Tribune</i> , May 29 and June 5, 1981.	James E. Hubbard, President of Council, Borough of Conneaut Lake, State Street, Conneaut Lake, PA 16316.	June 5, 1981	422386C.
Wisconsin: Wood	City of Wisconsin Rapids (FEMA Docket No. 6225).	<i>The Daily Tribune</i> , June 12 and June 19, 1981.	Honorable James Kubisiak, Mayor, City of Wisconsin Rapids, 444 West Grand Avenue, Wisconsin Rapids, WI 54494.	June 19, 1981	555587D.
Milwaukee	City of Glendale (FEMA Docket No. 6225).	<i>The Glendale Herald</i> , June 11 and June 18, 1981.	Honorable Norbert J. Hynek, Mayor, City of Glendale, 5909 North Milwaukee River Parkway, Glendale, WI 53209.	June 19, 1981	550275C.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Oklahoma: Tulsa and Osage	City of Tulsa (FEMA Docket No. 6225).	<i>Tulsa Daily World and Tulsa Tribune</i> , June 24 and June 25, 1981.	The Honorable James M. Inhofe, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	June 15, 1981 (66-B).	405381D.
Minnesota: Anoka	City of Blain (FEMA Docket No. 6225).	<i>Blain-Spring Lake Park Life</i> , June 12 and June 19, 1981.	Lesley M. Johnson, City Manager, City of Blain, 9150 Central Avenue, Blain MN, 55434.	June 19, 1981	270007C.
Missouri: Platte	Unincorporated area (FEMA Docket No. 6625).	<i>The Landmark</i> , July 10 and July 17, 1981.	The Honorable John M. Reineke, Presiding Judge, Platte County Courthouse, 324 Main Street, Platte City, MO 64079.	June 25, 1981 (66-B).	290475A.
Pennsylvania: Luzerne	Borough of Forty Fort (FEMA Docket No. 6225).	<i>Times Leader</i> , June 26 and July 3, 1981.	Honorable Paul Detweiler, Mayor, Borough of Forty Fort, 1271 Wyoming Avenue, Municipal Building, Forty Fort, PA 18704.	July 3, 1981	420607C.
Luzerne	Borough of Wyoming (FEMA Docket No. 6225).	<i>Times Leader</i> , June 26 and July 3, 1981.	Honorable George Metcalfe, Mayor, Borough of Wyoming, 277 Wyoming Avenue, Wyoming, PA 18644.	July 3, 1981	420633D.
California: San Luis Obispo	City of San Luis Obispo (FEMA Docket No. 6225).	<i>San Luis Obispo County Telegram-Tribune</i> , July 8 and July 9, 1981.	The Honorable Melanie Billig, Mayor, City of San Luis Obispo, P.O. Box 321, San Luis Obispo, CA 93406.	July 7, 1981	060310C.
Nebraska: Burt	City of Tekamah (FEMA Docket No. 6199).	<i>The Burt County Plaindealer</i> , Aug. 13 and Aug. 20, 1981.	The Honorable Carl L. Schroeder, Mayor, City of Tekamah, P.O. Box 143, Tekamah, NE 68061.	Aug. 11, 1981	310024D.
Washington: Kitsap	City of Poulsbo (FEMA Docket No. 6199).	<i>Kitsap County Herald</i> , Aug. 12 and Aug. 19, 1981.	The Honorable Clyde C. Caldart, Mayor, City of Poulsbo, 127 Jensen Way, P.O. Box 98, Poulsbo, WA 98370.	Aug. 11, 1981	530241C.
Florida: Hillsborough	Unincorporated area (FEMA Docket No. 6225).	<i>The Tampa Tribune</i> , Aug. 27 and Sept. 3, 1981.	The Honorable Jan Platt, Chairperson, County Comm., Hillsborough Co., P.O. Box 1110, Tampa, FL 33601.	Aug. 13, 1981 (66-B).	120112B.
Kansas: Leavenworth	Unincorporated area (FEMA Docket No. 6199).	<i>The Leavenworth Times</i> , Aug. 17 and Aug. 18, 1981.	Mr. Louis A. Klemp, Chairman, Board of Commissioners, Leavenworth County Courthouse, Fourth and Walnut, Leavenworth, KS 66048.	Aug. 18, 1981	200186C.
Missouri: Clay and Jackson	City of Independence (FEMA Docket No. 6199).	<i>The Examiner</i> , Aug. 18 and Aug. 19, 1981.	The Honorable E. Lee Comer, Jr., Mayor, City of Independence, 103 North Main, Independence, MO 64050.	Aug. 18, 1981	290172B.
Florida: St. Lucie	City of Fort Pierce (FEMA Docket No. 6199).	<i>News Tribune</i> , Sept. 11 and Sept. 18, 1981.	The Honorable Buell Brown, Mayor, City of Fort Pierce, City Hall, P.O. Box 1480, Fort Pierce, FL 33450.	Aug. 19, 1981	120286C.
Iowa: Muscatine	City of Muscatine (FEMA Docket No. 6199).	<i>The Muscatine Journal</i> , Aug. 24 and Aug. 25, 1981.	The Honorable Evelyn L. Schauland, Mayor, City of Muscatine, Third and Sycamore, Muscatine, IA 52761.	Aug. 25, 1981	190213B.
Washington: King	City of Issaquah (FEMA Docket No. 6199).	<i>The Issaquah Press</i> , Sept. 9 and Sept. 16, 1981.	The Honorable H. G. Harrington, Mayor, City of Issaquah, P.O. Box M, Issaquah, WA 98027.	Aug. 25, 1981 (66-B).	530079B.
Pennsylvania: Bradford	Borough of Monroe (FEMA Docket No. 6199).	<i>The Daily Review</i> , Aug. 21 and Aug. 28, 1981.	Honorable Paul F. Thrasher, Mayor, Borough of Monroe, R.D. 1, Monroeton, PA 18832.	Aug. 28, 1981	420170B.
Texas: Tarrant	City of North Richland Hills (FEMA Docket No. 6199).	<i>Mid-Cities Daily News</i> , Sept. 21 and Sept. 22, 1981.	The Honorable Dick Faram, Mayor, City of North Richland, P.O. Box 18609, North Richland Hills, TX 76118.	Sept. 8, 1981 (66-B).	480607B.
Illinois: Rock Island	City of Rock Island (FEMA Docket No. 6225).	<i>Rock Island Argus</i> , Feb. 8 and Feb. 13, 1981.	Honorable James R. Davis, Mayor, City of Rock Island, 1528 Third Avenue, Rock Island, IL 61201.	Sept. 18, 1981	175171C.
Connecticut: Hartford	City of Hartford (FEMA Docket No. 6199).	<i>The Hartford Courant</i> , Oct. 2 and Oct. 9, 1981.	The Honorable George A. Athanson, Mayor, City of Hartford, City Hall, Hartford, CT 06103.	Sept. 24, 1981	095080A.
North Carolina: Cumberland	City of Fayetteville (FEMA Docket No. 6225).	<i>Fayetteville Observer</i> , Feb. 8, and Feb. 13, 1981.	The Honorable Beth Finch, Mayor, City of Fayetteville, City Hall, 234 Green Street, Fayetteville, NC 28301.	Sept. 25, 1981	370077C.
Connecticut: Hartford	Town of West Hartford (FEMA Docket No. 6199).	<i>The Hartford Courant</i> , Sept. 18 and Sept. 25, 1981.	The Honorable Ann Streeter, Mayor, Town of West Hartford, 28 S. Main Street, West Hartford, CT 06107.	Sept. 25, 1981	095082B.
Illinois: McLean	City of LeRoy (FEMA Docket No. 6199).	<i>LeRoy Journal</i> , Sept. 24 and Oct. 1, 1981.	Honorable Jack Moss, City of LeRoy, 111 East Center Street, LeRoy, IL 61752.	Oct. 2, 1981	170499C.
Michigan: Newaygo	City of Fremont (FEMA Docket No. 6199).	<i>Fremont Times Indicator</i> , Sept. 23, and Sept. 30, 1981.	Henry Van Dop, City Manager, City of Fremont, 101 East Main Street, Fremont, MI 49412.	Oct. 2, 1981	260167C.
Minnesota: Stearns	City of Cold Spring (FEMA Docket No. 6199).	<i>Cold Spring Record</i> , Sept. 24, and Oct. 1, 1981.	James Trueman, Clerk-Treasurer, City of Cold Spring, 27 Red River South, Cold Spring, MN 56320.	Oct. 2, 1981	270444C.
Oklahoma: Rogers	Unincorporated area (FEMA Docket No. 6199).	<i>The Claremore Progress</i> , Oct. 14, and Oct. 15, 1981.	Mr. Elmer L. McGuire, Chairman, Rogers County Commissioners, County Courthouse, 219 South Missouri, Claremore, OK 74017.	Oct. 5, 1981 (66-B).	405379A.
California: Santa Clara	City of Gilroy (FEMA Docket No. 6199).	<i>The Gilroy-Morgan Hill Dispatch</i> , Oct. 14, and Oct. 16, 1981.	The Honorable Norman B. Goodrich, Mayor, City of Gilroy, 7390 Rosanna Street, P.O. Box 66, Gilroy, CA 95020.	Oct. 6, 1981	060340C.
Florida: Hillsborough	Hillsborough County (FEMA Docket No. 6199).	<i>Tampa Tribune</i> , Nov. 6 and Nov. 13, 1981.	The Honorable Jan Platt, Chairperson, County Commissioners, Hillsborough County, P.O. Box 1110, Tampa, FL 33601.	Oct. 8, 1981	120112B.
Virginia: Independent City	City of Radford (FEMA Docket No. 6199).	<i>Radford News Journal</i> , Oct. 2 and Oct. 9, 1981.	Robert Ashbury, City Manager, City of Radford, 619 Second Street, Radford, VA 24141.	Oct. 9, 1981	510127B.
Wisconsin: St. Croix	Village of North Hudson (FEMA Docket No. 6199).	<i>Hudson Star Observer</i> , Oct. 1 and Oct. 8, 1981.	Honorable Wally Gregerson, Village of North Hudson, 309 7th Street North, North Hudson, WI 54176.	Oct. 9, 1981	555568C.
Waukesha	Village of Menomonee Falls (FEMA Docket No. 6199).	<i>Menomonee Falls News</i> , Oct. 1 and Oct. 8, 1981.	Frederick Gottlieb, Village Manager, West 156 North 8480 Pilgrim Road, Menomonee Falls, WI 53051.	Oct. 9, 1981	550483C.
California: Yolo	City of Woodland (FEMA Docket No. 6199).	<i>The Daily Democrat</i> , Oct. 14 and Oct. 15, 1981.	The Honorable Harry O. Walker, Mayor, City of Woodland, 300 First Street, Woodland, CA 95695.	Oct. 13, 1981	060426B.
Colorado: Morgan	City of Brush (FEMA Docket No. 6199).	<i>The Brush News-Tribune</i> , Oct. 14 and Oct. 21, 1981.	The Honorable Raymond M. Paulsen, Mayor, City of Brush, 600 Edison Street, P.O. Box 363, Brush, CO 80723.	Oct. 13, 1981	080130C.
Iowa: Iowa	City of Marengo (FEMA Docket No. 6199).	<i>The Pioneer-Republican</i> , Oct. 15 and Oct. 22, 1981.	The Honorable Otto Maas, Mayor, City of Marengo, 153 East Main Street, Marengo, IA 52301.	Oct. 13, 1981	190157C.
Kansas: Harvey	City of Burton (FEMA Docket No. 6199).	<i>Burton Graphic</i> , Oct. 15 and Oct. 22, 1981.	The Honorable Brian Boston, Mayor, City of Burton, P.O. Box 146, Burton, KS 67020.	Oct. 13, 1981	200130C.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Johnson	City of Gardner (FEMA Docket No. 6199).	<i>The Gardner News</i> , Oct. 14 and Oct. 21, 1981.	The Honorable Phyllis Thomen, Mayor, City of Gardner, 112 South Elm Street, Gardner, KS 66030.	Oct. 13, 1981	200164C.
Texas: Bandera	City of Bandera (FEMA Docket No. 6199).	<i>The Bandera Bulletin</i> , Oct. 15 and Oct. 22, 1981.	The Honorable W. D. Smith, Mayor, City of Bandera, P.O. Box 896, Bandera, TX 78003.	Oct. 13, 1981	480021C.
New Hampshire: Merrimack	Town of Bow (FEMA Docket No. 6199).	<i>The Concord Monitor</i> , Oct. 9 and Oct. 16, 1981.	Ms. Sarah Swenson, Chairman, Board of Selectmen, Town of Bow, 10 Grandview Road, Bow, NH 03301.	Oct. 16, 1981	330107.
Pennsylvania: Chester	Township of Thornbury (FEMA Docket No. 6199).	<i>West Chester Daily Local Times</i> , Oct. 9 and Oct. 16, 1981.	Harold Smithson, Secretary, Thornbury Township Supervisors, P.O. Box 11, Westtown, PA 19395.	Oct. 16, 1981	420290C.
North Carolina: Carteret	Carteret County (FEMA Docket No. 6106).	<i>Carteret County News Times</i> , Nov. 19 and Nov. 26, 1981.	The Honorable Mary Sue Noe, County Commissioner, Carteret County Courthouse, P.O. Drawer 630, Beaufort, NC 28516.	Oct. 19, 1981	370043A.
Alabama: Autauga and Elmore	City of Prattville (FEMA Docket No. 6199).	<i>The Prattville Progress</i> , Oct. 15 and Oct. 22, 1981.	The Honorable C. M. Gray, Mayor, City of Prattville, P.O. Box 277, Prattville, AL 36067.	Oct. 23, 1981	010002C.
Connecticut: Hartford	Town of East Hartford (FEMA Docket No. 6199).	<i>The East Hartford Gazette</i> , Oct. 14 and Oct. 21, 1981.	The Honorable George A. Dagon, Mayor, Town of East Hartford, 740 East Main Street, East Hartford, CT 06108.	Oct. 23, 1981	090026D.
Florida: Orange	City of Apopka (FEMA Docket No. 6199).	<i>The Apopka Chief</i> , Oct. 16 and Oct. 23, 1981.	Mr. Thomas E. Richeson, P. E., P.O. Drawer 1229, Apopka, FL 32703.	Oct. 23, 1981	120180C.
Palm Beach	Village of Palm Springs (FEMA Docket No. 6199).	<i>The Evening Times</i> , Oct. 16 and Oct. 23, 1981.	Mr. Arthur F. Rudford, Director of Public Works, Village of Palm Springs, 226 Cypress Lane, Palm Springs, FL 33461.	Oct. 23, 1981	120223C.
Osceola	City of St. Cloud (FEMA Docket No. 6199).	<i>The St. Cloud Times</i> , Oct. 15 and Oct. 22, 1981.	The Honorable Sarah Lewis, Mayor, City of St. Cloud, City Hall, 1300 9th Street, St. Cloud, FL 32769.	Oct. 23, 1981	120191C.
Illinois: Jersey	City of Grafton (FEMA Docket No. 6199).	<i>Democrat News</i> , Oct. 13 and Oct. 20, 1981.	Honorable Gerald Naim, City of Grafton, Box 251, City Hall, Grafton, IL 62037.	Oct. 23, 1981	170314C.
North Carolina: Cleveland	City of Shelby (FEMA Docket No. 6199).	<i>The Shelby Daily Star</i> , Oct. 16 and Oct. 23, 1981.	The Honorable George W. Clay, Jr., Mayor, City of Shelby, City Hall, P.O. Box 207, Shelby, NC 28150.	Oct. 23, 1981	420245C.
Rhode Island: Bristol	Town of Barrington (FEMA Docket No. 6199).	<i>Barrington Times</i> , Nov. 13 and Nov. 20, 1981.	Mr. Robert J. Schiedler, Town Manager, Town Hall, 283 County Road, Barrington, RI 02808.	Oct. 29, 1981	445382C. (66B).
Minnesota: Roseau	City of Roseau (FEMA Docket No. 6199).	<i>Roseau Times Region</i> , Oct. 20 and Oct. 27, 1981.	Honorable Milton Ameson, City of Roseau, Box 307, Roseau, MN 56751.	Oct. 30, 1981	270414C.
Pennsylvania: Berks	Township of Cumru (FEMA Docket No. 6199).	<i>Reading Eagle Times</i> , Oct. 23 and Oct. 30, 1981.	Edgar I. Zerbe, President-Commissioner, Township of Cumru, R.D. 3005—Welsh Road, Mohnton, PA 19540.	Oct. 30, 1981	420130B.
Illinois: Cook and Lake	Village of Buffalo Grove (FEMA Docket No. 6164).	<i>Buffalo Grove Herald</i> , Nov. 3 and Nov. 10, 1981.	William R. Balling, Village Manager, Village of Buffalo Grove, 50 Raupp Boulevard, Buffalo Grove, IL 60090.	June 11, 1982	170068C.
McHenry	City of Woodstock (FEMA Docket No. 6166).	<i>The Sentinel</i> , Oct. 30 and Nov. 6, 1981.	Dennis Anderson, City Manager, City of Woodstock, P.O. Box 180, 121 West Calhoun Street, Woodstock, IL 60098.	June 11, 1982	170488C.
Indiana: Lake	Town of St. John (FEMA Docket No. 6165).	<i>The Times</i> , Oct. 30 and Nov. 6, 1981.	Hal Foltz, President of Town Board, Town of St. John, 11033 West 93rd Avenue, St. John, IN 46373.	June 11, 1982	180141C.
Minnesota: Hennepin	City of Wayzata (FEMA Docket No. 6167).	<i>Lake Minnetonka Sun</i> , Nov. 4 and Nov. 11, 1981.	Dave Bangasser, City Manager, City of Wayzata, 600 Rice Street, Wayzata, MN 55391.	June 11, 1982	270186C.
Pennsylvania: Dauphin	Township of Lower Swatara (FEMA Docket No. 6168).	<i>The Patriot</i> , Oct. 30 and Nov. 6, 1981.	Frank R. Siffrin, Township Manager, Township of Lower Swatara, 1499 Spring Garden Drive, Middletown, PA 17057.	June 11, 1982	420385C.
Lancaster	Township of West Lampeter (FEMA Docket No. 6169).	<i>Intelligencer Journal</i> , Nov. 2 and Nov. 9, 1981.	Donald T. Horn, Chairman of Township Supervisors, Township of West Lampeter, 1711 Lampeter Road, Lampeter, PA 17137.	June 11, 1982	420566C.
Virginia: Rockbridge	Town of Glasgow (FEMA Docket No. 6170).	<i>The News Gazette</i> , Nov. 4 and Nov. 11, 1981.	R.E. Hostetter, Town Manager, Town of Glasgow, P.O. Box 326, Glasgow, VA 24555.	June 11, 1982	515526B.
California: Riverside	City of Indio (FEMA Docket No. 6179).	<i>Daily News</i> , Nov. 5 and Nov. 6, 1981.	Honorable Roger Harlow, Mayor, City of Indio, 100 Civic Center Mall, P.O. Drawer 1788, Indio, CA 92202.	June 15, 1982	060255C.
Oregon: Lincoln	City of Newport (FEMA Docket No. 6184).	<i>The News-Times</i> , Nov. 4 and Nov. 11, 1981.	Honorable John Breneman, Mayor, City of Newport, 810 S.W. Alder St., Newport, OR 97365.	June 15, 1982	410131C.
Minnesota: Blue Earth	Unincorporated area (FEMA Docket No. 6187).	<i>Mankato Free Press</i> , Nov. 6 and Nov. 13, 1981.	David W. Stevens, Chairman, Blue Earth County Board, County Courthouse, Mankato, MN 56001.	June 18, 1982	275231C.
Kansas: Barton	City of Ellinwood (FEMA Docket No. 6175).	<i>Ellinwood Leader</i> , Nov. 12 and Nov. 19, 1981.	Honorable Jerome E. Huslig, Mayor, City of Ellinwood, P.O. Box 278, Ellinwood, KS 67526.	June 22, 1982	200018C.
North Dakota: Cass	City of Riverside (FEMA Docket No. 6176).	<i>West Fargo Pioneer</i> , Nov. 11 and Nov. 18, 1981.	Honorable David L. Anderson, Mayor, City of Riverside, 108 West Main Ave., Riverside, ND 58078.	June 22, 1982	380316B.
Minnesota: Wright	City of Saint Michael (FEMA Docket No. 6193).	<i>Crow River News</i> , Nov. 18 and Nov. 25, 1981.	Honorable Elmer Eichelberg, Mayor, City of Saint Michael, Saint Michael, MN 55376.	July 2, 1982	270543C.
Ramsey	City of Saint Paul (FEMA Docket No. 6087).	<i>St. Paul Dispatch and Pioneer Press</i> , Nov. 20 and Nov. 27, 1981.	Honorable George Latimer, Mayor, City of St. Paul, 347 City Hall, St. Paul, MN 55102.	July 2, 1982	275246C.
Hennepin	City of Shorewood (FEMA Docket No. 6194).	<i>Lake Minnetonka Sun</i> , Nov. 18 and Nov. 25, 1981.	Douglas Uhrhammer, City Administrator, City of Shorewood, 5755 Country Club Road, Shorewood, MN 55331.	July 2, 1982	270185C.
Hennepin	City of Woodland (FEMA Docket No. 6202).	<i>Lake Minnetonka Sun</i> , Nov. 18 and Nov. 25, 1981.	Mrs. Louise Patridge, City Clerk, City of Woodland, P.O. Box 656, Wayzata, MN 55391.	July 2, 1982	270189C.
Pennsylvania: Allegheny	Township of Harrison (FEMA Docket No. 6203).	<i>Valley News Dispatch</i> , Nov. 26 and Nov. 27, 1981.	George Conroy, President of Supervisors, Township of Harrison, Municipal Drive, Natrona Heights, PA 15065.	July 2, 1982	420041C.
Louisiana: East Baton Rouge Parish	Unincorporated areas (FEMA Docket No. 6178).	<i>Advocate</i> , Nov. 17 and Nov. 18, 1981.	Honorable Pat Screen, President, East Baton Rouge Parish Council, Room 208, Municipal Building, Baton Rouge, LA 70821.	July 6, 1982	220058B.
Arcadia Parish	City of Crowley (FEMA Docket No. 6233).	<i>The Crowley Post-Signal</i> , Dec. 22 and Dec. 23, 1981.	Honorable Robert L. Istre, Mayor, City of Crowley, P.O. Box 1463, Crowley, LA 70526.	July 27, 1982	225195C.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Illinois:					
DuPage.....	City of Wood Dale (FEMA Docket No. 6210).	<i>The Voice</i> , Dec. 16 and Dec. 23, 1981.	Honorable Jerry Greer, Mayor, City of Wood Dale, 404 North Wood Dale Road, Wood Dale, IL 60191.	July 30, 1982.....	170224C.
Stephenson.....	Unincorporated area (FEMA Docket No. 6211).	<i>Freeport Journal Standard</i> , Dec. 11 and Dec. 18, 1981.	Don Pentecost, Chairman, Stephenson County Board, 15 North Galena Street, Freeport, IL 61032.	July 30, 1982.....	170639B.
Pennsylvania: Carbon.....	Township of East Penn (FEMA Docket No. 6212).	<i>The Times News</i> , Dec. 11 and Dec. 18, 1981.	Donald M. Ginder, Chairman, East Penn Township Board of Supervisors, R.D. 6 Box 34A, Lehigh, PA 18235.	July 30, 1982.....	421013B.
Louisiana: East Baton Rouge Parish.....	City of Zachary (FEMA Docket No. 6192).	<i>Advocate</i> , Dec. 30 and Dec. 31, 1981.	Honorable John Womack, Mayor, City of Zachary, P.O. Box 310, Zachary, LA 70791.	Aug. 3, 1982.....	220061B.
South Dakota: Custer.....	City of Custer (FEMA Docket No. 5799).	<i>Custer County Chronicle</i> , Dec. 31, 1981, and Jan. 7, 1982.	Honorable Annella Wright, Mayor, City of Custer, 622 Crook Street, Custer, SD 57730.	Aug. 10, 1982.....	460019C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: May 5, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

(FR Doc. 82-13536 Filed 5-19-82; 8:45 am)

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 6307]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of

property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or June 21, 1982, whichever is later.

FOR FURTHER INFORMATION CONTACT: Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by

floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001-4128).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information or regarding the completed stages of engineering tasks in delineating the special flood hazard areas of the specified community. This rule imposes no new requirements or regulations on participating communities.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

EFFECTIVE DATE: MAY 7, 1982

State	Identification No.	Community name and county name	Panels printed (No. and suffix)	Inland and coastal	Hazard	60.3 code	Program status	Status of		Previous map dates		Revision code(s)	Rescission	Floodways panels printed	Location of map repository
								FHBM	FIRM	FHBM	FIRM				
1	2	3	4	5	6	7	8	9	9	10	10	11	12	13	14
MI	260012	City of Au Gres, Arenac County.	0001B		I	FL	B	1	3	1	6/7/74, 3/5/76.	N/A	9, 10, 16.	N/A	Edward Tarnosky, Mayor, P.O. Box 121, 124 W. Huron Road, Au Gres, MI 48703, 517-867-8811.
PA	421875	Township of Shenango, Mercer County.	0001B, 0002B		I	FL	B	1	3	1	5/17/74, 5/14/76.	N/A	9, 10, 16.	N/A	K. Scott Campbell, Chairman, TWP Board of Supervisors, RD 2, Box 536, West Middlesex, PA 16150, 412-528-9571.

EFFECTIVE DATE: MAY 14, 1982

VA	510250	Westmoreland County	0001A-0006A		I	FL	B	1	3	1	7/18/75	N/A	9, 10, 16.	N/A	Thomas V. Finan, Chief Exe., Westmoreland Co. Courthouse, P.O. Box 467, Montross, VA 22520, 804-493-8911.
WI	550576	Langlade County	0001A-0010A		I	FL	B	1	2	1	N/A	N/A	N/A	N/A	James Mabry, Zoning Adm., Courthouse, 800 Clermont Street, Antigo, WI 54409, 715-623-2417.
NY	360985	Village of Attica, Wyoming County.	0001B		I	FL	B	1	3	1	5/24/74, 6/11/76.	N/A	10	N/A	Honorable Dale Stocum, Mayor, 9 Water Street, Attica, New York 14011.
NC	370432	Town of River Bend, Craven County.	0005A		I	FL	B	1	2	1	N/A	N/A	N/A	N/A	Mayor Daniel T. DeBow, 50 Shoreline Drive, New Bern, NC 28560.

EFFECTIVE DATE: MAY 21, 1982

NY	361099	Town of Cuba, Allegany County.	0005A, 0010A, 0015A, 0020A		I	FL	B	1	3	1	1/24/75	N/A	9, 10	N/A	Ernst Wadsworth, Town Supervisor, 5 Bull Street, Cuba, New York 14727.
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EFFECTIVE DATE: MAY 25, 1982

OR	410018	City of Lake Oswego, Clackamas, Multnomah, and Washington Counties.	0001B-0004B		I	FL	B	1	3	1	6/14/74, 6/11/76.	N/A	8, 9, 10.	N/A	Mayor C. Herald Campbell, P.O. Box 368, Lake Oswego, OR, 503-636-3601.
OK	400496	Pottawatomie County, unincorporated areas.	0001A-0011A		I	FL	B	4	2	1	N/A	N/A	N/A	N/A	Lloyd Rogers, Chairman, County Commissioners, Pottawatomie Co. Courthouse, Shawnee, OK 74801, 405-273-4305.

EFFECTIVE DATE: MAY 28, 1982

MI	260201	City of Marysville, St. Clair County.	0001B		I	FL	B	1	3	1	3/15/74, 4/30/76.	N/A	9, 10, 16.	N/A	Mayor Joseph S. Johns, 1111 Delaware Ave., Marysville, MI 48040, 313-364-6613.
OH	390294	Jefferson County, unincorporated areas.	0001B-0007B		I	FL	B	1	3	1	6/10/77	N/A	9, 10, 16.	N/A	Edward Swiger, Chairman, County Commissioners, 3rd & Market Street, Steubenville, OH 43952, 614-283-4111.
VA	510236	Brunswick County, unincorporated areas.	0001A-0008A		I	FL	B	1	3	1	4/11/75	N/A	9, 10, 16.	N/A	Mike Whitby, County Administrator, P.O. Box 399, Lawrenceville, VA 23868, 804-848-3107.

Community Map Actions

(Codes: Where no entry is necessary use N/A)

Column Code:

- Two letter state designator
- FIA Community 6-digit identity number
- Community name, County(ies) name
- Four digit number and suffix of each FIRM or FHBM panel printed
- INL/coast:

- I=Inland
C=Coastal
6. Hazard:
FL=Flood
MS=Mudslide
ER=Erosion
NF=Non Flood Prone
MF=Minimally Flood Prone
7. 60.3 Code:
A=Special Hazard not defined, no elevation data (No FHBM)
B=Special Hazard Designated, no elevation data (FHBM)

C=FIRM, No Floodway or Coastal High Hazard

D=FIRM, Regulatory Floodway Designated¹E=FIRM, Coastal High Hazard¹

8. Program status:

- Emergency
- Regular
- Not participating, no map
- Not participating, with map
- Withdraw

¹ Dual entry is available.

- 6=Suspended
- 9. FHB status:
 - 1=Never mapped
 - 2=Original
 - 3=Revised
 - 4=Rescinded
 - 5=Superseded by FIRM
- 9. FIRM status:
 - 1=Never mapped
 - 2=Original
 - 3=Revised
 - 4=Rescinded
 - 5=All zone C—no published FIRM
 - 6=All zone A and C—no elevations determined
- 10. Dates of all previous maps
- 11. Revision codes:
 - 1. 1916 BFE (Base Flood Elevation) Decrease
 - 2. 1916 BFE Increase
 - 3. 1916 SFHA (Special Flood Hazard Area) Change
 - 4. Change of Zone Designation; revised FIRM
 - 5. Curvilinear
 - 6. 1914 Incorporation
 - 7. 1914 Discorporation
 - 8. 1914 Annexation
 - 9. SFHA Reduction
 - 10. Non-1916 SFHA Increase Without Numbered Zones
 - 11. Non-1916 SHFA Increase with Numbered Zones
 - 12. Drafting Correction; Printing Errors
 - 13. Suffix Change ONLY
 - 14. Change to Uniform Zone Designations (7/1/74)
 - 15. Revisions Withdrawn
 - 16. Refunds Possible
 - 17. Letter of Map Amendment (1916)
 - 18. Letter of Map Amendment (1916 without Federal Register publication)
 - 19. Federal Register Omission
 - 20. Attention. A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
 - 21. Miscellaneous
- 13. List of Numbered Floodway Panels Printed
- 14. Address of Community Map Repository (44 CFR section 64.3)

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 30, 1982.

Lee M. Thomas,
Associate Director, State and Local Programs and Support.

[FR Doc. 82-13537 Filed 5-19-82; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 54, 56, 58, and 61

[CGD 77-147]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME U or UM Symbol Stamp for Pressure Vessels, Fittings, and Accumulators

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations require classes I, II, and III pressure vessels not containing hazardous materials to be inspected and stamped in accordance with the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code. They replace previous requirements for plan approval and shop inspection by the Coast Guard. The regulations also require (1) certification of pressure vessel design drawings and analyses by a registered professional engineer, (2) Coast Guard inspection of completed pressure vessels prior to installation and (3) compliance with certain requirements that are optional under the ASME Code. Several pressure vessel manufacturers have requested a changeover to ASME inspection and stamping because of frequent delays involved in having plan approval and shop inspections performed by the Coast Guard. ASME inspectors are more readily available to perform shop inspections in a timely manner, and the use of registered professional engineers to certify plans will minimize the time needed for Coast Guard pre-installation inspections.

EFFECTIVE DATE: These regulations become effective on June 21, 1982.

ADDRESS: A copy of the final evaluation for these regulations may be obtained from Commandant (G-CMC/TP24), (CGD 77-147), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Hime, c/o Commandant (G-MMT-TP12), U.S. Coast Guard, Washington, D.C. 20593 (202) 426-2160.

SUPPLEMENTARY INFORMATION: On December 29, 1980, the Coast Guard published a proposal in the Federal Register (45 FR 85488) concerning these regulations. Interested persons were given an opportunity to submit written comments and 12 comments were received.

Drafting Information

The principal persons involved in drafting these rules are Mr. Howard

Hime, Office of Merchant Marine Safety, and Mr. William R. Register, Office of the Chief Counsel.

OMB Control Number

Information collection requirements contained in this regulation (§§ 54.01-(d)(1), -5(e), and 54.10-25(c)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2130-0181.

Discussion of Comments

General

1. Two commenters suggested that certification by the American Bureau of Shipping (ABS) be included as an alternative to ASME inspection and stamping of pressure vessels or that ABS Surveyors be allowed to perform inspections to determine compliance with ASME requirements. Several meetings have been held with ABS to discuss these possibilities. However, at present, ABS does not have procedures that are equivalent to ASME procedures for shop inspection and stamping or for examining, certifying, and monitoring the performance of inspectors. When equivalent procedures are developed, ABS will be considered for inclusion as an alternative to ASME inspection and stamping.

2. One commenter suggested that, in lieu of requiring ASME inspection and stamping, it should be made an option to Coast Guard shop inspection and stamping. Almost all U.S. pressure vessel manufacturers, (more than 99%), and many foreign manufacturers are authorized to apply the ASME stamp, and, as a result, Coast Guard inspectors would not often be used. Also, there will be few Coast Guard inspectors available to perform this function. However, specific requests to apply Coast Guard requirements in lieu of ASME requirements could be authorized by an Officer in Charge, Marine Inspection (OCMI) under other regulations in Title 46, CFR, that allow equivalencies. The Title 46 regulations that allow equivalencies include §§ 30.15-1, 70.15-1, 90.15-1, 108.105, 175.15-1, and 188.15-1.

3. One commenter suggested that the proposed regulations be extended to include cargo tanks regulated under 46 CFR Part 151. This suggestion has not been adopted. Part 151 applies to unmanned tank barges used for the transportation of liquids or liquefied gases which have dangerous characteristics or flammability or combustibility characteristics. As stated

in the preamble to the notice of proposed rule making, continued Coast Guard plan review and shop inspection is needed for these cargo tanks since ASME inspection and stamping would not verify compliance with the additional safety requirements imposed by 46 CFR Part 54 for pressure vessels containing materials regulated under Part 151.

4. One commenter recommended that Mobile Offshore Drilling Units (MODU's) be exempt from the requirements in §§ 54.01-5(d)(2), 54.01-5(d)(6), and 54.01-5(d)(7). The commenter stated that the petroleum industry is generally unfamiliar with these requirements, which poses a potential compliance problem. This recommendation has not been adopted. The requirements referenced by the commenter represent general safety measures that in large part the petroleum industry is already following voluntarily. The cost to comply with the requirements is expected to be minimal.

Specific Regulations

5. *Section 54.01-5(c)(2)*. One commenter stated that the term "dangerous substances" in the proposed rules was not clear and recommended that the term "hazardous materials" be used instead. This recommendation has been adopted. The term "hazardous materials" is defined in 46 CFR 150.115 (45 FR 70264) and includes flammable and combustible liquids as defined in 46 CFR Part 30, materials regulated under 46 CFR Subchapter O, and liquids, liquified gases, and compressed gases as listed in 49 CFR 172.101. These are the same substances as those described in old § 54.01-5 as "dangerous articles, substances, or combustible liquids."

6.a. *Section 54.01-5(d) and -5(e)*. One commenter questioned the need to have a registered professional engineer certify that pressure vessel design drawings comply with the ASME Code. According to the commenter, an authorized inspector under the ASME Code certifies that the pressure vessel complies with the Code. The authorized inspector is only required to assure (1) that the pressure vessel is fabricated, tested, and inspected in accordance with the ASME Code and the design drawings and (2) that, if certain options are selected such as full radiography, they meet the requirements of the Code. The authorized inspector is not required to review the design drawings to determine compliance with ASME design requirements. Likewise, the inspector is not required to check for compliance with the regulations in § 54.01-5(d) (i.e., the inspector is not responsible for judging the adequacy of

the pressure vessel for its intended service nor for assuring the proper selection of the various options permitted by the ASME Code, such as, full radiography of welds in lieu of spot radiography or no radiography). Accordingly, as a check for compliance with the design requirements of the ASME Code and the requirements of section 54.01-5(d), the plans are required to be certified by a registered professional engineer.

6.b. One commenter believed that certification of design drawings by a registered professional engineer is an increase in the existing requirements for pressure vessels used on MODU's. This certification is an existing requirement, as stated in 46 CFR 58.60-11.

7. *Section 54.10-3(c)*. One commenter questioned the need for a pressure vessel to be examined by a Coast Guard marine inspector prior to installation. The commenter stated that this represents a duplication of effort since the pressure vessel is also inspected by an authorized inspector under the ASME Code. As explained in paragraph 6 above, the authorized inspector is not required to verify compliance with the requirements in § 54.01-5(d). The purpose of the Coast Guard inspection is to check for general compliance with the regulations, with emphasis on verification that the pressure vessel was in fact constructed in accordance with the requirements in § 54.01-5(d). The inspection also includes a visual check on whether the pressure vessel was damaged during transportation.

8. *Section 54.10-25*. One commenter questioned the need to provide both the Coast Guard data report forms as well as manufacturer's report forms. The commenter misinterpreted the proposal. Only one set of forms is required. If a pressure vessel is shop inspected by the Coast Guard, the data report forms provided by the Coast Guard are required. If a pressure vessel is inspected by an authorized inspector under the ASME Code, manufacturer's data report forms are required in lieu of Coast Guard forms.

9. *Section 58.30-25(a)*. One commenter requested that accumulators be exempt from ASME inspection and stamping. The commenter argued that the lead time to make design modifications in accordance with ASME requirements would take 12 to 18 months. As stated in paragraph 11 of the preamble to the NPRM, § 58.30-25(a) provides ASME inspection and stamping as an option to existing requirements for accumulators. Coast Guard plan approval and inspection has been retained as an option for accumulators.

10. *Section 61.10-5*. One commenter asked why § 61.10-5 requires periodic examination of Coast Guard stamped pressure vessels but not of an ASME stamped pressure vessel. The commenter misinterpreted the proposal. ASME stamped pressure vessels are also stamped with the Coast Guard symbol in accordance with § 54.10-3(c), and § 61.10-5 requires that they likewise be examined periodically.

Economic Evaluation and Record Keeping

These regulations are considered to be nonsignificant and, accordingly, a final evaluation has been prepared and placed in the public docket as required by the Department of Transportation's Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). These regulations have also been evaluated under the terms of Executive Order 12291 and have been determined not to be major rules.

As stated in the final evaluation, these rules will result in an approximate annual dollar savings of \$0.59 million for manufacturers and \$0.23 million for the Coast Guard. The expected benefit of these rules, in addition to the \$0.82 million annual saving, will be the substantial amount of time saved by manufacturers in obtaining required inspections of pressure vessels. Also, Coast Guard inspectors will acquire more time in which to perform required inspections of other types of marine equipment that cannot effectively be inspected by independent parties.

The NPRM was published before January 1, 1981, and, accordingly, the rule making is exempt from the Regulatory Flexibility Act (Pub. L. 96-354; 94 Stat. 1164; 5 U.S.C. 601-612). However, the requirements of the Act were taken into consideration and these regulations are not expected to have a significant economic impact on a substantial number of small entities which, for purposes of this rule making, consists of small pressure vessel manufacturers. As explained in the final evaluation, most manufacturers, both large and small, already hold the ASME stamp needed to comply with these regulations. However, for the few manufacturers who are not currently authorized to apply the ASME stamp, the cost to obtain one (\$5,000 for small manufacturers up to approximately \$20,000 for large manufacturers) is marginal compared to overall business costs. Also, some small manufacturers who, unlike larger concerns, do not have a registered professional engineer (PE) in their organization will incur some

increased costs to hire a registered PE to review and certify design drawings in accordance with these regulations. However, the total time and dollar savings for manufacturers, both large and small, associated with these regulations should be less than the time and money involved to obtain Coast Guard plan approval and shop inspection under the old requirements.

An analysis of the record keeping requirements in these regulations was conducted under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The analysis shows that 5252 documents were required to be submitted annually to the Coast Guard under the old requirements. The requirements as revised in this rule making reduce the annual reporting burden from 5252 documents down to 1312 documents.

List of Subjects 46 CFR Parts 50, 54, 56, 61

Vessels, Marine safety, 46 CFR Part 58.

Vessels, Oil and gas exploration, Marine safety.

In consideration of the foregoing, the Marine Engineering Regulations in Subchapter F of Title 46, Code of Federal Regulations, are amended as follows:

PART 50—GENERAL PROVISIONS

1. The authority citation for Part 50 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); section 3, 70 Stat. 152, as amended (46 U.S.C. 390b); section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); section 17, 54 Stat. 166 (46 U.S.C. 526p); section 2, Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); section 3, 68 Stat. 675 (50 U.S.C. 198); section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

§ 50.05-1(e) [Amended]

2. In § 50.05-1(e) remove the words "§ 54.01-16 and".

3. Revise § 50.15-5(c) to read as follows:

§ 50.15-5 ASME boiler and pressure vessel code.

(c) Except as required in § 54.01-5 of this chapter, manufacturers constructing boilers, pressure vessels, and safety valves for installation on vessels subject to the regulations in this subchapter

need not hold the applicable ASME Code symbol stamps.

PART 54—PRESSURE VESSELS

4. The authority citation for Part 54 is revised to read as follows:

Authority: section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); section 3, 70 Stat. 152, as amended (46 U.S.C. 390b); section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); section 17, 54 Stat. 166 (46 U.S.C. 526p); section 2, Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); section 3, 68 Stat. 675 (50 U.S.C. 198); section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

§ 54.01-1 [Amended]

5. In § 54.01-1, remove the last sentence of paragraph (a) and remove paragraph (a)(1).

6. Revise § 54.01-5 to read as follows:

§ 54.01-5 Scope (modifies U-1 and U-2).

(a) This part contains requirements for pressure vessels. Table 54.01-5(a) gives a breakdown by parts in this subchapter of the regulations governing various types of pressure vessels, boilers, and thermal units.

(b) Pressure vessels are divided into Classes I, I-L (low temperature), II, II-L (low temperature), and III. Table 54.01-5(b) describes these classes and sets out additional requirements for welded pressure vessels.

(c) The requirements for pressure vessels by class are as follows:

(1) Class I-L and II-L pressure vessels must meet the applicable requirements in this part.

(2) Pressure vessels containing hazardous materials as defined in § 150.115 of this chapter must meet the requirements of this part or, as applicable, the requirements in 49 CFR Parts 171-177 or Part 64 of this chapter.

(3) Except as provided in paragraph (c)(4) of this section, Classes I, II, and III pressure vessels not containing hazardous materials must be designed and constructed in accordance with the requirements in Section VIII, division 1, of the ASME Code and must be stamped with the ASME "U" symbol. These pressure vessels must also comply with the requirements that are listed or prescribed in paragraphs (d) through (g) of this section. Compliance with other provisions in this part is not required.

(4) Classes II and III pressure vessels that have a net internal volume of less than 0.14 cubic meters (5 cubic feet) and do not contain hazardous materials must

be stamped with either the ASME "U" or "UM" symbol. Compliance with other provisions in this part is not required.

(d) Pressure vessels described in paragraph (c)(3) of this section must—

(1) Have detailed plans that include the information required by § 54.01-18 (approved by the Office of Management and Budget under OMB control number 2130-0181);

(2) Meet § 54.01-35 and § 54.25-3;

(3) Have pressure relief devices required by subpart 54.15;

(4) Meet the applicable requirements in §§ 54.10-3, 54.10-20, and 54.10-25 for inspection, reports, and stamping;

(5) If welded, meet the post weld heat treatment and minimum joint and radiography requirement in Table 54.01-5(b);

(6) If a heat exchanger, meet § 54.01-2; and

(7) If a steam generating pressure vessel, meet § 54.01-10.

(e) The plans required by paragraph (d)(1) of this section must be certified by a registered professional engineer to meet the design requirements in paragraph (d) of this section and in section VIII, division 1, of the ASME Code. The certification must appear on all drawings and analyses. The plans must be made available to the Coast Guard prior to the inspection required by § 54.10-3(c). (Approved by the Office of Management and Budget under OMB control number 2130-0181.)

(f) If a pressure vessel has more than one independent chamber and the chambers have different classifications, each chamber must, as a minimum, meet the requirements for its classification. If a single classification for the entire pressure vessel is preferred, the classification selected must be one that is required to meet all of the regulations applicable to the classification that is not selected. For example, if one chamber is Class I and one chamber is Class II-L, the only single classification that can be selected is Class I-L.

(g) The design pressure for each interface between two chambers in a multichambered pressure vessel must be—

(1) The maximum allowable working pressure (gauge) in the chamber with the higher pressure; or

(2) If one chamber is a vacuum chamber, the maximum allowable working pressure (absolute) in the other chamber minus the least operating pressure (absolute) in the vacuum chamber.

7. Revise the heading of Table 54.01-5(b) to read as follows:

Table 54.01-5(b)—Pressure Vessel Classification

(Special heat exchanger requirements excluded, see § 54.01-2)

8. In Table 54.01-5(b) add a reference to footnotes 6 and 7 after the phrase "Minimum joint requirements¹". As revised, the phrase reads "Minimum joint requirements^{1, 6, 7}".

9. In Table 54.01-5(b) add a reference to footnote 7 after the phrases "Minimum radiography requirements, section VIII, ASME Code" and "Post Weld heat treatment required⁵". As revised, the phrases read "Minimum radiography requirements, Section VIII, ASME Code⁷" and "Post weld heat treatment required^{5, 7}".

10. In Table 54.01-5(b) add a reference to footnote 4 after the word "yes" the first time it appears under the column entitled "Shop Inspection Required", and the first time it appears under the column entitled "Plan Approval Required", to denote that certain Class I pressure vessels are exempt from plan approval and shop inspection.

11. Add new footnotes 6 and 7 to Table 54.01-5(b) to read as follows:

⁶ A butt-welded joint with one plate edge offset (see Figure UW-13.1(k) and table UW-12 of the ASME Code) may only be used in the fabrication of Class II and III pressure vessels.

⁷ These requirements apply only to welded pressure vessels.

12. In Table 54.01-5(b) replace the term "dangerous substances" everywhere it appears with the term "hazardous materials."

13. Revise the heading and paragraph (a)(4) in § 54.01-15 to read as follows:

§ 54.01-15 Exemptions from shop inspection and plan approval (replaces U-1(c) (6) through (9)).

(a) * * *

(4) Class I, II, and III pressure vessels that meet the requirements of § 54.01-5(c)(3), and -5(c)(4).

§ 54.01-16 [Removed]

14. Remove § 54.01-16.

15. Remove the second sentence in § 54.10-3(b).

16. Add a new § 54.10-3(c) to read as follows:

§ 54.10-3 Marine inspectors (replaces UG-90 and UG-91, and modifies UG-92 through UG-103).

* * * * *

(c) Pressure vessels described in § 54.01-5(c)(3), except pressure vessels in systems regulated under § 58.60 of this chapter, must be visually examined by a marine inspector prior to installation. The marine inspector also

reviews the associated plans and manufacturers' data reports. If, upon inspection, the pressure vessel complies with the applicable requirements in § 54.01-5, the marine inspector stamps the pressure vessel with the Coast Guard Symbol.

§ 54.10-17 [Removed]

17. Remove § 54.10-17.

18. Revise § 54.10-20(a) to read as follows:

§ 54.10-20 Marking and stamping.

(a) *Pressure vessels (replaces UG-118, except paragraph (k), and UG-118).* Pressure vessels that are required by § 54.10-3 to be stamped with the Coast Guard Symbol must also be stamped with the following information:

* * * * *

(4) Maximum allowable working pressure —kPa (—psig) at —C (—F).

(5) Class.

(6) Minimum service temperature allowed, if below -18 C (0 F)

(7) Water capacity in liters (U.S. gallons), if a cargo carrying pressure vessel.

* * * * *

§ 54.10-20 [Amended]

19. In § 54.10-20(c)(1), insert the words "Coast Guard shop" after the word "requiring".

20. Add a new § 54.10-25(c) to read as follows:

§ 54.10-25 Manufacturers' data report forms (modifies UG-120).

* * * * *

(c) If a pressure vessel is required to be inspected in accordance with § 54.10-3(c), the manufacturer's data reports required by UG-120 must be made available to the Coast Guard inspector for review prior to inspection of the pressure vessel. (Approved by the Office of Management and Budget under OMB control number 2130-0181).

21. In § 54.20-2, revise the heading and paragraphs (a) and (b) as follows:

§ 54.20.2 Fabrication for hazardous materials (replaces (UW-2(a))).

(a) Pressure vessels containing hazardous materials as defined in section 150.115 of this chapter must be of the class and construction required by Subchapters D, I, O, or, when not specified, of a class determined by the Commandant.

(b) Class III pressure vessels must not be used for the storage or stowage of hazardous materials unless there is specific authorization in Subchapters D, I, or O.

§ 54.20-3 [Reserved]

22. Remove and reserve § 54.20-3(c).

§ 54.20-10 [Removed]

23. Remove § 54.20-10.

PART 56—PIPING SYSTEMS AND APPURTENANCES

24. The authority citation of Part 56 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); Section 3.70 Stat. 152, as amended (46 U.S.C. 390b); Section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); Section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); Section 17, 54 Stat. 166 (46 U.S.C. 526p); Section 2 Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295f [c](2)); Section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); Section 3, 68 Stat. 675 (50 U.S.C. 198); Section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

25. In § 56.15-1, revise paragraphs (e) and (f) as follows:

§ 56.15-1 Fittings.

* * * * *

(e) The following requirements apply to nonstandard fluid conditioner fittings which do not contain hazardous materials:

(1) The nonstandard fluid conditioner fittings listed below must meet the applicable requirements in § 54.01-5 (c)(3), (c)(4), and (d) of this chapter or the remaining provisions in Part 54, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (6 inches) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

* * * * *

(f) Nonstandard fluid conditioner fittings rated above 103 kPa (15 psig), that contain hazardous materials as defined in § 150.115 of this chapter must meet the applicable requirements of Part 54 this chapter, except Subpart 54.10.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

26. The authority citation for Part 58 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); Section 3, 70 Stat. 152, as amended (46 U.S.C.

390b); Section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); Section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); Section 17, 54 Stat. 166 (46 U.S.C. 526p); Section 2, Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); Section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); Section 3, 68 Stat. 675 (50 U.S.C. 198); Section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

27. Revise the second sentence in § 58.30-25(a) to read as follows:

§ 58.30-25 Accumulator.

(a) * * * Accumulators must meet the applicable requirements in § 54.01-5 (c)(3), (c)(4), and (d) of this chapter or the remaining requirements in Part 54.

§ 58.60-3 [Amended]

28. In § 58.60-3, delete the citation "§ 54.01-16" and insert in its place the words "the applicable requirements in § 54.01-5 of this chapter".

PART 61—PERIODIC TESTS AND INSPECTIONS

29. The authority citation for Part 61 is revised to read as follows:

Authority: Section 5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); Section 3, 70 Stat. 152, as amended (46 U.S.C. 390b); Section 5, Pub. L. 95-474, 92 Stat. 1480 (46 U.S.C. 391a); Section 1, Pub. L. 85-739, 72 Stat. 833, as amended (46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 411); R.S. 4462, as amended (46 U.S.C. 416); Section 1, Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); Section 17, 54 Stat. 166 (46 U.S.C. 526p); Section 2, Pub. L. 96-453, 94 Stat. 207 (46 U.S.C. 1295F(c)(2)); Section 4, 67 Stat. 462 (43 U.S.C. 1333(d)); Section 3, 68 Stat. 675 (50 U.S.C. 198); Section 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46.

§ 61.10-5 [Amended]

30. In the first sentence of § 61.10-5(b), delete the words "Pressure vessels that required initial shop inspection and pressure vessels that are accepted under § 54.01-16" and insert in their place the words "Pressure vessels that are stamped with the Coast Guard symbol and pressure vessels in systems regulated under Subpart 58.60 of this subchapter".

31. Revise § 61.10-5(e)(6) to read as follows:

(e) * * *
(6) Pressure vessels not stamped with the Coast Guard Symbol.

32. In the first sentence of § 61.10-5(h)(1), remove the words "have been pneumatically tested during shop inspection" and insert in their place the

words "that were pneumatically tested before being stamped with the Coast Guard Symbol".

Dated: May 14, 1982.

Clyde T. Lusk, Jr.,
Rear Admiral, Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82-13615 Filed 5-19-82; 9:45 am]

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Maritime Administration

46 CFR Part 310

Admission and Training of Midshipmen at the United States Merchant Marine Academy

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MarAd) is amending its regulations relative to merchant marine training at the United States Merchant Marine Academy (Academy) to conform the regulations to the provisions of the recently effective Maritime Education and Training Act of 1980 (Pub. L. 96-453), including the requirement for a service obligation contract for students enrolled after April 1, 1982.

EFFECTIVE DATE: The regulations will be effective on May 19, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Erich J. Bernhardt, Academies Program Officer, Maritime Administration, Office of Maritime Labor and Training, Room 7306, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Phone—(202) 426-5766.

SUPPLEMENTARY INFORMATION: The Maritime Education and Training Act of 1980 (Pub. L. 96-453) contains a number of key provisions which need to be incorporated in the Academy regulations. The following text sums up the substantive changes MarAd is making to conform the regulations to the requirements of the statute.

Section 310.53 Nominations and vacancies.—This revision states that nominating officials may only nominate candidates who are residents of their States. It also reflects the fact that up to 40 additional appointments may be made by MarAd annually.

Section 310.54 General requirements for eligibility.—Twenty-five (25) years of age is established as the new maximum age for admission to the Academy. Also, a candidate who is conditionally appointed to the Academy pending completion of a Navy security and suitability investigation will be subject

to separation if the investigation establishes failure to meet the requirements for appointment as Midshipman, U.S. Naval Reserve.

Section 310.55 Scholastic requirements.—A new provision would give proper consideration to a candidate's post high school scholastic record.

Section 310.57 Application and selection of midshipmen.—A new provision would clarify that no special preference will be granted in the selection process to individuals with family members who are alumni of the Academy.

Section 310.58 Service obligation for students enrolled after April 1, 1982.—The amendments provide that, as a condition of admission, students enrolled after April 1, 1982, shall sign a service obligation contract. The obligations are: Complete the course of instruction at the Academy; fulfill the requirement for a license as a merchant marine officer in the U.S. merchant marine; maintain a license as such an officer for six (6) years following graduation; apply for, and accept if tendered, a commission in the U.S. Naval Reserve (including Merchant Marine Reserve); and serve the foreign and domestic commerce and the national defense of the United States for at least five (5) years following graduation, either as a merchant marine officer, or in a uniformed service of the United States. Failure to meet these obligations could lead to induction in the armed forces. There is a waiver provision that may apply in cases of undue hardship and impossibility of performing the service obligation due to accident, illness or other justifiable reason. Also, in exceptional cases, MarAd may grant a deferment of all or part of the service commitment for a period not to exceed two years to students enrolling in the marine or maritime-related graduate course of study approved by the Administrator. Deferments would only be granted to students with superior academic and conduct records while at the Academy.

We are defining a satisfactory year of service at sea for a merchant marine officer which is based on the approximate period of service for the industry as a whole.

Section 310.66 Foreign students.—The revision reflects the fact that under Pub. L. 96-453 the President may designate twelve (12) individuals from nations located in the Western Hemisphere, other than the United States, to receive instruction at the Academy. This section would also provide for the enrollment of an

additional thirty (30) qualified individuals from nations other than the United States. Unlike the foregoing twelve (12) appointments from the Western Hemisphere, these thirty (30) appointments would not be scholarships, and the foreign nations are required to reimburse MarAd for the costs. The thirty (30) appointments would require approval by both the Secretary of State and MarAd. This section is further revised to provide that the amount of reimbursement shall be the incremental cost of providing instruction to such foreign students, rather than the fully allocated cost. This method of reimbursement protects the interests of the U.S. Government in that it covers the total out-of-pocket costs incurred in providing instruction to these students, makes the use of training opportunity more attractive to friendly foreign nations, and advances the purpose intended by Congress.

The Maritime Administrator has made a determination, pursuant to the provisions of Executive Order 12291, that this is not a major rule that requires the preparation of a regulatory impact analysis. Pursuant to DOT Order 2100.5, this is a significant regulation for which a regulatory evaluation has been prepared and will be placed in the rulemaking docket and made available upon request. Please send request in writing to Mr. Erich J. Bernhardt, Academies Program Officer, Maritime Administration, Office of Maritime Labor and Training, Room 7302, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Phone—(202) 426-5766.

Good cause exists for publication of the revision of this regulation as a final rule, without opportunity for public comment and effective immediately, pursuant to provisions of 5 U.S.C. 553. The Congressional nomination process for the Academy has been completed. It is imperative that the final regulations be in place to reflect the requirements of Pub. L. 96-453 so that every Member of Congress and the other nominating officials may adequately inform his or her constituents of the new eligibility requirements and the service obligation. Further, it is essential to the Academy to provide guidance to nominees and make selections and notify principal candidates by May 1, 1982, the customary date for notification. Accordingly, notice and public procedure thereon are impracticable. Since there is no requirement for a notice of proposed rulemaking, the Maritime Administrator certifies that the regulation is not subject to the Regulatory Flexibility Act of 1980 (Pub.

L. 96-354). MarAd will develop specific reporting requirements for Academy graduates in light of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which will be subject to approval by the Office of Management and Budget.

List of Subjects in 46 CFR Part 310

Grant programs—Education, Schools, Seamen.

Accordingly, Subpart C is revised to read as follows:

PART 310—MERCHANT MARINE TRAINING

* * * * *

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

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| 310.67 | Academy regulations. |

Authority: Secs. 204(b) and 1301-1308, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114 and 1295-1295g); Maritime Education and Training Act of 1980 (Pub. L. 96-453); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 842), as amended by Pub. L. 91-469 (84 Stat. 1036); Pub. L. 97-31 (95 Stat. 151); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

§ 310.50 Purpose.

The regulations in this subpart govern the nomination, admission and appointment of midshipmen to the United States Merchant Marine Academy.

§ 310.51 Definitions.

(a) "Academy" means the United States Merchant Marine Academy.

(b) "Act" means the Maritime Education and Training Act of 1980, Pub. L. 96-453, 94 Stat. 1997, 46 U.S.C. 1295-1295g.

(c) "Administration" means the Maritime Administration, Department of Transportation.

(d) "Administrator" means the Administrator of the Maritime Administration.

(e) "Citizen" means an individual who, by birth or naturalization, owes national allegiance to the United States, but the term excludes United States nationals.

(f) "Foreign student" means an individual who owes national allegiance to a country or political entity other than the United States, and the term includes United States nationals.

(g) "NOAA" means the National Oceanic and Atmospheric Administration.

(h) "USNR" means the United States Naval Reserve.

§ 310.52 General.

(a) Midshipmen are appointed to the Academy for training to prepare them to become officers in the U.S. merchant marine. The Academy, located at Kings Point, New York, is maintained by the Government as a part of the Administration. After successful completion of the 4-year course of study, a graduate of the Academy shall receive a Bachelor of Science degree and a merchant marine license as either a third officer or third assistant engineer (or both licenses upon completion of a special curriculum and passing the respective license examinations) issued by the U.S. Coast Guard. If qualified, a graduate may be commissioned as an officer in a reserve component of an armed force of the United States.

(b) Midshipmen entering the Academy after April 1, 1982, are required by the Act to sign an agreement committing them to service obligations following the date of graduation. The terms of the service obligation contract are set forth in § 310.58 of this subpart.

§ 310.53 Nominations and vacancies.

(a) *Nominating officials.* (1) Each Senator and Member of the House of Representatives (including delegates from Guam, the Virgin Islands and the District of Columbia and the Resident Commissioner from Puerto Rico), the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office) may nominate ten (1) candidates to compete for admission to the Academy.

(2) In accordance with the Act (46 U.S.C. 1295b (b)(1)), nominating officials may only nominate candidates who are

residents of the State or other geographic area which the particular nominating official represents, as follows:

The candidate must be a resident of—	To be nominated by—
The State.....	A Member of the U.S. Senate representing that State.
The State.....	A Member of the U.S. House of Representatives whose Congressional District is located in that State.
Guam.....	The Delegate to the U.S. House of Representatives representing Guam.
Virgin Islands.....	The Delegate to the U.S. House of Representatives representing the Virgin Islands.
District of Columbia.....	The Delegate to the U.S. House of Representatives representing the District of Columbia.
Commonwealth of Puerto Rico.....	The Resident Commissioner to the United States from Puerto Rico.
American Samoa.....	The Governor of American Samoa (until a Delegate to the U.S. House of Representatives representing American Samoa takes office).
Any area or installation located in the Republic of Panama which is made available to the United States pursuant to the (i) the Panama Canal Treaty of 1977, (ii) the agreements relating to and implementing the Treaty signed September 7, 1977, and (iii) the Agreement between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1978; <i>Provided</i> , That no residence in the Republic of Panama is required if nomination is due to his or her parent's employment in the Panama Canal or in the Republic of Panama by the United States Government or the Panama Canal Commission.	Panama Canal Commission.
Northern Mariana Islands.....	Governor of the Northern Mariana Islands.
Trust Territory of the Pacific Islands.....	Secretary of the Interior.

(3) Individuals must be residents of the Trust Territory of the Pacific Islands to qualify for designation by the Secretary of the Interior.

(4) Nominating officials may select nominees, and the Secretary of the Interior may select designees, by any method they wish, including a screening examination.

(5) Candidates from nations other than the United States must be nominated by an official of their home government and have their applications approved by the United States Government official specified in § 310.66(a), or (c) or (d).

(b) *Vacancies.* (1) The number of vacancies in each entering class allocated to each State is in proportion

to the representation in Congress from that State.

(2) In each entering class, two vacancies shall be allocated each year for individuals nominated by the Panama Canal Commission; one vacancy each to nominees from Puerto Rico, Guam, Virgin Islands, Northern Marian Islands and American Samoa; and four vacancies to nominees from the District of Columbia.

(3) Not to exceed four (4) individuals at any one time may be admitted from the Trust Territory of the Pacific Islands and twelve (12) individuals from nations located in the Western Hemisphere, other than the United States, but not more than two (2) individuals from any one of such nations shall receive training at the same time.

(4) The Administrator may permit, upon approval of the Secretary of State, not more than thirty (30) individuals at one time from nations other than the United States to receive instruction at the Academy, subject to the condition that the foreign nations reimburse the Administrator for the cost of such training.

(5) The distribution of each entering class by State is:

Alabama.....	5
Alaska.....	2
Arizona.....	3
Arkansas.....	3
California.....	24
Colorado.....	4
Connecticut.....	5
Delaware.....	2
Florida.....	10
Georgia.....	7
Hawaii.....	2
Idaho.....	2
Illinois.....	15
Indiana.....	7
Iowa.....	5
Kansas.....	4
Kentucky.....	5
Louisiana.....	6
Maine.....	2
Maryland.....	6
Massachusetts.....	8
Michigan.....	12
Minnesota.....	6
Mississippi.....	4
Missouri.....	7
Montana.....	2
Nebraska.....	3
Nevada.....	2
New Hampshire.....	2
New Jersey.....	10
New Mexico.....	2
New York.....	22
North Carolina.....	7
North Dakota.....	2
Ohio.....	15
Oklahoma.....	5
Oregon.....	3
Pennsylvania.....	15
Rhode Island.....	2
South Carolina.....	5
South Dakota.....	2
Tennessee.....	6
Texas.....	15
Utah.....	2
Vermont.....	2
Virginia.....	7
Washington.....	5
West Virginia.....	3
Wisconsin.....	6
Wyoming.....	2

(6) The distribution of each entering class otherwise provided under the Act is:

Northern Mariana Islands.....	1.
Puerto Rico.....	1.
District of Columbia.....	4.
Republic of Panama.....	2.
Guam.....	1.
American Samoa.....	1.
Virgin Islands.....	1.
Administrator.....	Not to exceed 40.

(7) The distribution of students provided for under the Act without reference to entering class is:

	Not to exceed at any one time
Trust Territory of the Pacific Islands.....	4
Western Hemisphere nations (other than U.S.).....	12
Foreign nations.....	30

(c) *Request for nomination.* A person interested in admission to the Academy who feels that he or she meets the requirements in this subpart should request a nomination from his or her Senator or Representative or other appropriate nominating official listed in paragraph (a) of this section.

(d) *Date for nominations.* The nominating official will send a nomination form for each nominee to the Admissions Office, U.S. Merchant Marine Academy, Kings Point, Long Island, New York 11024, normally between August 1 and December 31 of the school year preceding that in which admission to the Academy is desired.

(e) *Appointments.* (1) The Administrator shall make appointments to fill the vacancies allocated pursuant to paragraph (b) of this section from among qualified nominees, in order of merit, from each geographical area. The order of merit shall be established according to the procedure as specified in § 310.57(b). Such appointments first shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter, appointments shall be made from among residents of each geographic area listed in paragraph (b) of this section. Thereafter appointments shall be made from among remaining qualified nominees (national alternates) in order of merit regardless of the area of residence.

(2) The Administrator may appoint, without competition, not more than forty (40) qualified citizens who possess qualities deemed to be of special value to the Academy. In making these appointments, the Administrator shall give special consideration to achieving a

national demographic balance and to recognizing individuals with qualities deemed to be of special value to the Academy.

§ 310.54 General requirements for eligibility.

(a) *Citizenship.* All candidates shall be citizens of the United States except: (1) Nominees from foreign nations; (2) nominees from the Northern Mariana Islands; (3) designees from the Trust Territory of the Pacific Islands; and (4) nominees from American Samoa, who may be American nationals. No person who is not a citizen shall be entitled to any office or position in the U.S. merchant marine by reason of his or her graduation from the Academy, until such person shall have become a citizen.

(b) *Age.* A candidate shall be not less than seventeen (17) years of age and shall not have passed his or her twenty-fifth (25th) birthday on June 15 of the year of admission to the Academy.

(c) *Character.* A candidate shall be of good moral character. The Administrator may reject the nomination of any candidate whose character is incompatible with the Academy's standards. No person who has been dismissed or compelled to resign from the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, the U.S. Coast Guard Academy, the Academy or a State maritime academy for improper conduct shall be eligible for appointment as a midshipman at the Academy. No person whose last discharge from any armed force was under conditions other than honorable or who has had a merchant mariner document removed or suspended for cause shall be eligible for appointment as a midshipman.

(d) *Investigation.* To be eligible for appointment, all candidates who are United States citizens shall be completely loyal to the United States and shall meet the requirements established by the Department of the Navy for designation as Midshipman, USNR (including the Merchant Marine Reserve, USNR). Candidates for appointment shall execute documents approved by the Administrator for the purpose of a security and suitability investigation. Appointment as a Midshipman, USNR (including the Merchant Marine Reserve, USNR) shall be a condition of admission for an individual who is a citizen. A candidate who is conditionally appointed to the Academy pending completion of a Navy security and suitability investigation shall be subject to immediate separation should the candidate, as a result of the investigation, fail to meet the

requirements established for appointment as Midshipman, USNR.

(e) *Waivers.* There shall be no waivers of general eligibility requirements.

§ 310.55 Scholastic requirements.

(a) *Academic requirements—(1) Credits.* Applicants shall have satisfactorily completed their high school education at an accredited secondary school, or equivalent, and shall present at least 15 units of credit for subjects acceptable to the Academy, comprised of:

- (i) 7 required units, as follows:
 - (A) 3 units of Mathematics (from algebra, geometry and trigonometry);
 - (B) 3 units of English; and
 - (C) 1 unit of Physics or Chemistry.
- (ii) 8 other units, preferably chosen from the following fields:
 - (A) Additional mathematics and science;
 - (B) Foreign language;
 - (C) Economics; and,
 - (D) Social science.

(2) *Evidence of academic work.* Before approval of an application, each applicant shall submit evidence showing completion of high school education, or showing that such education will be completed no later than June 30 of the year in which admission is sought.

(b) *Scholastic examinations—(1) Required entrance examinations.* Applicants shall qualify in either the College Board's Scholastic Aptitude Tests (SAT) or the American College Testing Program (ACT) examinations, administered nationally on scheduled dates at convenient testing centers. A candidate electing to use the College Board shall take both the mathematics and the verbal section of the SAT. A candidate electing to use the ACT, shall take all the tests, namely, English, Mathematics, Social Sciences and Natural Sciences. Minimum qualifying scores on the entrance examinations will be determined by the Superintendent of the Academy for each entering class prior to any offers of appointment for the particular class. Any score below the minimum on any one section of an examination shall make the nominee ineligible for admission. All examination costs shall be borne by the applicant. Nominees shall take all the required examinations by the February testing date in the year for which they seek appointment, unless the Academy's Admissions Office grants special authorization to take later examinations.

(2) *Forwarding test results.* Candidates shall be responsible for requesting the testing services to submit their scores directly to the Academy.

(3) *Test information.* Information on the entrance examinations may be obtained from—

The candidate's high school guidance office; or,
College Board, P.O. Box 592, Princeton, N.J. 08540; or,
College Board, P.O. Box 1025, Berkeley, CA. 94701; or,
American College Testing Program, P.O. Box 168, Iowa City, IA 52240.

(c) *Prior Scholastic Record.* Applicants shall demonstrate scholastic achievement by having attained a relatively high standing in relation to their fellow students and by having shown proficiency in mathematics and science courses. With respect to applicants who completed high school at least one year before applying for admission to the Academy, consideration will be given to satisfactory college level study or any special study undertaken to strengthen their academic backgrounds, particularly in respect to determining whether such supplementary academic activity offsets any deficiency in high school scholastic records.

(d) *Waivers.* No waivers of scholastic requirements will be granted.

§ 310.56 Physical requirements.

(a) *Physical standards.* (1) A candidate shall meet the physical requirements prescribed by the Department of the Navy for appointment as Midshipman, USNR (including the Merchant Marine Reserve, USNR) and the requirements prescribed by the U.S. Coast Guard for original licensing as a third mate and third assistant engineer. All candidates shall have color perception and refractive error within the limits prescribed by the Department of the Navy or by the U.S. Coast Guard, whichever are higher.

(2) The requirement to meet these standards is a continuing one and shall apply through graduation from the Academy. Failure to meet the standards while attending the Academy is grounds for, and may lead to disenrollment. Individuals who have completed at least two years of study and, as a result of an accident, illness or other cause (during official duty), fail to meet this requirement may be permitted to remain at the Academy at the discretion of, and under conditions set by, the Administrator. Those individuals permitted to remain through graduation will agree to fulfill aspects of the service obligation which they are capable of, as deemed appropriate by the Administrator.

(b) *Qualifying physical examinations.* All candidates for the Academy shall

have a physical and dental examination conducted by a service academy examining facility designated by the Service Academies Central Medical Review Board. The required physical examination shall occur within 1 year preceding the date of admission to the Academy. Although there is no charge for such examination, all expenses (including travel, meals and hotel accommodations) incurred in obtaining such examination shall be borne by the applicant. Candidates may be subject to reexamination upon reporting to the Academy and at any time while attending the Academy.

(c) *Physical reexamination.* A candidate who is rejected for failure to meet the physical requirements may request either a reevaluation of the examination results or a reexamination. A midshipman failing to meet the physical requirements while attending the Academy is entitled to make the same request.

(d) *Waivers.* No waivers of physical requirements will be granted.

§ 310.57 Application and selection of midshipmen.

(a) *Application.* All candidates shall submit an application for admission to the Academy's Admissions Office. Prospective candidates also should submit an application, but are not considered official candidates until their nominations are received. Candidates shall submit with their applications an official transcript and personality record from the candidate's high school and, if applicable, such records from any school attended after high school graduation. Application forms are available upon request by writing to the Admissions Office at the Academy.

(b) *Selection of Midshipmen.* Selection of midshipmen for appointment to fill vacancies allotted to the various States and other locations, as specified in § 310.53(b) (1) and (2) of this subpart, shall be in order of merit. The order of merit shall be determined on the scores of the required entrance examinations, on assessment of the academic background of the individual and on such other factors as are considered by the Academy to be effective indicators of motivation and the probability of successful completion of training at the Academy. No preference shall be granted in selecting individuals for appointment because one or more members of their immediate families are alumni of the Academy.

(c) *Notification of selection.* Results of the selection process will be made known about May 1 each year. The Academy shall advise each candidate and his or her nominating official of his

or her status as a principal candidate, as an alternate candidate or as an unqualified candidate. Alternates will replace principal candidates who decline appointment or fail to meet the physical requirements or the security and suitability investigation.

(d) *Service obligation agreement.* Each candidate selected for appointment to the Academy after April 1, 1982, who is a citizen of the United States, shall sign a service obligation contract as a condition of admission. The contract is prescribed in § 310.58 of this subpart.

(e) *Reporting to the Academy.* Candidates who accept offers of appointment shall, pursuant to instructions issued by the Academy, report to the Academy on a specified date in mid-July for orientation and induction.

(f) *Oath.* Each midshipman who is a citizen of the United States shall take the following oath of office at the Academy:

"I, _____, having been appointed a midshipman to the U.S. Merchant Marine Academy, accept appointment and do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will comply with all the regulations of the U.S. Merchant Marine Academy; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

(g) *Birth Certificate.* Each candidate shall present a certificate of birth authenticated by an authorized official.

§ 310.58 Service obligation for students enrolled after April 1, 1982.

(a) *Form of service obligation contract.* The service obligation contract shall obligate each midshipman who is a citizen and who enters the Academy after April 1, 1982, to:

(1) Complete the course of instruction at the Academy, unless sooner separated by the Academy;

(2) Fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy;

(3) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from the Academy;

(4) Apply for an appointment as, accept any tendered appointment as and serve as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the United States Coast

Guard Reserve, or any other Reserve component of an armed force of the United States for at least six (6) years following the date of graduation from the Academy;

(5) Serve the foreign and domestic commerce and the national defense of the United States for at least five (5) years following the date of graduation from the Academy;

(i) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) As an employee in a United States maritime-related industry, profession or marine science (as determined by the Administrator), if the Administrator determines that service under paragraph (a)(5)(i) of this section is not available;

(iii) As a commissioned officer on active duty in an armed force of the United States or NOAA; or

(iv) By combining the services specified in paragraphs (a)(5)(i), (ii) and (iii) of this section; and,

(6) Submit periodic reports to the Administration to establish compliance with all the terms of the contract.

(b) *Service as a merchant marine officer.* For purposes of the service obligation, a satisfactory year of service on vessels as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available.

(c) *Marine-related employment.* (1) Graduates who do not meet the sea service requirement in paragraph (b) of this section and who claim employment in a United States maritime-related industry, profession or marine science as meeting all or part of the service obligation under paragraph (a)(5) of this section and the service obligation contract shall submit evidence to the Administration that they have conscientiously sought employment as a merchant marine officer, and that such employment is not available. Such evidence submitted, and other information available to the Administration, shall be considered in any finding. In view of current and projected employment opportunities afloat, the Administrator will grant the shoreside employment option infrequently and only on the basis of comprehensive evidence.

(2) The Administrator may consider positions of operational, management or

administrative responsibility, including, but not limited to, the following marine-related categories, to be under the provisions of § 310.58(a)(5)(ii) of this subpart and the service obligation contract: Civilian employment in Federal and State agencies related to maritime affairs; steamship companies; stevedoring companies; vessel chartering and operations; cargo terminal operations; naval architecture; shipbuilding and repair; municipal and State port authorities; and port development, marine engineering, and tug and barge companies.

(d) *Reporting requirements.* Each graduate shall submit an employment report to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, D.C. 20590, on or before July 1 of each year following his or her year of graduation for five consecutive years. Each graduate granted a deferment to engage in a graduate course of study shall submit annual reports for the extension of the five (5) year obligation period resulting from such deferment. The Administration shall provide reporting forms. However, non-receipt of such form shall not exempt a graduate from submitting employment information as required by this paragraph. The reporting requirements for graduates will not become effective until there are Academy graduates subject to this provision, no earlier than 1986. The specific form to be developed by the Administration will be subject to approval by the Office of Management and Budget.

(e) *Breach of contract.* (1) If the Administration determines that any individual who has attended the Academy for not less than 2 years has failed to complete the course of instruction at the Academy, the Secretary of the Navy may order that individual to active duty in the U.S. Navy, at a rating determined by the U.S. Navy, to serve for a period of time not to exceed 2 years. The Administration shall submit the list of those who have breached their service obligation contract to the Chief of Naval Education and Training, Naval Air Station, Pensacola, Florida 32508.

(2) If the Administration determines that a graduate of the Academy has broken his or her agreement under paragraphs (a)(2) through (6) of this section and the service obligation contract, such individual may be ordered to active duty to serve a period of time not less than three (3) years and not more than the unexpired portion of

the service required under said subparagraph (5) and the contract. The Administrator, in consultation with the Department of Defense and the U.S. Coast Guard, shall determine in which service the graduate shall serve and the period of time. The branch of service in which the individual serves shall determine the rank or rating of the individual.

(f) *Waivers.* The Administrator shall have the discretion to grant waivers of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reason. Applications for waivers shall be submitted to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, D.C. 20590.

(g) *Deferments.* In exceptional cases, the Administration may grant a deferment of all or part of the agreement under paragraph (a)(5) of this section and the service obligation contract, for a period not to exceed 2 years, only for graduates considered to have superior academic and conduct records while at the Academy and only for the purpose of entering a marine or maritime-related graduate course of study approved by the Administrator; *Provided*, That any deferment of service as a commissioned officer under paragraph (a)(5)(iii) of this section and the service obligation contract shall be subject to the sole approval of the Secretary of the department which has jurisdiction over such service (including the Secretary of the department in which the U.S. Coast Guard is operating and the Secretary of Commerce with respect to NOAA). A graduate shall make application for such deferment through the Superintendent of the Academy, who shall forward each application, together with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration, NASSIF Building, 400 7th St., SW, Washington, D.C. 20590 for appropriate action.

(h) *Determination of compliance with service obligation contract; deferment; and review procedures.* (1) A designated official of the Administration shall:

(i) Determine whether a student or graduate has breached his or her service obligation contract;

(ii) Grant or deny a deferment of the service obligation, except for obligations otherwise a part of the graduate's commissioned officer status; and,

(iii) Grant or deny a waiver of the requirements of the service obligation contract in cases of undue hardship or impossibility of performance due to accident, illness or other justifiable reason.

(2) A Review Panel, consisting of a representative of the Administration serving as Presiding Official and representatives of the Department of the Navy, NOAA and the U.S. Coast Guard, shall review decisions of the designated official under paragraph (h)(1) of this section upon written request of the student or graduate.

(3) The Administrator shall adopt procedures for the Review Panel. Actual notice of such procedures will be given to each midshipman at the time of enrollment in the Academy.

(4) The decisions of the Review Panel shall be final.

§ 310.59 Courses of instruction.

(a) *At Academy.* Three major curriculums are offered: Nautical Science, for the preparation of deck officers; Marine Engineering, for the preparation of engineering officers; and the Dual License Program, a combined course which leads to licenses in both specialties. All midshipmen who are citizens shall take naval science courses prescribed by the Department of the Navy. All curriculums include general education courses and electives.

(b) *Sea year.* Midshipmen spend one-half of their sophomore (third class) year and one-half of their junior (second class) year training at sea aboard one or more merchant vessels. In addition to practical shipboard assignments, midshipmen are required to complete written study assignments incorporating material from the major segments of the Academy curriculums.

§ 310.60 Training on subsidized vessels.

All operators of subsidized merchant vessels, in accordance with contractual arrangements, are required to employ for training at least two midshipmen, as assigned by the Superintendent of the Academy, which employment shall be in accordance with the following provisions.

(a) *Work assignments.* All practical work assignments for midshipmen shall be in accordance with courses prescribed by the Superintendent of the Academy.

(b) *Working hours.* In order to permit midshipmen to complete their academic assignments, vessel employers shall not require midshipmen to work more than 8 hours each day. Midshipmen shall devote at least 3 hours of their own time each day to study.

(c) *Pay.* Midshipmen shall receive pay, while employed aboard merchant vessels, at the rate of \$461.40 per month directly from their steamship company employers. The employers also shall pay the midshipmen such subsistence and room allowance in port, transportation allowances, and other bonuses or allowances as are paid to the licensed officers of the vessel in which the midshipmen are employed.

(d) *Berthing and messing.* While aboard ship, midshipmen shall be berthed in single-occupancy rooms or in rooms with other midshipmen in that part of the vessel designated for licensed officers (or in first-class passenger quarters) and shall mess with the licensed officers.

§ 310.61 Training on other vessels and by other facilities or agencies.

The Administrator may arrange for training of midshipmen on Government-owned vessels, in cooperation with other governmental and private agencies, and on other vessels documented under the laws of the United States if the owner of such vessel cooperates in such use. Midshipmen may be assigned for training in shipyards, plants, and industrial and educational organizations for instructional purposes only.

§ 310.62 Allowances and expenses; required deposit.

(a) *Items furnished.* Each midshipman shall receive: free tuition, quarters and subsistence; limited medical and dental care; and certain travel expenses, in accordance with chapter 5, part A, of the Joint Travel Regulations for Members of Uniform Services, Vol. 1 (U.S. Department of Defense publication, Serial No. 0516-LP-255-0265), while traveling under official Academy orders.

(b) *Required Deposit.* Prior to admission to the Academy, each midshipman shall make a specified deposit, as established by Academy regulations, to help defray the cost of items and services generally of a personal nature which are not provided by the Academy. Additional deposits, as prescribed in Academy regulations, are required to be made in subsequent years. Failure to make any required deposit will result in denial of admission, suspension or disenrollment.

§ 310.63 Uniforms and textbooks.

The Academy shall supply midshipmen uniforms and textbooks in accordance with Academy regulations.

§ 310.64 Privileges.

(a) Midshipmen may be granted a leave of absence of approximately four

(4) weeks after completing each of the first, second and third years of training.

(b) Classes and exercises are suspended on New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day and such other days as may be designated by the President as holidays for Federal employees.

(c) Midshipmen may be granted approximately 2 weeks leave during the period which includes Christmas Day and New Year's Day.

(d) Liberty and other privileges are granted to midshipmen meriting them under Academy regulations.

(e) Relatives and friends of midshipmen may visit at the Academy during such hours as the Superintendent may prescribe.

(f) There shall be a Ship's Service Store maintained as a non-appropriated fund activity at the Academy primarily to serve the needs of the midshipmen.

§ 310.65 Graduation.

(a) *Classes enrolled prior to April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the required course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Filing for a commission in the USNR (including the Merchant Marine Reserve, USNR); and

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be granted commissions as Ensign, USNR (including the Merchant Marine Reserve, USNR) by the Department of the Navy.

(3) In return for the education received at Government expense, each applicant shall sign an agreement to serve in one of the following categories immediately after graduation:

(i) Sail on his or her license at sea for not less than six (6) months each year for three (3) consecutive years; or

(ii) Sail on his or her license at sea for not less than four (4) months each year for four (4) consecutive years; or

(iii) Apply for and serve on active duty for training on board a U.S. Navy ship for a minimum period of thirty (30) consecutive days each year for a period of three (3) consecutive years, and be either employed ashore for the balance

of each year in some phase of the maritime industry or engaged in full-time graduate studies related to the maritime field; or

(iv) Apply for and serve on full-time active duty as a commissioned officer in a uniformed service of the United States for a period of 3 consecutive years.

(b) *Classes enrolled after April 1, 1982.* (1) A midshipman will be graduated from the Academy upon the successful attainment of the following requirements:

(i) Completion of the required course of study;

(ii) Fulfillment of the requirements for a license as an officer in the merchant marine of the United States;

(iii) Application for an appointment, and acceptance if tendered of an appointment, as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the U.S. Coast Guard Reserve, or any other Reserve component of an armed force of the United States; and,

(iv) Compliance with the prescribed midshipman disciplinary and honor systems.

(2) Graduates receive the degree of Bachelor of Science and a U.S. Coast Guard license either as third officer or third assistant engineer or both. They also may be commissioned as a reserve officer in an armed force as described in paragraph (b)(1) of this section.

(3) The service obligation incurred by graduates is prescribed in § 310.58 of this subpart.

§ 310.66 Foreign students.

(a) *Appointments from the Trust Territory of the Pacific Islands.* The Administrator may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy. Not more than 4 such individuals may receive instruction at any one time. Residents of the Trust Territory of the Pacific Islands are neither citizens nor nationals of the United States.

(b) *Appointments from the Northern Mariana Islands.* The Governor of the Northern Mariana Islands may nominate individuals for one position each year allocated to residents of the Northern Mariana Islands. Such residents are neither citizens nor nationals of the United States.

(c) *Appointments from nations located in the Western Hemisphere.* The President may designate individuals from nations located in the Western Hemisphere, other than the United States, to receive instruction at the Academy. Not more than 12 individuals

may receive instruction under this Subsection at any one time, and not more than 2 individuals receiving instruction under this Subsection at any one time may be from the same nation.

(d) *Appointments from nations other than the United States.* In addition to the appointments under paragraphs (a), (b) and (c) of this section, the Administrator, with the approval of the Secretary of State, may permit individuals from any nations other than the United States to receive instruction at the Academy. Not more than 30 such individuals may receive instruction at any one time.

(e) *Candidate Sponsors.* A representative of the Administration or a diplomatic representative of the United States in the candidate's country of residence will be designated as the Candidate's Sponsor. It will be the responsibility of the Candidate's Sponsor to act as liaison with the appropriate officials of the candidate's country of residence and to coordinate all activities, including funding arrangements, entrance examinations, medical examinations, country clearances, travel papers, transportation to the Academy, obtaining the necessary designation by the Department of the Interior in the case of candidates from the Trust Territory of Pacific Islands under paragraph (a) of this section, the nomination of the Governor of the Northern Mariana Islands under paragraph (b) of this section, the nomination of a designee of the President in the case of candidates from nations located in the Western Hemisphere under paragraph (c) of this section, and the approval of the Department of State in the case of candidates from nations other than the United States under paragraph (d) of this section. In addition, the Candidate's Sponsor shall furnish to the Admissions Office of the Academy a report as to the candidate's proficiency in the use of idiomatic English.

(f) *Admissions Procedure—(1) Applications.* Applications for enrollment of foreign students shall be processed through the appropriate diplomatic channels of the applicant's country and the appropriate offices in the United States Departments of State or of the Interior, whichever is applicable. Applications shall reach the appropriate office of the United States Government by January 1 of the year in which admission is sought. After endorsement by the authorized official of the United States Government, the application will be forwarded promptly to the Academy's Admissions Office.

(2) *Qualifications.* Each candidate shall:

(i) Be a bona fide citizen of the country transmitting the application and meet the requirements as to age and character set forth in § 310.54 of this subpart;

(ii) Possess the physical qualifications, specified in § 310.56 of this subpart, and undergo a physical examination as arranged by the Academy's Admissions Office;

(iii) Be proficient in reading, writing and speaking idiomatic English; and,

(iv) Satisfy the following scholastic requirements:
(A) Meet the minimum qualifying scores on the entrance examinations as specified in § 310.55 of this subpart. When available, special foreign language College Board examinations may be substituted for the College Board or American College Testing Program examinations. Detailed certificates covering schoolwork of foreign students are required. Transcripts shall be submitted in the English language.

(B) Submit a certificate from his or her Government that he or she is conversant with the literature of his or her native country and that he or she has completed a course in the literature of his or her native language generally equivalent to two (2) years of secondary schoolwork in literature in the United States. In lieu of this certificate, a candidate may produce evidence of having acquired the units for literature from accredited United States schools.

(g) *Cost of instruction.* Students admitted to the Academy pursuant to paragraphs (a), (b) and (c) of this section shall be subject only to the same fees as are paid by citizen midshipmen. The cost of instruction (including the same allowances as received by midshipmen at the Academy appointed from the United States) for students admitted to the Academy under paragraph (d) of this section must be reimbursed to the Administrator by the nation from which the student comes. Such reimbursement shall be the incremental cost of providing the instruction to each of such foreign students (including the cost of allowances). The amount of reimbursement shall be established by the Academy separately for each entering class and each upper class prior to January 1 of the year in which the academic year begins and will be payable annually in advance of commencement of the academic year. Instructions as to payment procedures will be provided with the statement of the amount to be reimbursed. Students

admitted to the Academy pursuant to paragraph (d) of this section shall pay the same fees paid by citizen midshipmen.

(h) *Uniforms, textbooks and allowances.* The Academy shall provide to foreign students receiving instruction at the Academy all required uniforms and textbooks and allowances for transportation as are provided to citizen midshipmen.

(i) *Rules and regulations.* Subject to such exceptions as shall be jointly agreed to by the Administrator and the Secretary of the Interior with respect to individuals from the Trust Territory of the Pacific Islands, foreign students, including students from the Northern Mariana Islands, receiving instruction at the Academy shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal and graduation as citizen midshipmen; but such persons shall not be entitled to hold any license authorizing service on any merchant vessel of the United States solely by reason of graduation from the Academy.

(j) *Oath.* In lieu of the oath of allegiance to the United States, a substitute oath shall be required of students who are not citizens of the United States, as follows:

"I, _____, a citizen of _____, aged _____ years and _____ months, having been appointed to receive instruction at the U.S. Merchant Marine Academy, do solemnly swear (or affirm) to comply with all regulations of the U.S. Merchant Marine Academy and to give my utmost efforts to accomplish satisfactorily the required curriculum with the full knowledge that I shall be disenrolled from the U.S. Merchant Marine Academy if deficient in conduct, health or studies."

§ 310.67 Academy regulations.

The Superintendent of the Academy is delegated authority to issue all regulations necessary for the accomplishment of the Academy's mission.

(Catalog of Federal Domestic Assistance Program No. 11-507 U.S. Merchant Marine Academy (Kings Point))

Dated: May 13, 1982.

By order of the Administrator of the Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 82-13685 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration**49 CFR Part 581**

[Docket No. 73-19; Notice 30]

Bumper Standard; Notice of Intent**AGENCY:** National Highway Traffic Safety Administration, DOT.**ACTION:** Notice of intent.

SUMMARY: This notice describes future actions planned by the National Highway Traffic Safety Administration under the Motor Vehicle Information and Cost Savings Act to encourage and ensure the maximum availability to individual consumers of those bumper systems, options, and innovative designs which are the most cost effective for such consumers, and to develop and collect reliable information on passenger car bumper system performance above and, by separate rulemaking actions below, the minimum requirements of the agency's bumper regulation. This notice supplements the agency's rulemaking action amending the test impact speeds and damage criteria of the Part 581 Bumper Standard, and is intended to maximize the consumer and public net benefits of bumper regulation and to develop useful information for future analysis.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Brownlee, Director, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: By separate notice issued this day, the National Highway Traffic Safety Administration (NHTSA) has amended the Part 581 Bumper Standard (49 CFR Part 581), which prescribes minimum damage resistance performance requirements for passenger cars in low speed collisions. The standard establishes test procedures in which a vehicle must withstand a series of impacts with a fixed collision barrier and a pendulum test device at specified impact speeds. The amendment modifies the impact speeds for bumper testing from 5.0 mph for longitudinal barrier and pendulum impacts and 3.0 mph for corner pendulum impacts to 2.5 mph for longitudinal and 1.5 mph for corner impacts. Damage resistance requirements are also modified to eliminate prohibitions on any damage to the bumper system itself in test impacts.

The Part 581 Bumper Standard was established under the concurrent authority of the Motor Vehicle Information and Cost Savings Act (Cost

Savings Act) (15 U.S.C. 1901, *et seq.*) and the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, *et seq.*). The former statute directs the agency to set bumper standards which seek to obtain the maximum feasible reduction in costs to the public and the consumer. In furtherance of this goal, and as a supplement to the agency's action today in amending the Part 581 requirements, the agency intends to initiate two major programs to assure that cost savings to different sectors of the public and the consumer are maximized through the use and availability of cost-beneficial bumper designs providing different levels of protection.

Agency Bumper Test Program

The first major initiative contemplated by the agency would involve a new testing program to be undertaken by NHTSA to determine the extent of actual bumper protection offered by particular bumper systems on new vehicle models. Under such a program, the agency could, on its own initiative or at the request of vehicle manufacturers, perform bumper testing to determine whether particular bumper systems in fact meet the Part 581 damage resistance criteria when tested at impact speeds greater than those required by the standard.

Testing could be performed by NHTSA in accordance with the existing Part 581 test protocol, or under new procedures to be developed by the agency. However, the objective would be to assess the actual levels of performance offered by bumper systems. The testing program would, of course, not substitute for either the manufacturers' responsibility to certify compliance, or the agency's responsibility to conduct appropriate testing to determine compliance with the new standard.

NHTSA believes that the contemplated test program would further the objectives of Titles I and II of the Cost Savings Act. It would provide maximum incentives for innovation and the development of improved bumper technology, and maximum net benefits to the public and consumers, by encouraging the availability of systems that in fact provide higher levels of benefit, at higher levels of cost, than those which were determined to be most beneficial for all consumers and all cars in the setting of the Part 581 standard.

This program would encourage manufacturers with innovative, efficient bumper designs providing additional damage resistance performance to market those systems using government test data to support their claims of superior bumper system performance by

vehicles equipped with upgraded bumper systems as either standard or optional equipment. Such a program would be proposed and considered in consultation with appropriate other regulatory agencies, including the Federal Trade Commission.

Such marketing would create the opportunity for individual consumers who place a high value on the intangible benefits of avoiding low speed collision damage, i.e., savings in time and inconvenience, to purchase bumper systems which, while not the most beneficial to consumers in general, may be preferable to the individual consumer. To the extent that some consumers are willing to pay more for greater levels of bumper protection, these payments would represent a subsidy to the insurance industry in terms of reduced claims and overhead expense. This cost savings may be passed on to consumers in general in the form of lower insurance premiums. In this way, net benefits to the public would be increased.

The program would also provide consumers with independent confirmation of manufacturers' bumper performance claims to assure that purchasing decisions are based on the most accurate information available. In this way, maximum marketplace freedom for informed selection among alternative bumper systems would be encouraged, and consumers would be provided with the opportunity to purchase additional bumper protection in an informed manner, should they consider such protection desirable.

Finally, the program would provide valuable assistance to insurance companies by generating information on which discounts for improved bumper performance could be based. Such discounts could in turn provide further incentives for manufacturers to develop improved bumper designs.

Alternative Requirements for Particular Vehicle Classes

The second major initiative planned by the agency would involve a program by which in separate rulemaking proceedings the agency might further amend the Part 581 Bumper Standard to establish alternative standards for particular vehicle classes. The Cost Savings Act authorizes NHTSA to promulgate bumper standards relating to the reduction of vehicle damage in low speed collisions. Consistent with this directive, the agency believes that standards establishing different levels of protection for different classes of vehicles may be an additional and

appropriate means of maximizing benefits to consumers.

Under the contemplated program, the agency would invite petitions for rulemaking from manufacturers with alternative bumper designs shown to be capable of providing net benefits to the public and consumers under the terms of the Act. Manufacturers would be asked to provide with their petitions the best available cost, weight and other data relating to bumper systems of particular classes of vehicles and existing and contemplated bumper system designs. Based on this information, the agency would be able to refine its own analysis of bumper system costs and benefits as it applies to particular groupings of vehicles and propose rulemaking to establish alternative bumper performance standards for those vehicle groupings. Of course, the effect on vehicle safety would be considered in any such rulemaking action. NHTSA would also determine the extent to which consumer information must be provided to advise consumers of the existence of alternative standards and the economic and other effects of compliance by particular vehicles with those alternative standards.

Such alternative standards would provide increased design flexibility and potential added cost savings for consumers. Moreover, such standards would permit the effect of economic forces, including insurance premium rate setting, to be assessed, and would provide maximum incentives for technological innovation.

Finally, by furthering technological development and maximizing economic incentives to design and offer more efficient and effective bumper systems, the agency believes that the contemplated testing and alternative standards programs would also contribute to the availability of additional and more reliable empirical data on alternative bumper systems. Such data would be of value to the agency in determining the need for possible future regulatory actions concerning the bumper standards. In this way, the objectives of the Cost Savings Act would be furthered by the contemplated programs.

This notice is not a notice of proposed rulemaking. Appropriate administrative and rulemaking actions will be separately taken to implement the plans described in this notice. In accordance with the requirements of the statutes cited above, the Administrative Procedure Act (5 U.S.C. 553) and agency regulations, notice of proposed rulemaking and opportunity for written and oral comment will be provided as appropriate with respect to any actions

involving modification of NHTSA regulations.

(Sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); secs. 103, 119, Pub. L. 89-563. (80 Stat. 718 (15 U.S.C. 1392), 1407); delegation of authority at 49 CFR 1.50)

Issued on: May 14, 1982.

Raymond A. Peck, Jr.,
Administrator.

[FR Doc. 82-13549 Filed 5-14-82; 3:11 pm]

BILLING CODE 4910-59-M

49 CFR Part 581

[Docket No. 73-19; Notice 29]

Bumper Standard

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the Bumper Standard to reduce the test impact speeds required by that standard to 2.5 mph for longitudinal front and rear barrier and pendulum impacts and 1.5 mph for corner pendulum impacts. The notice also amends the damage resistance criteria of the standard to eliminate limitations on the damage which may be incurred by the bumper face bar and associated components and fasteners in bumper testing.

The agency finds that under this action net benefits will accrue to the public and to the nation's consumers. This action is thus required by the mandate of the Motor Vehicle Information and Cost Savings Act that any bumper standard issued under that statute "seek to obtain the maximum feasible reduction in costs to the public and to the consumer," taking into account the costs and benefits of implementation, effects on insurance and legal costs, savings in consumer time and inconvenience and considerations of health and safety.

Any reduction in costs related to bumper systems, including savings from reduced fuel consumption, will exceed any reduction in benefits which may occur because of increases in damage, insurance costs, delay and inconvenience, and other matters. This action will thus increase and seek to maximize the net consumer and public benefits of the standard. The agency also finds that this action will cause no reduction in vehicle safety.

DATES: This action is effective July 6, 1982. Any petitions for reconsideration must be received by the agency not later than June 21, 1982.

ADDRESS: Any petition for reconsideration should refer to the docket number and notice number of

this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Michael Brownlee, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: The "Part 581 Bumper Standard" (49 CFR Part 581) specifies levels of damage resistance performance which passenger motor vehicles must provide in low speed collisions. Bumper performance is measured in test impacts with both a fixed collision barrier and a pendulum test device. Bumpers must meet damage criteria which preclude any damage at all to vehicle exterior surfaces, which ensure protection of various safety-related components of the vehicle, and which allow only minimal damage to the bumper itself.

Background

The history of the Part 581 bumper standard has been long, extremely controversial and fraught with uncertainty. The current action is the culmination of years of study, analysis and agency action and reaction.

Federal Motor Vehicle Safety Standard 215

In its initial efforts in the field of bumper regulation, the National Highway Traffic Safety Administration (NHTSA) issued Federal motor vehicle safety standard (FMVSS) 215, *Exterior Protection*, under the National Traffic and Motor Vehicle Safety Act (the Safety Act). 15 U.S.C. 1381 *et seq.* As initially implemented on September 1, 1972, that standard imposed requirements which prohibited damage to specified safety-related components and systems, e.g., headlights and fuel systems, in a series of perpendicular barrier impacts, at 5.0-mph for front and 2.5-mph for rear bumper systems.

One year later, several new requirements became effective under FMVSS 215. First, rear barrier impact speeds were increased from 2.5-mph to 5.0-mph. Second, the standard specified 5.0-mph perpendicular front and rear pendulum impacts and 3.0-mph corner front and rear pendulum impacts. Third, a bumper height requirement was in fact established by specifying that the longitudinal pendulum impacts must be made between a height of 16-20 inches. (The corner pendulum impacts were limited to a height of 20 inches until September 1, 1975, when the standard

specified that they must be made within the same 16-20 inch height range.)

Motor Vehicle Information and Cost Savings Act

On October 20, 1972, Congress enacted the Motor Vehicle Information and Cost Savings Act, ("the Act"). 15 U.S.C. 1901 *et seq.* The stated purpose of Title I of the Act is to "reduce economic losses associated with low speed collisions of motor vehicles." 15 U.S.C. 1901(b). Section 102(a) directed the Secretary of Transportation¹ to promulgate bumper standards in accordance with the criteria of section 102(b) which requires that such standards—

Seek to obtain the maximum feasible reduction of costs to the public and to the consumer, taking into account:

(A) The cost of implementing the standard and the benefits attainable as the result of implementation of the standard;

(B) The effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;

(C) Savings in terms of consumer time and inconvenience; and

(D) Considerations of health and safety, including emission standards.

15 U.S.C. 1912(b)(1).

The Act also provides that the bumper standards must not conflict with motor vehicle safety standards issued under the Safety Act. 15 U.S.C. 1912(b)(2).

Adoption of the Part 581 Standard

Pursuant to both the new authority of the Act and that of the Safety Act, NHTSA established the Part 581 Bumper Standard in 1976. 41 FR 9346 (March 4, 1976). As adopted, this standard combined the safety features of FMVSS 215 with new damage resistance criteria intended to promote consumer cost savings.

The Part 581 standard established compliance test procedures which consist of a series of five test impacts on both the front and the rear bumper. Each test series includes one longitudinal barrier impact, two longitudinal pendulum impacts and two corner pendulum impacts.

The Part 581 standard sets forth substantive requirements in terms of damage resistance criteria which took effect in two stages. The first stage, or "Phase I" of the Part 581 standard, became effective on September 1, 1978, on which date FMVSS 215 was *ipso facto* revoked. Phase I incorporated the former FMVSS 215 safety criteria, and added new damage resistance criteria which prohibited damage to all exterior

vehicle surfaces, e.g., sheet metal, other than the bumper face bar and related components and fasteners.

More stringent damage resistance criteria, known as the "Phase II" criteria, became effective one year later, on September 1, 1979. The Phase II criteria expanded Part 581 by also imposing limits on the amount of "dent" and "set" damage which could be sustained by the bumper face bar itself in the same series of test impacts. "Dent" refers to permanent deviation from the original contour of the bumper face bar in areas of contact with the barrier face or the impact ridge of the pendulum test device. "Set" refers to permanent deviation of the bumper from its original contour and position relative to the vehicle frame. Phase II limited allowable dent to $\frac{1}{8}$ inch, and set to $\frac{3}{4}$ inch, each as measured thirty minutes after completion of each test impact.

Early Proposals and Evaluations of the Bumper Standard

1973

NHTSA initially proposed a Part 581 standard in August 1973, while FMVSS 215 was in force, but after the passage of the Act. This 1973 proposal would have required protection against damage in 5.0-mph test impacts. 38 FR 20899 (August 3, 1973).

1975

NHTSA thereafter issued a second Part 581 proposal, in January 1975. This revised proposal would not only have reduced (at least temporarily) the impact speeds required by FMVSS 215, but also would have reduced the damage resistance criteria contained in the Part 581 proposal still pending from 1973. 40 FR 10 (January 2, 1975). These proposed reductions were based primarily on the results of two intervening agency-sponsored studies, which indicated that the cost and weight of many of the then-current production bumpers had made such bumpers no longer cost-beneficial. The 1975 proposal would also have reduced the number of longitudinal pendulum impacts from six front and six rear, to three front and three rear.

After considering information and arguments submitted in response to the August 1973 and January 1975 proposals, the agency issued yet another proposal in March 1975. 40 FR 11598 (March 12, 1975). At that time, the agency withdrew the January 1975 proposal regarding test speeds, and proposed instead only to amend the still pending 1973 proposal to reduce the number of longitudinal pendulum impacts to two front and two rear.

1976

The agency finally promulgated the Part 581 Bumper Standard in March 1976, specifying 5.0-mph test impact speeds and requiring a total of five barrier and pendulum impact tests for the front bumper and five for the rear.

1977

In 1977, however, NHTSA issued two further rulemaking proposals. The first would have delayed the effective date of the Phase II damage criteria one year. 42 FR 10862 (February 24, 1977). The second, which replaced the first, proposed three alternatives: (1) A one-year delay of Phase II; (2) a one-year delay with a consumer information program on bumper performance in the interim; and (3) an indefinite delay of Phase II and substitution of the information program. 42 FR 30655 (June 16, 1977). These proposals were withdrawn by the agency in November of that same year. 42 FR 57979 (November 7, 1977).

Also in 1977, NHTSA decided to undertake a series of long term studies of its existing and proposed rulemaking efforts. As a part of this initiative, it began a multi-year evaluation of the Part 581 Bumper Standard. This evaluation, which was released in April 1981, is discussed in detail below.

1978

In 1978, and after the effective date of the 5.0-mph, Phase I standard, the Senate Appropriations Committee included in its report on the fiscal year 1979 Appropriations Act for the Department of Transportation a directive that NHTSA conduct studies and analyses reevaluating to the maximum extent feasible the question of the level of bumper damage resistance which would be most cost-beneficial to the consumer. The Committee further directed the agency to modify the Part 581 standard (i.e., the standard to which this current rulemaking is addressed) in accordance with the results of such analyses. S. Rep. No. 938, 95th Cong., 2d Sess. 25 (1978).

1979

In February 1979, the agency completed a Preliminary Analysis which concluded that 2.5-mph bumpers offered approximately \$77 more net benefits than 5.0-mph bumpers. In March 1979, the agency published an advance notice of proposed rulemaking seeking public comment on its February analysis. The notice indicated that the responses would be used to aid NHTSA in preparing a final report to the Senate Appropriations Committee and in

¹ The authority of the Secretary to promulgate safety standards has been delegated to the NHTSA Administrator. 49 CFR 1.51(a).

determining the possible need for changes in the Part 581 standard.

In June 1979, NHTSA published a "Final Assessment of the Bumper Standard". That document estimated the net benefits of alternative bumper standards specifying test impact speeds of 2.5 mph, 5.0 mph, and 7.5 mph. The agency at that time concluded that a standard specifying 5.0-mph impact speeds should be retained since it was believed to provide slightly more lifetime vehicle net benefits (\$39) than one specifying 2.5-mph impact speeds. In December 1979, the agency updated its assessment based on comments received from the automotive and insurance industries. It concluded that the advantage of the 5.0-mph standard over the 2.5-mph standard was less than previously thought, offering only \$11-\$29 more lifetime vehicle net benefits than a standard specifying 2.5-mph impact speeds.

1980

In late 1980, during the final days of the 96th Congress, a House-Senate conference committee reported out a bill which would have statutorily reduced the test speed in the Part 581 standard to 2.5 mph for a two-year period. H.R. Rep. No. 1371, 96th Cong., 2d Sess. 25 (1980). Sharp differences of opinion regarding the relative merits of the agency's two 1979 bumper analyses were highlighted in the Congressional debates. See, e.g., Senate debate of September 25, 1980, 126 Cong. Rec. S13499-501. However, Congress adjourned without taking final action on the bill.

1981

In April 1981, NHTSA published a notice of intent to review the Part 581 standard and propose again to modify the requirements of the Part 581 Bumper Standard. 46 FR 21203 (April 9, 1981).

Also in April 1981, NHTSA completed and published its "Evaluation of the Bumper Standard," which it had begun in 1977. Based upon continually developing data and analyses, this report addressed in still further detail the costs and benefits of each phase of the agency's bumper requirements, beginning with the initial FMVSS 215 standard. The April 1981 Evaluation incorporated newly-developed data from various agency studies on insurance claims for vehicles manufactured since the Part 581 standard took effect, on the incidence and extent of low speed collision damage, and on bumper costs. Unlike previous studies, the Evaluation separately analyzed front and rear bumpers. It found that regulated front bumpers tended to be cost effective

while rear bumpers were not. This study, in accordance with both the Senate's 1978 directive and the provisions of Executive Order 12291, formed the basis for the agency's undertaking the current rulemaking.

Current Rulemaking

October 1981 Proposal and Analysis

On October 1, 1981, NHTSA published a notice of proposed rulemaking (the NPRM) seeking comments on nine different alternatives for amending Part 581. 46 FR 48262. The proposals ranged from one reducing the test impact speed to 2.5 mph for rear bumpers only to one eliminating all test impact requirements for front and rear bumpers except as necessary to maintain a height requirement. Specifically, the nine alternatives were as follows:

Alternative IA would have reduced the test impact speeds for rear bumpers only to 2.5 mph for longitudinal impacts and to 1.5 mph for corner impacts. It would have maintained the test impact speed for front bumpers at 5.0 mph and would have maintained the Phase II damage resistance criteria. (5.0 mph front/2.5 mph rear, Phase II)

Alternative IB would have made the changes included in alternative IA and substituted Phase I damage resistance criteria for Phase II criteria for front and rear bumpers. (5.0-mph/2.5-mph, Phase I)

Alternative IIA would have eliminated the damage resistance criteria for rear bumpers only, with the exception of the criterion that is intended to ensure uniform bumper height by requiring bumper contact with a pendulum test device within a specified height range. It would have maintained the 5.0-mph test impact speed and Phase II criteria for front bumpers. (5.0 mph/height only, Phase II)

Alternative IIB would have made the changes included in alternative IIA and substituted Phase I criteria for Phase II criteria for the front bumper. (5.0 mph/height only, Phase I)

Alternative IIIA would have reduced the test impact speed for front and rear bumpers to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would have retained the Phase II damage criteria. (2.5 mph/2.5 mph, Phase II)

Alternative IIIB would have made the changes included in alternative IIIA and substituted Phase I criteria for Phase II criteria for front and rear bumpers. (2.5 mph/2.5 mph, Phase I. This alternative is referred to below as the 2.5-mph/2.5-mph alternative.)

Alternative IVA would have reduced the test impact speed for front bumpers

to 2.5 mph for longitudinal impacts and 1.5 mph for corner impacts. It would also have eliminated the damage criteria for rear bumpers with the exception of the bumper height criterion. (2.5 mph/height only, Phase I)

Alternative IVB would have made the changes included in alternative IVA and substituted Phase I criteria for Phase II criteria for front bumpers. (2.5 mph/height only, Phase I)

Alternative V would have eliminated the damage resistance criteria for front and rear bumpers, with the exception of the bumper height criterion (height only/height only).

The alternatives set forth in the NPRM were developed during the preparation of a Preliminary Regulatory Impact Analysis (PRIA) (Docket 73-19, Notice 27, No. 011).² The PRIA which was published for public comment simultaneously with the NPRM, built upon all of the agency's earlier evaluations and assessments. To encourage close scrutiny of the PRIA and the NPRM, and in recognition of the limited empirical data on several important issues, the agency specifically requested comment on 25 detailed questions which were set forth in the NPRM.

Using the present Part 581 standard for comparison, the PRIA estimated the changes in costs and benefits that were likely to occur if the standard were modified in each of the ways set forth in the October notice of proposed rulemaking. The PRIA concluded that the differences in probable net benefits among several alternative bumper standards were small. The results of the PRIA suggested that while 5.0-mph bumper requirements had in fact reduced lifetime repair costs for cars, they also had increased both car purchase prices and fuel consumption. The 5.0-mph bumper requirements were found to have decreased insurance company claims payments and overhead, but also to have increased the manufacturing costs of car companies.

² In preparing the PRIA, the agency also considered the possibility of raising, as well as lowering the required test impact speeds. The 1979 Final Assessment stated that a 7.5-mph bumper would have marginally greater net benefits than a 5.0-mph bumper. However, the Executive Summary for that document indicated that the conclusions regarding the 7.5-mph bumper were based on substantially less data than were the conclusions regarding the 5.0-mph bumper and thus that the conclusions about the 7.5-mph bumper were far less reliable. Subsequently obtained data and analyses have not provided any basis for placing more credence in those three-year old conclusions about 7.5-mph bumpers.

Public Meetings

The agency conducted two public meetings on the NPRM on October 22 and November 12, 1981, in fulfillment of the statutory requirement that all interested persons be given an opportunity to present orally data, views and arguments on the October 1981 NPRM. The agency scheduled two separate meetings instead of a single extended one in response to a request by insurance industry representatives. Those representatives requested an opportunity to introduce data relating to suggested new compliance technologies whose use would reportedly allow the existing requirements of the Part 581 standard to be retained with little if any modification, but at greatly reduced economic cost. In the notice announcing the meetings, the agency urged all interested parties to provide technical and economic data that would help focus the issues at the first public meeting, and indicated that the second meeting would be used to allow others to respond to testimony at the first meeting. 46 FR 48958 (October 5, 1981).

The views and arguments advanced by responding parties with substantial economic interests at stake, e.g., the insurance and automotive manufacturing industries, were similar to those previously expressed in response to earlier analyses, proposals, and requests for comments. However, commenters did submit significant new data on several issues, including those relating to the cost and weight of bumpers providing different levels of protection.

Positions of Interested Parties

Test impact speed. Insurance industry representatives, generally joined by consumer representatives, expressed their support for retaining the current Part 581 requirements, based upon assertions of favorable benefit and cost analyses of the current standard, safety considerations, and the legislative history of the Act. Insurance representatives further contended that the legislative history indicates a Congressional intent that bumper standards be established at a level of 5.0 mph. They strongly opposed the option of adopting Regulation No. 42 of the United Nations Economic Commission for Europe (ECE).³

³ECE Regulation No. 42 requires that a car's safety systems continue to operate normally after the car has been impacted by a pendulum or moving barrier on the front and rear longitudinally at 4 kilometers per hour (about 2.5 mph) and on a front and rear corner at 2.5 kilometers per hour (about 1.5 mph) at 445 mm (about 18 inches) above the ground under loaded and unloaded conditions. See discussion under "Harmonization," below.

Some insurance industry commenters contended that the record in this proceeding is insufficient to support any reduction of the damage resistance or safety requirements of the Bumper Standard below current levels. These commenters, joined by an organization presenting arguments on behalf of consumers, argued (1) that in order to amend the standard the agency must be able to establish affirmatively that any selected alternative is one which uniquely meets the statutory criteria of the Act and the Safety Act, in a manner superior to any and all others, and (2) that on the record the agency is not able to make such a finding with respect to any particular alternative.

Auto industry commenters overwhelmingly supported the alternative proposing reduction of test impact speeds to 2.5 mph in longitudinal impacts and 1.5 mph in corner impacts, and substitution of Phase I damage criteria for Phase II criteria. Among the reasons stated in support of this alternative were assertions of cost-benefit analyses for that alternative more favorable to the consumer, the results of the agency's prior analyses, the similarity of this alternative to ECE Regulation No. 42, the greater relevance of the 2.5-mph design speed to the speed of the typical parking lot collision, and the enhanced prospects of gathering field data on the relative merits of 2.5-mph and 5.0-mph bumpers.

Three foreign manufacturers stated that they favored adoption of the requirements of ECE Regulation No. 42, but that the 2.5-mph/2.5-mph alternative was their second choice because of its similarity to the European standard. Several other manufacturers, while not advocating the adoption of the ECE requirements as such, noted the desirability of harmonizing United States and European bumper requirements. Some domestic and foreign automakers expressed reservations about adoption of the ECE standard in its entirety, but advocated adopting certain aspects of that standard, such as eliminating the fixed barrier test or establishing a single permissible bumper height.

A trade association representing materials suppliers registered its support for the 5.0-mph/5.0-mph standard, asserting that the standard provides the added advantage of affording actual protection at speeds above 5.0 mph. One bumper component manufacturer proposed the additional alternative of lowering the pendulum impact speed to 2.5 mph, while retaining the 5.0-mph impact speed for barrier tests. That commenter contended that the

pendulum test, which concentrates force on a particular area of the bumper, is a disproportionately severe test which prevents use of optimum 5.0-mph bumper designs.

A number of private individuals also submitted views on the proposed alternatives. The majority of those commenting favored retention of existing Part 581 requirements, although apparently some comments were based on factual representations contained in media reports of the rulemaking proceeding, instead of the data and issues actually under review. See, e.g., Docket 73-19, Notice 27, No. 209. Insurance industry and public interest commenters claimed that public opinion favors the 5.0-mph/5.0-mph standard, and that significant, if not determinative, weight should be given to such alleged preferences.

Phase I-Phase II damage resistance requirements. Several commenters specifically addressed the issue of differences between the Phase I and Phase II damage criteria. Automakers addressing the issue uniformly favored return to the Phase I criteria. Two manufacturers advocated elimination of all criteria addressed to damage to non-safety components. The insurance industry generally favored retention of the Phase II criteria, as did a component parts manufacturer, although one insurance industry commenter advocated consideration of permitting nonself-restoring energy absorbing devices.

Other test procedure modifications. Commenters discussed several other alternative approaches to the Phase I-Phase II issue, including merely amending the bumper standard test procedures. One modification discussed by several commenters would allow manual repositioning of bumper or shielding-panel components during testing. Both insurance and auto industry commenters agreed that manual repositioning would be a desirable modification of the bumper system test procedure. However, some auto industry commenters also stated that eliminating the Phase II damage criteria would serve to alleviate much of the need for manual repositioning.

Three vehicle manufacturers and one component supplier recommended limiting the number of pendulum test impacts so that the bumper standard test procedure would more closely approximate real life experience. These commenters advocated reducing the number of pendulum impacts to one longitudinal impact and one corner impact per bumper, or to one

longitudinal and two corner impacts per bumper.

For additional details concerning comments on the NPRM, see the appendix to this notice.

Agency Decision

Drawing on the best available data, public comments submitted in response to the October 1981 NPRM, and comments presented at NHTSA's public meetings on October 22 and November 12, 1981, NHTSA has now completed a Final Regulatory Impact Analysis (FRIA) of the bumper standard alternatives. Docket 73-19, Notice 29, No. 001. Careful consideration was given to the data and analyses contained in the FRIA and all comments received in the rulemaking proceedings. Responses to all significant comments are contained either in this notice or the FRIA. Based on its review of all of these materials, the agency has decided to adopt the 2.5-mph/2.5-mph, Phase I alternative. That alternative reduces to 2.5 mph the front and rear longitudinal barrier and pendulum impacts for testing compliance with the safety and damage resistance criteria and substitutes Phase I damage resistance criteria for phase II criteria.

In the agency's judgment, neither costs savings nor safety considerations warrant the retention of the current standard. Indeed, the agency believes that the changes in the damage resistance criteria and the compliance test speed are necessary in order to comply with the requirements of the Act that the standard seek to provide the maximum feasible reduction in costs to the public and the consumer.

As discussed in more detail below and in the FRIA, the extensive data analyzed by the agency and the reasoned assumptions made by the agency after opportunity for public comment have led the agency to the firm conclusion that the current 5.0-mph/5.0-mph standard does not meet the statutory requirements. Stated simply, the current standard does not provide or seek to provide the maximum feasible reductions in cost. Therefore, the agency has determined that the current standard can no longer be retained in accordance with the Act. Similarly, it is clear that a standard imposing a height only requirement for front and rear bumper systems would provide fewer net benefits than other alternatives considered in this rulemaking proceeding.

The agency recognizes that no single remaining alternative is dramatically superior in terms of net benefits over the wide ranges of reasoned assumption made about the values of certain important variables. However, after

careful comparison of the current standard and the specific proposed alternatives under ranges of assumptions, the agency concludes that the 2.5-mph/2.5-mph, Phase I alternative best satisfies the statutory criterion that the bumper standard "seek to obtain the maximum feasible reduction of costs to the public and to the consumer."

The agency has concluded that the alternatives involving differential front and rear impact speed requirements are less desirable because of uncertainties surrounding the effects of impacts between bumpers with different levels of aggressivity. These alternatives received no support among commenters. Alternatives involving height-only requirements for rear bumpers appeared to provide slightly less net benefits than the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives under most sets of assumptions considered.

Alternatives which have higher impact speed requirements and would produce essentially the same net benefits, differ from the selected alternative principally in that they make an even trade of additional dollars saved in avoided damage for additional dollars spent for damage protection at such higher speeds. Those alternatives would thus fail to meet the test of the statutory criteria with respect to "maximum feasible reduction of costs." The initial direct costs to consumers of the selected alternative are less than those of that alternative which would in the agency's judgment be most likely to provide comparable net benefits, the 5.0-mph/2.5-mph alternative.

The agency has also concluded that reducing the impact speed to 2.5 mph and eliminating the Phase II damage criteria will not have an adverse effect on safety. Such amendments will have no discernible effect on the number of accidents, deaths or injuries that occur annually.

The new standard adopted in this notice will provide greater latitude and incentive for car manufacturers to improve bumpers through the innovative use of new designs and materials, while conforming to the clear Congressional directive that the agency promulgate and enforce a minimum performance standard seeking maximum feasible reductions in cost. Also, the chosen alternative best advances the goal of harmonization with international standards while meeting applicable statutory requirements.

Pursuant to Executive Order 12291, the agency has concluded that there is a strong and reasonable basis in the record of this rulemaking proceeding for the factual conclusions and choices of data and methodologies underlying the

selection of the 2.5-mph/2.5-mph alternative.

Agency Rationale

The sharply opposed positions of the commenters on the many complex technical, analytical and policy issues raised in this proceeding provide dramatic evidence of the difficulty which the agency has faced in reaching this decision. The primary issues involved in the agency's decision are as follows:

Resolution of uncertainty. The Act directs not only that a bumper standard be adopted and maintained, but also that such standard be set at the particular level of performance which "seeks to provide the maximum feasible reduction of costs to the public and to the consumer," taking into account specified elements of costs and benefits.

On several of the issues presented in choosing among the various alternatives, the agency was confronted with uncertainties arising either from conflicts among data or from the absence or limited nature of relevant, reliable data.

Because of the prior history of the standard and the sequence of technology used by manufacturers to comply over time, field performance data under real world conditions are sharply limited to empirical data on two types of systems, as discussed elsewhere in this notice. As a result, the combination of the specificity of the statutory language and the limited nature of the data available has left the agency certain of the need to act, but marginally less certain as to which of the available alternatives and which means of analysis of such alternatives will produce the result most in conformity with the intent of Congress.

For several years, the agency has been taking all prudent steps to obtain more data to reduce uncertainty with respect to the appropriate standard and to analyze and account for the possible effects of remaining uncertainties on certain key variables. In a number of areas, more reliable data could not be developed by the agency. In the FRIA, the agency carefully identified and explained the assumptions it made in those areas and invited public scrutiny and comment. To ensure full discussion of all of the issues presented, the agency asked detailed questions regarding those assumptions in the October 1981 NPRM.

The agency's assumptions were the subject of extensive public comment. The agency received over two hundred comments from a full spectrum of interested parties and sought to gather

all available data on the subject of this proceeding. New data, estimates and arguments were received which have assisted the agency in adjusting and refining its analysis of the standard and the alternatives.

The agency believes that sufficient information exists to make all determinations required by applicable statutory criteria. The uncertainties confronting the agency now are significantly less than those which existed when the current standard was promulgated. The agency knows far more now about the benefits and costs of bumper standards with various levels of performance requirements than it did then. In the agency's judgment, there is no reasonable prospect of obtaining more definitive data under the continued application of the existing Part 581 standard.

The record is most clear on the issue of the present standard's noncompliance with the criteria in the Act. If the agency were now setting a bumper standard for the first time, it could not justify establishing a 5.0-mph/5.0-mph standard. The existing 5.0-mph standard provides significantly less net benefit to the public and consumers than would several of the proposed alternatives with less stringent performance requirements.

The record and empirical data before the agency are less definitive with respect to some aspects of the agency's assessment of the proposed alternative standards. Some uncertainty continues to exist with respect to several issues, including the proper economic value to be assigned to delay and inconvenience, the number of relevant low-speed impacts which a car may be expected to sustain over its lifetime, the proper economic value to be assigned to damage which car owners themselves elect not to repair, the proper factor to be applied to determine the relationship between increases in bumper weight and resulting increases in the weight of other vehicle systems and structures to accommodate the heavier bumpers (secondary weight), and the extent of weight reductions which would accrue if various alternative standards were adopted.

NHTSA has explored these areas of uncertainty to the limits of available data and appropriate analytical techniques. Ultimately, the agency has relied in these areas upon inferences from available data, informed judgment about engineering, technical, economic and legal matters, and the informed and expert opinion of commenters on the issue of which alternative level of performance requirements will best

achieve the policy objectives set forth in both the Cost Savings and Safety Acts.

The agency has subjected its interim findings and conclusions to sensitivity analyses, to identify and isolate the most significant (i.e., outcome determinative) variables and to determine the levels of confidence which may be placed on the values ultimately assigned to such variables. Where NHTSA could not with certainty assign a single value to a variable determined to be significant, the agency in all cases employed a range of values based upon the best available information. Those ranges generally include the values recommended by the commenters. The use of these ranges permitted the agency to examine the sensitivity of the results of its analysis and ensure the integrity of the outcome.

Finally, the agency identified the sets of assumptions it believes are most probable, and subjected each of its comparative analyses to various combinations of such values. These choices and related assumptions are discussed below in this notice and in greater detail in the FRIA itself.

Selection of test speeds, cost savings considerations—threshold factors. In its efforts to ensure the fullest consideration of the current standard and the proposed alternatives, NHTSA analyzed the net benefits of the standard and each alternative both by the use of average values and the use of extreme values for those variables about which there was either a significant measure of uncertainty or sharp and irreconcilable differences of opinion among the commenters. Some of the extreme assumptions were favorable to the current standard, while others were favorable to a reduced standard. The extreme values so analyzed represent in most cases neither a probable nor a reasonable outcome of events. Such analysis illustrates the most extreme of the possible outcomes in order to ensure the fullest consideration of the results of the agency's action.

Under the three sets of those extreme assumptions deemed to be the more reasonable by the agency, the net benefit calculation was found to favor a reduced standard. In these comparisons, all but one alternative proposal proved superior to the 5.0-mph/5.0-mph standard in terms of net benefits. See Table X-9 of the FRIA.

Only under the fourth set of extreme assumptions considered by the agency did the current standard yield more net benefits than did the alternatives. See Table X-9 of the FRIA. However, the agency considers it virtually impossible that the factual elements of that

combination of assumptions could occur in reality, in large part because of inherent contradictions in economic or behavioral results that would be associated with such alignment. See Chapter XI of the FRIA.

Therefore, the agency can not, consistent with its statutory mandate, retain the existing standard.

Similarly, alternative V, which would have eliminated all but the height requirement for both front and rear bumpers, also is found to fail to maximize net benefits to the consumer under the range of combinations of assumptions considered. No set of assumptions or average set forth in Tables X-9 and X-10 of the FRIA showed superior net benefits for alternative V. Accordingly, this alternative has been rejected by the agency.

Given the relatively flat nature of the cost and benefit curves over the range between the 5.0-mph/2.5-mph and 2.5-mph/height only alternatives, the choice among the remaining alternatives is more difficult. Particular sets of assumptions would suggest the superiority of various alternatives which retain some level of front bumper impact requirements but which would eliminate all impact requirements, and retain only a height requirement, for rear bumpers. However, any such apparent superiority in each case occurs only in the unique event of one combination of assumptions. Viewed as a whole, the data and probabilities associated with all combinations of assumptions preclude any reasonable finding that an alternative is superior where the range of necessary factual preconditions is so narrow.

First, under the sets of assumptions considered by the agency to be most likely or representative, the 2.5-mph/unregulated alternative cannot be found to be the alternative which is most likely to maximize net benefits. See Table XI-4 of the FRIA. Under all three sets of assumptions in that table considered by the agency to represent the most likely or average values for disputed elements of fact, the 2.5-mph/unregulated alternative provides fewer net benefits than does the 2.5-mph/2.5-mph alternative. Under two of those sets of facts, the net benefits of the 2.5-mph/unregulated alternative are also inferior to those of the 5.0-mph/2.5-mph alternative.

Second, while the net benefits of the 5.0-mph/unregulated alternative are closer to those of the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives, they are still inferior. The net benefits of that alternative exceed those of 2.5-mph/2.5-

mph alternative in only one instance in Tables X-9, X-10 and XI-4. In several instances, the 5.0-mph/unregulated alternative yields less net benefits than does either the 5.0-mph/2.5-mph or 2.5-mph/2.5-mph alternative.

Finally, there is another consideration which leads to the rejection of the 5.0-mph/unregulated alternative. Any alternative not providing front and rear impact protection at the same speed raises uncertainty about the aggressivity results or other effects of differential requirements.

Among the alternatives having differential requirements, the 5.0-mph/unregulated alternative has the most extreme differential. Since there are not any hard data on the effects of this differential, those effects could not be factored into the net benefit calculations in the FRIA. However, the agency's engineering judgment leads it to the conclusion that implementing a standard with such a differential would cause front bumpers to be more aggressive than rear bumpers. This aggressivity differential would cause rear ends of cars to receive greater but presently unquantifiable levels of damage in car-to-car collisions than they would if the impact speed requirements were identical.

The amount of any such additional rear end damage would offset in whole or in part any incremental benefits derived from requiring front bumpers to comply with more stringent requirements. Since these possibilities are not reflected in the net benefit figures for alternatives with differential front and rear impact speeds in Chapters X and XI of the FRIA, such net benefit figures would have to be considered overstated in the event that differential requirements were imposed.

The agency notes that implementing a standard with different front and rear bumper requirements could tend, in a front-to-rear collision between two cars, to have the undesirable effect of subsidizing some of the damage costs of the driver of the striking vehicle, who is most likely to be deemed under law to be at fault in causing the collision.

Finally, although commenters differed on the actual effects of differential impact speed requirements for front and rear bumpers, no commenter advocated adoption of a bumper standard requiring different test impact speeds, and some manufacturers suggested that consumer expectations would make bumpers subject to height only requirements unacceptable in the marketplace.

Selection of test speeds, cost savings considerations—final decision. The considerations discussed above and the requirement in section 102 that the

agency's standard seek to maximize cost reductions thus necessitated the determination by the agency of which of the remaining alternatives, i.e., the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives, would seek to provide the greatest superiority in net benefits.

Based on the analysis in the FRIA, the agency concludes that the 2.5-mph/2.5-mph alternative more fully satisfies all aspects of the statutory mandate than does the 5.0-mph/2.5-mph alternative. The agency's choice between these two alternatives was reached after comparing the estimated results of implementing these alternatives under all examined sets of extreme assumptions, as well as under those sets of assumptions deemed by the agency most representative or most likely to occur. Under the sets of extreme assumptions in Table X-9 of the FRIA, an equal number of sets support the choice of each of these two alternatives.

However, when the highly unlikely fourth set of assumptions in Table X-9 is discarded, and the net benefits developed using the first three sets of assumptions in lines 1 through 3 of that table are averaged to represent equal probabilities of outcome for each of the sets of facts (See line 1 of Table XI-4), the 2.5-mph/2.5-mph alternative is clearly superior. This alternative yields \$42 in net benefits relative to the current standard, compared with \$33 in net benefits for the 5.0-mph/2.5-mph alternative.

The agency's direct comparison of these two alternatives in Table XI-4 under other sets (lines 2 and 3 of that table) of assumptions discloses that the 2.5-mph/2.5-mph and the 5.0-mph/2.5-mph alternatives would yield varying net benefits that do not differ greatly.

The agency has noted above the absence of hard data that would be desirable in determining precise values for some of the variables involved in projecting costs and benefits. It is important to note, however, that the variables about which the sharpest disagreements of fact have arisen in the record, e.g., the frequency of low speed accidents, the value of delay and inconvenience, and the appropriate factor to apply to arrive at secondary weight, are in fact also those variables which are the least significant to the outcome of the agency's net benefit calculations. For example, as shown in Table XI-2 of the FRIA, using the value for each of these variables which most favors retaining the current standard would reduce the net benefits of the 2.5-mph/2.5-mph alternative by only \$4-12 over the life of the car. A shift in the values assigned to these variables would thus be least likely to produce a

change in the outcome of the agency's determinative net benefit calculations. Thus, the variables about which the greatest controversy has arisen are in most cases also those which are least important in the decision-making process.

In selecting this alternative, the agency was also guided by its conclusion that where two or more alternatives yield net benefits or ranges of net benefits which are difficult to distinguish, the cost savings goal of the Act is most fully satisfied by selecting the alternative with the requirements which impose the lowest direct, immediate costs.

The 2.5-mph/2.5-mph alternative is the one which imposes the least direct, immediate costs on the consumer, i.e., the least increase in the cost of a new car. To illustrate this point, if the unregulated bumper is considered the baseline, the agency's analysis indicates that the increase in direct and immediate cost to the consumer for bumper system components alone would be \$21-41 for a car equipped to comply with the 2.5-mph/2.5-mph alternative, but \$30-58, or 50 percent higher, for a car equipped to comply with the 5.0-mph/2.5-mph alternative. The choice of the 2.5-mph/2.5-mph alternative over the 5.0-mph/2.5-mph alternative reduces the direct bumper component cost increases by \$9-17, and the difference would be even greater if secondary weight costs were considered. See Table VII-8 of the FRIA.

Selection of the alternative with less stringent requirements, and thus lower immediate costs, avoids forcing consumers to spend more in purchasing a new car in order to obtain what would only eventually, if at all, amount to equivalent net savings or benefits.

If the agency did not select the alternative with the lower immediate costs, the consumer would be required to spend additional money in pursuit of benefits whose occurrence and amount are less certain. The agency believes that the consumer is best served by an approach which in close cases favors the more certain over the less certain equivalent net benefit. NHTSA believes that this interpretation of the Act most fully implements the objectives of the Congress and of Executive Order 12291 and represents the soundest public policy.

The agency also must recognize, and if possible implement, the apparent distinction made in the Act between obtaining the "maximum feasible reduction of costs to the public and to the consumer" (emphasis added). The legislative history of the Act does not

suggest a reason for the apparent distinction between the public at large and those who may purchase cars. One possible interpretation of this distinction is that Congress meant to seek the maximum possible benefits for the public in general, including those not purchasing cars. Once the agency has determined that the net benefits of the 5.0-mph/2.5-mph and 2.5-mph/2.5-mph alternatives are close, the agency believes that the only interpretation which would give appropriate weight to the statutory distinction between the "public" and "consumer" would be the alternative which better permits the marketplace to work efficiently and to produce innovative designs, the implementation of which will reduce overall costs to society as well as the purchasers of new cars.

Several automobile manufacturers and component suppliers commented that reduction of the test impact speed to 2.5 mph would facilitate use of new components and technologies, including plastics, ultra-high strength steel, and single-unit bumper systems. NHTSA believes that such design flexibility would be beneficial to the public at this time for several reasons. Innovation could result in more effective bumpers at lower cost to the public than would otherwise be available. Innovation and variety will allow individual consumers to apply their own individual value determinations on such important issues as the cost of delay and inconvenience, by opting to purchase more protection than would be cost-beneficial to the consuming public at large under the Act. Innovation, variety and a range of implemented choices in the marketplace will permit the agency to monitor cost and benefit trends and collect data about different performance levels of bumpers in the future.

The 2.5-mph/2.5-mph alternative will permit more innovation than the 5.0-mph/2.5-mph alternative because the former allows wider design freedom. Moreover, the 2.5-mph/2.5-mph alternative will increase the economic incentive of the manufacturers to retool because the parts for the new designs could be used on both the front and rear bumper systems of a vehicle. Without such innovation and retooling, the designs of bumpers are more likely to remain static, at least in the short run, and the benefits of innovative designs will be unrealized or significantly delayed.

There are other considerations that support the selection of the 2.5-mph/2.5-mph alternative. As noted above, any alternative specifying the same front and rear impact speed is deemed

preferable to alternatives involving differential front and rear test impact speeds since an alternative with symmetrical requirements would not raise uncertainty about the effects of differential requirements. Further, a bumper standard requiring differential front and rear impact speeds would lead to increased production costs and an increase in replacement part inventories as a result of probable losses in commonality of front and rear bumper components. Reduced commonality in a mass production market would be likely to increase the consumer cost of new vehicles and replacement parts.

In view of these differences between the alternatives and the probable consequences of the selection of each, the policies and requirements of the Act favor the choice of the 2.5-mph/2.5-mph alternative. As noted later in this preamble, the goal of section 102 is not to provide maximum protection against damage in low speed collisions without regard to the cost of such protection. Instead, the goal is to reduce front and rear end damage in low speed collisions under a statutory criterion and specific considerations that, when read together, indicate the most appropriate result is the one that minimizes the total consumer and public expenditure related to such damage and its prevention. The agency believes that the distinctions it has drawn between and the choices it has made among the alternatives are fully consistent with, and required in furtherance of, the policies of the Act.

Selection of test speeds; safety considerations. As discussed in more detail later, adoption of the 2.5-mph/2.5-mph alternative will not have any measurable effect on the risk that future accidents might be caused by safety components which malfunction due to damage incurred in prior low speed collisions and which are left unrepaired. Available data indicate that very few accidents occur as a result of malfunctioning of those vehicle components which are subject to the safety criteria of the bumper standard. The agency concludes that far fewer accidents could be attributed, and only by speculation, to a failure to repair such components after they had been damaged in the only type of collision relevant to this discussion, i.e., one which might occur at an impact speed between 2.5 mph and 5.0 mph.

Similarly, the agency concludes that reducing the bumper standard test speeds will not increase the risk that safety components damaged in such low speed collisions will cause injury in subsequent accidents caused by other

factors. The only safety-related system that is covered by the safety criteria of the Part 581 bumper standard and that might contribute to injury in the event of an accident is the fuel system. However, the data relied upon by one commenter addressing this issue predated the effective date of FMVSS 301, Fuel System Integrity. That safety standard provides protection, independent of and substantially superior to that of the bumper standard, against the risk that fuel leaks will create a safety hazard in an accident.

The agency concludes also that reducing the test speeds for the safety criteria will not measurably affect the high-speed crash energy management of cars. The difference in the energy management capability of 5.0-mph bumpers and 2.5-mph bumpers is negligible at crash speeds such as those (30 mph) specified in the safety standards regulating the crashworthiness of new cars.

Finally, NHTSA concludes that reducing the bumper standard test impact speeds will neither create inconsistencies with any of the safety standards nor make compliance with those standards more difficult.

Corner impact speeds. It should be noted that selection of a 2.5-mph test impact speed for longitudinal impacts also necessitates the selection of a 1.5-mph corner impact requirement. The 1.5-mph corner impact speed represents an equivalent proportional reduction in the 3.0-mph corner impact speed in the current standard as compared to the reduction from 5.0 mph to 2.5 mph for longitudinal impacts. The agency has always established corner impact speeds at lower levels due to the greater damage potential of corner pendulum impacts relative to longitudinal pendulum impacts at the same speed. The greater relative severity of the corner impact results from the concentration of crash force on a single location, which is inherent in a corner impact, and the fact that impact absorbing devices are designed to provide maximum protection in the more common longitudinal impacts. If the proportional relationship of the longitudinal and corner impact speeds were not maintained, the effort to maximize net benefits would be frustrated.

Phase I versus Phase II. Making a choice between Phase I and Phase II damage resistance criteria was also difficult because of the limited empirical data available for comparing performance under the two sets of criteria. Phase I of the Part 581 standard remained in effect for only one model

year (MY), 1979, and available information indicates that many manufacturers proceeded directly to bumper designs intended to meet the Phase II requirements prior to their effective date. The information that is available from surveys of vehicle owners and from insurance files indicates no discernible difference between the net benefits of MY 1974-78 and MY 1980 bumpers. Even if this information did reveal a difference, there are no data which the agency could use to determine the relative contributions of Phase I and Phase II to those benefits.

No compliance testing of MY 1979 models was conducted by NHTSA. The agency's compliance test results for MY 1980 suggest greater levels of protection for MY 1980 cars than is found in empirical data on real world damage experience for Phase II bumpers. The agency believes that in such cases agency decisions must be more strongly influenced by real world data since they reflect actual experience and are more reliable indicators of future real world experience. The insurance claim and survey data reflect the myriad variations in accident conditions and circumstances encountered in actual driving. In contrast, the compliance tests involve a limited and idealized set of conditions and circumstances. Those tests were necessarily chosen by the agency with the knowledge that they were imperfect surrogates from which to predict on-road experience.

Those commenters addressing the issue generally noted the cost and weight savings available by deleting the Phase II requirements. Commenters also pointed out that the increased use of non-metallic face bars has decreased the visibility of dent and set and thus greatly changed the circumstances under which such damage must be evaluated. Moreover, as suggested in the comments, deletion of Phase II would eliminate present difficulties in evaluating minor damage in compliance testing. The agency has been unable to determine that there are any net benefits associated with the Phase II damage criteria, independent of impact speed requirements.

The agency has also noted and taken into account the factual information and assertions submitted by representatives of the insurance industry concerning the possible use of more economical compliance technology such as nonself-restoring energy absorbers. The use of such technology is prevented by the current Phase II requirements. The availability of such technology on new bumper systems is a desirable result,

independent of the impact speed requirement imposed by the bumper standard. Retaining the Phase II requirements would inhibit the further development of such technology.

Finally, the agency took into account the importance of distinguishing in its analyses among favorable net benefit results attributable to impact speed reduction only, those results attributable to action with respect to Phase II only, and those results attributable to both aspects of the decision. Factual data exist in the record only with respect to the first and third of these areas. Thus, any attribution of benefits to the Phase II requirements would be too speculative as a basis for agency decision. The agency believes that the probable effect of its current decision will be the introduction of bumper systems exhibiting at least some characteristics of 5.0-mph, Phase I bumpers. Bumper face bars and reinforcements designed for 5.0-mph impacts, and therefore most probably capable of affording even greater actual protection as a result of over-design to ensure compliance, will undoubtedly continue to be used in at least some new cars in the short term. Effectively, 5.0-mph, Phase I bumpers will thus be produced under the new standard, on an interim basis and for some portion of the new car fleet. The performance of these cars can and will be monitored closely by the agency to estimate the actual effects of the shift to Phase I criteria.

For all of these reasons, the agency has concluded that the Phase II criteria are not justified and that those criteria should be deleted from the standard.

Removal of optional equipment during compliance testing. Several commenters contended that existing Part 581 test procedures restrict the installation of certain optional equipment prior to sale of a vehicle to a first purchaser. Although one domestic manufacturer stated that its optional equipment sales were not restricted, other automobile and equipment manufacturers commented that existing test procedures inhibit installation of fog lamps, running lights, and headlamp washers. Commenters recommended dealing with this problem by removing such equipment prior to testing, exempting such items from the protective criteria, or limiting testing to standard equipment only.

NHTSA believes that the safety value of optional equipment such as fog lamps has yet to be demonstrated conclusively. To the extent that the equipment does serve a safety function, permitting its removal during testing would encourage its installation and thereby promote

safety. Further, distinguishing between optional equipment installed before the purchase of a new car and that installed after such purchase serves little purpose, since equipment installed after purchase would be just as likely to be damaged in a low-speed collision. Moreover, such a distinction unfairly discriminates in favor of aftermarket suppliers at the expense of manufacturers and dealers wishing to attach equipment prior to the sale of new cars. The agency also notes that possible cost savings from factory installation of optional equipment are lost if such installation is discouraged by the test requirements. For these reasons, the agency has amended the standard to permit removal of fog lamps, running lights, other optional equipment attached to the bumper face bar, and headlamp washers prior to testing.

Harmonization. The Trade Agreements Act of 1979 (19 U.S.C. 2532(2)), requires that the agency consider harmonization with international standards in its regulatory actions. In the present context, ECE Regulation No. 42 is relevant.

NHTSA has formally endorsed enhanced efforts at harmonization between and among international standards in presentations to the Group of Experts on the Construction of Vehicles (Working Party 29) which operates under the ECE's Inland Transport Committee. Explicit harmonization of a United States bumper standard with the ECE regulation could have some positive economic effects since domestic manufacturers might experience lower costs due to reduced need for differentiation in design and equipment between cars for sale in this country and cars for export. In addition, European manufacturers subject to the ECE regulation could experience similar reduced costs.

This consideration, however, cannot be deemed to be controlling where United States law creates specific performance or policy criteria for regulatory action. With regard to ECE Regulation No. 42, NHTSA has concluded that the Act imposes specific criteria relating to cost savings which the ECE regulation does not address. Further, it is noted that the Act mandates the bumper standards issued thereunder be drafted so that they regulate performance instead of directly regulating bumper design. Certain provisions of the ECE regulation would impose statutorily impermissible design restrictions on vehicles produced for sale in this country. Finally, NHTSA has concluded that potential bumper

mismatch problems could result from substituting the height requirement specified in that regulation for the requirement in the Part 581 Bumper Standard. NHTSA will continue to pursue the question of harmonization in appropriate forums, but at this time merely notes that the 2.5-mph/2.5-mph, Phase I alternative selected in this rulemaking is far more compatible with the ECE regulation than the current Part 581 standard or the 5.0-mph/2.5-mph alternative.

Number of pendulum impacts. Some commenters suggested that the number of pendulum test impacts required by the standard be reduced. However, given the likelihood that some cars may incur more than two low speed bumper impacts in their lifetime, and the possibility that all such impacts may be either longitudinal or corner impacts and may involve the same bumper, the agency has concluded that the current procedure is appropriate to assure that each bumper is able to withstand the impacts to which it may in fact be subjected over its lifetime.

Public opinion survey. Some commenters alleged that public opinion strongly favors the retention of bumper requirements at current levels and should control the agency's decision in this rulemaking. As evidence of public opinion, two commenters cited a survey conducted by the Opinion Research Corporation, Inc., (ORC) for the Insurance Institute for Highway Safety.

NHTSA disagrees with the commenters' suggestion about public opinion. First, the level of bumper standards established by the agency under the Act cannot be determined merely on the basis of what members of the public understand to be the relevant facts and issues, or what they themselves would prefer. The Congress has determined the public policy which must be applied by the agency, and the agency's decision must be reached in accordance with the statutory criteria. Those criteria do not include public preferences as such, although as noted in the FRIA, adequately demonstrated public preference may be relevant to assessments of future market demand and the response options available to the auto manufacturing and insurance industries.

Second, the agency does not believe that the ORC survey provides reliable evidence on public preferences regarding economic values associated with bumper alternatives before the agency. An analysis of the text of the survey discloses that the structure and specific questions asked did not compensate for the public's general lack of detailed information concerning the

costs and benefits of bumpers. Yet the survey asked a variety of questions which could be meaningfully answered only by persons knowledgeable about such matters. Also, many of the specific questions may have inadvertently encouraged respondents to give inflated estimates of the value of the current bumper standard. For these and other reasons discussed in chapter III of the FRIA, the agency regards the ORC survey as an inconclusive indicator of informed public opinion.

Legal issues. Some commenters advocating retention of the current standard have questioned the adequacy of the record in this proceeding to provide a basis for decision and have challenged in advance the legal soundness of any decision to amend the standard.

In this rulemaking proceeding, the agency has compiled voluminous materials over a period of years which have been used in analyzing competing alternatives. Through the notice and comment process and two public meetings, the agency has received over two hundred comments from a full spectrum of interested parties and has gathered all available data on the subject of this proceeding. New data, estimates and arguments have been received which have assisted the agency in refining its analysis of the standard.

As noted above, the agency recognizes that a degree of uncertainty is present in some of its calculations and conclusions by virtue of the absence of conclusive real world data relating to certain categories of benefits and costs. However, this lack of factual certainty no more absolves the agency of its duty under section 102 of the Act to ensure that a bumper standard exists which in fact complies with the requirement to seek maximum feasible reductions in cost than could similar uncertainties have arguably absolved the agency of its duty to issue a standard in the first instance. Under the Act, the agency is directed to adopt and maintain a standard. That standard is further required to meet certain statutory criteria. Implicit in this and any similar statutory mechanism is both a prohibition against rescinding an existing standard altogether, and maintaining a standard which, on the basis of a developing evidentiary foundation is found either not to have any net benefits, or to have fewer net benefits than any one or more different standards. As noted above, explicit instructions to the effect were directed to the agency in 1978.

The agency does not accept an expansive view of the limitations imposed on the agency's action in this

proceeding by the Act, as inferred by some commenters from the provisions of the Act, itself. The agency is cognizant of the relevant statutory criteria imposed by this organic Act and has acted in accordance with them.

The statute does not require, and the legislative history does not support, an inference of Congressional intent that the agency be completely certain regarding the relevant factual issues before it conducts rulemaking under this Act. To the contrary, the Act, its legislative history and Congressional action to date have emphasized the presence of significant uncertainty on all of the relevant issues discussed in this notice. Recognition of the uncertainty may be seen in, for example, the wording of the criterion in section 102 governing the setting of the level of the bumper standard. The agency is not required to establish a standard that produces the maximum feasible reduction in costs, but one that "seeks to obtain" such a reduction. The agency has always considered itself bound to proceed with continuing review and rulemaking even in the presence of uncertainty. This conclusion and interpretation of the statute is consistent with the agency's actions since enactment, and is explicitly reasserted in this notice.

The statute also does not mandate that the standard be set so as to require the use of the most protective bumpers which can be produced. From the beginning of its action under the provisions of the Act, the agency has always recognized that such bumpers would be so expensive to produce and replace that their use would involve a net economic loss for consumers. 38 FR 20899 (August 3, 1973). As the agency also noted in that notice, rulemaking under the Act involves the balancing of many factors to determine what level of performance is most beneficial to the public and the consumer.

As the agency interprets the Act and its history, the purpose of the Act's bumper provisions is to secure cost savings for the public and the consumer. The bumper provisions address the issues of the costs of damage in low speed collisions and the costs of avoiding that damage and authorize and direct the agency to set standards that minimize the combined total of these costs to the public and the consumer. The goal of seeking cost savings is promoted by setting the standards and as appropriate adjusting them toward the level where the marginal benefits equal marginal costs. That is, if raising bumper performance from its unregulated level yields more

incremental benefits, reflected in damage reduction, than the incremental costs of increased damage protection, the standard should be raised. The impact speed requirements should be raised to the point where the incremental increase in damage avoided equals the incremental increase in costs. This is the point at which the cost savings or net benefits are maximized.

Raising the requirements above that point of equality would not provide the public and consumer with any additional cost savings. Two possibilities exist regarding the relationship of incremental benefits and costs above that point. One is that incremental benefits will be less than the incremental costs at all points above the point of equality. In that event, raising the requirements above the point of equality would reduce the cost savings achievable at that point. The other possibility is a variation on the first in that incremental benefits will equal or at least appear to equal incremental costs over some range of requirement levels immediately above the point of equality. The FRIA suggests that there may be a range over which incremental benefits and costs appear to be roughly equal. Setting requirements within such a range would not, however, increase cost savings, and would thus be of questionable validity. It would result in a simple trading of dollars, that is, receiving only as much in reduced damage as one pays for increased damage protection.

In this rulemaking action, NHTSA has determined that the 2.5-mph/2.5-mph alternative is more likely than the current standard and the other alternatives to be the point of equality, that is, where the incremental benefits first equal the incremental costs. Accordingly, the agency has selected that alternative as the new standard. As noted above, setting a higher standard would not increase the savings to the public and consumers. A higher standard would only increase the direct, immediate costs which each new car purchaser must bear.

Some commenters have asserted that a 5.0-mph test impact speed is necessary to satisfy the expectations voiced in Congress during deliberations on the Act. While these expectations are relevant, the determinative fact in all instances must be what the Congress in fact did through legislative action. In the Act, the Congress did not set a particular standard, but instead adopted the maximum feasible cost reduction criterion, and required that bumper standards be set in accordance with it. The criterion is a deliberately flexible

one which permits and even requires that bumper standards be adjusted based on available information.

Some commenters suggested that the agency is legally bound to maintain the Part 581 Bumper Standard at its present level because the standard incorporates the safety criteria of former FMVSS 215. One insurer asserted that the criteria in section 103(a) of the Safety Act must form a basis for any decision to amend the Bumper Standard. Those criteria require that a safety standard be practicable, be stated in objective terms, and meet the need for motor vehicle safety. 15 U.S.C 1392(a). Another insurer cited the legislative history of the Act in support of the proposition that Congress intended safety considerations to be controlling in establishing bumper standards.

Given the hybrid nature of the part 581 Standard, this rulemaking action was initiated under the concurrent authority of the Act and the Safety Act. Without deciding whether the criteria established for safety standards under section 103 must necessarily be applied in all cases under the Act where any safety relationship can be asserted, the agency has concluded, based on the discussion in this notice and the FRIA, that its actions in this proceeding are in all respects in accordance with the applicable criteria of the Safety Act itself.

By the same token, this action does not conflict with safety standards promulgated under the Safety Act. To the extent that bumper standards may be considered to be safety standards, the 5.0-mph safety criteria of Part 581 have been determined to be unsupported, even under the Safety Act criteria, and are amended by this notice. Reducing the test speed does not make compliance with any safety standard more difficult. The changes made by this rulemaking action do not necessitate any change in efforts to comply with existing safety standards. To the degree that pedestrian impact protection is a relevant safety consideration, current agency research on the subject suggests the possibility of an adverse safety consequence from bumpers designed for impact speeds of 5.0 mph or higher.

The Final Regulatory Impact Analysis

NHTSA's FRIA estimates the changes in costs and benefits likely to result from amending the Bumper Standard. In assessing the relative merits of the alternative bumper standard amendments described in the notice of proposed rulemaking in this proceeding, NHTSA has considered all available evidence and viewpoints in order to quantify and analyze the various factors

relevant to determining bumper system net benefits.

As discussed in the agency's FRIA, the primary measure of benefits of the Part 581 Bumper Standard is the economic cost of the damage avoided by use of a bumper designed to provide protection at a higher impact speed. In the agency's FRIA, this cost was determined for each alternative standard by computing the cost of repaired damage and unrepaired damage. The cost of damage was computed by first using the results of vehicle owner surveys and insurance company claim files to estimate the frequency of damage to bumper systems. This figure was then analyzed in terms of the projected effectiveness of that bumper system in preventing damage, as estimated from insurance records and by use of engineering judgment.

Reduced levels of savings representing the value of damage which the vehicle owner decides not to have repaired were determined by first estimating the repair costs for unrepaired damage described by car owners. NHTSA then reduced the repair cost by a range of values to reflect the fact that the damage was not repaired, the effect of vehicle age on the value of that damage, and the absence of any out-of-pocket expenses incurred by the car owner.

The agency's calculation of benefits also took into account insurance cost savings beyond the value of the damage avoided by the bumper system, i.e., through savings in administrative expense. Savings in consumer time and inconvenience resulting from damage avoidance at various levels of bumper damage resistance were also considered as benefits of bumper regulation. Such savings include the value of time saved at the scene of a low speed accident, reduced time and expense in obtaining repair estimates, and savings in the avoided cost of obtaining alternative transportation while collision damage is repaired. Finally, although not subject to quantification in the agency's economic analysis, the agency considered the possible beneficial or adverse effects of bumper requirements on vehicle safety.

A very important cost impact of bumper regulation is the increase in new car prices attributable to the use of bumper systems providing greater levels of damage resistance. This cost consists of the cost of the bumper system itself and the cost of upgrading other vehicle components to support the additional weight of more damage resistant systems (i.e., the cost of secondary weight). The FRIA examines the changes in such costs that would result

from adopting test speeds below those in the current standard. The costs used in the agency's FRIA represent the marginal change in costs resulting from changing from the current bumper standard to an alternative standard requiring lower levels of bumper performance. Costs are calculated in terms of actual cost to the consumer. Finance charges associated with that portion of the vehicle purchase price attributable to the bumper are considered and taken into account as appropriate.

In addition to the effect on the initial cost of purchasing a car, the added operating cost of driving a car with a heavier bumper system has been considered. The agency has estimated the additional fuel costs incurred in carrying the extra primary and secondary weight associated with bumper systems providing greater levels of damage resistance performance. Costs and benefits to be accrued in the future have been discounted to reflect their value in current dollars. Results of the FRIA have been stated in terms of positive or negative net benefits for the various alternative standards, as compared to the costs and benefits of the current 5.0-mph/5.0-mph standard. See chapters X and XI of the FRIA.

In the agency's analysis, several factual issues are of particular importance, and the data and opinion evidence relied upon by the agency are summarized in greater detail below.

Frequency of bumper-related collisions. As noted above, benefits derived from the damage avoidance properties of bumpers are computed by estimating first the frequency of bumper-related collisions, and then the ability of the bumper system to protect the car in those collisions. Levels of protection thus computed yield benefits in terms of the costs which would otherwise have been incurred in connection with the avoided damage.

In 1970, the Ford Motor Company conducted a survey of actual observed damage to Ford cars in parking lots. Based on that survey, earlier NHTSA analyses estimated that the average car experienced 3.63 low-speed collisions involving its bumpers during its lifetime.

In the PRIA, the agency estimated the frequency of unreported, low speed collisions at a lower number, based on the results of a telephone survey of principal operators of cars. That survey was conducted for NHTSA by Westat, Inc.

The agency's October 1981 NPRM specifically requested that commenters address the issue of the best method of estimating such low speed collision frequency. Responding commenters

disagreed on the relative merits of the cited damage frequency estimates. While car manufacturers argued for the use of figures derived from the Westat study, insurers generally favored higher estimates. Commenters addressing this issue generally expressed the view that the actual figure for low speed collision frequency would be somewhere below the figure of 3.63 lifetime impacts estimated from the parking lot surveys by Ford.

The agency agrees with commenters that the Ford survey is inadequate for use in the current context, by virtue of various factors, including its concentration on urban areas. The agency believes that the Westat survey, and the comments to the record by interested parties represent superior, and the best available, data on low-speed accident frequency. They have been considered in the computation of this factor. NHTSA has considered the possible use of crash recorders on cars to assess accident frequency, but finds that this approach would be prohibitively expensive and not technically feasible at this time. For these reasons, the FRIA incorporates a range of values for low speed accident frequency, using as the bounds of the range the highest estimate provided in the comments and the lower estimate derived from the Westat survey data.

Bumper system effectiveness. On the question of the effectiveness of bumper systems designed to provide protection at differing impact speeds, estimates used in the PRIA were based on comparisons by agency experts between the performance of cars with Part 581 bumpers and with pre-standard cars. The agency was able in the PRIA to make extensive use of field data to determine the effectiveness of bumpers designed to provide protection in 5.0-mph impacts. NHTSA was able also to supplement insurance industry data on reported accidents with Westat survey data on damage incurred in unreported accidents.

However, no similar data on the effectiveness of bumpers designed to provide protection at other impact speeds exists. As a result, the agency was forced to rely in its PRIA on data concerning MY 1973 rear bumpers for its estimates of 2.5-mph bumper effectiveness. These were the only bumpers ever sold in this country which were required to provide 2.5-mph protection. As an alternative and cross-check, the agency also considered in the PRIA estimates which had been developed for use in the June 1979 Final Assessment of the Bumper Standard, and which were based on engineering judgment of the agency's experts

regarding the relative effectiveness of various bumper systems. The use of these estimates was supported by the insurance industry in its review of the 1979 Assessment.

Using this methodology, the agency estimated that 2.5-mph bumpers would achieve 67 percent of the effectiveness of 5.0-mph bumpers in low speed collisions. That is, 2.5-mph bumpers would be two-thirds as effective in preventing damage as 5.0-mph bumpers would be.

Car and insurance industry commenters joined in arguing the unreliability of estimates based on the performance experience of MY 1973 rear bumpers. They stressed the lack of comparability between these early bumpers and the 2.5-mph bumper systems which would be produced today, citing the absence of any uniform height requirement for MY 1973 bumpers, the actual similarity of MY 1973 bumpers to unregulated bumpers of prior years, the increased uniformity among bumper designs in the present vehicle fleet, and other factors related to the vehicle fleet mix. NHTSA agrees with commenters that data on MY 1973 rear bumpers fails to provide an accurate approximation of current 2.5-mph designs. NHTSA has concluded therefore that the methodology employing MY 1973 rear bumper data should not be used in estimating current levels of bumper effectiveness.

NHTSA has considered relying upon European data relating to the performance experience of bumpers designed in compliance with ECE Regulation No. 42 to assess the effectiveness of 2.5-mph bumpers but has concluded that adequate data of that type are not available. Although alternatives data sources were specifically sought in NHTSA's October 1981 NPRM, no field data on the effectiveness of alternative systems in other countries were introduced into the record by commenters. Moreover, European bumpers are required to be designed to meet a safety standard only, and are tested under different procedures than American bumpers. Finally, differences in fleet composition and average vehicle weight, as well as the greater frequency of urban driving in Europe, would limit the relevance of data based on vehicles in use abroad to predicted vehicle experience in American driving conditions.

Insurance industry commenters presented to the record data on certain laboratory tests undertaken on production vehicles alleged to have been equipped with 2.5-mph bumpers, i.e., pickup trucks and multipurpose

passenger vehicles not subject to the Part 581 requirements. NHTSA has concluded, based on the evidence in the record, that the damage levels reported in the insurance industry tests are not sufficiently relevant to predict 2.5-mph bumper performance. The tests reported upon were of limited scope, and no data have been introduced or are known to the agency from which to conclude that the bumper systems tested were designed to, or would in fact, comply with the Part 581 requirements in 2.5-mph barrier and pendulum impacts. Moreover, a commenter from the auto industry pointed out an instance in which the insurance claim frequency for a car equipped with a Part 581 bumper was actually higher than for its counterpart, the four-wheel drive, multipurpose passenger vehicle version which was equipped with an unregulated bumper. The agency has therefore concluded that estimates based on extrapolation from field data better account for factors such as crash angle, impact speed, frequency of occurrence and vehicle fleet mix. Thus, NHTSA makes use in the FRIA of the 67 percent effectiveness figure employed in the 1979 Assessment, but now applies this factor to the superior lifetime damage estimates derived from the 1981 Evaluation.

Primary bumper costs and weight. With respect to the increase in costs associated with bumper systems providing greater levels of damage protection, many motor vehicle manufacturers submitted previously unavailable estimates of the cost and weight penalties associated with providing bumpers meeting current 5.00-mph performance requirements, as compared with the cost of complying with a 2.5-mph, Phase I requirement or with the ECE Regulation No. 42 bumper requirement.

The agency estimates in the FRIA that the primary cost differences between 5.0-mph and 2.5-mph Phase II bumper systems can be best expressed as a range from \$18 to \$35. The corresponding range of weight differences is estimated to be from 15 to 33 pounds. The \$18 to \$35 and 15 to 33 pound ranges are based on estimates submitted to NHTSA by the manufacturers and reflect the range of representative cost and weight savings estimates submitted.

In their submissions to the rulemaking docket, the manufacturers generally did not identify all changes in design or components that would take place if the bumper standard were reduced to 2.5 mph/2.5 mph. Certain changes were specifically noted, however.

Manufacturers stated that such a reduction would allow the removal of self-restoring, heavy duty energy absorbers and noted that they would probably make that change. Some manufacturers also identified reducing face bar thickness and removing some reinforcements as being among the changes possible if the standard were reduced.

Although the estimates of cost and weight for 2.5-mph bumper systems included in the FRIA generally agree with current estimates of representative manufacturers, and are consistent with those confidential submissions made in response to the 1979 advance notice of proposed rulemaking, other independent estimates have been generated which indicate that even greater weight reductions are possible if the Part 581 bumper standard were reduced to 2.5 mph/2.5 mph. For example, the 1979 Final Assessment cited a weight reduction estimate of 43 pounds developed by a design engineer under contract with NHTSA. Since the 43 pound figure was developed in reference to cars averaging 3,350 pounds in weight, the appropriate value applicable to the lighter average car produced today would be less. Assuming the weight loss in primary bumper weight would be proportional to total vehicle weight, the appropriate figure for today's cars would be approximately 36-37 pounds. Notwithstanding the higher value thus represented, the upper range set forth in the FRIA is 33 pounds. If the higher figures of 36-37 pounds were used, the weight and cost differential between 5.0-mph and 2.5-mph bumpers, and thus the benefits of the lower impact speed, would be even greater.

In addition, other independent cost studies submitted as evidence in the record indicate that the actual costs for all manufacturers of components such as energy absorbers may in fact be higher than cost estimates by the car manufacturers who submitted data on this point. See, for example, Docket No. 81-07 Notice 1, No. 006. If the cost avoided by removing such energy absorbers from a car were as high as \$48, instead of the \$20 estimated in confidential submissions responding to the 1979 advance notice of proposed rulemaking (as updated to reflect the weight of current cars), the additional cost savings of reducing the part 581 standard to 2.5 mph/2.5 mph would be increased by \$28, thereby enhancing the cost reduction attributable to that alternative. In this case, although the result may be to underestimate the benefit of the lower standard, the

agency has chosen to use in the FRIA the lower cost and weight estimates submitted by the manufacturers who commented in response to the NPRM, since such lower values produce benefit calculations less favorable to the regulatory result urged by the car manufacturers involved.

Secondary weight and cost. On the subject of secondary weight, NHTSA relied in its FRIA on methodologies developed by the transportation Systems Center (TSC) of Cambridge, Massachusetts, and General Motors. The TSC methodology assumes that, in the case of vehicles with unitized bodies, the vehicle body will not be affected by changes in bumper weight. This methodology results in a secondary weight factor of .5; that is, one half pound of secondary weight will be added to the rest of the vehicle for each pound of added bumper weight. The General Motors methodology, based on actual component weights of MY 1974 General Motors products, assumes that all the weight of a unitized vehicle body is affected by secondary weight. This methodology results in a secondary weight factor of about 1.0.

The agency has concluded, based on all comments received, that the assumptions of the TSC methodology concerning vehicles with unitized bodies are extreme. One manufacturer submitted an estimate of secondary weight based on its analysis of its most efficient new car designs. That analysis indicates a secondary weight factor of 0.7 (i.e., seven-tenths of a pound added for each pound of added bumper system weight). Since all of these were new designs for which secondary weight factors may be lower than for the fleet as a whole, the agency considers that this estimate most likely represents the lower bound of secondary weight factors in the current vehicle fleet. Older, existing production car designs, which would also be affected by a reduced standard, would be likely to have a secondary weight factor of 1.0 or higher. The agency has concluded that there is no adequate basis to establish a higher value than that based upon actual component weight analysis, and accordingly the agency makes use of both the .7 and 1.0 factors in the FRIA.

Only two commenters addressed the issue of the cost of secondary weight. Both commenters suggested that NHTSA's estimate of \$.72 per pound in the FRIA represents the lower bound of possible secondary weight costs, since it was based only on the cost per pound of structural components and did not include cost effects on weight dependent subsystems such as tires and

brake linings. However, the agency believes that while changes such as upgrading brake linings or marginally increasing tire size to accommodate increased bumper weight will undoubtedly occur to some extent, they are impossible to quantify in terms of dollar costs on the record before the agency. Thus, the agency continues to use only the cost of major structural materials such as cold-rolled steel and aluminum to reflect secondary weight cost more conservatively. Because of an error discovered by the agency in its original computation of the markup factor used in the PRIA, the agency has now corrected the cost of secondary weight and uses \$.60 per pound in the FRIA.

Use of consumer costs instead of manufacturer variable costs. In calculating for the FRIA the cost savings available from modified bumper requirements, NHTSA considered manufacturers' variable cost savings, but not reductions attributable to savings on dealer markup, which represent some additional potential consumer savings. Several motor vehicle manufacturers endorsed NHTSA's inclusion of variable cost savings in its analysis and projected savings of 10 to 30 percent resulting from reducing the Bumper Standard impact speed level to 2.5 mph. However, the manufacturers also commented that consumer cost (which includes dealer markup), rather than variable cost, is a more realistic determinant of the cost of bumper regulation.

The agency believes that use of consumer costs is more consistent with the requirements of the Act. Using the newly submitted cost savings estimates supplied by the auto manufacturers, and the agency's independent analysis of the reasonableness of these estimates based on the use of teardown studies, NHTSA stated cost savings in terms of consumer costs in its FRIA. The FRIA employs a sensitivity analysis to assess the effect on consumer prices of various possible bumper standard alternatives.

Finance charges. In its PRIA, NHTSA added the cost of new car finance charges to the cost of current bumper systems. While several auto industry sources saw no difficulty with consideration of finance charges from the standpoint of economic theory, certain representatives of the auto and insurance industries noted that the principal of a car loan, in addition to the interest, should have been discounted to estimate true consumer savings. The agency agrees that the approach used in the PRIA overstated consumer savings because of the failure to discount the

loan principal also. In estimating new car costs in the FRIA, the agency has discounted both the principal and the interest of new car loans.

Percentage of new car purchases which are financed. One commenter argued that the agency overestimated the percentage of vehicle purchases which are financed, and the duration of the financing obtained. However, the agency's figures on loan duration and percentage of new car sales financed are based on the latest available information from the Federal Reserve Board. The commenter based its alternate suggested percentage figure on data which included used car sales, which are less frequently financed. Moreover, to the extent that a small percentage of new car sales are not financed through consumer credit, e.g., fleet sales, these sales are nonetheless commonly financed through business borrowing at an even higher interest rate. Thus, the agency has not changed its analysis in response to this comment.

Retooling costs. Comments by one domestic manufacturer at NHTSA's public meeting on bumpers indicated that that company would incur a one time retooling cost of one million dollars if the present bumper standard were amended to reduce the test impact speed. Another major domestic manufacturer contended that this cost is irrelevant because, if it were not economically favorable to manufacturers to retool, such expenses would not be incurred. The agency has concluded that in computing overall societal costs of the regulation, this expense is relevant and should be considered. However, retooling costs have already been included in the agency's estimates of new car cost and thus are not addressed as a separate item in the FRIA.

Fuel consumption. In addition to the initial expense of purchasing a bumper system providing increased damage resistance performance, more stringent bumper standards which require heavier systems increase vehicle operating expenses. The added weight of the bumpers causes an increase in fuel consumption. As discussed above, projected weight savings from reduction of the bumper standard test impact speed to 2.5 mph would be significant, even for smaller cars. In its PRIA, NHTSA estimated that each additional pound of weight adds 1.1 gallons to the lifetime fuel consumption of a passenger vehicle. Some commenters accepted this fuel penalty figure as a reasonable approximation. One manufacturer advocated use of a higher figure. However, the source of the 1.1 gallon

estimate, a major domestic auto manufacturer, revised its estimate downward to 1.0 gallons per pound, based on testing and simulation studies on new, lighter weight cars. The agency is using this revised lower figure to be conservative in its estimates of benefits associated with the proposed alternatives to the current 5.0-mph standard.

NHTSA in its PRIA used a projected 1982 fuel cost in 1981 dollars of \$1.60 per gallon in calculating the cost of the fuel consumed in carrying additional bumper weight, with small additional real price increases (in terms of 1981 dollars) in subsequent years. The four major domestic automakers concurred in the use of this figure in comments on the notice of proposed rulemaking. However, figures in the latest Department of Energy (DOE) and Data Resources, Inc. (DRI) forecasts suggest that an estimate of \$1.28 per gallon more accurately reflects current pricing trends. Accordingly, the agency has used this figure as the 1982 average price in the FRIA.

Discount rate. For purposes of its PRIA, NHTSA used a discount rate of 10 percent in assessing the current value of future costs and benefits. This rate has been established by the Office of Management and Budget for use in Government analyses. Since, however, it is arguable that a statutory mandate to consider actual costs and benefits would require the agency to at least analyze the actual discount rate as well in reaching its conclusions, such an analysis was undertaken. See Table III-6 of the FRIA. Although one commenter suggested a lower figure, NHTSA has concluded that, given the insensitivity of net benefits to changes in the discount rate, the 10 percent rate is appropriate at this time. This figure represents a compromise between competing schools of thought as defined in economic literature, and has been used in past agency regulatory analyses. Its continued use facilitates the comparison of costs and benefits of different regulatory actions. Thus, the 10 percent figure has been retained as the basis for the discount rate used throughout the FRIA, in estimating the current value of both costs and benefits.

Lifetime distribution of accident frequency. NHTSA based its discounting in the PRIA on the assumption that accident frequency is distributed over a vehicle's lifetime, in proportion to the number of miles traveled each year by the vehicle. Car manufacturers differed on the validity of this assumption, with some contending that accident rates are higher for older vehicles. If this were

true, then the net benefits of reducing the bumper standard would be even greater than estimated by the agency in the FRIA. However, NHTSA has concluded that the evidence presented on actual distribution of accidents over vehicle lifetime is not sufficiently reliable to attempt more specific yearly estimates, because, among other things, it includes both high and low speed accidents and the correlation between these types of accidents has not been established. Thus, the agency continues to use its original assumption on this point.

Effect of non-bumper related design changes on repair costs. A member of the insurance industry contended that not all increases in damage-per-claim figures occurring since implementation of the bumper standard should be attributed to the standard. According to that commenter, new components, such as rectangular headlamps and one-piece plastic front-end panels, which have come into use since implementation of Federal bumper standards, have added to damage-per-claim figures used by NHTSA to assess the effect of the bumper standard. Commenters made no showing regarding the costs of the various front end components, the extent of their use in given model years, or the frequency and extent of their damage. Further, as several auto industry commenters noted, the increased complexity of the 5.0-mph bumper system makes that system more expensive to repair or replace when damaged in an impact above its design speed of 5.0 mph. Thus, the record provides no objective basis for the agency to modify its analysis.

Value of unrepaired damage. In the FRIA, NHTSA valued the cost of unrepaired damage at the full cost to repair that damage. However, several auto manufacturers commented that such damage should be valued at some lesser figure or should not be counted at all. One manufacturer placed the figure at not more than 50 percent of the cost to repair the damage. The agency's 1979 Final Assessment placed the figure at 75 percent. NHTSA has concluded that unrepaired damage clearly imposes some cost. The value of this cost, however, would necessarily vary with the age of the car, other cumulative damage, whether or not bumper-related, and other factors. NHTSA believes that a range of 50 to 75 percent of the full cost of repair represents a reasonable balancing of competing considerations and has used such a range to approximate the value of unrepaired damage in the FRIA.

One commenter suggested that consumer tolerance for cosmetic vehicle damage increases, and the value of such damage should therefore decrease, with vehicle age. However, the agency has no way of assessing this effect and therefore considers it too speculative to include in the FRIA. Therefore, the agency has not amended its calculations in response to this comment.

Current versus future technology. Throughout the consideration of bumper effectiveness, cost, and weight, the agency has been faced with the alternatives of relying on historical data based on the experience of previous model year vehicles, or on calculations based on present or future technologies. The difficulty of the choice is apparent. The former approach has the advantage of greater and superior empirical data, but may not fully account for the most recent advances in design or materials technology. The latter approach may more fully reflect state current and future conditions, but the absence of any empirical or field data introduces significantly greater elements of uncertainty.

Insurance industry and consumer representatives criticized the agency's analysis for relying on bumper designs used in the late 1970's instead of the best bumper technology available today. These commenters contended that state-of-the-art bumpers in use on the latest vehicle models are lighter, more efficient, and cost less than bumpers on earlier models and are more representative of bumpers which will be used in the future. An insurance industry representative and one component supplier commented that new technologies involving use of plastics could positively affect the net benefits of 5.0-mph bumpers. Motor vehicle manufacturers countered that use of a representative current bumper system as the basis for cost and weight estimates is more realistic, because it is more reflective of immediate cost/benefit impacts and because styling considerations frequently limit the use of the most efficient bumper design available.

The agency believes that analysis of the bumper regulation should be based on real-world conditions and that it is unrealistic to assume that the most advanced technology will be used in all cases. While the use of alternative technologies could affect costs and benefits if such technologies were widely adopted, no evidence has been presented that cost, styling, production or other constraints would permit universal acceptance of these new technologies. More important, even if

designs more efficient in terms of costs and weight were chosen to represent 5.0-mph bumpers in the FRIA, the effect of this change on the FRIA outcome would be negated in large part by the necessary parallel assumption that bumper systems offering lower levels of protection would also be designed and implemented at the most efficient levels possible. Therefore, NHTSA has concluded that projections of bumper net benefits must continue to be based on data relating to real world bumper systems.

Insurance premium increases. Many comments submitted by insurance industry sources and others noted that insurance premiums would increase if the bumper standard impact speed were lowered from its current levels. Insurers generally concurred that the level of such collision insurance premium increase would be 10 percent if the bumper standard test impact speed were reduced to 2.5 mph. The agency has reviewed in detail the cost of increased collision damage costs and the increased administrative overhead burden that would be incurred. Based on this analysis and on the assumption that only actual cost increases would be approved by state regulatory bodies for pass through and recovery in the form of rate increases the agency can not agree that such estimates are accurate. NHTSA accounts for insurance cost increases through estimates in the FRIA of increased collision damage costs and administrative overhead.

Effect on insurance companies, bumper component suppliers, and new car dealers. The agency's October 1981 notice of proposed rulemaking requested comments on the effect which amendment of the bumper standard would have on the insurance industry and bumper component suppliers. Members of these industries did not respond to this inquiry, except with regard to the insurance premium estimates noted above. Motor vehicle manufacturers addressing this point generally concluded that effects on related industries would not be major. Although one source predicted a reduction in the dollar sales volume of bumper component parts, increased sales of replacement parts would tend to offset to some extent the lower per unit cost of bumper replacement parts.

One industry which did claim a major interest in this proceeding was the automobile retail sales industry, as represented by the National Automobile Dealers Association. That organization pointed out the devastating effects on its membership of the recent depressed automotive retail sales market and

provided data indicating the effect on car sales of price increases similar in magnitude to those resulting from the Part 581 Bumper Standard.

Consumer time and inconvenience. Several commenters addressed issues relevant to the consideration by NHTSA, as mandated by the Act, of the value of consumer time and inconvenience related to damage incurred in low speed collisions. NHTSA's PRIA incorporated a figure of \$26 per incident as the value of consumer time and inconvenience associated with assessment and repair of low speed collision damage. Insurance industry and consumer representative commenters presented results of a survey conducted for that industry by Opinion Research Corporation which seemed to suggest that a much higher per accident value should be placed on time and inconvenience. However, NHTSA has concluded that the results of this survey do not require revision of the agency's estimates of the value of delay and inconvenience.

Commenters citing the Opinion Research survey placed values of \$150 to \$200 per incident on the delay and inconvenience resulting from low speed accidents, in contrast to NHTSA's PRIA estimate of \$26. However, review of the survey results suggests that these estimates may include the value of repair costs to be borne by consumers, i.e., the deductible amount of the consumers' collision insurance, usually \$100, a cost accounted for elsewhere in NHTSA's analysis.

Also, the Opinion Research survey focused attention on the delay and inconvenience involved in having collision damage repaired. NHTSA's estimates are based on average time loss for all accidents, including those in which damage was minimal and/or not repaired. The survey included questions which could be accurately answered only by persons with detailed knowledge of the costs and benefits of bumper systems. Moreover, apparent biases in some of the survey questions may have inflated survey respondents' estimates of the value of damage avoidance. When the effect of the above noted factors is accounted for, the insurance industry and consumer representative commenters' estimates and the NHTSA estimate do not differ greatly.

Some automobile industry and consumer representatives commented that the agency's estimate of \$10 per incident for the cost of alternate transportation while low speed collision damage is repaired may be too low. A consumer organization commented that

the agency underestimated the time lost at the scene of an accident and in obtaining repair estimates. It suggested that NHTSA had also understated the expense of being without a car while collision damage is repaired. It should be noted that the agency's Analysis counts savings in delay and inconvenience for all accidents, whether or not damage is actually repaired. Since damage is not always repaired, the agency's figures translate into a higher per accident savings for those accidents where repairs are actually made. Nevertheless, after consideration of the comments on these issues, the agency has now used, and has performed a sensitivity analysis using, a range of costs for time and inconvenience of \$26 to \$50 in the FRIA.

Safety issues. Insurance industry and other commenters expressed concern that reduction of the test impact speed requirements of the standard would pose a risk to vehicle safety due to increased damage to safety related components. As evidence of the safety impact of bumper regulation, one insurance industry commenter cited a study in which it examined accident claims involving rear impacts to MY 1973 and 1974 vehicles. According to this commenter, the results of this study indicate reductions in trunk lid and taillamp damage on certain models when the bumper standard for rear bumpers was upgraded in MY 1974. This commenter also noted reductions in trunk lid, trunk latch and tailpipe damage on some models in data from NHTSA's driver survey, although the commenter concluded that the survey was of such limited scope as to preclude the drawing of significant conclusions. The commenter asserted that components of the type protected by the Bumper Standard do affect safety in that, even if their malfunction does not actually cause an accident, it increases the risk to occupants once an accident occurs, e.g., through leaking fuel from a damaged fuel system.

Several auto industry sources commented that current bumper requirements do not provide significant safety benefits. One major domestic manufacturer cited studies conducted by Westat and Indiana University's Institute for Research in Public Safety (Docket No. 73-19, Notice 27, No. 041) in support of its assertion that only one percent of accidents are caused by safety component malfunctions which could have resulted from low speed collision damage. This commenter contended, moreover, that the nature of these malfunctions (e.g., lamps not working) does not permit the inference that even this low incidence of

contribution to accident causation is attributable to collisions, but is instead more commonly experienced as a result of maintenance neglect (e.g., failure to replace burned-out bulbs). As a result, the commenter argues that low speed collision damage is a minuscule factor in motor vehicle safety. Another major manufacturer also commented that the bumper standard's connection to safety is tenuous, and that there is no evidence that safety would be compromised by amendment of the bumper standard requirements. Other automakers commented that a 2.5-mph bumper standard would be adequate in any event to protect vehicle safety components.

Other commenters asserted that 5.0-mph bumper requirements may in fact have a net adverse effect on vehicle safety. An auto industry trade association commented that the extra weight and rigidity of more damage resistant bumpers could adversely affect crash deformation characteristics and rates of crush and energy absorption so as to reduce potential levels of occupant protection in higher speed collisions. Another auto industry commenter argued that while 5.0-mph bumpers do not contribute significantly to safety through protection of safety components, the added weight of those bumpers necessarily reduces accident avoidance capability by adversely affecting braking and cornering performance.

Finally, the agency's own developing research into pedestrian impact protection indicates a clear possibility of conflict between affording enhanced safety protection in this area and increasing or even maintaining the current bumper standard.

After consideration of the extensive discussion of this issue in the record of this proceeding, including the Indiana University study referenced above, NHTSA has concluded both that no safety based justification exists for the current 5.0-mph bumper requirements, and that relaxation of the impact speed requirements would not compromise any known safety consideration. In the agency's judgment, a safety need for 5.0-mph bumpers has never been demonstrated, either before issuance of the FMVSS 215 and Part 581 standards or by subsequent experience. Moreover, the argument that protection of safety systems in low speed collisions is important for purposes of vehicle crashworthiness as well as crash avoidance is not convincing in view of the fact that only Part 581 criterion which contributes significantly to crashworthiness, i.e., the criterion

relating to the fuel system, is now protected much more effectively by FMVSS 301.

NHTSA has also considered the energy management consequences of this action with respect to compliance with the applicable FMVSS requirements relating to occupant crash protection and fuel system integrity. Insurance industry commenters noted that the crash energy of a 2.5-mph collision is one quarter that of a 5.0-mph collision. Thus, it was suggested that 2.5-mph bumpers would be less effective in managing crash energy than 5.0-mph bumpers. However, a number of motor vehicle manufacturers commented that in the 30.0-mph barrier impact used to determine compliance with various crashworthiness FMVSS, the vehicle bumper absorbs only a small percentage of the crash energy, generally less than 5 percent. Moreover, some manufacturers commented that reduction of the bumper test impact speed requirements would permit removal of space consuming and aggressive energy absorbers and stiff frame rails which may actually inhibit design of vehicles for efficient high speed energy management. Also, reduction of bumper test impact requirements could lead to reduced aggressivity of the impacting vehicle in side collisions.

After review of comments received, NHTSA has concluded that reduction of bumper test impact requirements would not have a negative effect on high speed crash energy management. The amount of energy generated in a 5.0-mph barrier impact is less than three percent of that generated in a 30.0-mph barrier crash. The energy generated in 2.5-mph barrier impact is one percent of 30.0-mph crash energy. Thus, although 5.0-mph bumpers may absorb more energy than 2.5-mph bumpers, the difference is negligible in a 30.0-mph barrier impact. Moreover, as suggested by commenters, the 5.0-mph bumper requirements may inhibit efficient vehicle energy management design. NHTSA has concluded that 5.0-mph bumpers make no significant contribution to occupant crash protection or to protection of fuel system components which may be damaged in high speed crashes.

Thus, the agency's action does not conflict with any existing safety standards.

Other Issues

Accounting for vehicle size in testing. NHTSA requested that commenters consider whether the test procedure adequately accounts for vehicle size differences. While some commenters suggested that car size is a factor in damage resistance, those commenters

expressing an opinion on the issue commented that the existing test requirements adequately account for these effects. Those requirements adjust test pendulum weight to the mass of the vehicle tested. Commenters also noted that size and weight differences among cars are decreasing as downsizing progress. Thus, change in the test procedures to account for vehicle size differences does not appear to be warranted.

Manual repositioning of bumper system components during testing. Several commenters suggested the desirability of allowing manual repositioning of bumper or shielding-panel components during testing. These commenters suggested that such a procedure would reduce costs, increase design flexibility, promote the use of new technologies, and reduce the subjectivity now inherent in the evaluation of shielding panel damage. However, some auto manufacturers also stated that eliminating the Phase II damage resistance requirements would alleviate much of the need for manual repositioning. Since the Phase II criteria are being replaced by Phase I criteria, and manual repositioning might introduce uncertainties into the test procedure, the agency has decided not to permit manual repositioning.

Bumper height. On the issue of bumper height, several auto manufacturers commented that the height requirements of the standard account for a substantial portion of the benefits of the standard. One automaker referred to matching heights as the single most important requirement of the standard. A major insurer, however, contended that a matching requirement associated with an "ineffective" impact speed of 2.5 mph would be meaningless. This commenter also contended that only 49 percent of reported accidents are bumper-to-bumper accidents.

Of course, a significant proportion of reported accidents would be side impacts, rollovers, and single vehicle collisions rather than bumper-to-bumper impacts. Therefore, it does not necessarily follow that damage incurred in non-bumper-to-bumper accidents is attributable to bumper mismatch. Moreover, unreported accidents would be expected to include a higher proportion of bumper-to-bumper accidents than would reported accidents because bumper-to-bumper contact would prevent significant damage in a number of cases. Thus, a number of bumper-to-bumper accidents would not appear in the figures for reported accidents.

Finally, the agency notes that the height of some vehicle structural

components may be determined by the height of the bumper. To the degree that uniform bumper heights may tend to result in uniform side structural members, additional levels of protection may result in side impact collisions from matching of bumpers and frame rails. NHTSA concludes that the height requirement is a useful component of the bumper regulation. Height standardization is maintained under the amendment announced in this notice.

One commenter advocated lowering the prescribed bumper height to less than 16 inches, the current low bound for pendulum testing. This commenter contended that low bumpers would optimize pedestrian protection characteristics, minimize aerodynamic drag, and reduce injuries in side impacts. NHTSA will consider the contribution of bumper height in connection with ongoing research in the areas of pedestrian protection and side impacts. However, until such time as the effects of bumper height in these areas can be fully evaluated, the very high transition cost of converting existing vehicle designs and the desirability of consistency with bumper heights of the existing vehicle fleet makes it preferable that the present height requirements be maintained.

Effective date. Some automobile manufacturers commented on the need for expeditious action to amend the standard. One manufacturer noted that final action by March 1982 would permit bumper system modifications to be made in time for introduction of model year 1983 vehicles. Another commented on the long leadtimes necessary for introduction of product changes. Yet another stated that an effective date for bumper standard amendments in the near future would permit incorporation of bumper system changes in a new vehicle model currently in the design stage. In view of these considerations, and because this action relieves a restriction, NHTSA has determined that good cause exists to make this amendment effective June 21, 1982.

Requirements for Analyses

NHTSA has determined that this proceeding involves a major rule within the meaning of Section 1, paragraph (b)(1), of Executive Order 12291 in that it is likely to result in an annual effect on the economy of \$100 million or more. The agency estimates that current bumper requirements add between \$140 to \$200 to the cost of a new car compared to the cost of a car with unregulated bumpers. The reduction of test impact speed requirements for each of the roughly 11 million vehicles

expected to be sold in this country annually is likely to result in an impact on the economy far exceeding \$100 million. For this same reason, this action is considered significant for purposes of Department of Transportation procedures for internal review of regulatory actions. The agency's FRIA for this action has been placed in the public docket. Copies may be obtained by contacting the Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

Pursuant to the Regulatory Flexibility Act, the agency has considered in its FRIA the impact of this rulemaking action on small entities. The agency certifies that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. The agency has concluded that few, if any, manufacturers of motor vehicles and bumper components or vehicle insurers are small entities. New car dealers will not be significantly affected because this action is unlikely to significantly affect new car sales levels for individual dealerships. To the extent that such sales may be affected, the effect would be positive. While increased car collision damage repairs may result from this action, the impact on individual repair shops is not expected to be significant. Again, the effect would be positive.

The economic effects of this action on small organizations and governmental units will generally be the same as those on the general public. As purchasers of new cars, these organizations and units will experience the same increase in net benefits. While this action could result in a minor increase in police time spent at the scene of some low speed accidents, this effect is not expected to be significant.

In developing this final rule, NHTSA considered the bumper standard promulgated by the International Standards Organization and adopted by the ECE. However, the agency found that standard to be inappropriate for use in this country since it does not adequately deal with consumer cost savings considerations as required by the Act.

NHTSA has prepared an Environmental Assessment of the likely environmental consequences of this proposal. This Assessment has been placed in the public rulemaking docket (Docket 73-19; Notice 27, No. 004). Based on this Assessment, the agency has concluded that this action will not have a significant effect on the human environment and that, for this reason, an

Environmental Impact Statement will not be prepared for this action.

List of Subjects in 49 CFR Part 581

Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration.

PART 581—BUMPER STANDARD

In consideration of the foregoing, 49 CFR Part 581, is amended as follows:

§ 581.5 [Amended]

1. Section 581.5(a) is revised to read:
(a) Each vehicle shall meet the damage criteria of §§ 581.5(c)(1) through 581.5(c)(9) when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(b), under the conditions of § 581.6, at an impact speed of 1.5 m.p.h., and when impacted by a pendulum-type test device in accordance with the procedures of § 581.7(a) at 2.5 m.p.h., followed by an impact into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, while traveling longitudinally forward, then longitudinally rearward, under the conditions of § 581.6, at 2.5 m.p.h.

2. Section 581.5(b) is removed and reserved.

3. Section 581.5(c)(8) is amended by substitution of the word "The" in place of the words "For vehicles manufactured from September 1, 1978 to August 31, 1979, the".

4. Section 581.5(c)(10) and 581.5(c)(11) are removed and reserved.

§ 581.6 [Amended]

5. Section 581.6(a)(5) is revised to read:

(a) * * *
(5) Trailer hitches, license plate brackets, running lights, fog lamps, other optional equipment mounted on the bumper face bar and headlamp washers are removed from the vehicle.

* * * * *
(Sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on May 14, 1982.

Raymond A. Peck, Jr.,
Administrator.

Appendix

The following is a summary of the more major comments submitted in response to the notice of proposed rulemaking and discussed in more general terms in the preamble of this notice. This summary is organized in broad terms according to the interest groups from which the comments were

received. Responses to these comments are set forth in the preamble to the final rule and in the FRIA.

Insurance Industry and Consumer Representative Comments

In commenting on the issue of low speed damage frequency, insurance industry and consumer representatives criticized the Westat survey on a number of grounds. The Insurance Institute for Highway Safety (IIHS) and Consumers Union contended that the survey understates damage frequency due to memory weaknesses on the part of survey respondents. IIHS also noted that nonprincipal drivers were not surveyed directly and cited discrepancies between the original Westat survey and a follow-up survey emphasizing operators of later model vehicles. Allstate Insurance Company contended that the Westat survey cannot be used to make judgments about the effects of changing the bumper standard on the frequency of damage to safety components because the sample size is too limited, and that the survey is not representative because it covers only unreported damage. Allstate advocated use of a higher estimate, although not as high as that suggested by the Ford survey results. IIHS also suggested that use of the Westat survey improperly accounts for accidents reported to police. State Farm Mutual Automobile Insurance Company contended that the study understates the number of low speed impacts due to the probable existence of impacts with parked vehicles, and of accidents not reported to the person interviewed.

On the issue of bumper effectiveness, IIHS and the Highway Loss Data Institute (HLDI) supplied results of laboratory tests on current vehicles not required to meet the Part 581 standard, i.e., pickup trucks and multipurpose passenger vehicles. These commenters reported substantially poorer bumper performance on these vehicles, which, according to these commenters, would comply with a 2.5-mph bumper requirement.

IIHS also argued that vehicle size is a major determinant of the amount and frequency of crash related property damage. Thus, IIHS contended NHTSA's assessment of bumper effectiveness is biased in favor of older, unregulated vehicles because the more recent vehicle mix includes greater numbers of more damage prone smaller vehicles. Moreover, IIHS argued, imports are more frequently involved in property damage accidents than are domestically produced vehicles, further biasing the analysis against later model years

which include a larger percentage of imported vehicles.

The American Insurance Association and State Farm contended that the discount rate of 10 percent applied by the agency to determine the present value of future expenditures is too high. Since bumpers represent an investment which displaces other consumption, these commenters argued that a more accurate discount rate would be 4 percent. Allstate commented that the discounting factor should be applied to inflated costs rather than current costs.

On the subject of delay and inconvenience, the Center for Auto Safety (CFAS) placed the cost of a rental vehicle, which may be required while low speed collision damage is repaired, at \$24 to \$30 per day. CFAS estimated that consumers use 1.6 gallons of gasoline in obtaining a single damage repair estimate and that each such estimate now costs \$35 on the average. CFAS also contended that the agency underestimated the time lost at the scene of an accident and in obtaining repair estimates.

An insurance industry representative submitted data from a public opinion poll which, according to the commenter, demonstrates overwhelming public support for the 5.0-mph bumper standard. The commenter also asserted that this poll indicates people are willing to pay for the higher levels of protection provided by the 5.0-mph bumper standard. CFAS also argued that the public supports the 5.0-mph bumper requirements.

The insurance industry argued that ECE Regulation No. 42 is irrelevant and inappropriate to requirements of the Cost Savings Act, primarily because it does not address the issue of protection against economic damage. According to the insurance industry, the ECE requirements amount to merely a weaker version of FMVSS 215. Moreover, this source contended the ECE standard focuses in part on design rather than performance characteristics, and thus is not in accordance with United States statutory requirements for issuance of performance standards.

Liberty Mutual Insurance Company commented that the current Part 581 requirements do not adequately account for vehicle dive, which can contribute to bumper underride in accident situations. Presumably, dive-induced mismatch damage would be increased under ECE requirements.

On the issue of new technologies, IIHS argued that new materials, *i.e.*, polycarbonate plastics, which could significantly reduce the weight of bumpers meeting current 5.0-mph requirements are available at this time.

State Farm advocated the possible use of sacrificial components, *i.e.*, components which must be adjusted or replaced after a collision, as a means of reducing bumper cost and weight.

Auto Industry Comments

In addressing the question on the issue of low speed collision frequency, General Motors Corporation and Ford Motor Company commented that studies conducted by Ford overstate damage frequency, principally due to their emphasis on vehicles used in urban areas. These commenters suggested that the Westat survey is a more reliable source of data because it is more current and is based on a more representative sampling system.

Chrysler Corporation, American Motors Corporation, and Volkswagen of America, Inc. commented that neither the Ford or Westat data provide an adequate means of assessing low speed collision frequency. These commenters suggested that use of crash recorders or other controlled tests is necessary to generate data.

In questioning the value of MY-1973 bumpers in assessing 2.5-mph bumper effectiveness, several commenters pointed out that MY-1973 bumpers were not subject to a pendulum impact test and thus were not required to be of a uniform height. Commenters noted that MY-1973 rear bumpers were essentially the same as MY-1972 bumpers, but with stronger mounting brackets. This comment is consistent with State Farm's comment that its research revealed no difference in performance between MY-1973 and 1972 rear bumpers. Some commenters also concluded that new 2.5-mph bumpers would perform better in the current vehicle mix than did MY-1973 bumpers in previous years, due to the increased uniformity of current bumper designs. General Motors, Ford, and Chrysler joined in attacking the relevance of laboratory tests as a means of assessing the relative performance of bumpers, stating that such tests have never been correlated to real world conditions.

American Motors suggested that NHTSA consider the European experience with 2.5-mph bumpers under ECE Regulation No. 42. However, General Motors commented that its German subsidiary reported an absence of field data on the effectiveness of 2.5-mph bumpers in Europe. Moreover, General Motors contended that the European bumper standard is purely a safety standard and that bumpers designed to meet that standard would not be representative of future American 2.5-mph designs. In General Motors' opinion, the estimates used in NHTSA's

1979 Final Assessment provide the best available information on bumper effectiveness at alternative design speeds.

Several auto industry sources argued that unregulated bumpers produced in the future would provide greater levels of damage resistance performance than pre-standard bumpers. The factor most commonly cited in support of this contention was that consumer expectations would require that bumpers provide higher levels of performance. Insurance cost considerations, international harmonization, and experience in designing improved bumpers were also cited as contributing to the prospects for improved performance from future unregulated bumpers. Certain auto industry sources estimated that unregulated bumpers would exceed 1.5-mph performance and, at least initially, provide performance approximating that available under a 2.5-mph Phase I standard or ECE Regulation No. 42.

In discussions of bumper cost and weight savings from use of 2.5-mph bumpers, estimates of overall weight savings ranged from 8 lbs. for Volkswagen to over 38 lbs. for Volvo of America Corporation. Ford reported weight savings of 34 lbs. for its European Escort model compared to its American counterpart as a result of differing bumper requirements. Associated cost savings of roughly \$35 were estimated by several manufacturers.

On the related issue of secondary weight, a recent General Motors analysis of seventeen late model front-wheel drive vehicles produced a secondary weight factor of .72. General Motors stated that this factor was used in the design process of its recent "X" and "J" car models. Toyota Motor Company also estimated a secondary weight factor of .7 for its current models. Renault agreed that the correct secondary weight factor is greater than .5. Comments received from Ford, Chrysler, and American Motors all contended that a secondary weight factor of 1.0 would be appropriate for NHTSA's analysis.

The fuel penalty factor of 1.1 gallons of fuel consumed for each additional pound of bumper weight, used in NHTSA's Preliminary Regulatory Impact Analysis, was based on testimony presented by General Motors before Congress. General Motors, in its comments on the notice of proposed rulemaking on bumper standard amendments, revised its estimate downward to 1.0 gallon of fuel per pound of vehicle weight. However,

several other motor vehicle manufacturers commented that the 1.1 gallon figure is reasonable. Chrysler noted that a higher figure could be used.

Chrysler estimated the increased cost to repair 5.0-mph bumpers as compared to 2.5-mph bumpers at between \$70 and \$90. BMW of North America, Inc. cited an analysis prepared by a West German technical institute which found that at impact speeds of 18 kph (approximately 11 mph) and higher, repair costs for American-made bumpers are greater than for European bumpers due to more expensive bumper shock absorbers and body components. BMW also noted a West German insurance study reporting that the great majority of all collisions occur at speeds above 11 kph.

General Motors and Ford commented that NHTSA's figure for the hourly value of lost time is too high. General Motors contending that the figure should be somewhere between the average hourly wage rate and the minimum wage. Ford argued that a figure of \$3.50, roughly half the average hourly earnings figure, would be more accurate. This figure is consistent with a Consumers' Research report which concluded that commuters are willing to pay 42 percent of an hour's wage to save one hour of travel time. Regarding the cost of alternate transportation while collision damage is being repaired, Ford concurred in the agency's estimate of \$10 per incident. Volkswagen commented that the figure seemed too low, and General Motors suggested that the agency consider the actual cost of rental vehicles.

Chrysler expressed the opinion that insurance premiums would decrease due to a reduction in bumper repair costs if the performance requirements of the standard were lowered. Ford commented that insurance industry premium discounts and surcharges based on vehicle damage claims experience provide a significant marketplace incentive to manufacturers to design vehicles providing better damage resistance performance.

Daimler-Benz AG, Renault, and Peugeot S.A. cited cost and consistency considerations as the basis for their positions in support of the ECE standard. Other commenters suggested that cost savings, e.g., savings in tooling and testing costs, would result from harmonization. Renault estimated weight savings of 14-15 kg. for its vehicles equipped with bumpers designed to meet the ECE standard.

Volkswagen and American Motors discussed at length their position that the fixed-barrier impact test should be dropped from the standard. ECE Regulation No. 42 does not require a fixed-barrier test. According to

Volkswagen, elimination of the barrier test would reduce testing costs, promote international harmonization, and make the standard more equitable.

Volkswagen criticized the barrier test as unreliable, unsophisticated, and adding nothing to the standard. American Motor contended that the pendulum test alone would be sufficient, since it assures height standardization and proper bumper geometry to minimize override, and the versatile positioning of the pendulum permits testing of the entire bumper system. American Motors suggested that the pendulum test could be run with the vehicle idling to provide a test relevant to dynamic situations. Volvo suggested the alternative of employing the ECE test procedure with damage criteria taken from the Part 581 standard.

Volkswagen and BL Technology Ltd. pointed out that the ECE standard provides for pendulum impact at a single height rather than within a height range as is the case with the Part 581 standard. BK Technology contended that the ECE height requirement should be adopted in this country to promote harmonization and reduce costs. BL Technology also noted that the single height requirement permits reduced vertical bumper width thereby improving engine cooling. However, Volkswagen argued there is little difference between the European and United States' height requirements in terms of benefits and that the Part 581 requirement should be retained to avoid possible mismatch with vehicles already in use.

On the subject of Phase I versus Phase II damage criteria Ford and General Motors questioned the cost-effectiveness of the Phase II requirements. General Motors argued that NHTSA's analysis overstates the benefits of the Phase II standard because the agency overestimates the effectiveness of Phase II bumpers in impact at speeds of 5.0 mph or below. General Motors added that NHTSA must consider the 5 lbs. of additional weight and resulting \$6 additional fuel cost imposed by the Phase II requirements. Information supplied by Volvo and the Bureau of Labor Statistics suggests that initial consumer costs of between \$10 and \$15 result from the Phase II requirements. Ford contended that no true Phase I bumpers have ever been produced because model year 1979 vehicles represented a transition period between FMVSS 215 and Part 581, Phase II.

Ford contended that the pendulum test is not appropriate for assessing damage resistance properties of the bumper itself due to its concentration of force in particular locations. This test, in

combination with the Phase II criteria may, according to Ford, require use of expensive energy absorbers even if the test impact speed were lowered to 2.5 mph. Although Davidson Rubber Division commented that the Phase II criteria posed no problem for soft face systems, that manufacturer at the same time advocated reduction of the pendulum impact speed to 2.5 mph. BL Technology and General Motors commented that return to Phase I criteria would encourage design innovation and the use of new, lighter weight materials. Mitsubishi Motors Corporation favored the Phase I criteria because bumper deformation would improve the crash energy management characteristics of the bumper system.

Ford also noted objectivity problems in evaluating bumper damage under the Phase II criteria. Finally, Ford argued that the increased use of rubber and polymeric bumper materials has changed consumer perceptions and reduced the visibility of and concern about minor dents and similar damage which was inherent in the use of chrome-plated bumpers.

Two auto manufacturers advocated dropping not only the damage criteria applicable to the bumper system itself, but all criteria limiting damage to the exterior surfaces of the vehicle. Saab-Scania of America, Inc. made this suggestion in the context of a possible decision to retain the 5.0-mph test impact speed requirement. Toyota's comment noted vehicle cost and weight could be reduced by eliminating the exterior surface protection requirements.

Commenters addressing the issue differed on the extent of manual repositioning which should be permitted. Ford recommended permitting manual repositioning which could be preformed without special equipment or experience. Volkswagen favored manual repositioning without tools, while Chrysler suggested that manual repositioning without "special" tools be permitted.

On the question of new technologies, Ford and Volkswagen commented that relaxation of the bumper standard requirements would permit use of fiberglass bumpers, plastic face bars, rubber mountings, and ultrahigh strength steel components which could result in cost and weight savings, increased styling flexibility and improved aerodynamic characteristics. Davidson Rubber offered compressible plastics, i.e., foam or honeycomb materials, as examples of materials which could be used if the standard requirements were lowered. C&F Stamping Company, Inc.

cited plastics and single-unit bumper systems. American Motors commented that return to Phase I would increase useage of SMC Components. Chrysler noted the potential for cost and weight savings from ultrahigh strength steel if Phase II criteria were eliminated. One component supplier, Molnar Industries, Inc. noted the availability of fiber reinforced plastic bumpers which it contended may make lowering the bumper standard requirements unnecessary.

[FR Doc. 82-13550 Filed 5-14-82; 3:11 pm]
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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1063 and 1064

Ex Parte No. MC-95 (Sub-No. 1)

Practices of Motor Common Carriers of Passengers-Checked Baggage Prohibitions and Liability Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission adopts regulations which define the groups of articles that motor common carriers of passengers (bus lines) may refuse to transport in checked baggage and for which bus lines may limit or disclaim liability for loss or damage. These regulations clarify how bus lines may limit their liability and what articles they may lawfully refuse to carry. The regulations reduce the regulatory burden on the traveling public and the carriers which serve them.

DATE: This decision shall become effective June 21, 1982.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7656.

SUPPLEMENTARY INFORMATION: By notice served April 22, 1981 (46 FR 22911, April 22, 1981) the Commission proposed modification of regulations appearing at 49 CFR 1063 and 1064. The public comments generally support the modifications. However, in response to some objections the Commission modified the original proposal. The rules as adopted reflect this modification. The complete decision is available from the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. The adopted rules are reproduced below.

This decision will not have a significant effect on the quality of the human environment or conservation of energy resources nor, as certified in the notice of proposed rulemaking, a

significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1063:

Motor carriers, Freight, Buses, Passenger baggage service, Baggage liability.

PART 1063—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

1. 49 CFR Part 1063 is amended by redesignating the existing paragraph (C) in 49 CFR 1063.4 as paragraph number (c)(1) and adding the following paragraphs § 1063.4(c) (2) and (3):

§ 1063.4 Baggage service.

* * * * *

(c) Baggage liability.

(1) * * *

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, to disclaim any liability for loss or damage to the following articles:

(i) articles whose transportation as checked baggage is prohibited by law or regulation;

(ii) fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials which have a disagreeable odor.

(iii) those other articles that the Commission decides, on a case-by-case basis on petition by the carrier, may be transported with no liability or may be refused as part of checked baggage.

(3) All other articles must be accepted as checked baggage and liability for them may not be eliminated. However, carriers need not offer excess value coverage on valuable articles. "Valuable articles" include money, negotiable instruments, valuable papers, manuscripts, irreplaceable publications, documents, jewelry, and other articles of extraordinary value.

2. 49 CFR Part 1064 is amended by adding the following paragraph (a)(3) to the existing regulations at 49 CFR 1064.1:

§ 1064.1 Minimum permissible limitations for baggage liability.

(a) * * *

(3) Carriers need not offer excess value coverage on articles listed in 49 CFR 1063.4(c)(3).

[49 U.S.C. 10321, 5 U.S.C. 553]

Decided: May 12, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham,

Sterret, Andre, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13476 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 265

United States Standards for Grades of Fresh or Frozen Shrimp

AGENCY: National Oceanic and Atmospheric Administration Commerce.
ACTION: Interim final rulemaking.

SUMMARY: The National Marine Fisheries Service, National Oceanic and Atmospheric Administration of the U.S. Department of Commerce proposes to establish general grading standards for all non-breaded forms of fresh or frozen shrimp. These grading standards will provide for the systematic differentiation of the quality of shrimp into four categories—U.S. Grades A, B, C, and substandard. The proposed standards will be applied to all commercial species of fresh or frozen shrimp, in raw or cooked states, in all non-breaded market forms. The adoption of grading standards is expected to facilitate trade in shrimp of all commercial species, as consumers will be able to select shrimp on the basis of identified quality. The standards are based on the Codex Alimentarius Standard for Frozen Shrimp as approved by the Codex Alimentarius Commission.
DATES: Effective May 20, 1982. Written comments will be accepted on or before August 18, 1982.

ADDRESS: Send comments to: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Brooker, Standards, Specifications and Labeling Branch, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634-7458.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, desires to amend Title 50, Code of Federal Regulations, Part 265, by deleting the present Subpart A in its entirety and substituting a new Subpart A. The purpose of this amendment is to provide

general standards for grading all non-breaded forms of fresh or frozen shrimp (See 50 CFR Part 265 Subpart B for U.S. Standards for Grades of Frozen Raw Breaded Shrimp). The general standards will apply to all non-breaded market forms of all commercial species of fresh or frozen shrimp, raw or cooked. Under these standards, the quality of shrimp will be systematically differentiated as U.S. Grade A, B, C, or substandard. Identification of quality levels on the product label will benefit the consumer and industry.

The quality standards for raw headless frozen shrimp which currently constitute Subpart A of 50 CFR Part 265 were developed in the early 1960's. Since the promulgation of those regulations, a number of industry-wide changes have taken place necessitating their revision and the development of standards covering other market forms:

1. Market forms have shifted significantly to peeled and deveined shrimp, both raw and cooked, for which there are no standards (quality or regulatory).

2. There have been numerous technological changes in the handling and processing of shrimp products.

3. The Codex Alimentarius Commission has approved a Recommended International Standard for Quick Frozen Shrimp and has invited countries to adopt it; this standard provides a framework for a general standard covering all forms of shrimp.

4. An Advisory Code of Practice for shrimp has been approved by the Codex Commission.

To provide an early opportunity for interested persons to contribute to development of the proposed standards, the NMFS published an Advance Notice of Proposed Rulemaking at 45 FR 51858 on August 5, 1980. The ANPR invited public comment and was mailed to interested persons. The comments received have been evaluated and considered in the preparation of this rulemaking.

This rulemaking relates to agency contracts for the voluntary inspection of all non-breaded forms of fresh or frozen shrimp and, therefore, is exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553 (a)). Although this rulemaking is effective upon publication, comments on its content will be accepted by the agency before or within 90 days of publication.

This rulemaking has been reviewed by the agency in accordance with the specifications of Executive Order 12291, "Federal Regulation," and the Department guidelines implementing that order; the agency has determined

that it is not a "major rule" in that the promulgation of such standards will have no effect on the economy, investment or productivity. Accordingly, no regulatory impact analysis is required. Further, no regulatory flexibility analysis is required, since the rule is exempt from the notice and comment requirements of the Administrative Procedure Act.

The promulgation of these regulations will establish the standards by which all non-breaded market forms of fresh or frozen shrimp can be graded under the NMFS Seafood Inspection Program. Participation in the Seafood Inspection Program is strictly voluntary. The use of these proposed standards and procedures to ascertain a grade will require Department of Commerce inspectors to observe and record data in those plants that wish to participate in the Inspection Program. This data recording process is necessary for the proper performance of the agency in determining the appropriate grade of shrimp. The Office of Management and Budget has determined that this data recording process is an observer function and therefore exempt from the provisions of the Paperwork Reduction Act of 1980.

The Acting Assistant Administrator for Fisheries has determined that these regulations do not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 50 CFR Part 265

Seafood.

(7 U.S.C. 1621-1630)

Dated: May 17, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 265—UNITED STATES STANDARDS FOR GRADES OF CRUSTACEAN SHELLFISH PRODUCTS

Accordingly, 50 CFR Part 265 Subpart A is amended as follows: By removing the existing Subpart A in its entirety, and inserting in lieu thereof the following Subpart A:

Subpart A—U.S. General Standards for Grades of Fresh and Frozen Shrimp

Sec.	
265.101	Scope and product description.
265.102	Product forms.
265.103	Grades.
265.104	Ascertaining the grade.
Table 1	Defect Table.
Table 2	Tolerance for Various Defects.
265.105	Hygiene.
265.106	Appendices.

Appendix 1. Procedure for cooking samples in sensory evaluation of cooked flavor and odor.

Appendix 2. Defect action levels.

Appendix 3. Determination of net weight of contents.

Subpart A—United States General Standards for Grades of Shrimp

§ 265.101 Scope and product description.

These standards shall apply to clean, wholesome shrimp of the regular processed commercial species that are fresh or frozen, raw or cooked. Such shrimp are processed and maintained in accordance with good commercial practice at temperatures necessary for the preservation of the product. The provisions of 50 CFR Part 260, "Inspection and Certification" shall apply to this subpart.

§ 265.102 Product forms.

(a) *Types*. (1) Fresh.

(2) Frozen Individually (IQF) glazed or unglazed.

(3) Frozen Solid Pack, glazed or unglazed.

(b) *Styles*. (1) Raw (uncoagulated protein).

(2) "Parboiled"—heated for a period of time such that the surface of the product reaches a temperature adequate to coagulate the protein.

(3) "Cooked"—heated for a period of time such that the thermal centre of the shrimp reaches a temperature adequate to coagulate the protein.

(c) *Market forms*. (1) Heads on (head, shell, tail fins on).

(2) Headless (only head removed; shell, tail fins on).

(3) Peeled, round, tail off (all shell and tail fins removed with segments unsplit and vein not removed).

(4) Peeled, round, tail on (all shell except last shell segment and tail fins removed, with segment unsplit and vein not removed).

(5) Peeled and deveined, round, tail off (all shell and tail fins removed with segments shallowly slit to last segment and vein removed to last segment).

(6) Peeled and deveined, round, tail on (all shell removed except last shell segment, and tail fins, with segments shallowly slit to last segment and vein removed to last segment).

(7) Peeled and deveined, fantail or butterfly tail off (all shell and tail fin removed with segments deeply slit to last segment and vein removed to last segment).

(8) Peeled and deveined, fantail or butterfly, tail on (all shell removed except last shell segment and tail fins, with segments deeply slit to last

segment and vein removed to last segment).

(9) Peeled and deveined, western (all shell removed except last shell segment and tail fins, with segments split completely to last segment and vein removed to last segment).

(10) Shell on pieces (head removed, shell and tail fins when existing not removed).

(11) Peeled and deveined, round pieces (all shell removed with segments shallowly slit except last segment when existing; vein removed except last segment when existing).

(12) Peeled and deveined butterfly pieces (all shell removed with segments deeply slit except last segment when existing; vein removed except last segment when existing).

(13) Peeled undeveined pieces (all shell removed).

(14) Other forms of shrimp as specified and so designated on the label.

§ 265.103 Grades.

Each sample unit inspected shall be graded in accordance with the following specifications. Grades shall be assigned to lots in accordance with § 265.104(f).

(a) U.S. Grade A shrimp shall:

(1) Possess good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) not exceed the tolerance level for defects for U.S. Grade B quality set forth in § 265.104, Table II.

(b) U.S. Grade B shrimp shall:

(1) Possess reasonably good flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) not exceed the tolerance level for defects for U.S. Grade A quality set forth in § 265.104, Table II.

(c) U.S. Grade C shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) not exceed the tolerance level for defects for U.S. Grade C quality set forth in § 265.104, Table II.

(d) Substandard shrimp shall:

(1) Possess minimum acceptable flavor and odor characteristics of the species as defined in § 265.104(d), and

(2) exceed the tolerance level for physical defects for U.S. Grade C quality as set forth in § 265.104, Table II.

(e) *Ungraded shrimp.* Shrimp which do not possess minimum flavor and odor characteristics of the species as defined in § 265.104(d) will not be graded. If any condition constituting a defect action level (as defined in § 265.106, Appendix 2) is found to exist, the product shall be classified as "decomposed" and shall be retained as unfit for human consumption.

§ 265.104 Ascertaining the grade.

The grades of specific lots shall be certified in accordance with Part 260, Subpart A of this chapter (Inspection and Certification, Regulations Governing Processed Fishery Products).

(a) *General procedures.* The grade shall be determined by evaluation of fresh shrimp in the fresh and cooked states, and by evaluation of frozen shrimp in the frozen, thawed and cooked states, as appropriate for each evaluation. Shrimp shall be evaluated for odor and flavor in accordance with paragraph (d) of this section. Shrimp shall be evaluated for physical characteristics, defects and uniformity of size in accordance with paragraph (e) of this section. Deviation from normal characteristics, extent of defects, and lack of uniformity are classified as to relative severity as minor, major or serious in accordance with § 265.104, Table I; tolerance levels for the various characteristics and defects are set forth for each grade classification in § 265.104, Table II.

(b) *Sampling.* Lot size, number of sample units and acceptance numbers shall be in accordance with the regulation governing processed fishery products, 50 CFR 260.61, Table II, V, or VI, whichever is applicable. Unless otherwise specified, the sample unit shall consist of a package or packages sufficient to provide two pounds declared net weight. In evaluation for uniformity of size, the sample unit shall be one entire package.

(c) *Count.* "Count", or number of shrimp per pound, is determined by dividing the number of shrimp in the adjusted sample unit by the adjusted weight in pounds. Shrimp marketed as "pieces" shall not be subject to this evaluation.

(1) "adjusted weight" means the weight of all of the whole, unbroken, undamaged shrimp in the sample unit. It is determined by deleting the weight of shrimp pieces, broken and damaged shrimp, inadvertently or improperly peeled shrimp, improperly deveined shrimp, and unuseable material (all as defined in Section 265.104(e)) from net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(2) "adjusted sample unit" means the number of shrimp comprising the adjusted weight.

If the count so ascertained does not conform with the declared count, the sample unit shall be considered a deviant. A lot shall be considered to be of the declared count if the number of deviant units in the sample does not exceed the acceptance number prescribed for the sample size in Part 260 of this chapter. If the number of

deviant units in a lot exceeds the acceptance number for deviant units, it shall be marked as a mixed lot and shall not be graded.

(d) *Evaluation of flavor and odor.*—(1) *Procedure.* Sensory evaluation of flavor and odor on each of the sample units shall be carried out only by those trained to do so. For raw odor evaluation, frozen shrimp shall be thawed. Fresh or thawed shrimp are broken and the broken flesh is held close to the nose immediately to detect off odor. Cooked style shrimp shall be evaluated for flavor and odor as is, thawed if frozen. For evaluation of flavor and odor fresh or frozen uncooked style shrimp after cooking, use the procedure in Appendix 1, § 265.106 for cooking all samples. Sensory evaluation of cooked samples shall be completed as soon as practical after cooking while the samples are still warm.

(2) *Definitions of flavor and odor.*

(i) Good flavor and odor (minimum requirements for Grade "A" shrimp) means that the product has the normal, pleasant flavor and odor characteristic of freshly caught shrimp that is free from off-flavors and odors of any kind. A natural odor or flavor reminiscent of iodoform is acceptable unless excessive.

(ii) Reasonably good flavor and odor (minimum requirements for Grade "B" shrimp) means that the product may be somewhat lacking in good flavor and odor characteristic of freshly caught shrimp but is free from objectionable off-flavors and off-odors of any kind.

Within a sample unit, each shrimp shall be Class 1 as defined in Appendix 2, § 265.106.

(iii) Minimum acceptable flavor and odor (minimum requirements of a Grade "C" or "substandard" product) means that the raw product and the cooked product have a moderate storage-induced odor (for the raw product) and flavor and odor (for the cooked product) but the product is reasonably free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

Reasonably free means that within a sample unit, less than 5 percent of the shrimp may show class 2 decomposition as defined in Appendix 2, § 265.106. None of the shrimp shall show Class 3 decomposition.

(e) *Evaluation of physical characteristics and defects.* Each sample unit shall be evaluated as to physical characteristics and defects in accordance with the following definitions and methods of analysis. If examining frozen shrimp that have been glazed, remove the glaze using

Procedure 18.001 of the Association of Official Analytical Chemists immediately before starting the examination. (Appendix 3, § 262.106.)

(1) Dehydration. Dehydration refers to a general desiccation of the shrimp flesh that is noticeable after the shell and glaze are removed. It is evaluated by noting any detectable change from the normal characteristic, bright appearance of freshly caught, properly iced or properly processed shrimp.

(i) Slight dehydration means scarcely noticeable desiccation of the shrimp flesh that will not affect the desirability and/or eating quality of the shrimp.

(ii) Moderate dehydration means conspicuous desiccation of the shrimp flesh that will not seriously affect the desirability and/or eating quality of the shrimp.

(iii) Severe dehydration means conspicuous desiccation that will seriously affect the desirability and/or eating quality of the shrimp.

(2) Deterioration is evaluated by noting any detectable change in the normal good odor of freshly caught, properly iced or properly processed shrimp.

(i) Slight deterioration means that overall the sample unit lacks the normal characteristic pleasant odor of freshly caught, properly iced or properly processed shrimp; the desirability and/or eating quality of the shrimp is not affected.

(ii) Moderate deterioration means that overall the sample unit has scarcely noticeable odors of prolonged storage and/or off-odors that materially affect the desirability and/or eating quality of the shrimp.

(iii) Severe deterioration means that overall the sample unit has definite odors of prolonged storage and/or spoilage odors that seriously affect the desirability and/or eating quality of the shrimp.

(3) Presence of broken or damaged shrimp. Fresh or thawed shrimp (glaze removed) shall be visually examined. Broken or damaged shrimp, identified as follows, are grouped together and evaluated by noting the percent by weight of such broken or damaged shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Broken" means a shrimp having a break in the flesh greater than $\frac{1}{3}$ of the thickness of the shrimp measured where the break occurs.

(ii) "Damaged" means a shrimp that is crushed or mutilated so as to materially affect its appearance and/or useability.

(4) Presence of shrimp pieces. (Shrimp marketed as "pieces" will not be subject to this evaluation.) Fresh or thawed

shrimp shall be visually examined.

"Piece" means:

(i) For a count of 70 or fewer unglazed shrimp per pound, any shrimp that has fewer than 5 segments, with or without tail fins attached; or

(ii) For a count of more than 70 unglazed shrimp per pound, any shrimp that has fewer than 4 segments; or

(iii) Any whole shrimp with a break in the flesh greater than $\frac{1}{3}$ of the thickness of the shrimp measured where the break occurs.

Shrimp pieces so identified are grouped together and evaluated by noting the percent by weight of such pieces in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(5) Presence of unuseable material (legs, flippers, loose shell, antennae, heads, swimmerets, extraneous material and unacceptable shrimp). The product shall be visually examined in the fresh or thawed state. Unuseable materials, defined as follows, are separated from the shrimp and evaluated by noting the percent by weight of such unuseable material in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106).

(i) "Legs" refers to walking legs only (heads-on market form excepted); if attached should be detached and weight thereof evaluated.

(ii) "Loose shell" and "antennae" refer to any piece of shell or antennae which is completely detached from the shrimp.

(iii) "Flipper" refers to the tail fin with or without the last shell segment attached, with or without flesh.

(iv) "Head" refers to any portion of the head (cephalothorax). (Heads-on shrimp excepted).

(v) "Extraneous material" means any material in the sample unit which is not shrimp material.

(vi) "Unacceptable shrimp" refers to abnormal or diseased shrimp.

(6) "Black spot and improperly cleaned ends" refer to presence of any objectionable black or darkened area that affects the desirability and/or eating quality of the shrimp. Affected shrimp are grouped together and evaluated by noting the percent by weight of such shrimp in the total net weight of the sample unit (determined in accordance with Appendix 3, § 265.106). Shrimp with black spot and/or improperly cleaned ends shall, if they are considered defective in other categories, also be evaluated in such other categories.

(7) Presence of inadvertently or improperly peeled, or improperly deveined shrimp. Fresh or thawed shrimp shall be visually examined to determine whether the particular market

form being examined has been properly peeled and/or deveined (i.e. head, shell segments, swimmerets, tail fins, and alimentary canal have been removed) in accordance with the description of that market form as set forth in § 265.102(c). Inadvertently peeled, improperly peeled and improperly deveined shrimp, identified as follows, are grouped together (one class of defect) and evaluated by noting the percent by weight of such shrimp in the total sample unit. (Inadvertently peeled, improperly peeled, or improperly deveined shrimp that are also considered broken, damaged, or pieces, shall be evaluated only as broken, damaged, or pieces, accordingly).

(i) "Inadvertently or improperly peeled" refers to a shrimp with any shell or shell fragments missing or intact other than as outlined under § 265.102(c). (Shell-on shrimp with tail fins and/or telson missing is inadvertently peeled, but if the last segment of flesh is missing, the shrimp is damaged).

(ii) "Improperly deveined" refers to a shrimp with any attached black or dark vein other than as outlined under § 265.102(c).

(8) Uniformity of size. The product shall be evaluated in the fresh or thawed state for uniformity of size as follows:

(i) From the adjusted sample unit (all whole, unbroken, undamaged shrimp in the sample unit except that if marketed as "pieces", evaluation shall be of uniformity of size of undamaged pieces) visually select and weigh not more than 10 percent by count, but not less than one of the largest shrimp;

(ii) Visually select and weigh not more than 10 percent by count, but not less than one, of the smallest shrimp;

(iii) Divide the weight of the large shrimp by the weight of the small shrimp and the result will be the uniformity ratio.

(9) Texture. "Texture" refers to an undesirable toughness and/or dryness and/or mushiness of shrimp. The product is examined in the cooked state (if uncooked style, cooked in accordance with procedures specified in Appendix 1, § 265.106) and evaluated by noting deviations from the normal characteristics of the species when freshly caught, properly processed, and cooked. The texture of the cooked shrimp should be firm, slightly resilient, but not tough, moist but not mushy. Deviations are classified as:

(i) Slight. Fairly firm, moist, but not mushy.

(ii) Moderate. Moderately tough, moist, but not mushy.

(iii) Severe. Excessively tough, very dry, or very mushy.

(f) Grade Assignment. Physical characteristics and defects of each sample unit shall be classified and points assigned in accordance with Table I; the tolerance level for each grade shall be in accordance with Table II. Each sample unit shall be assigned the grade into which it falls in accordance with the evaluation of flavor and odor and tolerance level for characteristics and defects as specified in section 265.103. The grade assigned to a lot is the grade assigned to the majority of the sample units; provided that if

(1) the number of sample units which fall one grade below the majority grade (by reason of flavor and odor evaluation or physical characteristics and defects) exceeds the acceptance number prescribed for the sample size (number of sample units) as specified in section 260.61; or

(2) the grade of any one of the sample units falls more than one grade below the majority grade in flavor and odor evaluation or by reason of physical characteristics and defects, the grade assigned to the lot shall be one grade below the majority grade.

§ 265.105 Hygiene.

Shrimp shall be processed and maintained in accordance with §§ 260.98 to 260.104 of this Chapter and of the Good Manufacturing Practice regulations contained in 21 CFR Part 110.

TABLE I.—CLASSIFICATION OF DEFECTS

Defect	Points Assigned		
	Minor	Major	Serious
1. Dehydration: Slight	1		
Desiccation: Moderate		2	
Severe			4
2. Uniformity ratio of weight as defined in section 265.104(e)(8):			
1.75 to 1.99	1		
2.00 to 2.25		2	
Over to 2.25			4
3. Deterioration:			
Slight	1		
Moderate		2	
Severe			4
4. Black spot and improperly cleaned ends:			
From 1% to 4% (by weight)	1		
From 4% to 6% (by weight)		2	
More than 6% (by weight)			4
5. Pieces:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
6. Damaged and broken:			
From 2% to 4% (by weight)	1		
From 4% to 10% (by weight)		2	

TABLE I.—CLASSIFICATION OF DEFECTS—Continued

Defect	Points Assigned		
	Minor	Major	Serious
More than 10% (by weight)			4
7. Legs, loose shell, antennae, flippers, extraneous material heads, or unacceptable shrimp:			
From 1% to 2% (by weight)	1		
From 2% to 3% (by weight)		2	
More than 3% (by weight)			4
8. Improperly peeled, inadvertently peeled, and improperly deveined:			
From 1% to 6% (by weight)	1		
From 6% to 10% (by weight)		2	
More than 10% (by weight)			4
9. Texture:			
Slight	1		
Moderate		2	
Severe			4

TABLE II.—TOLERANCES FOR VARIOUS DEFECTS

Combined minor and major Defects	Serious defects
U.S. Grade A: Up to and including 5 points	None.
U.S. Grade B: Over 5 points, up to and including 9 points.	None.
U.S. Grade C: Over 9 points, up to and including 13 points.	Up to 4 points.

§ 265.106

Appendix 1

Procedures for cooking samples in sensory evaluation of cooked flavor and odor.

"Cooked in a suitable manner" (Cooked style excepted) means that a portion of the thawed product has been cooked as follows:

Place 2 to 4 ounces of shrimp in a sauce pan with 1 pint of water and 1 teaspoon of salt. (Salt optional.) Cook until internal temperature reaches 160 degrees F (70 degrees C). Drain and cool without rinsing and check for flavor, odor, and texture.

Appendix 2

Defect Action Levels

These defect action levels apply to sample units of fresh or frozen shrimp.

A defect action level occurs if at least one of the following conditions is present:
If 5 percent or more of the shrimp in a sample unit show Class 3 decomposition; or
If 20 percent or more of the shrimp in a sample unit show Class 2 decomposition; or
If the percentage of shrimp showing Class 2 decomposition plus four times the percentage of those showing Class 3 decomposition equals at least 20 percent of the shrimp in a sample unit.

The classes are defined as follows:

Class 1—Passable

This category includes fishery products that range from very fresh to those that contain fishy odors or other odors

characteristic of the commercial product, not definitely identifiable as decomposition.

Class 2—Decomposed (Slight but Definite)

The first stage of definitely identifiable decomposition. An odor is present that, while not really intense, is persistent and readily perceptible to the experienced examiner as that of decomposition.

Class 3—Decomposed (Advanced)

The product possesses a strong odor of decomposition which is persistent, distinct and unmistakable.

Appendix 3

Determination of Net Weight

Regulatory tolerances for new weight are established under the provisions of the Federal Food Drug and Cosmetic Act, as amended.

The following procedures are based on the Thirteenth Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists.

18.001 New Weight of Frozen Seafoods Procedure.

Set scale, 32.050, on firm support and level. Adjust zero load indicator or rest point and check sensitivity.

(a) *Glazed seafoods*.—Remove package from low temperature storage, open immediately, and place contents under gentle spray of cold water. Agitate carefully so product is not broken. Spray until all ice glaze that can be seen or felt is removed. Transfer product to circular No. 8 sieve, 20 cm (8") diameter for product less than or equal to 0.9 kg (2 lb.) and 20 cm (12") for product greater than 0.9 kg (2 lb.). Without shifting product, incline sieve at angle of 17–20° to facilitate drainage and drain exactly 2 minutes (stop watch). Immediately transfer product to tared pan (B) and weigh (A). Weight product = A – B.

Modified AOAC 18.016 and 13.017 method for determining the net weight of frozen peeled shrimp blocks and packages.

(a) Equipment needed.

(i) Container of sufficient size and capacity so as to completely submerge the product. Wire mesh basket large enough to contain contents of package and with opening small enough to retain all pieces. Expanded metal test-tube basket or equivalent, fully line with standard 16 mesh per linear inch insect screen, mesh bags or other suitable containers are also satisfactory.

(ii) Balance. Sensitive to 0.01 ounce or 0.25 g.

(iii) Sieve. U.S. standard #8 wire sieve 12" diameter (30 centimeters).

(iv) Thermometer.

(v) Stop Watch.

(2) Procedures.

Place contents of individual package in wire mesh basket and immerse in container of fresh water so that top of basket extends above water level. Introduce water at 80° ± 5°F (26°C ± 3°C) at bottom of container at flow rate of 1–3 quarts or liters per minute. As soon as the product thaws so that the glaze can be removed and the shrimp separated easily, transfer all material to 12" (30 centimeters) No. 8 sieve, distributing

evenly. Tilt the sieve to above 20 degrees and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

"Drained weight" of cooked shrimp is determined by the following AOAC 18.018 method modified.

Procedure

(i) Weigh product free all wrapping and record weight. Place product in a container containing an amount of fresh potable water $80 \pm 5^\circ\text{F}$ ($26^\circ\text{C} \pm 3^\circ\text{C}$) equal to 8 times the declared weight of the product. If product is block frozen, turn block over several times during thawing. If frozen shrimp are caked together they may be parted manually provided they are not injured in the process. When all the ice has melted, empty the shrimp into a 12" (30 centimeters) 8 sieve, distributing evenly. Tilt the sieve to about 20° and drain for exactly two minutes. Immediately transfer shrimp to a tarred container and weigh.

[FR Doc. 82-13808 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-06-N

Proposed Rules

Federal Register

Vol. 47, No. 98

Thursday, May 20, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool plants and still be priced under the order. The proposed suspension would remove the limits on such movements of milk during the months of June through August 1982. The action was requested by a cooperative association to assure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for dairy farmers regularly associated with the market. The closing of a fluid milk plant supplied by the cooperative association prompted the request.

DATE: Comments are due not later than May 27, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes

following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the Federal Register. However, this would not permit the completion of the required suspension procedures and the inclusion of June 1982 in the suspension period if this is found necessary. The initial request for this action was received on May 11, 1982.

It has also been determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois marketing area is being considered during the months of June through August 1982:

1. In § 1032.13(b)(2), the language "during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

2. In § 1032.13(b)(3), the language "for not more days of production of producer milk, by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section".

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than May 27, 1982. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include June 1982 in the suspension period.

The comments that are sent will be available for public inspection at the

office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove the limits on the amount of milk that may be diverted from pool plants to nonpool plants during the months of June through August 1982. The order now provides that during the months of January through April and September through November not more than 8 days' production of a producer may be diverted to nonpool plants that are not other order plants. Such diversions are limited to not more than 12 days' production of a producer during August and December. Diversions to nonpool plants that are also other order plants are limited each month of the year to not more than the number of days of production of a producer that is received at pool plants.

The suspension was requested by a cooperative association that supplies milk to handlers regulated under the order. The cooperative association received notification that a pool distributing plant it supplies will cease operations on May 29, 1982. The cooperative stated that other pool distributing plants have supply arrangements that run through August but that tentative arrangements have been made to place the plant's milk supply in such other pool distributing plants in September. As a result, milk of the cooperative's members will be temporarily in excess of fluid milk needs and will have to be moved to nonpool plants for surplus disposal during June through August.

Outlets for the displaced milk include manufacturing plants located in the production area and distributing plants in the St. Louis area that are regulated under the adjacent St. Louis-Ozarks order. The cooperative contends that suspension of the diversion limitations is necessary so that the milk can be moved to such plants in the most economical manner. Without the suspension, the cooperative contends, costly and inefficient movements of milk would have to be made to continue to pool the milk of dairy farmers who have been regularly associated with the market. Also, without the suspension, some of the milk would become pooled under the St. Louis-Ozarks order, thereby lowering returns to producers supplying that market. The cooperative

contends that St. Louis-Ozarks producers should not have their returns reduced as a result of carrying a reserve supply of milk that has regularly been associated with the Southern Illinois order.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on May 14, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-13754 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-30]

Council on Energy Independence; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of petition for rulemaking filed by the Council on Energy Independence.

SUMMARY: In a Federal Register notice published on December 17, 1981 (46 FR 61484), the Commission announced the receipt of and requested comments on a petition for rulemaking (PRM-50-30) filed by the Council on Energy Independence. The petition, which was dated September 11, 1981, requested that the Commission amend its regulations in 10 CFR Part 50 to extend the operating life of nuclear power plants by beginning the 40-year Operating License (OL) term at the date of issuance of the OL. By letter dated May 4, 1982, the petitioner has withdrawn its petition for rulemaking and requested that the Commission cease work on its proposed amendments to 10 CFR Part 50.

ADDRESSES: A copy of the petitioner's letter of withdrawal is available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC. A copy of the letter of withdrawal may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free: 800-368-5642.

Dated at Bethesda, Maryland this 12th day of May 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-13810 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 423

Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Products and Leather Clothing

AGENCY: Federal Trade Commission.

ACTION: Notice of opportunity to file objections to the participation of Chairman James C. Miller III in the rulemaking proceeding.

SUMMARY: The purpose of this document is to notify interested parties of statements about this proceeding regarding care labeling of textile products and leather clothing made by Chairman James C. Miller III prior to his appointment to the Commission and to afford interested parties an opportunity to file objections to Chairman Miller's participation in the proceeding if they wish.

DATE: Objections may be filed on or before June 4, 1982.

ADDRESS: Objections should be addressed to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and should be labeled "Chairman Miller's Participation in Care Labeling Amendments."

Copies of the Chairman's prior statements are available in Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W. ((202) 523-3598).

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3487.

SUPPLEMENTARY INFORMATION: Prior to his appointment to the Commission, Chairman Miller made certain statements concerning the amendments to the Trade Regulation Rule governing Care Labeling of Textile Products and Leather Clothing that the Commission had proposed on January 26, 1976 (41 FR 3747). Mr. Miller made the statements in 1976 in his capacity at that time as Director, Government Operations and Research of the Council on Wage and Price Stability ("Council"). The statements appear in: (1) A Council

press release reporting Mr. Miller's remarks before the National Conference on Care Labeling in Washington, D.C., on July 20, 1976; (2) comments of the Council which Mr. Miller joined in submitting for the rulemaking record on September 24, 1976; and (3) a Council press release concerning the September 24, 1976 comments of the Council.

Notwithstanding his prior statements, Chairman Miller intends to participate in any future Commission deliberations in the proceeding unless, after consideration of any objections to his participation that may be filed in response to this notice, he or the Commission determines otherwise. Interested parties may file such objections on or before June 4, 1982.

Copies of Chairman Miller's prior statements are available in Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580 ((202) 523-3598).

List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552))

By direction of the Commission, dated May 12, 1982.

Carol M. Thomas,
Secretary.

[FR Doc. 82-13766 Filed 5-19-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

Proposed Customs Regulations Amendments Relating to Currency Rates of Exchange

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations provide a list of foreign countries whose currencies are converted into equivalent United States currencies and certified on a quarterly basis. Each time a new country is to be added to this list, the regulations must be amended. This is a burdensome procedure which Customs believes should be simplified. This document proposes to amend the regulations by (1) removing the list of countries from the regulations, and (2) providing that Customs would establish, and publish as a Treasury Decision in the Customs Bulletin for each calendar quarter, a list of foreign countries for which quarterly currency rates are certified, and for the currency of each of

the countries, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter.

DATE: Comments must be received on or before July 19, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: G. Scott Shreve, Duty Assessment Division (202-566-5307), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 31 U.S.C. 372, it is necessary to convert foreign currency into equivalent United States currency for the purpose of assessing and collecting duties upon merchandise imported into the United States. To do this, Customs must use the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York ("FRB").

The FRB provides rates of exchange by two methods: (1) responses to special requests by Customs, and (2) daily rate sheets.

Special requests by Customs are utilized for those currencies for which rate information is needed infrequently either because of low trade volume or due to the fact that most transactions are in U.S. dollars.

For currencies for which there is a high demand for rate information, certified rates of exchange are provided by the daily rate sheets. The daily rate sheets list (1) countries set forth in § 159.34(a), Customs Regulations (19 CFR 159.34(a)), whose currencies are converted into equivalent United States currencies and certified on a quarterly basis, and (2) countries not set forth in § 159.34(a), but for which there is a demand for currency rate information. The FRB finds it more efficient to provide information about this second group on the daily rate sheets as opposed to responding to numerous special requests.

For those countries listed in § 159.34(a), certified quarterly rates of exchange are used. For these countries, Customs publishes in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the FRB for the respective foreign currency for a day in that quarter.

The certified quarterly rate of exchange is used for Customs purposes for any date of exportation within the quarter unless a certified daily rate, as determined by the FRB and certified to the Secretary of the Treasury, for the date of exportation varies by 5 percent or more from the certified quarterly rate. In that event, Customs publishes in the Customs Bulletin a notice of the variation (popularly called a "variance"), and the rate certified on that date for the applicable country listed in § 159.34(a). The certified daily rate then is used for Customs purposes in connection with merchandise exported on that date.

For those countries appearing on the daily rate sheets but not on the list of countries in § 159.34(a), a different procedure is used. The rates of exchange for those countries are converted and certified on a daily basis, rather than on a quarterly basis, as is the case of the countries listed in § 159.34(a). Therefore, to inform the importing community of the daily rates of exchange of those countries, it is necessary for Customs to publish a separate Treasury Decision each week in the Customs Bulletin.

Customs believes that when trade practices change so as to warrant the addition of a country to the daily rate sheets, that country also should be placed on the quarterly list and subject to the benefit of the quarterly rate procedure. In this regard, Customs published a final rule in the *Federal Register* on May 4, 1981 (T.D. 81-117; 46 FR 24944), amending § 159.34(a), by adding eight countries to the quarterly list. Since that amendment, other countries appearing on the daily rate sheets should be added to the quarterly list. Under existing procedures, it would be necessary to amend § 159.34(a) to add these new countries to those already listed in that section. Further, as other countries are added to the daily rate sheets, it would be necessary to amend § 159.34(a) again. Customs believes this is a burdensome procedure which should be simplified.

Rather than commence the amendatory process each time a country is to be added to the list of countries, this document proposes to amend § 159.34(a) by removing the list of countries and, in its place, advise the public that Customs would establish, and publish as a Treasury Decision in the Customs Bulletin for each calendar quarter, a list of foreign countries for which quarterly rates of exchange are certified and for the currency of each of the countries, the rate or rates first certified by the FRB for such foreign currency for a day in that quarter. This means that a country, added to the daily

rate sheets between calendar quarters, would be added to the quarterly list of countries at the time of publication of the Treasury Decision in the Customs Bulletin at the next calendar quarter. In the interim, to inform the importing community of the daily rates of exchange of those countries added to the daily rate sheets, Customs would continue to publish a separate Treasury Decision each week in the Customs Bulletin. The advantage of this approach is that § 159.34(a) need not be amended repeatedly each time another country is added to the daily rate sheets.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

The Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act, Pub. L. 96-354, (5 U.S.C. 601, *et seq.*), it is hereby certified that the proposed regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Charles D. Rassin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 159

Customs duties and inspection, Imports, Foreign currencies.

Authority

This document is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 25, 28 Stat. 552, as

amended (31 U.S.C. 372), section 624, 46 Stat. 759 (19 U.S.C. 1624).

PART 159—LIQUIDATION OF DUTIES

It is proposed to revise § 159.34(a), Customs Regulations (19 CFR 159.34(a)), to read as follows:

§ 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* Customs shall establish on the 1st day of January, April, July, and October of each year, a list of foreign countries for which a quarterly currency rate is certified. Customs shall publish quarterly as a Treasury Decision in the Customs Bulletin the list of foreign countries and for the currency of each of the countries, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter.

Approved April 30, 1982.
William Raab.

Commissioner of Customs.

John M. Walker, Jr.

Assistant Secretary of the Treasury.

[FR Doc. 82-13607 Filed 5-19-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 211, 221, 231, 250, and 270

Notice of Intent To Require the Use of a Payor Information Form

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The Minerals Management Service (MMS), formerly the Conservation Division of the U.S. Geological Survey (USGS), proposes the use of a Payor Information Form (PIF) to identify all parties holding interests in Federal lands, Outer Continental Shelf (OCS) lands, or Indian lands leases on which royalties are being paid on minerals extracted and sold. The Payor Information Form will be required to be submitted by each party who pays rentals and/or royalties to the MMS, identifying the percentage of production/sales for each specific lease or property. The proposed PIF will enable MMS to determine all of the payors responsible for making payments on Federal and Indian leases to the Royalty Management Accounting Center. This form fulfills the recommendation of the Commission on

Fiscal Accountability of the Nation's Energy Resources that:

*** the Department immediately require all lessees of revenue producing leases or their agent (the operator or some other agent) to submit a payor plan signed by all payors indicating the payment responsibilities of each party. In the payor plan, the lessee should identify the payors for 100 percent of the royalty obligation. Modified payor plans must be submitted whenever any payor responsibilities change ***

DATE: Written comments and recommendations on this proposed rulemaking must be received on or before June 21, 1982.

ADDRESS: Written comments may be mailed or delivered to Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Room 6A220, Mail Stop 660, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 660, Reston, Virginia 22091, telephone (703) 860-7331.

Authority: The Director of the Minerals Management Service has the authority to prescribe the manner in which royalty production and sales data are remitted to the Federal Government in accordance with the pertinent provisions of the minerals operating regulations (30 CFR Parts 211, 221, 231, 250, 270) and the terms of the minerals leases and contracts issued pursuant to the Mineral Leasing Act, the Act of February 25, 1920 (30 U.S.C. 181 et seq.); the Acquired Lands Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.); the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.); the Allotted Lands Leasing Act of 1909 (25 U.S.C. 396); the Tribal Lands Leasing Act of 1938 (25 U.S.C. 396a); and Executive Order 12291 (48 FR 13193).

SUPPLEMENTARY INFORMATION: On January 19, 1982, the Secretary of the Interior established the Minerals Management Service and transferred thereto all functions previously exercised by the Conservation Division, U.S. Geological Survey, including administration of the regulatory programs cited herein. Secretarial Order No. 3071 (47 FR 4751, February 2, 1982).

Purpose

The Royalty Management Program (RMP) of MMS is developing a new data base to identify properties and parties paying rentals and royalties on Federal and Indian leases. Rentals paid to the Bureau of Land Management are not included. To develop and maintain this automated data base, the RMP proposes utilizing a Payor Information Form. The

Payor Information Form will be required to be submitted by each party who pays rentals or royalties to MMS. This form will be required for each lease on which a payment is made to MMS, specifying what percentage of the production is covered by the payment.

Payors will be required to file amended PIFs, within 30 days, when any change in the information previously provided occurs.

From the information provided on the PIF, the RMP will assign unique accounting identification codes. Payors will use the assigned codes for reporting and paying rentals and royalties on the Report of Sales and Royalty Remittance (Form 9-2014).

Explanation

The new accounting identification numbering system has been designed to provide the flexibility needed to allow reporting and paying at the Federal or Indian lease level or below. This flexibility is needed to deal with ownership and operational arrangements which may not be consistent across an entire Federal or Indian lease.

Ownership and operating rights are routinely assigned on part of a lease rather than for an entire lease. As a result of this ownership division on a Federal or Indian lease, industry will usually identify their leases based upon common ownership or operators which, most of the time, are not consistent with the Federal or Indian lease boundary. Thus a Federal or Indian lease usually consists of more than one company "lease."

In the future, a new element in the Federal royalty accounting system will be what is called the "revenue source." The revenue source from the Government or Indian lessor's point of view is a producing entity on a lease from which the lessor expects to receive revenues.

A revenue source will be one or more wells or zone completions on a Federal or Indian lease which have:

- A common royalty rate
- A common operator
- A common ownership or division of interest

For Federal or Indian royalty accounting identification purposes, the revenue source will be further separated by products produced.

The products are identified by the party (payor) who will be paying the royalties for each of the products.

If the royalty payor has more than one marketing outlet for the same product, such as sales to more than one

purchaser, then the payment will be further subdivided into "selling arrangements."

At the selling arrangement level, the percentage of the total product being sold at that level is identified. This percentage represents that portion of the product (i.e., fraction of 100 percent) that is being sold by a payor from that revenue source.

Thus for Federal and Indian royalty accounting identification purposes, a unique identification numbering system is developed which consists of the following components:

- Lease number
- Revenue source
- Product
- Payor
- Selling Arrangement

Detailed instructions for completing the proposed Payor Information Form have been developed and are available upon request from Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service—MS660, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

List of Subjects in 30 CFR Parts 211, 221, 231, 250, and 270

Dated: May 17, 1982.

S. Daniel N. Miller, Jr.,
Assistant Secretary of the Interior.

BILLING CODE 4310-31-M

REVISED ☐ MINERALS MANAGEMENT SERVICE - ROYALTY MANAGEMENT

(DATE) 3/1/82

PAYOR INFORMATION FORM ACCOUNTING IDENTIFICATION SHEET

SECTION I
PAYER
INFORMATION

COMPANY NAME CO. CODE
 PERSON TO CONTACT AREA CODE TELEPHONE EXTEN.
 AUTHORIZED SIGNATURE DATE

SECTION II
LEASE
INFORMATION

LEASE NO. PRODUCING ☐ RENTAL/MINIMUM ROYALTY ONLY ☐
 WHO PAYS GAS STORAGE ☐
 WHO PAYS CO. CODE
 MIN. ROYALTY? CO. CODE

SECTION III
REVENUE
SOURCE
INFORMATION

YOUR INTERNAL ID (NAME/NO.) OF FOR THIS LEASE. R/S CODE

A.) REVENUE
SOURCE
OPERATOR
(IF DIFFERENT
FROM PAYER)

NAME CO. CODE
 PERSON TO CONTACT AREA CODE TELEPHONE EXTEN.

B.) REVENUE
SOURCE
TYPE

IF POOLED PRODUCTION:
☐ UNITIZED PRODUCTION ALLOCATION
☐ COMMUNITIZED PRODUCTION ALLOCATION
 (COMPLETE (C) UNIT/COMM. AGREEMENT DATA)

IF LEASE PRODUCTION:
☐ SINGLE WELL
☐ GROUP OF WELLS
☐ ALL WELLS ON THIS LEASE
 (COMPLETE (D) WELL DATA)

OTHER:
☐ COMPENSATORY ROYALTY
 (COMPLETE (C) UNIT/COMM. AGREEMENT DATA, IF NEEDED)

C.) UNIT/COMM
AGREEMENT
DATA

UNIT NAME
 (COMM. WELL NAME)
 PARTICIPATING AREA
 (COMM. FORMATION)
 UNIT NO. TRACT NO. TRACT%

D.) WELL
DATA

1.) WELL NAME FORMATION LOCATION
 API WELL NO. OR
 ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

2.) WELL NAME FORMATION LOCATION
 API WELL NO. OR
 ST. CNTY. WELL CODE S/T CMPL 1/4 1/4 SEC. TOWNSHIP RANGE

SECTION IV
SELLING
ARRANGEMENTS

COMPANY NAME
 LEASE NO. OF FOR THIS LEASE.
 REVENUE SOURCE OF FOR THIS LEASE.

A.) OIL

1.) GENERAL
 SELLING ARRANGEMENT OF FOR THIS REVENUE SOURCE, S/A CODE
 PRODUCT DESCRIPTION PROD. CODE
 THE BUYER/SELLER IS CODE
 (IF RIK, ENTER REFINER'S NAME)
 OIL BULLETIN CATEGORY CODE
 ROYALTY-IN-KIND? YES ☐ NO ☐
 RIK

2.) PURCHASE
INFO.

3.) WPT
 WINDFALL PROFITS TAX-EXEMPT? YES ☐ NO ☐
 DESCRIPTION TIER 1 2 3
 BASE PRICE - INTERIM OCT. 1, 1980 CODE

4.) ALLOWANCES

5.) PAYOR
PERCENT
 TRANSPORTATION ALLOWANCE YES ☐ NO ☐
 GATHERING CHARGE YES ☐ NO ☐
 PERCENT OF TOTAL VOLUME FOR THIS PRODUCT

B.) GAS

1.) GENERAL
 SELLING ARRANGEMENT OF FOR THIS REVENUE SOURCE, S/A CODE
 PRODUCT DESCRIPTION PROD. CODE
 THE BUYER/SELLER IS CODE
 (IF RIK, ENTER REFINER'S NAME)
 CODE

2.) PURCHASE
INFO.

3.) ALLOWANCES
 TRANSPORTATION ALLOWANCE YES ☐ NO ☐
 GATHERING CHARGE YES ☐ NO ☐
 PERCENT OF TOTAL VOLUME FOR THIS PRODUCT

C.) OTHER
PRODUCT

1.) GENERAL
 SELLING ARRANGEMENT OF FOR THIS REVENUE SOURCE, S/A CODE
 PRODUCT DESCRIPTION PROD. CODE
 THE BUYER/SELLER IS CODE
 (GAS PLANT NAME)
 PERCENT OF TOTAL VOLUME FOR THIS PRODUCT

2.) PAYOR
PERCENT

3.) ALLOWANCE
 MANUFACTURING ALLOWANCE

MINERALS MANAGEMENT SERVICE - ROYALTY MANAGEMENT
 PAYOR INFORMATION FORM
 WELL DATA CONTINUATION SHEET

3/1/82

COMPANY NAME			
LEASE NO.			
REVENUE SOURCE		OR	
		FOR THIS LEASE.	

1.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
2.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
3.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
4.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
5.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
6.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
7.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	

[FR Doc. 82-13919 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-31-C

8.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
9.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
10.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
11.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
12.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
13.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
14.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
15.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	
16.)	WELL NAME	FORMATION	LOCATION
	API WELL NO.	OR	
	ST. CNTY. WELL CODE S/T CMPL	1/4 1/4 SEC. TOWNSHIP RANGE	

Minerals Management Service**30 CFR Part 221****Site Security; Onshore Federal and Indian Oil and Gas Leases**

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period on a notice of intent to propose rulemaking.

SUMMARY: In response to requests for an extension of time to comment on a notice of intent to propose rulemaking on minimum site security requirements for onshore Federal and Indian oil and gas leases published in the Federal Register April 21, 1982 (47 FR 17076), a 15-day extension is hereby granted. This extension will give the public more time to study and comment on the notice of intent to propose rulemaking.

DATE: Comments on this notice of intent to propose rulemaking must be received by June 7, 1982.

ADDRESS: Comments may be mailed to Director, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 656, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535 (FTS) 928-7535; or Mr. Cecil Feeney, (703) 860-6259, (FTS) 928-6259.

Dated: May 13, 1982.

Eddie R. Wyatt,

Acting Chief, Onshore Minerals Management Division.

[FR Doc. 82-13737 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement**30 CFR Part 943****Public Disclosure of Comments Received From Federal Agencies on Proposed Bonding Amendment to the Texas State Program**

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

ACTION: Disclosure of comments.

SUMMARY: Before the Director of the Office of Surface Mining Reclamation and Enforcement, (OSM) may approve state regulatory program amendments submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Director has solicited comments from these agencies on the Texas program, and is today announcing their public disclosure.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" for addresses where copies of the comments received from Federal Agencies and the administrative record on the proposed bonding amendment to the Texas State program are available.

FOR FURTHER INFORMATION CONTACT: Robert L. Markey, Director, Oklahoma State Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth St., Tulsa, Oklahoma 74103, Telephone: (918) 581-7929.

SUPPLEMENTARY INFORMATION:**Availability of Copies**

Copies of the comments received from Federal agencies and administrative record on the proposed bonding amendment to the Texas program are available for public inspection and copying during regular business hours at:

Office of Surface Mining Reclamation and Enforcement, Oklahoma State Office, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240, Telephone: (202) 343-7896.

Texas Railroad Commission, Surface Mining and Reclamation Division, 105 West Riverside Drive, Austin, Texas 78711, Telephone: (512) 475-8751

Background

The Director, OSM is evaluating the proposed bonding amendment submitted by Texas for his review on September 18, 1981. See the Federal Register. In accordance with section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), this amendment to Texas' program may not be approved until the Director has 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 relevant to the program amendment as proposed. In this regard, the following Federal agencies were invited to comment on the Oklahoma program:

Department of Agriculture:
Soil Conservation Service
Forest Service
Agricultural Stabilization and Conservation Service
Advisory Council on Historic Preservation
Department of Labor:
Mine Safety and Health Administration

Environmental Protection Agency
Water Resources Council
Council on Environmental Quality
Department of Energy
Department of the Interior:
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Bureau of Reclamation
Fish and Wildlife Service
National Park Service
Geological Survey
U.S. Army Corps of Engineers

Of those agencies invited to comment, OSM received acknowledgement and/or comments from the following offices.

Department of Agriculture:
Soil Conservation Service
Forest Service
Agricultural Stabilization and Conservation Service
Environmental Protection Agency
Department of the Interior:
Bureau of Reclamation
Fish and Wildlife Service
National Park Service
Minerals Management Service

Dated: May 14, 1982.

Arthur W. Abbs

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 82-13727 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE**Defense Nuclear Agency****32 CFR Ch. I****Guidance for the Determination and Reporting of Nuclear Radiation Dose for DOD Participants in the Atmospheric Nuclear Test Program (1945-1962)**

AGENCY: Defense Nuclear Agency, DOD.

ACTION: Request for comments on proposed guidelines.

SUMMARY: We propose to establish guidance to DOD components for the determination and reporting of ionizing radiation dose for DOD participants in the atmospheric nuclear test program (1945-1962). These proposals are based upon a review of the existing film badge dosimetry data base and established scientific principles. The methodology by which a film badge dose or an absorbed radiation dose may be established for individual test participants is outlined. The use of individual film badge data as well as records existing for other individuals, radiological surveys, weapons effects data, and modeling techniques based on

the laws of the physical sciences form the basis of the guidance.

DATES: All written comments in response to this request are welcome and must be received by July 15, 1982 in order to be considered.

ADDRESS: Written comments should be addressed to the Director, Defense Nuclear Agency, ATTN: NTPR, Washington, D.C. 20305

We will send a copy of the Fact Sheet on the Nuclear Test Personnel Review Program to anyone requesting it. This fact sheet describes the background and scope of the program and some of the findings to date. Please send requests to Col. Thomas J. Haycraft at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittigan, Defense Nuclear Agency, ATTN: GC, Washington, D.C. 20305 (Telephone 202-325-7681).

SUPPLEMENTARY INFORMATION:

Authority

On March 26, 1982, the United States District Court for the District of Columbia filed a Memorandum Order in the case of *Gott v. Nimmo*, Civil Action No. 80-906. The order requires the Defense Nuclear Agency to promulgate "rules which establish methodologies and standards to calculate radiation exposure." A notice of appeal has been duly filed and, in the event the decision of the District Court is reversed, this proposed rule will be withdrawn.

Previous Actions by the Department of Defense

Between 1945 and 1962 the Atomic Energy Commission (AEC) carried out some 235 atmospheric nuclear tests, principally in Nevada and the Pacific Ocean. An estimated 220,000 Department of Defense (DOD) personnel, military and civilian, were involved in this testing, and many were exposed to low levels of ionizing radiation in the performance of various activities. The doses generally were well within established radiation dose limits.

DOD in December 1977 began a program of wide-ranging actions on behalf of the atmospheric nuclear test participants. The Defense Nuclear Agency (DNA) was appointed the DOD Executive Agency for this effort. The Nuclear Test Personnel Review (NTPR) program was established by DNA to carry out these responsibilities.

DOD has made a commitment to Congress to provide the recorded exposure, or to estimate the most probable exposure, for each test participant. The principal issue addressed herein is the method for

calculating the nuclear radiation dose for the individual participants.

Radiation Dose Determination

The basic means by which to measure dose from exposure to ionizing radiation is the film badge. Of the estimated 220,000 Department of Defense participants in atmospheric nuclear weapons tests, about 145,000 have film badge dose data available. The records have been converted to a standard format and are being provided to each military service, which can use the film badge dose data to obtain a radiation dose for a particular individual from that service. This is done upon request from the individual, the individual's representative, the Veterans' Administration, or others as authorized by the Privacy Act.

From 1945 through 1954, the DOD and Atomic Energy Commission (AEC) policy was to issue badges only to a portion of the personnel in a homogeneous unit such as a platoon of a battalion combat team, Naval ship or aircraft crew. Either one person was badged in a group performing the same function, or only personnel expected to be exposed to radiation were badged. After 1954, the policy was to badge all personnel. But, some badges were unreadable and some records were lost or destroyed, as in the fire at the Federal Records Center in St. Louis. For these reasons the NTPR Program has focused on determining the radiation dose for those personnel (about 75,000) who were not issued film badges or for whom film badge records are not available.

In order to determine the radiation dose to individuals for whom film badge data are not available, alternative approaches are used as circumstances warrant. All approaches require investigation of individual or group activities and their relationship to the radiological environment.

First, if it is apparent that personnel were not present in the radiological environment and had no other potential for exposure, then their dose is zero. Second, if some members of a group had film badge readings and others did not—and if all members had a common relationship with the radiological environment—then doses for unbadged personnel can be calculated. Third, where sufficient badge readings or a common relationship to the radiological environment does not exist, dose reconstruction is performed. This involves correlating a unit's or individual's detailed activities with the quantitatively determined radiological environment.

The three approaches are described as follows: A. Activities of an individual

or his unit are researched for the period of participation in an atmospheric nuclear test. Unit locations and movements are related to areas of radiation. If personnel were far distant from the nuclear detonation(s), did not experience fallout or enter a fallout area, and did not come in contact with radioactive samples or contaminated objects, they were judged to have received no dose.

B. Film badge data from badged personnel may be used to estimate individual doses for unbadged personnel. First, a group of participants must be identified that have certain common characteristics and a similar potential for exposure to radiation. Such characteristics are: individuals must be doing the same kind of work, referred to as activity, and all members of the group must have a common relationship to the radiological environment in terms of time, location or other factors. Identification of these groups is based upon research of historical records, technical reports or correspondence. A military unit may consist of several groups or several units may comprise a single group.

Using proven statistical methods, the badge data for each group is examined to determine if it adequately reflects the entire group, is valid for use in statistical calculations, or if the badge data indicate the group should be subdivided into smaller groups.

For a group that meets the tests described above, the mean dose, variance and confidence limits are determined. An estimated dose equal to 95% probability that the actual exposure did not exceed the estimate is assigned to unbadged personnel. This procedure is statistically sound and will insure that unbadged personnel are assigned doses much higher than the average/mean for the group.

C. Dose reconstruction is performed if film badge data are unavailable for all or part of the period of radiation exposure, if film badge data are partially available but cannot be used statistically for calculations, special activities are indicated for specific individuals, or if other types of radiation exposures are indicated. In dose reconstruction, the conditions of exposure are reconstructed analytically to arrive at a radiation dose. Such reconstruction is not a new concept; it is standard scientific practice used by health physicists when the circumstances of a radiation exposure require investigation. The underlying method is in each case the same. The radiation environment if characterized in time and space, as are the activities

and geometrical position of the individual. Thus, the rate at which radiation is accrued is determined throughout the time of exposure, from which the total dose is integrated. An uncertainty analysis of the reconstruction provides a calculated mean dose with confidence limits. The specific method used in a dose reconstruction depends on what type of data are available to provide the required characterizations as well as the nature of the radiation environment. The radiation environment is not limited to the gamma radiation that would have been measured by a film badge, but also includes neutron radiation for personnel sufficiently close to a nuclear detonation, as well as beta and alpha radiation (internally) for personnel whose activities indicate the possibility of inhalation or ingestion of radioactive particles.

The first approach in subparagraph A above is straightforward; the second in subparagraph B uses standard statistical procedures; the third approach in subparagraph C is discussed in more detail in the section titled, *Dose Reconstruction Methodology*.

General Procedures

The following procedures govern the approach taken in dose determination:

- a. Use individual film badge data where available and complete.
- b. Identify group activities and locations for period(s) of possible exposure.
- c. Qualitatively assess the radiation environment in order to delineate contaminated areas. If no activities occurred in these areas, and if no other potential for exposure exists, a no dose received estimate is made.
- d. If partial film badge data are available, define group(s) of personnel with common activities and relationships to radiation environment.
- e. Using standard statistical methods, verify from the distribution of film badge readings whether the badged sample adequately represents the intended group.
- f. Calculate the mean dose with variance and confidence limits, for each unbadged population. Assign a dose equal to 95% probability that actual exposure did not exceed the assigned dose.
- g. If badge data is not available for a statistical calculation, conduct a dose reconstruction.
- h. For dose reconstruction, define radiation environment through use of all available scientific data, e.g., measurements of radiation intensity, decay, radioisotopic composition.

i. Quantitatively relate activities, shielding, position, and other factors to radiation environment as a function of time. Integrate dose throughout period of exposure.

j. Where possible, calculate mean dose with confidence limits; otherwise calculate best estimate dose or, if data are too sparse, upper limit dose.

k. Compare calculations with available film badge records to verify the calculated doses.

i. Where identified as a contribution to total dose, calculate initial or internal radiation dose.

Dose Reconstruction Methodology

A. Concept

The specific methodology consists of the characterization of the radiation environments to which participants, through all relevant activities, were exposed. The environments, both initial and residual radiation, are correlated with the activities of participants to determine accrued doses due to initial radiation, residual radiation and/or inhaled/ingested radioactive material, as warranted by the radiation environment and the specific personnel activities. (5, 6) Due to the range of activities, times, geometries, shielding, and weapon characteristics, as well as the normal spread in the available data pertaining to the radiation environment, an uncertainty analysis is performed. This analysis quantifies the uncertainties due to time/space variations, group size, and available data. Due to the large amounts of data, an automated (computer-assisted) procedure is often used to facilitate the data-handling and the dose integration, and to investigate the sensitivity to variations in the parameters used. The results of the calculations are then compared with film badge data as they apply to the specific period of the film badges and to the comparable activities of the exposed personnel, in order to validate the procedure and to identify personnel activities that could have led to atypical doses. Radiation dose from neutrons and dose commitments due to inhaled or ingested radioactive material are not detected by film badges (5, 6) Where required, these values are calculated and recorded separately.

B. Characterization of the Radiological Environment

This step describes and defines the radiological conditions as a function of time for all locations of concern, that is, where personnel were positioned or where personnel activities took place. The radiation environment is divided

into the two standard categories—initial radiation and residual radiation.

The initial radiation environment results from several types of gamma and neutron emissions. Prompt neutrons and gamma radiation are emitted at the time of detonation, while delayed neutrons and fission-product gamma, from the decay of radioactive products in the fireball, continue to be emitted as the fireball rises. In contrast to these essentially point sources of radiation, there is gamma radiation from neutron interactions with air and soil, generated within a fraction of a second. (8) Because of the complexity of these radiation sources and their varied interaction properties with air and soil, it is necessary to obtain solutions of the Boltzmann radiation transport equation. (9) The radiation environment thus derived includes the effects of shot-specific parameters such as weapon type and yield, neutron and gamma output, source and target geometry, and atmospheric conditions. The calculated neutron and gamma radiation environments are checked for consistency with existing measured data, as available. In those few cases displaying significant discrepancies that cannot be resolved, an environment based on extrapolation of the data is used if it leads to a larger calculated dose. (7)

The residual radiation environment is divided into two general components—neutron-activated material that subsequently emits, over a period of time, beta and gamma radiation; and radioactive debris from the fission reaction or from unfissioned materials that emit alpha, beta, and gamma radiation. (8) Because residual radiation decays, the characterization of the residual environment is defined by the radiation intensity as a function of type and time. Radiological survey data are used to determine specific intensities at times of personnel exposure. Interpolation and extrapolation are based on known decay characteristics of the individual materials that comprise the residual contamination. (5, 7) In those rare cases where insufficient radiation data exist to adequately define the residual environment, source data are obtained from the appropriate weapon design laboratory and applied in standard radiation transport codes (10, 11, 12) to determine the initial radiation at specific distances from the burst. This radiation, together with material composition and characteristics, leads to a description of the neutron-activated field for each location and time of interest. In all cases, observed data, as

obtained at the time of the operation, are used to calibrate the calculations.

C. Activities of Participants

This step uses official historical records, augmented by personal interviews where gaps exist, to depict a scenario of activities for each individual or definable group. For military units, whose operations were closely controlled, the scenario is usually well defined. The same is true for observers, (7) who were restricted to specific locations both during and after the nuclear bursts. Ships' locations and activities are usually known with a high degree of precision from deck logs. Aircraft tracks and altitudes are also usually well defined. Personnel engaged in scientific experiments often kept logs of their activities; moreover, the locations of their experiments are usually a matter of record. Where the records are insufficiently complete for the degree of precision required to determine radiation exposure, participant's comments are used and reasonable judgements are made to further the analysis (13). Possible variations in the activities, as well as possible individual deviations from group activities, with respect to both time and location, are considered in the uncertainty analysis of the radiation dose calculations.

D. Calculation of Dose

The initial radiation doses to close-in personnel (who were normally positioned in trenches at the time of detonation) are calculated from the above-ground environment by simulating the radiation transport into the trenches. Various calculational approaches, (10, 14) standard in health physics, are employed to relate in-trench to above-trench doses for each source of radiation. Detailed modeling of the human body, in appropriate postures in the trench, is performed to calculate the gamma dose that would have been recorded on a film badge and the maximum neutron dose. (15) The neutron, neutron-generated gamma, and prompt gamma doses are accrued during such a short time interval that the posture in a trench could not be altered significantly during this exposure. The fission-product gamma dose, however, is delivered over a period of many seconds. (8) Therefore, the possibility of individual reorientation (e.g., standing up) in the trench is considered. (7,16)

The calculation of the dose from residual radiation follows from the characterized radiation environment and personnel activities. Because radiation intensities are calculated for a field (i.e., in two spatial dimensions) and

in time, the radiation intensity is determinable for each increment of personnel activity regardless of direction or at what time. (5, 7) The dose from exposure to a radiation field is obtained by summing the contribution (product of intensity and time) to dose at each step. The dose calculated from the radiation field does not reflect the shielding of the film badge afforded by the human body. This shielding has been determined for pertinent body positions by the solution of radiation transport equations as applied to a radiation field. (5) Conversion factors are used to arrive at a calculated film badge dose, which not only facilitates comparison with film badge data, but serves as a substitute for an unavailable film badge reading.

The calculation of the dose from inhaled or ingested radioactivity primarily involves the determination of what radioisotopes entered the body in what quantity. Published conversion factors (17, 18) are then applied to these data to arrive at the radiation dose and future dose commitments to internal organs. Inhalation or ingestion of radioactive material is calculated from the radioactive environment and the processes of making these materials inhalable or ingestible. Activities and processes that cause material to become airborne (such as wind, decontamination or traffic) are used with empirical data (19, 20) on particle lofting to determine airborne concentrations under specific circumstances. Volumetric breathing rates and durations of exposure are used to calculate the total material intake. Data on time-dependent weapon debris isotopic composition and the above-mentioned conversion factors are used to calculate the dose commitment to the body and to specific body organs. (6, 22)

E. Uncertainty Analysis

Because of the uncertainties associated with the radiological data or calculations used in the absence of data, as well as the uncertainties with respect to personnel activities, confidence limits are determined where possible for group dose calculations. The uncertainty analysis quantifies the errors in available data or in the model used in the absence of data. Confidence limits are based on the uncertainty of all relevant input parameters, and thus vary with the quality of the input data. They also consider the possible range of doses due to the size of the exposure group being examined. Typical sources of error include orientation of the weapons, specific weapon yields, instrument error, fallout intensity data,

time(s) at which data were obtained, fallout decay rate, route of personnel movements, and arrival/stay times for specific activities. (5, 7)

F. Comparison with Film Badge Records

Calculations of gamma dose were compared with film badge records for two military units at Operations PLUMBBOB to initially validate this methodology. Where all parameters relating to radiation exposure were identified, direct comparison of gamma dose calculations with actual film badge readings was possible. Resultant correlations provided high confidence in the methodology. (5, 8)

Film badge data may, in some cases, be unrepresentative of the total exposure of a given individual or group; nevertheless, they are extremely useful for direct comparison of incremental doses for specific periods, e.g., validating the calculations for the remaining, unbadged period of exposure. Moreover, a wide distribution of film badge data often leads to more definitive personnel grouping for dose calculations and to further investigation of the reason(s) for such distribution. (5) In all cases, personnel film badge data are not used in the dose calculations, but rather are used solely for comparison with and validation of the calculations. For dose reconstruction accomplished to date, comparison has been favorable and within the confidence limits of the calculations. (5, 6)

References

- (1) Headquarters, Camp Desert Rock, "Final Report, Exercise Desert Rock V," Las Vegas, Nevada, July 16, 1953.
- (2) Headquarters, Exercise Desert Rock VI, "Exercise Desert Rock VI, Final Report Of Operations," Las Vegas, Nevada, May 23, 1955.
- (3) National Council On Radiation Protection and Measurements, "Basic Radiation Protection Criteria," NCRP Report No. 39, January 15, 1971
- (4) National Council on Radiation Protection and Measurements, "Instrumentation and Monitoring Methods for Radiation Protection," NCRP Report No. 57, May 1, 1978.
- (5) Science Applications, Inc., "Analysis of Radiation Exposure for Task Force WARRIOR, Shot SMOKY, Exercise Desert Rock VII-VIII, Operation PLUMBBOB," DNA 4747F, Defense Nuclear Agency, May 31, 1979.
- (6) Science Applications, Inc., "Analysis of Radiation Exposure for Task Force BIG BANG, Shot CALILEO, Exercise Desert Rock VII-VIII, Operation PLUMBBOB," DNA 4772F, Defense Nuclear Agency, April 9, 1980.
- (7) Science Applications, Inc., "Analysis of Radiation Exposure for Troop Observers, Exercise Desert Rock VI, Operation Teapot,"

DNA 5354F, Defense Nuclear Agency, July 15, 1980.

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(9) K. Huang, *Statistical Mechanics*, John Wiley & Sons, Inc., New York, 1963.

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(11) Union Carbide Corporation, "A User's Manual for ANISN, A One-Dimensional Discrete Ordinates Transport Code with Anisotropic Scattering," 1967.

(12) Science Applications, Inc., "Version 4 of ATR (Air Transport of Radiation)," DNA 3995, Defense Nuclear Agency, January 1978.

(13) Science Applications, Inc., "Analysis of Radiation Exposure, 4th Marine Corps Provisional Atomic Exercise Brigade, Exercise Desert Rock VII, Operation PLUMBBOB," DNA 5774F, Defense Nuclear Agency, June 15, 1981.

(14) Oak Ridge National Laboratory, "The MORSE Monte Carlo Radiation Transport Code System," ORNL-4972, February 1975.

(15) National Council on Radiation Protection and Measurements, "Protection Against Neutron Radiation," NCRP Report No. 38, January 4, 1971.

(16) Science Applications, Inc., "Analysis of Radiation Exposure for Troop Observers, Exercise Desert Rock V, Operation Upshot-Knothole," DNA 5742F, Defense Nuclear Agency, April 28, 1981.

(17) Battelle Pacific Northwest Laboratories, "Age-Specific Radiation Dose Commitment Factors for a One-Year Chronic Intake," NUREG-0172, U.S. Nuclear Regulatory Commission, November 1977.

(18) Oak Ridge National Laboratories, "Estimates of Internal Dose Equivalent to 22 Target Organs for Radionuclides Occurring in Routine Releases from Nuclear Fuel-Cycle Facilities," ORNL/NUREG/TM-190, U.S. Nuclear Regulatory Commission, June 1978.

(19) K. Steward, "The Resuspension of Particulate Matter from Surfaces," pp. 63-74 of *Proceedings of a Symposium on Surface Contamination*, (B.R. Fish, editor), Pergamon Press, New York, June 1964.

(20) L. R. Anspaugh, et al., "Resuspension and Redistribution of Plutonium in Soils," *Health Physics*, Vol 29, pp. 571-582, October 1975.

(21) Oak Ridge National Laboratory, "ORIGEN Isotope Generation and Depletion Code—Matrix Exponential Method," CC-217, June 1977.

(22) Science Applications, Inc., "Fallout Inventory and Inhalation Dose to Organs (FIIDOS)," 1981.

Dated: May 17, 1982.

M. S. Healy,

OSD, Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 82-13799 Filed 5-19-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD12-82-01]

Drawbridge Operation Regulations; San Joaquin River, Calif.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the California Department of Transportation, the U.S. Navy, and the Atchison, Topeka and Santa Fe Railway Company, the Coast Guard is considering changing the regulation governing the Navy Drive, Highway 4, and Santa Fe bridges over the San Joaquin River near Stockton, California, to exempt the bridges from the requirement to open for vessels. The bridges are now required to open upon twelve hours advance notice. This proposal would relieve the bridge owners of the burden of maintaining the machinery and of having a person available to open the draw. Exempting these bridges from the requirement to open for vessels should not interfere with the reasonable needs of navigation as there have not been any bridge openings since 1978 except for tests. As a precaution to avoid foreclosing future navigational access, a part of the proposed regulation would require the bridges to be restored to service upon six months notice from the Coast Guard.

DATE: Comments must be received on or before July 6, 1982.

ADDRESS: Comments should be submitted to and are available for examination from 7 a.m. to 4 p.m., Monday through Friday, except holidays, at the office of the Commander (oan), Twelfth Coast Guard District, 630 Sansome Street, Room 936, San Francisco, California 94126. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Bridge Administrator, at (415) 556-8668, or at the above address.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Twelfth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Rose E. Guerra, Bridge Administrator, and Lieutenant Commander W. A. Cassels, Project Attorney, District Legal Office, Twelfth Coast Guard District.

Discussion of The Proposed Regulation

The Navy Drive swing bridge, at mile 39.8, was built in 1938 and is the only vehicular access to Rough and Ready Island near Stockton, CA. The bridge has had few openings in recent years, except for maintenance.

The single leaf bascule railroad bridge, at mile 40.6, was built in 1931. Since 1974 to date the bridge has been opened a total of 16 times. Eight of the openings were in 1978 due to a construction project, and there have not been any openings since that time.

The Highway 4 swing bridge at mile 41.6 was built in 1930. The bridge has not been opened for a vessel passage since November 1976. Logs dating back to 1943 show several intervals of up to six years between openings for marine traffic. Under the existing classification as a fully operational swing bridge, the structure does not meet CAL/OSHA standards in several areas. The estimated cost for upgrading the mechanical and electrical features to comply with CAL/OSHA minimum standards is \$75,000. The expense appears unwarranted given the infrequency of use.

There is no commercial navigation on the waterway and little recreational use. The proposed regulation would provide for restoration of service should future navigation require it.

This proposed regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, the proposed regulation is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of the proposed regulation is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule, if

promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects In 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.714(a) to read as follows:

§ 117.714 San Joaquin River and its tributaries, California.

(a) San Joaquin River. (1) Port of Stockton railway bridge at Stockton. The draw shall open on signal if at least twelve hours notice is given to the Port Director.

(2) U.S. Navy Drive bridge, Atchison, Topeka and Santa Fe railroad bridge, and California Highway 4 bridge (Garwood Bridge). The draws need not be opened for the passage of vessels. The owners or agencies controlling the bridges shall restore the draws to full operation within six months of notification to take such action from the Commander, Twelfth Coast Guard District.

(3) Drawbridges above the Old River junction need not open for the passage of vessels.

* * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: May 5, 1982.

J. P. Stewart,
Vice Admiral.

[FR Doc. 82-13617 Filed 5-19-82; 6:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations; Miscellaneous Amendments

Correction

In FR Doc. 82-11658 appearing on page 18375 in the issue of Thursday, April 29, 1982 make the following corrections:

1. On page 18377, third column, in § 401.12(a), there should have been a line of five asterisks between paragraphs (2) and (3), signifying that the rest of paragraph (2) was not changed.

2. On page 18379, first column, in § 401.68(a)(4), in the third line, "explosives and ship" should have read "explosives and shop".

3. On page 18379, center column, in § 401.69(c)(7), "50 tonnes or corrosive" should have read "50 tonnes of corrosive".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Claims Based Upon Ionizing Radiation Exposure

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The VA (Veterans Administration) proposes a regulation to comply with a court order of the United States District Court for the District of Columbia. The proposed regulation will codify current practice by which VA requests information in disability claims based upon alleged exposure to ionizing radiation in military service. It states that VA will inquire of DoD (Department of Defense) as to the degree and circumstances of exposure, if any, of the veteran involved. This regulation may be subject to change or rescission following appellate review of the underlying litigation.

DATE: Comments must be received on or before June 21, 1982. We propose to make this regulation effective the date of final approval.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 30, 1982.

Persons visiting the Veterans Administration Central Office in Washington, D.C., for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: A. J. Mullen (202 389-3088).

SUPPLEMENTARY INFORMATION: The subject litigation, *Gott v. Nimmo*, No. 80-0906 (formerly styled *Gott v. Cleland*), was initially filed as a challenge to three internal documents which had been prepared in an effort to facilitate the processing and evidence-

gathering in ionizing radiation disability claims. The three documents were: a June 15, 1979, Memorandum of Understanding by which DVB (Department of Veterans Benefits) of the Veterans Administration and DNA (Defense Nuclear Agency) of the Department of Defense agreed to formalize and improve existing procedures to ensure the most complete investigation of veterans' ionizing radiation injury claims; section 0-20 of DVB Program Guide 21-1, containing general information for reference of adjudication personnel relating to such claims; and paragraph 22.05.1 of DVB Manual 21-1, which set forth procedures for obtaining information from claimants as to any possible exposure to radiation from nuclear detonations.

Because these documents were considered not to be rules or regulations subject to the promulgation procedures required for rulemaking by the Administrative Procedure Act (APA) at 5 U.S.C. 553, to which procedures the VA is bound by a regulation at 38 CFR 1.12, notice-and-comment rulemaking was not undertaken in their issuance. The program guide section, however, has been published in the Federal Register on several occasions, as a matter of public information. See 44 FR 49090 (1979); 45 FR 29161 (1980); 45 FR 86605 (1980).

By an order of September 30, 1981, the district court declared the three challenged documents invalid for failure to have been promulgated under APA rulemaking procedures, and ordered that any future "radiation rules" of VA or DNA be so promulgated before being used. In compliance with that order, use of all three of the challenged documents was terminated. No radiation claim rules have been issued, because statutory and regulatory authority already exists for determining whether a claimed disability is "service-connected." See 38 U.S.C. 101(16), 301-362, 410; 38 CFR Part 3. Claims for service-connected disability benefits based upon ionizing radiation exposure are being developed and processed, as before, using the longstanding claim procedures applicable to all disability claims.

Although the Government believed it was in full compliance with the court order by disposing of the invalidated documents which were the subjects of the lawsuit, the court issued a supplemental memorandum opinion on February 17, 1982, indicating that its concern was with the "introduction of new methodology to calculate radiation exposure." According to the court, the invalidated memorandum of

understanding was the "document which contained the new methodology." Further, "the new methodology referred to in the (memorandum) was the key feature that jeopardized the rights and interest of plaintiffs." The court specifically ordered

That within ninety days the defendants cause to be published in the *Federal Register* notice of proposed rulemaking to replace the documents invalidated by this Court's order of September 30, 1981, the rules to include but not be limited to, the establishment of methodologies and standards to calculate radiation exposure and harm which are used by the Veterans Administration in deciding veterans' claims of radiation injuries, and interested parties shall be invited to submit comments and proposed changes in said rules.

In its opinion the court explained that the "notice of rulemaking should disclose the methodology the defendants propose to follow, set forth specific areas of inquiry, and request relevant information."

VA has no methodology for the calculation of ionizing radiation exposure data with respect to claimants for disability benefits. As in all claims presented to VA where it is alleged that a veteran's present disability had its cause or origin in military service, the process of adjudication of a radiation claim generally includes a request to DoD for information relevant to the claim. VA relies on DoD to provide such information, and expects that DoD, coordinating through DNA, will employ whatever methods it deems appropriate to develop the necessary data. Because VA believes the methodology used by DNA to generate data for VA's use in radiation claims lies solely within DoD's discretion and expertise in the area of nuclear weapon research and monitoring, the invalidated memorandum of understanding between the two agencies, contrary to the court's subsequent conclusion, did not prescribe such methodology. Nevertheless, we are informed that DoD is currently undertaking notice-and-comment rulemaking on its radiation exposure data development methodology, pending the resolution of the appeal in this litigation. Further guidance as to the what the proposed rulemaking should contain was provided by the court in a memorandum order of March 26, 1982.

With regard to the use VA makes of radiation exposure data provided by DoD, the court acknowledged, in its September 30, 1981, opinion, that the statutory prohibition of judicial review of VA benefit claim decisions, at 38 U.S.C. 211 (a), "bars review of individual adjudications." The court held that, because "(p)laintiffs do not seek any

judicial action regarding the merits of individual claims," the court has jurisdiction to invalidate the challenged documents. In the February 17, 1982, opinion the court again noted that plaintiffs "neither challenge the merits of any individual decision nor the nature of the data in this action." Finally, in the March 26, 1982, memorandum order the court assured defendants that it "did not prohibit exchange of information between the Veterans Administration and the Department of Defense." Accordingly, VA continues, as in the past, to request information from DoD for use in claims, under authority of 38 U.S.C. 3006, and DoD continues to comply with the law by responding. Once received from DoD, any radiation exposure data is considered by VA adjudication personnel, in conjunction with all other evidence of record in each particular claim, under the laws and regulations applicable to service-connected disability benefits, at 38 U.S.C. Chapter 11 and 38 CFR Part 3.

To comply with the court order to which reference has been made above, VA is proposing to add § 3.161 to Title 38, Code of Federal Regulations. The proposed § 3.161 will codify, within VA's adjudication regulations, the Agency's practice of requesting DoD reports in radiation disability claims.

The proposed § 3.161 is set forth below.

The Administration hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact, in terms of compliance costs, paperwork and recordkeeping, or any other regulatory burden, on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this regulation affects individuals applying for VA disability benefits. Pursuant to 5 U.S.C. 605 (b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this proposed regulation change is nonmajor for the following reasons:

(1) It will not have an effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program number is 64.109)

Approved: May 11, 1982.

Robert P. Nimmo,
Administrator.

PART 3—ADJUDICATION

The Veterans Administration is proposing to amend 39 CFR Part 3 as follows:

Section 3.161 is added to read as follows:

§ 3.161 Claims based upon ionizing radiation exposure.

If it becomes necessary to determine whether claimed exposure to ionizing radiation in service has contributed to causation of death or current disability, a request will be made of the Department of Defense for a report concerning the circumstances under which exposure, if any occurred, and the degree of such exposure. (38 U.S.C. 3006)

[FR Doc. 82-13805 Filed 5-19-82; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2107-6]

Approval and Promulgation of Implementation Plans; South Carolina: Revisions in Bubble and Incinerator Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Following public hearing on November 17, 1981, the South Carolina Board of Health and Environmental Control approved two revisions in its implementation plan on January 8, 1982, and forwarded them to the State Legislature for approval. Legislative approval is expected by June 1982.

A revision in the South Carolina "bubble" regulation will allow the State's industrial community opportunities to use this provision of the State Implementation Plan (SIP) without requiring each alternative emission limit to undergo the SIP approval process. The second revision involves changes in the State's incinerator regulation. EPA proposes to approve both revisions, under the new Emissions Trading Policy

Statement (47 FR 15076 (April 7, 1982)), provided the State adopts them in a form that is substantially equivalent in effect to the provisions described in this notice. The public is invited to comment on the proposed action.

DATE: To be considered, comments must be received on or before June 21, 1982.

ADDRESSES: Written comments should be addressed to Douglas Cook of EPA, Region IV's Air Programs Branch (see EPA, Region IV address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations.

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, S.W., Washington, D.C.
20460.

Air Programs Branch, Environmental
Protection Agency, Region IV, 345
Courtland Street, N.E., Atlanta,
Georgia 30365.

Bureau of Air Quality Control, South
Carolina Department of Health and
Environmental Control, 2600 Bull
Street, Columbia, South Carolina
29201.

FOR FURTHER INFORMATION CONTACT:
Douglas Cook, EPA Region IV Air
Programs Branch, 345 Courtland Street,
N.E., Atlanta, Georgia 30365, 404/881-
2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: EPA is today proposing these revisions concurrently with South Carolina's proceedings. EPA normally proposes action on a State Implementation Plan revision after formal State adoption and submittal to EPA. EPA is using a more expeditious process in this case to minimize delays and enhance the economic benefits associated with the "bubble" approach. Many companies in South Carolina are contending with specific compliance dates. Quick action on this proposal could afford substantial savings on design and purchase cost associated with add-on controls.

Alternative Emission Limitation Options ("Bubble")

These revisions to South Carolina's bubble regulations provide a framework for encouraging the most economically efficient way to meet the emission levels mandated by the State's SIP. The revised bubble procedure encourages companies to seek innovation in control technology. Further, these revisions shorten the time needed for approval of a company's control strategy because most bubbles will not require explicit EPA action. EPA's review confirms that the State's revision will continue to ensure attainment and maintenance of

ambient air quality standards as expeditiously as practicable, will ensure reasonable further progress, and will use enforceable procedures.

The regulations prohibit the bubble as a means to supersede requirements of prevention of significant deterioration, New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, or any other requirements mandated by the Clean Air Act (CAA). It also provides that hazardous air pollutants must be reduced in any trade with nonhazardous pollutants. Provisions are made for the "bubbling" of total suspended particulate (TSP), sulfur dioxide (SO₂), volatile organic compounds (VOC), nitrogen dioxide (NO₂), carbon monoxide (CO), and lead emissions. These provisions insure that attainment of national ambient air quality standards will not be jeopardized. Some of the requirements are legal enforceability; quantifiability of emissions; trade restrictions to same pollutant category; equivalence to or improvement over air quality impact of the existing regulatory requirements; public participation.

Section II-A outlines specific modeling requirements for TSP and SO₂ trades. Specifically, no modeling is required if actual emissions do not increase, bubbled emission points are within 100 meters of each other, and stack heights are within 10% of each other. A SIP revision and limited modeling will be required if the bubble causes some impact, but does not cause a significantly different air quality impact. Diffusion modeling considering all sources in the area and a SIP revision is required under other conditions.

Section II B outlines provisions for VOC bubbles. Some specific provisions are: total emissions must not increase; a bubbled source must comply with any future emission limits; process information must be supplied by the applicant. The state may approve an alternative limitation if the proposed emission sources to be traded are within 50 kilometers of each other; the sum of the alternative limitations does not exceed the sum of the emission rates contained in the SIP; actual emissions do not exceed allowed growth in the SIP; and all general provisions of the regulation are satisfied. Further, under specific conditions, TSP, SO₂, and VOC trades may take place without SIP revisions, but trades involving nitrogen dioxides, carbon monoxide and lead and those involving fugitive emissions of TSP and SO₂ must have EPA approval prior to becoming effective.

Section II D applies to pollutants that

are subject to regulation under § 111(d) of the Clean Air Act. This provision must be reviewed and approved by EPA as part of a § 111(d) plan, and not as a SIP revision. Therefore, EPA will review Section II D in conjunction with South Carolina's § 111(d) plan, and will be taking action on it in a separate Federal Register notice.

Emissions From Incinerators

The state proposes to revise Section B of its incinerator regulation. The old section reads: "Emissions shall not produce smoke which exceeds twenty (20) percent opacity for an aggregate of more than three (3) minutes in any one hour or fifteen (15) minutes in a twenty-four hour period." The new section will read "emissions * * * of more than six (6) minutes in any one hour or twenty-four (24) minutes in a twenty-four hour period."

Action: EPA is today proposing to approve the South Carolina regulations that revise South Carolina's SIP, provided the regulations are adopted as described in this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this regulation from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: April 8, 1982.

Charles R. Jeter,
Regional Administrator.

[FR Doc. 82-13767 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-8-FRL-20882]

Approval and Promulgation of State Implementation Plans; Revision to the Montana Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the Montana State

Implementation Plan (SIP), relating to that plan's requirements for the permitting of new major sources and major modifications to sources in attainment areas. Montana is revising its SIP in accordance with the requirements for the Prevention of Significant Deterioration (PSD) of air quality (40 CFR 51.24), as those sections were amended on August 7, 1980 (45 FR 52729-52735). In conjunction with the approval of this plan, EPA would remove the Federal PSD program as it applies to lands under State jurisdiction.

EPA's review is being conducted concurrently with public review of the same revisions at the State level. This concurrent review, prior to final State regulatory action, which EPA refers to as "parallel processing," is designed to reduce the time necessary for EPA approval of SIP revisions.

DATE: Comments must be received on or before June 21, 1982.

ADDRESSES: Comments should be directed to: Max H. Dodson, Director, Montana Office, Environmental Protection Agency, Federal Building, Drawer 10096, 301 S. Park, Helena, Montana 59626.

Copies of the materials submitted by the Governor and comments received on this proposal may be examined during normal business hours at:

Environmental Protection Agency,
Montana Office, Federal Building,
Room 292, 301 S. Park, Helena,
Montana 59626.

Environmental Protection Agency,
Public Information Reference Unit,
Room 2922, 401 M Street SW,
Washington, D.C. 20460.

Environmental Protection Agency,
Region VIII, Air Program Branch, 1860
Lincoln Street, Denver, Colorado
80295.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Alkema, Chief, Air,
Pesticides and Hazardous Wastes,
Environmental Protection Agency,
Federal Office Building, 301 S. Park,
Drawer 10096, Helena, Montana 59626,
(406) 449-5414.

SUPPLEMENTARY INFORMATION: On

March 3, 1982, the State of Montana held a public hearing to consider revisions to its State Implementation Plan for the Prevention of Significant Deterioration of air quality (PSD).

Section 110(a)(2)(D) and Part C of the Clean Air Act establish specific requirements for the Prevention of Significant Deterioration of air quality in areas where ambient levels are lower than the national standards. The Act defines the amount of deterioration that can be tolerated in an area in terms of

maximum allowable increases in ambient air quality concentrations (increments). These increments vary and are a function of the classification of an area. There are three applicable classifications under this program: (a) Class I where the increments are very stringent and practically no deterioration is allowed, (b) Class II where moderate, well-controlled growth is allowed, and (c) Class III where a greater amount of growth is allowed. While the Act established several mandatory Class I areas, most of the nation is now Class II. The Act gives redesignation authority to State Governors and Indian governing bodies.

The principal means of protecting the increments are the review and regulation of major new stationary sources and modifications, the tracking of minor source growth and the periodic review of increment consumption. At present, EPA is implementing the program by a Federal permit system designed to meet the requirements of Part C. In that program, operators of major new sources and major modifications must obtain a permit before commencing construction. The permit will be granted only if, among other things: (a) The increments for the area are protected, and (b) best available control technology will be employed.

This program is presently implemented in Montana by EPA through regulations promulgated in 40 CFR 52.21. In addition EPA promulgated requirements for State PSD programs at 40 CFR 51.24. The regulations developed for public hearing by the State of Montana are designed to meet the requirements of 40 CFR 51.24 through the review of major stationary source growth. The Montana regulations will prohibit new source construction in clean areas unless best available control technology is employed and a demonstration is made that the increments and air quality related values are being protected.

EPA has evaluated these proposed amendments to the Montana plan's requirements for preconstruction permitting of new major sources and major modifications, and found them to be equivalent to the requirements of 40 CFR 51.24 with some minor exceptions.

Proposed Action

EPA is proposing to approve this Montana SIP revision which revises Subchapter 9 of the Administrative Rules of Montana (ARM) applicable to new major sources and major modifications of sources in attainment areas consistent with 40 CFR 51.24. The

State is modifying its regulation to correct some minor deficiencies which are identified in the "Technical Support Document" prepared by EPA. These changes will be included in the final version of the regulation, which will be adopted by the Montana State Board of Health at its meeting on May 21, 1982. The "Technical Support Document" may be examined at the addresses and times listed in the "Summary" portion of this notice.

EPA is proposing approval of these revisions prior to its final adoption by the State because the revisions are not expected to be controversial and few, if any, comments are expected. If significant comments are received and the proposed revisions are substantially changed prior to their adoption at the State level, EPA will publish a revised notice of proposed rulemaking. If no substantive changes are made to the proposed revisions, EPA will issue a notice of final rulemaking on the proposed revisions discussed herein. The final rulemaking action by EPA will be published only after the revisions have been adopted in final form by the State. The procedure is termed "parallel processing" and is estimated to reduce the time necessary for final approval of SIP revisions by an average of three to four months.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. Section 605(b)), I hereby certify that the proposed action will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it imposes no new requirements. It only proposes to approve requirements adopted by the State.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: March 10, 1982.

Steven J. Durham,
Regional Administrator.

[FR Doc. 82-13708 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 121

National Guidelines for Health Planning—Rescission of Computed Tomographic Scanner Standards

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to rescind the standards for computed tomographic (CT) scanners with respect to the appropriate supply, distribution and organization of health resources. Concern has been expressed that the standards are too rigid and inflexible, and that they don't take into account recent advances in the state-of-the-art in scanning technology. This action will give states and local communities the fullest possible discretion and flexibility in health systems planning. Non-regulatory technical information materials concerning CT scanners are being made available to the public.

DATES: Comments must be received not later than July 6, 1982.

ADDRESS: Written comments and recommendations should be submitted to: Office of Planning, Evaluation, and Legislation, Health Resources Administration, Center Building, Room 10-22, 3700 East West highway, Hyattsville, Maryland 20782. All materials received in response to this notice will be available for public inspection and copying at the above location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lyman Van Nostrand, Acting Associate Administrator for Planning, Evaluation and Legislation, Health Resources Administration, Center Building, Room 10-22, 3700 East West Highway, Hyattsville, Maryland 20782, (301) 436-7270.

SUPPLEMENTARY INFORMATION:

A. Overview

Section 1501 of the Public Health Service Act (the Act) requires the Secretary to issue by regulation guidelines concerning national health planning policy. The guidelines must include standards respecting the appropriate supply, distribution, and organization of health resources which reflect the unique circumstances of medically underserved populations in isolated rural communities.

On March 28, 1978 the Secretary published as final regulations the first issuance of National Guidelines for Health Planning (42 CFR Part 121; 43 FR

13040). Those regulations, which consist of Subpart A—General Provisions, and Subpart C—Standards Respecting the Appropriate Supply, Distribution, and Organization of Health Resources, include specific standards respecting computed tomographic (CT) scanners.

Under the standards, new scanners should not be added in a health service area unless all the existing scanners are operating above an established rate measured in medically necessary patient procedures per year. The preamble to the final regulations, in discussing the CT scanner standards (see 43 FR 13043-4), recognized that CT scanning is a rapidly changing field and stated that developments would be carefully and continually monitored.

Since publication, a number of objections have been raised to the standard. Concern is expressed that they do not adequately take into account recent advances in the state-of-the-art of CT scanning technology which have resulted in an increased proportion of body scans being performed. These scans take longer to complete than head scans. The standards are seen also as rigid and inflexible because they do not specifically require that the different scan types and times or factors relating to local circumstances be considered. In addition, objections have been raised that inflexibility in application of the standards has acted in some cases to obstruct the sale and distribution of needed scanners, thus inhibiting access to necessary CT scanning services and preventing the public from deriving the full benefit of their potential. This may actually increase costs due to the substitution of more costly and invasive procedures. In addition, because many sparsely populated rural areas lack the population base to reach the existing standard of 2500 patient procedures per year, objections were raised that the standard inhibited access to necessary CT scans in rural areas.

An important contribution to monitoring of changes in this field was the recent Consensus Development Conference, held by the National Institutes of Health on November 4-6, 1981. The Conference was held in order to seek a position on issues involving CT scanning of the brain. Among the conclusions of that Conference were that: (a) CT scanning may not be sufficiently available for the public to derive the full benefit of its potential; and (b) the costs resulting from the use of CT in diagnoses are substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment needed to carry them out.

Three years' experience with the standards has led the Department to conclude that these concerns are well founded and that the standards are inappropriate and should be rescinded. This position is consistent with the Department's policy that states and local communities should have the fullest possible discretion and flexibility in determining when and how to act. Rescission of the standards will help ensure that decisions on the distribution of CT scanners are made at the State and local level.

In view of current developments regarding the Federal health planning program, the Department has no present intention of issuing revised CT scanner standards in regulatory form. The Department has developed, however, nonregulatory up-to-date technical information materials concerning CT scanners, based on previous extensive consultation and consensus development with a wide range of individual experts and outside organizations. These materials are available to the public on request. State and local planning agencies and others will be free to use the information as they see fit in developing or implementing their health plans.

B. Process of Consultation

Section 1501(c) of the Public Health Service Act requires that:

(c) At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) or a revision under subsection (d) of such guidelines, the Secretary shall, with respect to such proposed guideline or revision, consult with and solicit recommendations and comments from the health systems agencies designated under part B, the State health planning and developing agencies designated under part C, the Statewide Health Coordinating Councils established under part C, associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development established by section 1503.

Accordingly, a draft Notice of Proposed Rulemaking to rescind the existing CT standards was sent to a selected list of reviewers on December 8, 1981. This included Health Systems Agencies, State Health Planning and Development Agencies, Statewide Health Coordinating Councils, and members of the National Council on Health Planning and Development. Copies were also sent to a selected list of associations and specialty societies, most particularly those which had participated in a previously established workgroup: The Technical Workgroup on CT Scanning Standards. This included representation from such

groups as the American College of Radiology, the National Electrical Manufacturer's Association, and the Consumer Coalition for Health.

Although the comment period was 45 days, the summary of comments provided below reflects all the comments received through February 3, 1982. As of that date, 19 written responses had been received.

C. Summary of Comments

Fifteen of the nineteen respondents favored rescinding the CT standards, while four were opposed.

Commonly cited reasons for support of rescission were:

- (1) The regulations do not reflect recent technological advances.
- (2) The regulations are inflexible and make insufficient provision for exception to the minimum usage guidelines.
- (3) The regulations inhibit access to scanners for rural residents.
- (4) The regulations do not foster a competitive market for scanners.

Each of these reasons is expanded on below. Specific comments are included.

1. *Recent technological advances:* Since 1978, advances in the state-of-the-art of CT scanning technology have resulted in an increasing proportion of body scans being performed, which take a longer amount of time to complete than head scans. A weighted system would respond to these advances by taking into account the increasing number of body scans performed and the longer scan time necessary to complete each scan.

One respondent commented that rapid technological advances make regulation changes obsolete before they occur. When first developed, CT scanners were limited to usage in the diagnosis of head pathology. However, the images, produced by these early models provided insufficient definition for clearcut unequivocal diagnosis. In the years to follow, technological improvements in image definition coupled with the concomitant development of body scanners rapidly established the scanners as a primary radiological diagnostic tool. The use of CT currently is the diagnostic procedure of choice in a wide variety of human pathology. Regulatory measures designed to establish minimum usage standards to prevent a rapid proliferation in the number of scanners purchased were based on early model performance and logically have little applicability to modern scanners. Another respondent addressed the issue by calling the current guidelines restrictive and not in keeping with the

state-of-the-art of CT scanner technology.

2. *Inflexibility of the current standard:* Objections have been raised to the existing standard which is expressed in terms of a single uniform number of patient procedures to be reached annually. It is seen as rigid and inflexible, because it does not take into account the different scan types and times nor additional circumstances which should be taken into account in using the standard. In addition, objections have been raised that the inflexibility of the standards acts in some cases to obstruct the sale and distribution of needed scanners, inhibits access to necessary CT scanning services, and thus affects the quality of patient care.

One respondent contended that areawide facilities must have the flexibility to set their own standards. Another called the current standards rigid and claimed that the HSA's have been inflexible in enforcing them. As a result, large segments of the population have been denied access to CT scanners. Minimum usage standards for existing scanners which may restrict the purchase of additional scanners within a particular delivery area preclude many localities from adequately meeting their own diagnostic medical needs. For example, many densely populated counties in and around large cities are restricted from the purchase of needed scanners by an underutilized machine in a large city hospital within the same delivery area. Consequently, many large populations do not have adequate access to a major medical diagnostic tool. One respondent stated that the regulations severely restrict the rational allocation and distribution of a significant, and necessary to modern medical practice, diagnostic tool.

3. *Access in rural areas:* The present standard impairs access to CT scanning services in sparsely populated rural areas, because these areas generally lack the population base to reach the existing standard of 2500 patient procedures per year.

One respondent contended that it is impossible to meet Federal guidelines in his western state's vast underpopulated largely rural areas. The available population is inadequate to sufficiently utilize a scanner in order to meet the regulatory minimum requirement. As a result, new scanner purchases are precluded, and the residents travel prohibitive distances to have access to those already in place. Many rural district health planners, however, have chosen to interpret Federal regulations broadly and have developed their own more suitable individual standards.

4. *Lack of a competitive market:* One respondent contended that the elimination of the Federal CT standard and the subsequent adoption of planning methodologies and guidelines by the individual States would serve to foster a competitive market in health care.

Four of the nineteen respondents opposed rescinding the standards. Their reasons included:

1. Concerns that this would contribute to cost escalation.
2. Concern that rescission will cause overpurchasing.
3. Doubt concerning the accuracy of the perceived inflexibility.

Each of these reasons is expanded on below. Specific comments are included.

1. *Cost concerns:* The concern was expressed that the rescission of the Federal standard would lead to a proliferation of these services far beyond the needs of the population, and that the costs for delivering these services would subsequently rise. Depending on what projections are used for additional purchases of CT scanners, and given operating cost for each machine, it was contended that this could add substantially to medical care costs.

2. *Concern with overpurchasing:* The concern was expressed that market forces would not rationalize the purchasing system, but rather would be destructive of rational planning, proper allocation of health resources, and efforts to contain unnecessary costs.

Elimination of the standard might lead to significant excess, underused scanning capacity, and a passage of the costs on to the consumer.

3. *Doubt about perceived inflexibility:* One respondent felt that the current regulations were not as inflexible as perceived by some. Reflecting congressional intent, the National Guidelines specifically allow flexibility in their application due to local circumstances. Consequently, this respondent felt that the perceived inflexibility of the standard was not actual.

The Department does not agree with the comments related to cost escalation. As discussed further below, there is evidence that the costs of CT in diagnosis have been substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment to carry them out.

A few other comments were neither positive nor negative, but reflected on other issues. These include the following:

1. The experience with CT technology was cited as an example of how

technology assessment and control ought to work. Early proliferation was controlled until the technology was refined and its viability proven. The result was better quality and avoidance of unnecessary cost. Although rescission of the CT scanning standards is timely, there should be a continued Federal role in technology assessment and control.

2. It was noted that the CT scanning standards currently require data collection and utilization review programs to be established before approval for a scanner is given. It was proposed that these requirements should be encouraged at State and local levels.

D. Determinations of Applicability of Certain Impact Analyses

The Department has determined that this proposed rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies or geographic regions; or
- (3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This determination is based on a number of considerations.

Perhaps most important is the emerging view that the costs of installation and continued use of CT units in a diagnostic radiology department are compensated for by the savings achieved by a reduction in other procedures, including exploratory surgery and angiography.

The National Institutes of Health held a Consensus Development Conference on November 4-6, 1981, in order to seek a position on issues involving computed tomographic scanning of the brain. Among some of the conclusions of that Conference are the following:

CT is a remarkable new development in radiographic imaging which, in only 8 years, has transformed the diagnosis and much of the management of structural disease of the brain and its surrounding tissue. Presentations by experts from a variety of fields indicated that CT is a safe, accurate, and powerful tool in the primary diagnosis of, among other conditions, brain tumors, brain hemorrhages, effects of major head injury, and certain infections of the brain. Given its speed, accuracy, and low radiation dose, CT has displaced a

number of other radiologic diagnostic procedures, many of which are, in comparison, more uncomfortable, more dangerous, and more costly to the patient.

The panel considered the geographic distribution of CT scanners and the current patterns of diagnostic usage. Two important considerations emerged. It appears that in the U.S. today, CT may not be sufficiently available for the public to derive the full benefit of this diagnostic tool. Evidence points to an insufficient number of instruments in several large metropolitan areas, in medically underserved areas, and in some sparsely populated regions where the prevalence of head trauma is high.

In some instances, however, the indiscriminate use of CT has occurred in patients unlikely to have structural disease, resulting in displacement of patients for whom this technology is critical. Accordingly, this consensus report suggests appropriate criteria for the use of CT in present medical practice.

The Conference also addressed the issue of whether the availability of CT brain scanning has influenced the use of other methods of imaging. The consensus was that such availability had strongly influenced the use of other imaging techniques, and that this had resulted in substantial costs savings. This discussion is summarized in the Conference Statement as follows:

The superior ability of the CT examination in the detection of intracranial and intracerebral disease processes has profoundly altered the use of several pre-existing radiographic methods for examining the brain. Some of these examinations, notably the most invasive, those causing significant patient discomfort, or those with nonspecific diagnostic results have been affected more than others.

The developments enumerated above have had a favorable impact upon healthcare delivery. CT scanning has often reduced risk and discomfort for patients. Data indicate that the costs of CT in diagnosis have been substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment needed to carry them out. In some cases net costs of diagnoses have even been reduced. The panel heard evidence that the use of CT in outpatient diagnosis holds the potential for reducing hospital admissions and shortening hospital stay.

Selected efforts have been made to determine more precisely to what degree utilization of CT scanners is compensated for by the savings achieved by the reduction in other procedures.

One recent effort in this regard was published by Ronald G. Evens, M.D., in the August 1980 issue of *Radiology*. In his article on "The Economics of Computed Tomography: Comparison with Other Health Care Costs," he noted that "The net cost of CT is its annual cost minus that of any reductions in diagnostic procedures and hospital or therapeutic services." Dr. Evens estimated that for 1978, when there was a base of 1,042 CT installations, this net cost figure for the total set of existing scanners was less than \$150 million.

Since the latest estimate of CT scanner sales by OTA is in the range of 17 per month (204 per year), the annual incremental net costs would be substantially less.

Other considerations in making this determination include recent changes in the certificate of need legislation. Amendments included in the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) have raised the thresholds for determining when capital expenditures must be reviewed. For major medical equipment, the threshold was raised from \$150,000 to \$400,000. For the annual operation cost threshold, this was raised from \$75,000 to \$250,000. Both changes have saved to exempt a number of CT scanner purchases from review, particularly brain scanners.

In addition, under the Health Planning Amendments of 1979, a certificate of need is not required for the acquisition of major medical equipment which will not be owned by or located in a health care facility, unless the equipment will be used to provide services for inpatients of a hospital. Recent data from the January, 1981 Background Paper on CT Scanners by the Office of Technology Assessment indicate that 18.9 percent of scanners are now in offices and clinics.

Provided below is table of the estimated distribution of the 1,471 CT scanners available in May, 1980:

DISTRIBUTION OF CT SCANNERS BY TYPE OF FACILITY (MAY 1980)

Type of facility	Facilities with CT scanners		CT scanners	
	Number	Percentage of total	Number	Percentage of total
All hospitals.....	1,041	78.7	1,175	79.9
Mobile scanners.....	18	1.4	18	1.2
Office and clinics.....	264	19.9	278	18.9
Total.....	1,323	100.0	1,471	100.0

Source: Office of Technology Assessment.

Furthermore, the 1979 amendments resulted in the exemption of certain

health maintenance organizations from the certificate of need process.

These various amendments have all tended to limit the scope of coverage of the certificate of need process, and consequently the CT standard in the National Guidelines, as they relate to the purchase of CT scanning equipment.

The Department has also determined that this proposed rule will not have a significant impact on small business and therefore does not require preparation of a Regulatory Flexibility Analysis under the Regulatory Flexibility Act. Public Law 96-354.

List of Subjects in 42 CFR Part 121

Health Planning, CT Scanner standards.

Accordingly, it is proposed that § 121.210 of 42 CFR Part 121 be removed.

Dated: March 10, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: April 22, 1982.

Richard S. Schweiker,

Secretary.

PART 121—NATIONAL GUIDELINES FOR HEALTH PLANNING

Subpart C—Standards Respecting the Appropriate Supply, Distribution, and Organization of Health Resources

For the reasons set out in the preamble, Part 121, Chapter 1, of Title 42 of the Code of Federal Regulations is proposed to be amended as follows:

§ 121.210 Computed tomographic scanners [Removed].

Part 121 is amended by removing § 121.210.

[FR Doc. 82-13728 Filed 82; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6311]

Proposed Special Flood Hazard Areas, Base Flood Elevations, and Zone Designations for the City of Newark, Alameda County, California Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard areas, base flood elevations, and zone designations as described below.

The proposed special flood hazard areas, base flood elevations, and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed special flood hazard areas, base flood elevations, and zone designations are available for review at the Office of the City Engineer, City Administration Building, 37101 Newark Boulevard, Newark, California.

Send comments to: Honorable David W. Smith, Mayor, City of Newark, 37101 Newark Boulevard, Newark, California 95460.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard areas, base flood elevations and zone designations for the City of Newark, California in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These special flood hazard areas, base flood elevations, and zone designations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard areas, base flood elevations, and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the

second layer of insurance on existing buildings and their contents.

The proposed special flood hazard areas, base flood elevations and zone designations have been added due to recently annexed areas. Along Mowry Slough, between the limit of detailed study and a point approximately 1050 feet downstream of Station Road, the proposed base flood elevations range from 8 feet National Geodetic Vertical Datum (NGVD) to 10 feet NGVD, and the proposed zone designations are Zones A6 and A8. The salt evaporators, located in the northwestern portion of the City, are being identified as Zone A1 with a proposed base flood elevation of 7 feet NGVD. In the southernmost portion of the City, the proposed special flood hazard area for the salt evaporators is being identified as Zone A.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: April 28, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13543 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6313]

National Flood Insurance Program Proposed Zone Designation and Base Flood Elevation Determinations for the Village of Tinley Park, Cook County, Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at

17355 South 68th Court, Tinley Park, Illinois.

Send comments to: Edward J. Zabrocki, Village President, Village of Tinley Park, 17355 South 68th Court, Tinley Park, Illinois 60477.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E. Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Association Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the Village of Tinley Park, Illinois, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L.

90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.
The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation national geodetic vertical datum (feet)	Zone designa- tion
Flossmoor Ditch.....	Portions of the area bounded on the north by Interstate 80, and on the east, south, and west by the corporate limits.	695	A4.B.
Midlothian Creek.....	South of Redwood Lane.....		C.
Tinley Creek.....	Within recent annexation between 88th Street and 84th Avenue.....		A,B,C.
76th Avenue Ditch.....	Portions of the area bounded on the north by 159th Street, on the east by 84th Avenue, on the south by 163rd Street, and on the west by the corporate limits.		C.
	Portions of the area bounded on the north by Brementowne Road, on the east by Manchester Street, on the south by 167th Street, and on the west by Harlem Avenue.	695	A3.
	Portions of the area bounded on the north by a line parallel to and approximately 100 feet north of 160th Plaza, on the east by the corporate limits, on the south by a line parallel to and approximately 100 feet south of 163rd Plaza, and on the west by Olcott Avenue.		C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13539 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6315]

**National Flood Insurance Program
Proposed Zone Designation
Determinations for the City of Hugo,
Washington County, Minnesota**

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at 5524 Upper 146th Street North, Hugo, Minnesota.

Send comments to Honorable Marvin LaValle, Mayor, City of Hugo, 5524 Upper 146th Street North, Hugo, Minnesota 55038.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, P.E. Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed zone designations for the City of Hugo, Minnesota, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations are as follows:

Source of flooding	Location	Zone designation
Two unnamed lakes.	Portions of the area bounded on the north by 122nd Street North, on the south and east by the corporate limits, and on the west by Janero Avenue North.	A.
Clearwater Creek.	Portions of the area bounded on the north by a line parallel to and approximately 5400 feet north of Frenchman Road, on the east by Everton Avenue North and a line proceeding north from the northern end of Everton Avenue North, on the south by Frenchman Road, and on the west by the corporate limits.	B.
Standing water.	Portions of the area bounded on the north by 170th Street North, on the east and west by lines parallel to and approximately 1200 feet east of and 400 feet west of Ingessoll Avenue North, respectively, and on the south by a line parallel to and approximately 1700 feet south of 170th Street North.	A.C.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support).

Issued: April 20, 1982.

Lee M. Thomas

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13540 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6314]

National Flood Insurance Program Proposed Zone Designation and Base Flood Elevation Determinations for the City of Sartell, Stearns and Benton Counties, Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the

newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the

flood-prone areas and the proposed base flood elevations and zone designations are available for review at 310 Second Street South, Sartell, Minnesota.

Send comments to: Honorable Robert Bogard, City of Sartell, P.O. Box 140, Sartell, Minnesota 56377.

FOR FURTHER INFORMATION CONTACT:

Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472. (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support gives notice of the proposed base flood elevations and zone designations for the City of Sartell, Minnesota, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.

These zone designations and base (100-year) flood elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed zone designations and base flood elevations are as follows:

Source of flooding	Location	Elevation national geodetic vertical datum	Zone designa- tion
Mississippi River	Southern corporate limits in Benton County..... Sartell Street	1001 feet	A6, C
	Portions of the area bounded on the north and east by the corporate limits, on the south by a line directed due west from the junction of Scenic Drive and First Avenue NE, and on the west by the Mississippi River.	1003 feet	A8, C
		1020 feet	A8, B, C
Watab River	Portions of the area bounded on north by Third Street North, on the east by a north-south line located approximately 500 feet west of the junction of Sartell Street and Second Street South, and on the south and west by the corporate limits.	1019 through 1031 feet.	A4, A5, B, C

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E. O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: April 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-13541 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR PART 67

[Docket No. FEMA-6316]

Proposed Special Flood Hazard Area and Base Flood Elevations for the City of Gearhart, Clatsop County, Oregon Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed special flood hazard area and base flood elevations as described below.

The proposed special flood hazard area and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed special flood hazard area and base flood elevations are available for review at the Office of the City Administrator, 698 Pacific Way, Gearhart, Oregon.

Send comments to: Honorable Leo Sayles, Mayor, City of Gearhart, Drawer "D", Gearhart, Oregon, 97138.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Chappell, P.E. Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Associate Director, State and Local Programs and Support, gives notice of the proposed special flood hazard area and base flood elevation for the City of Gearhart, Oregon in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968, (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

These special flood hazard area and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed special flood hazard area and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed special flood hazard area, identified as Zone A, is being added along Neacoxie Creek, north of 10th Street. In addition, the areas of flooding identified as Zone AO with designated base flood elevations, are being revised to depth 1 foot.

Pursuant to the provisions of 5 U.S.C. 605 (b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 67

Flood Insurance, Flood Plains.

National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: Apr. 28 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc 82-13542 Filed 5-19-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-343; FCC 82-206]

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet Pacific Telecommunications Needs During the Period 1981-1995

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing for public comment a number of alternative, proposed facilities construction and use plans for the Pacific Ocean Region submitted by the United States international service carriers and the Communications Satellite Corporation. The plans were submitted in response to the Commission's Inquiry into the development of the policies and guidelines it shall apply in acting upon requests for authorization to construct and operate cable and satellite facilities for service in the Pacific region during the period 1981 to 1995. The rulemaking here instituted will concern proposals by the U.S. service carriers to acquire IRU (Indefeasible Right of Users) interest in circuits in the ANZCAN cable to be constructed for introduction into service in 1984.

DATES: Comments on the plans are due June 1, 1982 and reply comments on June 14, 1982.

ADDRESS: Comments should be submitted to: The Secretary, Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects

Telecommunications, Pacific region.
In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet Pacific Telecommunications needs during the period 1981-1995, CC Docket No. 81-343.

Adopted: April 29, 1982.

Released: May 7, 1982.

1. On May 15, 1981, the Commission adopted a Notice of Inquiry¹ in the above-captioned proceeding which initiated a comprehensive planning process in the Pacific Ocean region for the 1981-1995 time period. The Notice reviewed past Commission policies in authorizing facilities in the Pacific Ocean region and outlined recent developments. The Notice also set forth the scope of issues to be considered in the proceeding and the criteria to be used in the evaluation of alternatives. Finally, the Notice proposed a procedure to be followed in undertaking the Pacific planning effort.

2. It has been our stated policy to promote pro-competitive structural

policy initiatives and reliance on marketplace forces to the fullest extent practicable in our regulatory oversight of the international telecommunications industry. To the extent these structural policies may be successful in introducing effective competition into the international marketplace, we may be able to commensurately reduce our direct involvement in the authorization and use of international telecommunication facilities by the U.S. international service carriers and Comsat. However, until such time as effective competition is deemed to be present in international telecommunications markets, we must continue to insure the fulfillment of Section 214 of the Communications Act of 1934 by direct authorization and oversight of the construction and use of international telecommunications facilities based upon a public interest finding of the need for such facilities.

3. As stated in the Notice of Inquiry, we believe that a comprehensive review of long range regional needs and facilities options, rather than an *ad hoc* review of individual facilities applications, is necessary to meet the primary public interest objective of attaining efficient utilization of the lowest cost combination of facilities which can satisfy valid traffic needs and service quality objectives. Policy guidelines based upon a comprehensive planning effort reduces the regulatory risk to U.S. carriers and their foreign correspondents. There is also a substantial reduction in the time and resources required to process facility authorization applications conforming to the guidelines; this improves the efficiency and reduces the time required to complete the entire facility licensing process.

4. As set forth in the Notice of Inquiry, the scope of the proposed planning effort includes an assessment of facilities currently operating in the region; this entails a comparison of actual use relative to available capacity and design life. The scope also includes the development and analysis of a full range of facilities alternatives capable of meeting projected traffic demands in the Pacific region through year-end 1995. This Notice of Proposed Rulemaking will focus upon near-term facility requirements—those facilities expected to be operational by the mid-1980's. However, these near-term issues will be examined within the context of data and information encompassing the entire planning period.

5. The Notice indicated that the first phase of the proceeding would consist of a series of public meetings of all interested parties as a means of

expeditiously obtaining relevant planning information and data necessary to compile a full and complete record. This record is to consist in part of the planning information developed jointly by the United States international service carriers (USISCs) and their foreign correspondents in the Pacific region. It also was to include additional relevant information supplied by the USISCs, Comsat, and other interested parties. Upon completion of the record compilation process, the rulemaking stage of this proceeding was to be initiated.

6. In keeping with the procedure outlined in the Notice of Inquiry, a series of public meetings have been held for the purpose of generating the basic planning data and information used to formulate and evaluate alternative facilities plans designed to meet traffic demands in the Pacific region during the planning period. The task of assembling a comprehensive planning data base along the lines outlined in the Notice of Inquiry is complete and alternative facilities plans have been developed. Therefore, in accordance with procedures outlined in the Notice of Inquiry, we are hereby entering the rulemaking phase of this proceeding.

7. The purpose of this Notice of Proposed Rulemaking (NPRM) is to evaluate the proposed facilities alternatives available for service in the mid-1980's in the Pacific region within the context of plans encompassing the entire planning period, to issue tentative guidelines regarding the acquisition and use of such facilities, and to request public comment on these tentative findings and the record compiled. Section I contains a summary of comments and reply comments received in response to the Notice of Inquiry (NOI). Sections II and III summarize the record compiled and the carriers' and Comsat's evaluation of the alternative plans. Section IV and V contain a discussion and analysis of the record and a statement of tentative findings. Finally, section VI contains the ordering clauses.

I. Summary of Comments and Reply Comments

8. In the Notice of Inquiry, we requested comments from interested parties on: (1) The need for a planning process, (2) the appropriateness of the mechanism outlined in the Notice of Inquiry for carrying out such a process, and (3) other mechanisms that should be considered. Comments were received from the following entities: AT&T, ITT World Communications Inc., RCA Global Communications, Inc., Western

¹ Notice of Inquiry, released June 1, 1981, FCC 81-243, 46 FR 31286 (June 15, 1981).

Union International, Inc., Comsat, Hawaiian Telephone Company, FTC Communications, Inc., The Department of Defense (DOD), the State of Hawaii, and the Joint Council on Educational Telecommunications. In addition, the State of Hawaii, Alascom, Inc., FTC Communications, Inc., TRT Telecommunications Corporation, and the DOD petitioned to be made parties to this proceeding.

9. The comments from the various parties overwhelmingly endorsed the need for a planning process for the Pacific region and the mechanism outlined by the Commission for carrying out the various stages of the process. In addition to stating their agreement with the planning process, several parties raised issues which they believe might impact the process. The Hawaiian Telephone Company is concerned about the usefulness of the information requested in the context of developing general policy guidelines. Comsat believes that due to the dissimilarities in the Atlantic and Pacific regions, a different evaluative approach needs to be developed for the Pacific. Comsat believes that a new approach is warranted because of the greater number of foreign cable routes, the lack of an identifiable core group of administrations in the Pacific, and the question of how U.S.-Hawaii and U.S.-Alaska traffic will be treated. Comsat also notes that the desire for expedition in this matter may jeopardize the development of an adequate record, particularly since Comsat has only recently received the basic planning data and information that has been available to the USISCs for some time.

10. ITT World Communications Inc. believes that the Commission should ensure that domestic satellite capacity will continue to be made available to the International Record Carriers (IRCs) on an IRU (indefeasible right of user) or cost basis to meet service requirements between the Mainland and off-shore U.S. points. RCA Global Communications, Inc. states that it is unnecessary for the Commission to engage in meetings with foreign administrations to develop a facilities plan. The State of Hawaii states its belief that the Commission has failed to adequately recognize the importance of the various domestic satellite systems capable of serving Hawaii. In addition, the State of Hawaii feels that the Commission should address the policy issue of the appropriateness of granting foreign administrations whole circuit ownership in transmission facilities between Hawaii and the U.S. Mainland. The DOD indicates that from a national

defense and security standpoint the level of service quality during the period following a facility failure and before restoration is extremely important. Thus, the DOD believes that cost and technology should not be the only significant factors used in assessing the desirability of any facility plan. The DOD also notes its view that the maximum possible diversity and redundancy of transmission paths is essential to the security of the DOD's and other critical U.S. Government and private sector communications.

11. The Joint Council on Educational Telecommunications stresses the need for the Commission to consider the need for domestic and regional communications (within countries and related island groups). In order to bring about this goal, the Joint Council on Educational Telecommunications sees a need for innovative approaches to services and rate structures so that existing facilities can be used to facilitate island development. Western Union International, Inc. raises several policy issues which it feels must be decided in the context of the planning process. According to Western Union International, Inc., the Commission should: (1) Reaffirm its Authorized User Policy; (2) grant direct access to INTELSAT to those international service carriers who desire such access; (3) insist upon continued IRU/cost based sublease access to the second generation of the Comstar domestic satellite system for all eligible carriers; and (4) terminate prescribed use formulas for satellite and cable circuits.

12. Reply comments were received from AT&T, Comsat, ITT World Communications, Inc., Western Union International, Inc., and Alascom, Inc. AT&T and Comsat believe that the policy questions cited by WUI are outside the scope of the planning process, and any consideration of these questions would unduly delay the planning process. With respect to the State of Hawaii's comments, AT&T contends that its proposed plans already incorporate the State of Hawaii's concerns. AT&T points to the fact that approximately 88% of its domestic message telephone traffic to and from Hawaii is provided over a single satellite route. AT&T also notes that a second satellite path will be introduced in 1982, resulting in approximately 94% of its Mainland-Hawaii traffic being routed via two diverse COMSTAR/TELSTAR satellite paths by 1985. According to AT&T, any greater reliance on domestic satellites for Mainland-Hawaii traffic will deny customers the benefits of its new lightwave cable

technology. AT&T and ITT World Communications believe that the Commission's policy of allowing foreign ownership of whole circuits in the Mainland-Hawaii cables is in the public interest, since it reduces the cost to U.S. ratepayers. ITT World Communications views reliance on domestic satellite systems to the exclusion of cable facilities for Mainland-Hawaii service as adversely affecting users by destroying the benefits of media diversity and new cable technology.

13. In addition to reiterating its view that complex policy questions must be decided in the context of this proceeding, Western Union International stresses the need for service, operational, economic and competitive flexibility. It also believes this can only be achieved through implementation of the Commission's expressed policies and goals and through appropriate action taken on the four policy issues identified by WUI. Alascom believes that the Commission should address the following issues in designing a specific regional policy: (1) The treatment of traffic involving Hawaii and Alaska; (2) The role of domestic satellites in serving these points; and (3) The needs of Alaska and other rural and remote areas in the Pacific region.

II. Summary of the Record Compiled

14. The information compiled for the record (listed in Appendix 1) is based upon a list of questions (reproduced as Appendix 2) distributed at the first public meeting of the interested parties. The record compiled contains three major segments: basic planning data and information (i.e., demand, facility capacities, cost elements, etc.), alternative facilities plans, and carrier analysis and evaluation of the plans.

15. The basic planning data is then used by the carriers and Comsat to generate alternative facilities plans designed to meet traffic demands throughout the planning period. These plans consist of various combinations of new facilities introduced in the Pacific region at various times. The plans also contain detailed distributions of circuits routed over these new facilities for each year of the planning period.

16. These alternative facilities plans are then subjected to a detailed analysis and evaluation. The plans are evaluated and compared on the basis of the technological risks associated with the various facilities and their configurations, the quality of service characteristics of each plan, the demand flexibility provided by each plan (i.e., the spare capacity available to meet

unexpected increases in circuit demand), and on the basis of the estimated cost of each plan.

17. The alternative facilities plans developed by the carriers and included in the record are designed to depict three general scenarios.² The first scenario is a baseline plan (Plan I) characterized by introducing no new facilities into the region during the planning period. This plan is not designed to be a workable alternative, but is intended to indicate critical capacity shortages within the planning period indicating where new facilities are likely to be needed. The second scenario is a plan with two variations (Plans IIA and IIB) designed to rely on the (largely) temporary use of a foreign owned cable system between the Mainland/Hawaii and permanent use of a foreign owned cable between Hawaii and Australia, Fiji and New Zealand to relieve a capacity shortage in the mid-1980's. This temporary use of foreign cable capacity paves the way for an early introduction of optical fiber cable technology into the region (1988) to meet the needs of the late 1980's and early 1990's. The third scenario is a plan (Plan III) relying on construction of additional analog cables between the mainland and Hawaii and between Hawaii and Japan as well as permanent use of a foreign owned cable between Hawaii and Australia, Fiji and New Zealand to alleviate a cable capacity shortage in the mid-1980's. This results in delaying the introduction of optical fiber cable systems in the region until the latter part of the planning period (1991). A more detailed description of the features and assumptions of the three scenarios are set forth below and in Appendix 3, and the major facilities are shown on the map.³

A. Plan I

18. Plan I assumes no new cable or satellite facilities are introduced during the planning period. The carriers characterize this plan as a "baseline" plan which is not workable, since it does not permit traffic demands to be met for the entire planning period. Indeed, as existing satellites and cables are retired, Plan I results in no service being available to a number of Pacific

points. The purpose of generating Plan I is to provide a frame of reference and point of comparison for the other plans.

B. Plans IIA and IIB

19. Plans IIA and IIB both assume U.S. carrier use of circuits in the Canada-Hawaii segment of the ANZCAN cable system (ANZCAN North) and in the Hawaii-Fiji-Australia-New Zealand segments of that cable system (ANZCAN South).⁴ Plan IIA assumes temporary use of approximately 656 whole circuits and 545 half circuits and the permanent use of 203 half circuits in ANZCAN North. Plan IIB assumes temporary use of 656 whole circuit and 538 half circuits and permanent use of 203 half circuits.⁵ The temporary circuits would be acquired on an indefeasible right of user (IRU) basis for use during the 1984-1988 period, and then they are to be resold to the ANZCAN owners at depreciated net book value at the end of the period. All 648 half circuits obtained by U.S. carriers in ANZCAN South would be acquired on a permanent basis.

20. Plans IIA and IIB both assume introduction of digital optical fiber cables of AT&T's SL design between the Mainland and Hawaii (8000 voice circuits) and between Hawaii and Japan (4000 voice circuits) in 1988. Both plans assume the use of INTELSAT IV, IV-A, V, V-A and VI-A satellites at various times in the Pacific Ocean region. Other than the INTELSAT VI AND VI-A satellites, which may be launched directly into the Pacific Ocean region, all satellites used will be transferred from other ocean regions upon replacement by new satellites. Both plans assume the use of only the 6/4 GHz capacity provided by the various satellites. Plan IIA assumes the use of only a primary path satellite in the region between 1981 and 1987; a second

satellite path (major path) is introduced in 1987. Plan IIB assumes use of only a primary path satellite until 1984. Between 1984 and the 1987 introduction of a major path satellite, satellite traffic is divided between the primary path satellite and the Pacific Ocean region in-orbit spare satellite (i.e., an operational spare). This provides an additional independent satellite path, but adds no additional satellite capacity.⁶ Both Plans IIA and IIB assume that two independent satellite paths between the U.S. Mainland and Hawaii are provided by AT&T's domestic satellite system throughout the planning period.

C. Plan III

21. Plan III assumes the use of 161 half circuits acquired on a permanent basis in ANZCAN North (160 by the Hawaiian Telephone Co. and 1 by ITT World Communications Inc.) and 648 half circuits acquired on a permanent basis in ANZCAN South. The plan assumes introduction of an analog cable of AT&T's SG design (4200 voice circuits)⁷ between the U.S. Mainland and Hawaii in 1984 and introduction of a digital optical fiber cable of AT&T's SL design (8000 voice circuits) on that route in 1991. It also assumes introduction of an analog cable of Japanese design (1600 voice circuits) between Hawaii and Japan in 1988 and the introduction of a digital optical fiber cable of AT&T's SL design (8000 voice circuits) between Hawaii and Guam in 1991. The INTELSAT and AT&T domestic satellite facility assumptions of Plan III are the same as those made in Plan IIB.

D. Factors Common to Multiple Plans

22. All plans contemplate AT&T's maximum use of circuit multiplication equipment to approximately double the number of circuits used to provide message telephone service on all analog cables. Plans IIA, IIB, and III all contemplate AT&T's maximum use of digital circuit multiplication equipment to approximately triple the number of circuits used to provide message telephone service on all digital fiber

⁴ The ANZCAN cable will be constructed and owned by telecommunications entities in Australia, Canada, France, the Federal Republic of Germany, New Zealand, the Independent State of Papua, New Guinea, the Philippines and the United Kingdom. This system is designed to replace the current Compac cable system serving most of the same points; it reaches the end of its design life in 1984. On September 30, 1981 we granted Teleglobe, Canada a license to land the ANZCAN Cable in Hawaii pursuant to the provisions of the Act entitled "An Act relating to the landing operation of submarine cables in the United States" 47 U.S.C. 34-39 (1980) See Cable Landing License, FCC 81-439, released October 8, 1981.

⁵ Of 203 permanent half circuits, 202 would be used by the Hawaiian Telephone Co. and 1 by ITT World Communications, Inc. AT&T indicates in its December 10, 1981 submission to the record (last page of Tab 14) that further developments in the ANZCAN project subsequent to the development of the detailed plans, provide for approximately 300 of the original temporary 538 half circuits (Plan B) to be obtained on a permanent basis.

⁶ The concept of an operational space satellite requires that the sum total of traffic on both spacecraft is not to exceed the capacity on a single spacecraft, since a failure of one would require that all satellite traffic would have to be carried on the single remaining spacecraft.

⁷ The stated assumptions set forth in Plan III indicate that this cable would be configured to provide 3150 - 4kHz voice circuits. However, all AT&T's cost information pertaining to this cable as well as the circuit distribution assume this cable is configured to provide 4200 - 3kHz circuits. We expect AT&T to clarify this point in the comments filed in this proceeding.

² The plans submitted were actually constructed by the United States International Service Carriers with Comsat providing detailed information included in the generation of the plans.

³ The actual detailed plans and the data upon which these plans are constructed are available in the Docket in this proceeding and for public inspection in Room 538 of the Commission's headquarters. A comprehensive list of the assumptions and features of each plan is contained in Appendix 3. The map is filed as part of the original document.

optic cables.⁸ Plans IIA, IIB and III also assume use of TDMA/DSI multiplication equipment on the Pacific Ocean region satellite beginning in 1991.⁹ Plans IIA, IIB and III also assume U.S. carrier acquisition of interests in the foreign owned cables terminating in Okinawa, the Philippines, Guam and Australia to extend circuits in the ANZCAN South and Hawaii-Guam and Guam-Japan (Transpacific) cables to other countries. All plans distribute circuits among available routes in accordance with the balance loading method.¹⁰

III. The Parties' Evaluation of the Alternative Plans

23. The U.S. international carriers and Comsat analyzed the alternative plans from the standpoints of demand flexibility, technological risk, service quality, acceptability to foreign correspondents, and costs. Plan I is not analyzed, as the parties indicate it is merely a baseline plan and not a workable alternative.

A. Demand Flexibility

24. The particular geography of the Pacific Ocean region and the configuration of transmission facilities therein require use of a method to calculate the ability of a given plan to satisfy unexpected increases in traffic which differs from that used for North Atlantic facilities plans. North Atlantic facilities are used predominantly

between the North American and European continents, and both of these continents possess highly developed domestic networks. Consequently, circuits from any North Atlantic cable can be extended to any country in the North Atlantic region. As a result, the demand flexibility provided by a given plan for the North Atlantic can be calculated by adding the total number of cable and satellite circuits provided by that plan's facilities and subtracting the total forecasted demand for circuits in each year of the planning period. The number of spare circuits thus calculated, divided by the total forecasted circuit demand, yields the percent demand flexibility provided by the plan in each year.

25. While satellite circuits can reach any point in the Pacific Ocean region equipped to access the Pacific Ocean region INTELSAT satellites, circuits in each Pacific Ocean region cable cannot be used to all points in that region. Consequently, a somewhat different approach to calculation of demand flexibility must be used. The method chosen by the parties is to calculate satellite and cable demand flexibility separately for each plan. For satellites, the demand for circuits on the INTELSAT satellite system in the region from the Mainland and Hawaii to all other Pacific points is derived from each plan.¹¹ These demand figures are subtracted from the capacity provided by the satellites. The number of spare circuits thus derived, divided by the total demand for circuits on the satellites, yields the demand flexibility measure for the satellite medium.

26. Demand flexibility for cables is calculated separately for three cable routes: U.S. Mainland—Hawaii—Guam/Japan, and Hawaii—Australia. For each of the three separate routes, the total capacity provided by all cables serving the appropriate points is calculated and compared to the demand for cable circuits to these points to determine the spare capacity as a percentage of projected demand. AT&T did not provide a satellite demand flexibility calculation for its domestic satellites used between the U.S. Mainland and Hawaii.

27. AT&T's comparison of cable capacity and cable circuit demand for the three routes separately indicates that cable circuit demand flexibility is substantially the same on each of the routes for both Plans IIA and IIB except

for the 1984–1989 period. During this period, plan IIB provides a greater cable circuit demand flexibility on all three cable routes because of the greater use of satellite circuits in Plan IIB during that period. This is due to the availability of a second satellite path during that period and use of a balanced loading distribution of circuits among facilities. Plan III provides greater cable circuit demand flexibility on the U.S. Mainland—Hawaii and Hawaii/Guam/Japan routes than either Plans IIA or IIB because of the availability of a greater number of cable circuits and a larger number of independent cable paths. The cable circuit demand flexibility on the Hawaii—Australia route provided by Plan III is slightly better than that provided by Plan IIB between 1985 and 1988 and the same as Plans IIA and IIB between 1989 and 1995.¹²

28. Comsat's satellite demand flexibility analysis shows that demand flexibility differs for Plan IIA and IIB only between the 1984–1989 period. During this period, Plan IIB exhibits a smaller satellite demand flexibility. This is because the operational spare satellite (included in IIB, but not in IIA) provides a separate additional satellite path, but no additional satellite capacity.¹³ Under the balanced loading

¹² In AT&T cable demand flexibility analysis, a much lower circuit capacity for the optical fiber cable systems is used than the capacity shown for the same system in the actual plans. This leads to several instances where cable demand appears to exceed cable capacity (negative demand flexibility) in the later part of the planning period. These negative demand flexibility numbers disappear if the capacities of the optical fiber cable systems indicated in the plans are substituted for those used in AT&T's demand flexibility analysis. Similarly, AT&T's demand flexibility analysis for the Hawaii—Australia cable route assumes use of fewer ANZCAN South circuits than assumed in the plan's distribution. This again produces in a negative flexibility.

¹³ Under a balanced loading principle, growth circuits are equally distributed among available transmission paths. For example, implementation of Plan IIA would result in a single cable path (the ANZCAN North and South cables) and a single satellite path (the INTELSAT Pacific primary path satellite) on which growth circuits to Australia could be placed during the 1984–1986 period. Equal distribution of growth circuits between these two paths would result in 50 percent of those circuits being placed on the cable and 50 percent on the satellite. Under Plan IIB, however, two satellite paths would be available to Australia because of the use of the INTELSAT Pacific in-orbit spare satellite as an operational spare satellite. Equal distribution of growth circuits to Australia among the one cable and two satellite paths would result in two-thirds of those circuits being placed on satellites and one-third being placed on the cable. Since more circuits would be placed on satellites under Plan IIB while the total available satellite capacity remains the same as in Plan IIA, there are fewer unused satellite circuits available under Plan IIB between 1984 and 1986. This results in Plan IIB exhibiting a lower satellite circuit demand flexibility than Plan IIA.

⁸ Circuit multiplication equipment exploits the fact that pauses occur in normal conversation between persons. This equipment senses these pauses and routes portions of other calls to the momentarily idle circuits so as to derive the most efficient use of all available circuits. Existing equipment operating on analog cable circuits used for message telephone service normally permits 240 separate calls to be routed over 120 basic circuits. This, in effect, doubles the number of available telephone circuits. Equipment to be used on digital fiber optic cable circuits used for message telephone service is expected to triple the number of such circuits.

⁹ TDMA and DSI are acronyms for time division multiple access equipment and digital speech interpolation equipment, respectively. Use of TDMA, rather than frequency division multiple access currently used, increases the number of circuits a given satellite transponder can carry by approximately 50–60 percent. DSI equipment operates in much the same fashion as circuit multiplication equipment used on cables and approximately doubles the number of circuits used for message telephone services.

¹⁰ The balanced loading method distributes circuits among transmission facilities on paths with unused capacity with a goal of having each separate transmission path carrying equal numbers of circuits. When one of the transmission facilities reaches the limits of its capacity, circuits are equally distributed among the remaining facilities which have unused capacity. When a new transmission facility is introduced, all additional circuits are placed on that facility until it is carrying as many circuits as the other balanced facilities. Thereafter, circuits are distributed equally among all available paths.

¹¹ The portion of total demand assigned to each medium for the purpose of calculating demand flexibility is based upon the loading algorithm (i.e., balanced loading) used to distribute traffic among facilities in each plan.

method used to distribute traffic in the plans, the satellite medium having two paths in IIB will be loaded more heavily; thus, leaving less excess satellite capacity than shown in IIA. This demand flexibility difference due to loading disappears in the later part of the planning period as more new facilities are introduced into the region. Plan III shows more satellite demand flexibility than either Plans IIA or IIB after 1987, because of the greater number of cable circuits and independent cable paths.

B. Service Quality

29. AT&T analyzed the service quality provided by the alternative plans in terms of media (cable and satellite) diversity, route diversity, network management and redundancy/restoration. AT&T states that because of economic considerations (i.e., the cost of cable facilities), at least during the first half of the planning period, it has established a minimum acceptable media diversity objective of 67 percent satellite and 33 percent cable circuit use to major traffic points in the Pacific Ocean region. It notes that none of the three viable alternative facilities plans (Plans IIA, IIB, and III) meet this objective throughout the planning period. Specifically, all plans route less than 33 percent to total Pacific region traffic via cable in 1982 and 1983. Plans IIB and III also fail to meet the 33 percent cable objective in 1984 and 1985. This is because of the use of the Pacific Ocean region in-orbit spare satellite as an operational spare, together with the use of a balanced loading method for distributing circuits among available facilities. AT&T states that Plan III achieves the best balance from a media diversity point of view. Plans IIA and IIB are deemed to be less acceptable on a media diversity basis and need to be modified in the actual circuit activation plan to reach acceptability.

30. AT&T analyzed the alternative plans in terms of route diversity and the percentage of circuits which would survive a failure of the heaviest loaded facility on a given route for Australia, Hong Kong, Japan, Korea, the Philippines, Singapore and Taiwan. These points represent nearly 80 percent of U.S. international traffic in the Pacific Ocean region. AT&T indicates that Plan III provides the largest number of diverse routes during the planning period because it introduces more cables and assumes use of an operational spare satellite in 1984. Plan IIB provides better route diversity between 1984 and 1987 than Plan IIA because of the introduction of the operational spare satellite as a new

independent path. However, none of the three plans provide sufficient route diversity to maintain a level of surviving circuits upon failure of the heaviest loaded facility between two points that is sufficient to meet CCITT recommendations for quality of service. Consequently, all plans require restoration of failed circuits via spare capacity in another transmission system in order to maintain an acceptable level of service while the failed transmission path is being repaired. AT&T indicates that all plans assume the availability of a spare satellite to provide restoration capacity for any failed cable or satellite facility during the planning period. Comsat's analysis also indicates that all plans require restoration in the event of a major facility failure to maintain adequate service quality. AT&T also indicates that all of the alternative plans provide approximately the same ability to employ network management methods to minimize network congestion following facilities failures, since the plans do not provide significantly different numbers of diverse routes to the major Pacific traffic points.

C. Technological Risk

31. The principal technological risks identified by the carriers and Comsat are: (1) The possibility that development of the SL digital optical fiber cable will not be completed in time to permit its introduction in the period assumed by the plans; (2) the possibility of delay in the introduction of the INTELSAT satellites planned for the Pacific Ocean region; (3) delay in the availability of the necessary earth stations needed to access the operational spare and major path satellites; and (4) the possibility of delay in the implementation of overall capacity enhancement techniques on satellites. The technological risks of delay in the availability of the SL Digital optical fiber cable system is greater for Plans IIA and IIB, since these plans introduce such cables three years earlier than does Plan III. The risks indicated in (2), (3) and (4) above are the same for all plans, since all plans make the same assumptions concerning these elements. The risk associated with the availability of the operational spare satellite and the necessary earth stations to access that satellite is not present in Plan IIA, since that plan does not assume use of such a satellite configuration. None of these risks are found to be unacceptable by the carriers or Comsat.

D. Cost Analysis

32. The cost of each of the alternative facilities plans is estimated by AT&T and Comsat. Both parties express the

individual cost of a plan in terms of the discounted present worth of expenditures. However, the parties employ different methods and assumptions for estimating the cost of the various plans. AT&T uses two methods for estimating cost—a "use" and an "investment" method. The AT&T "use" method includes the USISC portion of the total investment and operating cost outlays for new cable systems introduced during the planning period, together with the estimated annual per circuit Comsat (tariff) lease charge for international satellite circuits. The AT&T "investment" method also includes the USISC portion of total investment and operating cost outlay for new cable systems. For satellites, an allocated portion of the total investment and operating cost associated with all the satellites of the various satellite series introduced into the region during the planning period is included. The portion of total INTELSAT satellite costs allocated to the U.S. in the Pacific region is determined by the planned use of a given satellite facility by the U.S. carriers in the Pacific region relative to its use by the foreign entities in the Pacific and its use in other ocean basin regions. Both the use and investment method employed by AT&T include all cable costs associated with providing U.S. Mainland/Hawaii service for those cable systems that are newly introduced into the Pacific region during the planning period.

33. Comsat's cost estimates for the plans are based upon a single investment related methodology. The Comsat approach includes the USISC portion of total investment and operating costs for new cable systems in a similar manner to that employed by AT&T in both its methods. In calculating the satellite portion of the cost associated with an individual facility plan, Comsat includes an allocated portion of only the total incremental investment and operating costs associated with satellite facilities serving the Pacific region. Comsat assumes that the only relevant incremental satellite costs are those associated with satellite facilities for which investment decisions by INTELSAT have not already been made as of the beginning of the planning period. This means that any satellite series prior to the INTELSAT VI (scheduled to be introduced in the Pacific region in 1991) is not included in the Comsat cost analysis. This differs significantly from the AT&T investment method approach in that AT&T includes an allocated portion of INTELSAT satellite costs (based upon relative use)

for the INTELSAT series IVA, V, VA, and VI in its analysis. For the INTELSAT VI satellite series that is included in the Comsat analysis, an allocation mechanism based upon relative use of the satellite by U.S. carriers in the Pacific region is employed by Comsat to allocate a portion of the overall satellite system cost to the Pacific plans. Finally, in contrast to both the AT&T use and investment methods, Comsat excludes from its cost analysis all cable costs associated with providing U.S. Mainland/Hawaii service.¹⁴

34. The AT&T and Comsat cost analysis results are presented in Table 1. Even though the various cost methodologies differ considerably, the estimates in the table indicate that Plan III is significantly more costly than either variation of Plan II, regardless of the cost method used. The table also shows that Plan IIB is cheaper than Plan IIA under both the AT&T and Comsat investment method. The two variations of Plan II are relatively close in total cost under all of the cost methods employed. Table 1 also includes a breakdown of the cost for each plan by media (cable/satellite). The estimates indicate that, for any given plan, total costs for satellite facilities are less than total costs for cable facilities for both the AT&T and Comsat investment methods. However, the AT&T use method yields a total cost for satellite facilities that is greater than the total cost for cable facilities for each plan. The estimates show that the expected total cost outlay for the USISC for the range of plans under consideration is in the 400 to 600 million dollar range (1982 present value dollars).

E. Overall Evaluation of the Plans

35. All the U.S. international carriers select Plan IIB as the most desirable of the alternatives presented. While Plan III provides somewhat better media and route diversity, it delays introduction of the digital optical fiber cable technology into the Pacific basin, is more costly. Plan IIB is preferred to IIA because it provides better route diversity through the use of an operational spare satellite, which is not included in IIA. Comsat does not indicate a specific preference for any of the proposed plans.

IV. Discussion

36. The overall goal of a proceeding for the review of facilities options such as this is to develop guidelines for the use of the U.S. international carriers and

Comsat in their negotiations with their foreign correspondents which will lead to agreement to construct and use the lowest cost combination of facilities which can satisfy projected demand for service at adequate levels of service quality. The mechanism used by the U.S. carriers, Comsat, other interested parties and by the Commission is to subject a range of alternative facilities configurations to analyses to determine each plan's ability to satisfy forecasted demand for service and provide adequate levels of service quality. Each plan is also analyzed to determine its costs. The results of these analyses are subjected to an overall evaluation to determine which plan or plans best meet these criteria. In the following sections we will discuss the parties analysis of each of these factors. This will be followed by discussion of the application of these factors to the alternative plans.

A. Demand Forecast

37. The circuit demand forecast for message telephone service used in the Plans was prepared by AT&T. The international record carriers prepared the forecast of circuit demand for international telegraph, telex and alternate voice/data private line services. All of these forecasts employ the best information available, and AT&T in particular, uses advanced statistical methods in generating the message telephone circuit demand forecast. AT&T's forecast of traffic between the U.S. and the major Pacific countries utilizes individual country econometric models to forecast traffic annually three years out from the present period. An extrapolation of growth trends obtained from the econometric models is used as the basis for the forecast for the remaining years of the planning period. For the smaller countries in the region, AT&T extrapolates historical growth trends in traffic to obtain the forecast for the planning period. Comsat independently forecasts international television traffic demand, but does not do any forecasting of message telephone or record traffic. The forecast of traffic demand on international satellites is obtained by Comsat and INTELSAT directly from the carriers and their foreign correspondents annually at the INTELSAT global traffic meeting. Comments filed on behalf of the State of Hawaii suggest that forecasted facilities requirements for Mainland-Hawaii television and for Mainland-Hawaii and U.S. foreign Pacific points wide band services should also be considered.

38. The forecasts clearly drive the whole planning process and constrain

the available facilities alternatives. It is the demand forecast that determines the capacity needed and the time period in which facilities to provide that capacity must be introduced into the region. Even though advanced techniques and the most up-to-date information are employed in developing these forecasts, it is important to recognize that the need for individual facilities is quite sensitive to variations in this forecast. Therefore, a frequent update of these forecasts is essential and the individual facilities plans should be revised to reflect changes in the forecast.

B. Cost Analysis

39. The number of different cost estimates supplied by AT&T and Comsat and the range over which these estimates vary reflect unresolved methodological controversies concerning the appropriate way to measure cost. In addition comments filed on behalf of the State of Hawaii suggest use of another method for comparing the cost of the alternative plans. Even though it is unlikely that these controversies will be resolved in the near future, it is important to be aware of the differences in the underlying assumptions employed in the different cost methods and the sensitivities of the cost estimates themselves to these differing assumptions.

40. One of the major differences in approach is the method used to measure the cost of satellite facilities to be incorporated in the plans. AT&T uses two methods to estimate satellite costs: a use related approach, which estimates annual Comsat lease (tariff) rate charges for the use of international satellite circuits; and an investment related method, which allocates a portion of the total investment and operating cost for satellite facilities to the Pacific region plans. Comsat employs a different investment related method, which incorporates only an allocated portion of the total investment and operating cost for any satellite series expected to be introduced into the Pacific during the planning period for which INTELSAT has not yet made a final investment commitment decision (i.e., the INTELSAT VI series). The major difference in approach between the two investment methods concerns the appropriate application of the economic concept of "sunk" cost and incremental decision-making.

41. Comsat's cost analysis uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. Comsat defines as new satellite

¹⁴ Other relatively minor differences in cost assumptions also exist between the AT&T and Comsat methods. See the respective cost submissions of the carriers in the record for details.

facilities only those satellites for which INTELSAT has not made a final investment commitment. The costs associated with all other satellites are treated as sunk costs and not included in Comsat's cost analysis. Comsat views the INTELSAT VI satellites as being the first satellites projected for use in the Pacific Ocean region for which INTELSAT has not made a final investment decision. Since the INTELSAT VI satellites are not introduced into Pacific Ocean region use before 1991 in any of the alternative plans, Comsat's cost analysis does not include any costs for use of INTELSAT satellite capacity for the 1981-1990 portion of the planning period.¹⁵

However, it must be noted that Comsat's investment in INTELSAT satellites is not fixed. Pursuant to the INTELSAT agreement, the investment of Comsat and all other signatories to that agreement is proportional to the use each makes of INTELSAT satellites. Consequently, Comsat's investment in all INTELSAT satellites, existing and new, is not fixed but varies with relative U.S. use of these satellites.¹⁶

42. AT&T submitted two cost analyses. Its investment based cost analysis also uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. However, AT&T accounts for the fact that Comsat's investment in INTELSAT satellites varies with use by including an allocated portion of the investment and operating costs for all INTELSAT satellites used in the Pacific Ocean region during the planning period. The costs AT&T allocates to the U.S. are based on the planned U.S. use of each Pacific Ocean region satellite relative to its use by foreign entities in the Pacific and to its use in other ocean regions.

43. AT&T's use related cost analysis also uses the investment and operating cost of new cable facilities to compare cost of the alternative plans. However, AT&T uses its projections of Comsat's future tariff charges to the U.S. carriers for lease of satellite circuit as the measure of satellite costs for the plans. Use of projected Comsat tariff charges is based on the fact that it is these charges which the carriers pay for satellite circuits and it is these costs which are

reflected in the charges the ratepayers must pay to the carriers for service. However, looked at from the perspective of the overall system, keeping in mind that the objective is to minimize the cost of the combination of facilities required to meet forecasted demand, AT&T's use related cost analysis distorts the choice between cable and satellites. This method reflects only the investment and operating costs for new cable facilities. It does not include return on investment or taxes for cable facilities. Since Comsat's tariff rates must meet its revenue requirements, including return on investment and taxes, this approach makes satellite use appear more costly in relation to cable use.¹⁷

44. The State of Hawaii asserts that cost comparisons of the alternative plans should be based on revenue requirements at a stated rate of return for both cables and satellite facilities. The State does not indicate whether it is suggesting comparison of revenue requirements for only new facilities or total revenue requirements for all facilities, new and existing.

45. Both AT&T and Comsat supplement their overall total cost estimates with a measure of average unit cost for satellite and cable facilities incorporated in the individual plans. This average unit cost is obtained by taking the total cost for satellite and cable facilities, respectively, for a given plan and dividing these total costs by the total number of half circuit-years that these facilities are able to generate.¹⁸ Therefore, the average unit cost measure obtained for a given plan is the cost per half circuit-year for both cables and satellite facilities used throughout the planning period.

46. We request the parties to comment on these various costing methods and to indicate the advantages and disadvantages they perceive with each method. We further request the parties to specifically address the proposal advanced by the State of Hawaii that a comparison of the revenue requirement impact of the alternative plans be made a part of our overall assessment.

C. Loading Criteria

47. Each of the plans developed employs a balanced loading formula for allocating traffic among the various facilities included in the plans. As

indicated by the carriers, pure balanced loading serves to optimize the service quality attributes of a given facilities configuration in that it minimizes the period of time over which there is an imbalance of traffic among the available facilities on a given route. Balanced loading also minimizes the percent of lost circuits in the event of a facilities failure between two geographical points. There seems to be little dispute concerning the service quality attributes of the balanced loading circuit distribution method.

48. AT&T and Comsat have reached a consensus that a specific master loading plan is the best approach for the actual allocation of traffic among facilities. The master plan allows for individual deviations from a given formula which would accommodate the wishes of individual foreign correspondents and provide an opportunity to maintain some growth on either satellite or cable facilities during periods in which a strict balanced loading method would call for all additional traffic to be loaded on one medium. The international record carriers argue that individual customer requirements for leased channel services necessitates that they have total flexibility with respect to loading traffic on a particular medium, and this extends even to the choice of individual facilities between two geographic points. The IRCs feel that due to these special customers demands they should be exempt from any loading formula used to allocate traffic. Given that individual private line customer demand may dictate particular facility choices, and recognizing that international record carriers circuit requirements are small relative to the total circuits in use, it seems unlikely that record carrier choice of facilities should upset any overall balance in facilities use required to either optimize service quality or to minimize cost to the ratepayer. Therefore, we tentatively conclude that the international record carriers should be exempt from any particular loading criteria. In addition, we generally find the arguments made by the carriers and Comsat in favor of a master plan approach to be persuasive. We further conclude: (1) A master plan approach to actual loading is acceptable, if the plan generally reflects the optimal service quality properties of balanced loading and gives due consideration to the cost to the ratepayer; and (2) the master plan includes some specific mechanism to deal with deviations from the given plan if traffic levels differ from those projected in the forecast. We ask the parties to specifically address these

¹⁵ Incremental investment and operation for U.S. earth stations are included in Comsat's cost analysis for the entire planning period.

¹⁶ While Comsat's investment in INTELSAT satellites varies with U.S. use, INTELSAT's investment in those satellites is fixed. Since the use made of those satellites by Comsat and the other INTELSAT signatories contributes the vast majority of INTELSAT's revenue requirements, changes in U.S. use of the satellites could affect the rates INTELSAT charges for satellite capacity.

¹⁷ AT&T indicates that it did not include taxes or the effects of inflation in its projection of future Comsat tariff charges.

¹⁸ A half circuit-year is the capacity of one half circuit in a facility for a period of one year. For example, a cable system with a 1000 circuit capacity and a design life of 25 years to be used totally for international service would provide 25,000 half circuit-years of service capacity to U.S. carriers.

loading considerations in their comments.

49. Given the projected timetable in this proceeding and the necessity to issue policy guidelines regarding facilities expected to be operational in the mid-1980's expeditiously, we ask the parties to file a master loading plan for facilities expected to be operational in the mid 1980's (i.e., introduced in the region in the 1984-1986 time period) as part of the comments on this NPRM. This will permit public comment on the proposed plan during the reply comment period, with guidelines for a final loading plan adopted in the First Report and Order. We will consider the master loading plan for the latter period facilities (those introduced into the region after 1986) in the next phase of this proceeding when more detailed information can be compiled regarding the actual configuration of these facilities and the timing of their introduction.

D. Demand Flexibility Analysis

50. Though we recognize the difficulties inherent in developing demand flexibility measures for evaluating the Pacific Ocean region plans regarding capacity available to meet unexpected demand requirements, we question the usefulness of the actual demand flexibility measures developed separately for cable and satellite facilities. We agree with the carriers that it makes little sense to attempt to simply aggregate cable capacity over the entire region when individual cable facilities are only adequate to serve particular points in the region and not all other points. We also agree that it is not possible to meaningfully allocate INTELSAT satellite capacity among the various subregions within the Pacific Ocean Basin. Yet, the results obtained from separately estimating demand flexibilities for cable and satellites for a given plan do not really provide a good indication of the available capacity relative to the expected demand in terms of meeting fluctuations or deviations in traffic demand throughout the planning period. In particular, the cable demand flexibility analysis developed by the carriers compares cable capacities available with a so-called cable demand. This cable demand is based upon the allocation of a portion of total demand to available cable facilities through the balanced loading formula. This is not a rigid demand requirement for cable facilities in the event that sufficient cable capacity is not available, for some (or maybe all) of this traffic could be routed via satellite. Similarly, the satellite demand flexibility analysis compares overall

available satellite capacity with satellite demand. The satellite demand figure is obtained from the balanced loading formula applied to each of the plans and is not a rigid requirement. Should circumstances dictate, at least some of the so-called satellite demand could be satisfied with available cable facilities. Therefore, the demand flexibility estimates for each medium separately do not give a true indication of the capacity in the region that is available to meet overall traffic requirements.

51. We developed a demand flexibility analysis to supplement that of the U.S. international carriers and Comsat. Our goal was to develop a method which would determine the total demand flexibility provided by the alternative plans. The method developed relies on the fact that INTELSAT satellite capacity available to the U.S. can be used to any point in the region equipped to access those satellites. Consequently, any increase in INTELSAT satellite capacity for U.S. services can be assumed to be available to any Pacific point. Increases in cable circuit capacity on one cable route cannot be used to provide service to points served by other cable routes (e.g., cable circuits on the Hawaii-Australia route cannot be used to serve points on the Hawaii-Guam-Japan cable route). However, because of the ability to use INTELSAT satellites to serve any Pacific point, increases of cable capacity on one route does increase the availability of circuits on other cable routes. It does so by making it possible to transfer traffic from satellite circuits to the additional cable circuits. The vacated satellite circuits can then be used to satisfy circuit demands to points served by other cable routes.

52. Using these facts, total demand flexibility can be calculated for Pacific Ocean region west of Hawaii by adding the total number of satellite and cable circuits available and subtracting the result from the total forecasted circuit demand to countries served by those facilities. The number of circuits resulting from this subtraction divided by the total forecasted demand determines the percent demand flexibility. However, one more step is required to refine this result. As noted above, the number of cable circuits added to one cable route are not the number of circuits which become available on other cable routes. It is the number of satellite circuits used to points served by the augmented cable route which become available because of the ability to transfer the traffic they carry to the additional cable circuits which define the capacity available to

other cable routes. This will not always be the same as the number of additional cable circuits. Consequently, a check must be made in each instance. This procedure is demonstrated in our analysis of the effect on demand flexibility of U.S. use of ANZCAN South cable circuits set forth later in this document.

53. With due consideration given to the qualifications and concerns set forth for the above, we generally are in accord with the analysis of the plans presented by the carriers and Comsat (summarized in Section II above). Given our preference to focus on the mid-1980's facilities in the first round of this proceeding, we will not indicate even a tentative preference regarding the facilities to be introduced into the region in the latter 1980's and early 1990's until the next round of this proceeding. Additional information is likely to be available then concerning the specific configuration, cost, technological risk, etc., associated with these facilities.

E. Analysis of Mid-1980's Facilities

54. In keeping with the focus set forth in the Notice of Inquiry, we will devote the remainder of our evaluation and analysis to those facilities which are being considered for introduction into the region during the mid 80's period. However, the analysis and evaluation of these facilities will encompass the time frame 1984 through 1988. The initial question that must be answered is the extent to which additional facilities are needed in the Pacific region for the mid-1980's time frame. The base-line Plan I developed by the carriers provides a comparison of overall circuit demand with currently available facilities. Examination of the details of that plan show that currently operational cable facilities will be essentially fully utilized by 1983, and all traffic growth beyond 1983 will be placed on the satellite system.¹⁹ Comsat's analysis based upon Plan I assumptions of no additional facilities added during the planning period set forth in Table 2, shows a shortage of satellite capacity (and total capacity, since the cables are full) to other Pacific Region countries in 1986 of 182 circuits. This corresponds to a 4% negative satellite demand flexibility in 1986. The table also shows that, without the addition of the major path international satellite in 1987, the shortage of available circuits will get worse as indicated by the 12% negative satellite demand flexibility in 1987 and a negative 27% in 1988, the result of

¹⁹See USISC Plan I in Tab 9 of AT&T December 10 submission in the record.

Comsat's analysis indicates that there will be insufficient capacity to meet demand in the 1986 to 1988 time period without the addition of new facilities. Application of our demand flexibility analysis to Plan I indicates total international circuit demand will exceed available capacity by 41 circuits in 1986.

55. Therefore, the results of the analyses clearly indicates that there is likely to be a shortage of capacity available for U.S. Pacific Region international traffic beginning in 1986 unless new facilities are added. The earliest that additional satellite capacity could be made available under current plans is in 1987 with the introduction of an INTELSAT major path satellite. Consequently, additional cable circuit capacity is needed if total U.S. Pacific international circuit demands are to be satisfied in 1986.

56. The information contained in Plan I indicates that all circuits (both basic and those which can be derived by circuit multiplication techniques) in existing cables available for U.S. Mainland-Hawaii services will be fully utilized by 1983. However, that plan also indicates that the AT&T domestic satellite system will have enough capacity to satisfy U.S. Mainland-Hawaii traffic growth at least to the end of 1987.²⁰ There are also a number of U.S. domestic satellite systems in addition to AT&T's which are or will be technically able to provide services between the U.S. Mainland and Hawaii during the mid-1980's. RCA American Communications, Inc. and the Western Union Telegraph Company currently operate domestic satellite systems with that capacity.²¹ In addition, GTE Satellite Corporation, Hughes Communications, Inc. and SPC Communications have been authorized to construct and operate domestic satellite systems which will have the capability of providing service between the U.S. Mainland and Hawaii in the mid-1980's. Letters were sent to these entities inquiring whether they expected to have capacity available in their domestic satellite systems they would be willing to make available to the U.S. international carriers for their provision of U.S. Mainland-Hawaii services during the mid-1980's. A number of these

entities indicated that they expected to have such capacity available but did not indicate the number of circuits which could be so used. However, RCA American Communications, Inc. indicated that it could provide a minimum of 200-300 circuits to the U.S. international carriers for U.S. Mainland-Hawaii services during the mid-1980's.

57. Comsat also indicated in its submission in this proceeding that there are transponders available in the Pacific Ocean INTELSAT primary satellite which could be leased to provide services between the U.S. Mainland and Hawaii. It states that three and one half transponders could be made available in 1984 and at least seven and one half transponders would be available in 1985 through 1988.²² Thus, in contrast to the U.S. international Pacific traffic routes, it appears that there will be sufficient transmission capacity available in existing and already authorized facilities to meet Mainland-Hawaii traffic demands with some margin of safety through 1987.

58. We will now consider various options for dealing with the capacity shortages identified for the mid-1980's period. The alternative facilities plans developed by the carriers and submitted in the record provide several new facilities options available for introduction in the Pacific region in the mid-1980's: ANZCAN North and South, an analog Hawaii-4 Cable (HAW-4), an analog TPC-3 cable (TPC-3), the operational spare INTELSAT satellite, and the additional use of domestic satellite capacity to Hawaii. We will consider first a comparison of USISC participation in the northern segment of the ANZCAN cable system versus construction of an analog HAW-4. For the U.S. Mainland-Hawaii traffic stream, we will also consider the option of additional domestic satellite use in lieu of participation in the ANZCAN North system and the construction of an analog HAW-4 cable. In addition, the need for an analog TPC-3 cable system between Hawaii and Japan in 1986 will be compared with the alternative of delaying implementation of such a system until a fiber optic TPC-3 can be obtained in 1988. For purposes of comparison (except for the evaluation of

the operational spare option), we will base our analysis on Plans IIB and III, since both plans contain the operational spare satellite and differ only with regard to the participation in the ANZCAN North cable system in lieu of an analog HAW-4 and TPC-3 cable system in the 1984-88 period, and the assumed lifetime of COMPAC cable.

F. Application of Demand Flexibility Analysis to Mid-80's Facilities

59. Table 3a shows a cable demand flexibility comparison between plans IIB and III for the 1984 to 1988 time period for the three major cable segments in the Pacific region. The differences between the two plans during this period of time are the extended use of COMPAC cable and the substantial USISC participation in the ANZCAN North system under Plan IIB instead of early retirement of COMPAC cable and constructing an analog HAW-4 in 1984 and an analog TPC-3 between Hawaii and Japan in 1986, as called for in plan III. The table indicates that the analog systems introduced in the mid-1980's in Plan III provide significantly more demand flexibility in the North America/Hawaii link until 1988. The analog HAW-4 cable in Plan III provides slightly better demand flexibility for the Hawaii/Australia segment for the years 1985 through 1988. The analog TPC-3 cable in Plan III provides much better demand flexibility in the 1986 to 1987 period on the Hawaii/Guam/Japan segment.

60. Table 3b shows satellite demand flexibility for the 1984 to 1988 period for Plans IIB and III. The higher demand flexibility figures for 1986 to 1987 in Plan III are due to the analog TPC-3 system introduced in 1986 freeing up additional capacity on the INTELSAT system. However, there does appear to be sufficient available capacity in the INTELSAT satellite system in the Pacific to accommodate traffic demands in the Hawaii/Guam/Japan traffic stream even if the analog TPC-3 system is not introduced in 1986. This is demonstrated by the satellite demand flexibility shown in the 1986 through 1988 time frame under Plan IIB, which does not include the analog TPC-3.

61. These results are more clearly demonstrated by application of our demand flexibility analysis to plans IIB and III to determine the overall demand flexibility those plans provide. For Plan IIB, the total number of cable circuit on the Hawaii-Japan cable route was added to the total number of cable circuits available on the Hawaii-Australia route. In calculating the available cable capacity on the latter route, account was taken of the fact that the number of

²⁰In Plan I, the U.S. record carriers indicate a deficiency of U.S. Mainland-Hawaii cable circuits beginning in 1984 which grows to a total of 51 circuits in 1987. It appears that this deficiency does not indicate a shortage of domestic satellite circuits but rather a lack of cable circuits to meet projected customer demands which can only be satisfied by cable circuits.

²¹American Satellite Company and Alascom, Inc. lease capacity capable of providing U.S. Mainland-Hawaii services in the Western Union and RCA satellite systems, respectively.

²²See, Comsat's December 10, 1981 submission to the record, Tab F, Table 10. Comsat indicates that the INTELSAT Pacific Ocean satellite transponders to which it refers are only capable of providing service in the eastern (U.S.) portion of this satellite's coverage zone. Consequently, these transponders could be made available for U.S. Mainland-Hawaii services without affecting the capacity of the satellite to provide service between the U.S. and other Pacific points.

ANZCAN North circuits available under the plan to extend the ANZCAN South circuits to the U.S. Mainland would not permit utilization of the total number of ANZCAN South circuits during the 1986-87 period. Consequently, only 632 rather than the total of 1128 basic and TASI derived ANZCAN South circuits were assumed to be available during this period. The total number of cable circuits thus derived was added to the capacity available for U.S. services in the INTELSAT satellites and the result divided by the total demand for circuits from the U.S. Mainland and Hawaii to Pacific points to determine overall demand flexibility. As shown in Table 3c, use of ANZCAN South circuits interconnected with the ANZCAN North circuits acquired by the carriers under Plan IIB would provide an overall demand flexibility of 15.4 percent in 1986, increasing to 78 percent in 1987 with the introduction of an INTELSAT major path satellite.

62. This demand flexibility analysis was examined to determine if the number of satellite circuits which could be vacated by transfer of traffic to U.S. ANZCAN South circuits equaled or exceeded the number of available U.S. ANZCAN South cables. In 1986 and 1987, there are more satellite circuits used to points on the Hawaii-Australia cable route than there are available U.S. ANZCAN South circuits. Consequently, the demand flexibility figures calculated above for those years are equally valid for the Hawaii-Japan cable route.

63. The demand flexibility figures calculated for Plan III pursuant to our methodology are also displayed in Table 3c. The overall demand flexibility numbers for 1986 and 1987 are significantly higher than those for Plan IIB reflecting the fact that the analog HAW-4 cable introduced in 1984 in Plan III permits all 1128 basic and TASI derived ANZCAN South circuits projected by the U.S. carriers to be used during that period, and the introduction of an analog TPC-3 cable in 1986.²³

²³ For these demand flexibility calculations, we assume the availability for U.S. use of the 648 ANZCAN South basic circuits which the distributions for both Plans indicate the U.S. carriers will acquire. AT&T's cable demand flexibility analysis, which does not include HTC or IRC ANZCAN South circuits originating in Hawaii, assumes acquisition of only 454 ANZCAN South circuits. This assumes fewer ANZCAN South circuits used from the Mainland than is assumed by the circuits distributions of Plans IIB and III. We used the cable capacity shown by AT&T's cable demand flexibility analysis to be available for Hawaii-Japan cable route. AT&T's analysis assumes 1500 TPC-3 circuits available for U.S. use rather than the 1600 assumed by the distribution of Plan III. Consequently, the demand flexibility calculated is somewhat understated.

64. Therefore, it seems reasonable to conclude that even though an analog HAW-4 and analog TPC-3 introduced in the mid-1980's are able to generate greater demand flexibility in some years for some parts of the region, the USISC participation in the ANZCAN North and South cables proposed in Plan II provides sufficient capacity to meet U.S. international traffic demands during the mid-1980's and still maintain a reasonable capacity safety margin throughout the Pacific Region.

65. A demand flexibility analysis is not undertaken separately for the U.S. Mainland-Hawaii route because no actual maximum satellite capacity figures were made available under Plans IIB and III. However, it seems reasonable to conclude that the addition of either the ANZCAN North cable system or the analog HAW-4 system would increase the overall demand flexibility between the U.S. Mainland and Hawaii. The greater circuit capacity of the analog HAW-4 would certainly add more demand flexibility than the USISC participation in the ANZCAN North system. But Plan I would seem to indicate that forecasted U.S. Mainland-Hawaii demand can be satisfied through 1987 without use of either an analog HAW-4 cable or use of ANZCAN North circuits. However, if no additional capacity is available in AT&T's domestic satellite system, demand flexibility would be zero in 1987. Some demand flexibility could be obtained by use of capacity in other domestic satellite systems or transponder capacity leased from INTELSAT as well as by use of ANZCAN North circuits or construction of an analog HAW-4 cable.

G. Quality of Service Evaluation of the Mid-80's Facilities

66. We turn now to an evaluation of the mid-1980's facilities on the basis of quality of service factors: media diversity, route diversity, and the percentage of surviving circuits. The results of AT&T's analysis for Plans IIB and III for the years 1984 through 1988 are contained in Table 4. Media diversity is measured in terms of the percentage of total circuits carried on cable systems. The first section of Table 4 compares the cable percentage for each plan for the entire region in the aggregate. The results show that Plan III has a significantly higher cable percentage in the years 1986 and 1987, but the gap closes in 1988. This is due largely to the introduction of the analog TPC-3 in Plan III in 1986. The remainder of the table contains media diversity percentages calculated for the three major international Pacific traffic

streams with the U.S. and for the U.S. Mainland-Hawaii route. The results indicate that the percentage of total circuits on cable facilities to Australia is somewhat higher for Plan IIB from 1985 through 1988 because of the fact that the COMPAC South cable remains in service until 1989 under Plan IIB. The cable percentage is significantly higher for Plan III (with the analog HAW-4 and TPC-3) only to Japan and the Philippines in the years 1986 and 1987.

67. In considering the traffic stream between the U.S. Mainland and Hawaii, three plans are compared with regard to quality of service factors, since it was shown above that an additional feasible option available in serving Hawaii, which is not available for international routes, is to place all growth traffic on the domestic satellite system during the period of the mid-1980's. Therefore, the table also includes Plan I for the U.S. Mainland-Hawaii route. The table shows that under Plan I, with no new cable systems, media diversity declines from 12% cable in 1984 to 6% in 1988. Plans IIB and III, which introduce the ANZCAN North system and the HAW-4 analog system in 1984, respectively, bring the cable percentage into the 20 to 30% range during the 1984 to 1988 period. The cable percentage is higher for the analog HAW-4, as compared to the ANZCAN North system from 1985 to 1988, but this difference diminishes in 1988.

68. Plan III, with the analog HAW-4 and TPC-3, provides greater overall media diversity for the Pacific region in the aggregate and for the U.S. Mainland-Hawaii traffic stream. However, Plan III actually provides less media diversity to Australia than does Plan IIB during the 1985-1988 period because of the 1984 retirement of COMPAC South assumed in Plan III. The greater media diversity shown between the U.S. Mainland and Japan and the Philippines between 1986 and 1988 provided by Plan III is due to the introduction of the analog TPC-3 Cable in 1986, and the analog HAW-4 Cable in 1984.

69. Table 4 also compares route diversity for Plans IIB and III for the three major traffic streams in the Pacific region. The table indicates that the implementation of Plan III (analog HAW-4 and TPC-3) creates additional independent cable routes to Japan and the Philippines for the years 1986 and 1987 that are not present in Plan IIB. The additional independent route to the Philippines and Japan under Plan III is due to the introduction of the analog TPC-3 in 1986. This additional route for Plan III provides additional diversity for only two years, as Plan IIB introduces an optical fiber TPC-3 in 1988, giving IIB

and III an equal number of independent routes to Japan and the Philippines beyond 1988. The number of independent routes between the U.S. Mainland and Hawaii is the same for both plans.²⁴ Examination of the circuit distributions for Plans IIB and III indicates that during 1986 and 1987, AT&T proposes to use 4 and 3 independent routes, respectively, to Australia and other Southern Pacific points.²⁵

70. Table 4 also contains a measure of the percentage of total circuits that would survive a failure of the largest facility on any given route prior to restoration of the failed facility. The percent of surviving circuits measure is another quality of service indicator that demonstrates the vulnerability of a given facility configuration to an unplanned outage or failure of a major facility. The higher the percentage of surviving circuits, the better the quality of service. The table shows that there is no significant difference between Plan IIB and III in the percentage of surviving circuits between the U.S. and Australia and between the U.S. and Japan. In contrast, there is a significant improvement in percentage of surviving circuits to the Philippines between 1986 and 1988 under Plan III due to the analog TPC-3 introduced in 1986. Between the U.S. Mainland and Hawaii, the analog HAW-4 yields a higher percentage of surviving circuits than the ANZCAN North system in the 1985 to 1987 time period. Both the ANZCAN North system and the analog HAW-4 significantly improve the percentage of surviving circuits to Hawaii over the alternative of no new cable systems (Plan I).²⁶

71. This analysis suggests that the analog HAW-4 provides a higher percentage of surviving circuits than the ANZCAN North system only for the U.S. Mainland-Hawaii traffic stream, while the analog TPC-3 cable system in Plan III improves the percentage of surviving circuits to the Philippines by about 10 to 15% for the period 1986 through 1988. However, none of the alternative plans

result in enough circuits surviving a major facility failure to avoid the need to restore service via spare capacity pending repair of the failed facility.

H. Cost Analysis of Mid-80's Facilities

72. As indicated in section II and the cost analysis section above, the cost issues are very complex and comparisons are very difficult. These difficulties are magnified when attempting to focus on individual facilities outside the context of an overall facilities plan. For example, different facilities being compared may have different useful lives, different degrees of uncertainty associated with the individual cost estimate, and one facility may be obtained on an annual lease basis, while the other may be purchased on a permanent capital investment basis. The cost analyses submitted by the carriers comparing the individual plans shows that Plan II (both versions A and B) is less expensive than Plan III. Table 5 presents measures of individual facility average unit cost for the various facilities introduced during the mid-1980's in Plans IIB and III. The average unit cost for the various facilities is presented in two different ways in the table. The first is the dollar cost per one half circuit-year. This is obtained by taking the dollar investment (excluding operating and maintenance) cost per half circuit in the facility and dividing by the number of years for which the facility is expected to deliver service. This measure is an attempt to adjust the unit cost for varying useful lives of the various facilities. The other measure is a simple dollar investment cost per half circuit in the facility, or equivalently, the IRU cost per half circuit.²⁷ Care should be taken in comparing facilities on the basis of the one half circuit-year unit cost measure, since facilities with longer useful lives will tend to appear less expensive than otherwise comparable facilities with shorter lives. A simple direct comparison of two facilities with different useful lives does not take into account the potential for lower unit cost available with a follow-on generation of facilities that would replace the current facility having the shorter useful life. Therefore, an appropriate cost comparison should include both an average unit cost measure for individual facilities and a comparison of overall plan costs, so that full consideration can be given to the follow-on facilities and

the economies that may be achieved from their early implementation.²⁸

73. Table 5 shows that the cost of an ANZCAN North temporary half circuit is more expensive than the permanent ANZCAN North circuit on a one half circuit-year basis. However, the ANZCAN North permanent half circuit is less than a temporary half circuit on an IRU investment outlay basis; this is clearly due to the difference in the five year temporary period (with the buyback provision at net book value) versus the 24 year useful life of the permanent circuit.²⁹ The table shows that the analog HAW-4 cable is cheaper than the ANZCAN North (both Temporary and permanent) on both a one half circuit-year basis and on a straight half circuit IRU investment basis. Nevertheless, it should be noted that the analog HAW-4 involves a 24 year commitment to outdated cable technology. Moreover, a comparison of the costs of the optical fiber version of the HAW-4 cable system with its analog counterpart indicates that on both a cost per half circuit-year basis and on a half circuit IRU basis, the optical fiber system is almost one half the cost of the analog version. Similarly, the TPC-3 analog system between Hawaii and Japan is shown to be more expensive on a unit cost basis (both one half circuit-year and half circuit IRU) than the digital TPC-3 Cable.

74. In order to try to capture the cost impact of follow-on facilities replacing initial facilities introduced in the mid-1980's, Table 6 presents average unit cost measures by media (satellite and cable) separately for Plans IIB and III on a one half circuit-year basis. The results presented in the table reinforce the notion that the average unit cost for cable facilities are cheaper in Plan II than in Plan III. This implies that lower half circuit-year costs are obtained by

²⁴ The table shows that an additional independent route between the U.S. Mainland and Hawaii is created under Plan IIB in the year 1988. This extra route disappears in 1989, since it is the result of an overlap in phasing out ANZCAN North temporary circuits and introducing the fiber optic HAW-4 cable in 1988. The number of independent routes to Hawaii drops to five in 1989.

²⁵ If AT&T used all cable routes available during the 1986-1987 period, Plans IIB and III would provide 5 and 4 independent routes respectively.

²⁶ It should be noted that the calculation of percentage of surviving circuits in Plan I, which assumes no new cable system, does not include a third satellite path such as the use of capacity leased in other domestic satellite systems or transponders leased from INTELSAT would provide.

²⁷ Both of these average unit costs are in 1981 present value dollars.

²⁸ For example, a simple comparison between the dollar cost per one half circuit-year for the ANZCAN North temporary facility and the HAW-4 analog facility show that the HAW-4 analog is significantly less expensive than the ANZCAN North system. However, the analog HAW-4 circuit will be in use for 24 years, while the ANZCAN North temporary circuit will be replaced at the end of five years. If the replacement is a HAW-4 optical fiber system, the follow-on cost per one half circuit-year is substantially reduced. This suggests that merely looking at the average unit cost of one facility compared with another can lead to erroneous conclusions unless the full implications of the follow-on facilities and differentials in useful lives are fully considered.

²⁹ The cost of the one half circuit IRU in ANZCAN North on a temporary basis is computed by taking the initial permanent IRU cost for a half circuit in ANZCAN North, and then computing the net present value cost for the entire five year period, including the buyback of the 1/2 circuit at net book value.

utilizing analog cable facilities on a temporary basis in the mid-1980's and replacing these facilities with the newer, more economical, optical fiber technology as soon as it is available in 1988, rather than investing in the less efficient analog cable technology on a permanent 24 years basis.³⁰

75. Finally, Table 5 shows that the COMSTAR domestic satellite system is less expensive on an average unit cost basis (both on a one half circuit-year and on a one half circuit IRU basis) than either the ANZCAN North temporary or permanent circuits. The COMSTAR circuits are also less expensive than the analog HAW-4 circuits on an IRU basis, but slightly more expensive on a one half circuit-year basis. This latter difference is due to the longer useful life of the analog HAW-4 system of 24 years, as compared with the COMSTAR satellite useful life of 7 years.

76. To complete the cost comparison among individual facilities being considered for the mid-1980's, it is useful to compare the total cost outlay of the USISC for various configurations of these individual facilities indicated in Plans IIB and III. Table 7 presents this comparison. The first row of the table indicates the total USISC facility investment cost outlay for the proposed number of circuits in the ANZCAN North system as set forth in Plan IIB. The outlay is estimated at 34 million dollars, and presumes the purchase of 538 half circuits for international use on a temporary basis, 203 half circuits purchased by the Hawaiian Telephone Company and ITT World Communications Inc. on a permanent basis for use to Canada and beyond to Europe, and 656 whole circuits for use on a temporary basis between the U.S. mainland and Hawaii. This is contrasted with the total USISC investment cost outlay for the HAW-4 analog system, as proposed in Plan III, of approximately 92.3 million dollars. This is a difference of 58.3 million dollars.

77. Further developments in the ANZCAN cable projects following the initial development of the proposed facilities plans indicate that the USISCs may ultimately wish to convert 300 of the proposed 538 ANZCAN North half circuits in Plan IIB for international traffic from temporary to permanent

status.³¹ No reason is given for this possible change from temporary to permanent acquisition of these circuits. Row two of Table 7 contains an estimate of total USISCs investment cost outlay for a modified Plan IIB purchase of ANZCAN North circuits, which replaces the original 538 half circuit temporary purchases for international use with 300 permanent circuits and 238 temporaries. This results in an estimate of total USISC investment cost outlay of 41.8 million dollars, an increase of 7.8 million over the original Plan IIB proposal.

78. Table 7 also shows that a further USISCs total investment cost savings can be obtained in ANZCAN North circuits if the proposed 203 permanent half circuits in ANZCAN North being used by the Hawaiian Telephone Company and ITT are converted to temporary circuits. The estimated USISC investment cost outlay for ANZCAN North circuits in which all are obtained on a temporary basis is approximately 28.7 million dollars. This is an additional savings of 5.3 million dollars over the original proposal in Plan IIB (first row of Table 7).³²

79. We also calculated the effect on the USISC's cost for ANZCAN North circuits of assuming that AT&T's domestic satellite system has sufficient capacity to adequately meet all growth in demand for U.S. Mainland-Hawaii telephone service between 1984 and 1987 thus making unnecessary the acquisition of the 600 ANZCAN North circuits proposed for use in providing that service. Deleting these 600 ANZCAN North whole circuits, and assuming all other ANZCAN North circuits are acquired on a temporary basis, results in a capital cost to the USISCs of \$11.9 million for ANZCAN North circuits.³³ We further considered the possibility that reducing the USISCs' use of ANZCAN North circuits from the proposed total of 1397 to 797 might cause the owners of that cable to configure it to provide 1380-4kHz

circuits rather than the 1840-3kHz circuits now planned. We calculated the cost to the USISCs of the 797 ANZCAN North circuits they would temporarily acquire under this scenario as if those circuits were 4 kHz circuits.³⁴ This resulted in a cost of \$15.9 million.³⁵ No cost analysis could be performed assuming lease of circuits in other domestic satellite systems or in INTELSAT transponders since insufficient cost information was provided for those facilities.

80. Table 7 also shows the total USISC outlay for the proposed TPC-3 cable system included in Plan III. This investment cost outlay is estimated at approximately \$66.8 million. The average unit cost measures presented in Table 5 show that the optical fiber version of the TPC-3 is much less expensive on a unit cost basis. Therefore, waiting an additional two years to obtain the optical fiber version of the TPC-3, as called for in Plan IIB, will result in a significant cost per circuit savings.

81. The general conclusions of this cost analysis are that the ANZCAN North cable system is more expensive on an average cost per circuit basis than the analog HAW-4 alternative, but given the use of temporary circuits in the ANZCAN system, the total USISCs outlay for the ANZCAN North package is less expensive than a comparable outlay for the HAW-4 cable system. Moreover, the optical fiber versions of HAW-4 and TPC-3 are much cheaper on a unit cost basis than their analog counterparts. Therefore, use of this temporary ANZCAN North package would permit the early introduction of these economical optical fiber facilities and would reduce the overall cost for

³¹ AT&T December 10 submission to the record, Tab 14, "AT&T cost analysis addendum: Plan IIB sensitivity."

³² The total cost savings of utilizing all temporary circuits in ANZCAN North, as opposed to the 203 permanent half circuits, will likely be somewhat less than the investment cost savings alone due to differences in transit, operations, and maintenance costs. It should also be noted that permanent circuits in ANZCAN North would provide some enhancement of route diversity (over the all temporary package) between the U.S. Mainland and Hawaii in the post 1988 period if the optical fiber HAW-4 is introduced.

³³ We assumed the ANZCAN North circuits proposed for U.S. record carrier use would be required to meet customer demands which could be satisfied only by cable circuits. Consequently, we included the cost of those circuits in our analysis.

³⁴ We derived the cost of the 4 kHz ANZCAN North circuits by multiplying the \$40,000 per half 3 kHz circuit IRU cost submitted by the parties by 2 to obtain the per whole circuit cost and then by 1840 to derive the total cost of the ANZCAN North cable. We then divided this result by 1380 (the number of 4 kHz circuits the cable would provide) and then by 2 to derive the IRU cost per half 4 kHz circuit. The resulting \$53,333 per half 4 kHz circuit IRU cost was then subjected to the same procedure described for temporarily acquire 3 kHz circuits to obtain the discounted present value. It should be noted that this method of deriving the cost of 4 kHz ANZCAN North circuit costs may somewhat overstate those costs since it does not account for the fact that fewer units of cable multiplex equipment would be required to configure the cable to provide 4 kHz circuits.

³⁵ There may be some additional costs (e.g., for additional earth station equipment) involved in use of AT&T's domestic satellite system to provide the circuits necessary to satisfy all growth in demand for U.S. Mainland-Hawaii telephone services between 1984 and 1987. However, the filings in this proceeding did not provide sufficient information to permit us to determine the existence or amounts of any such costs.

³⁰ The cost per half circuit-year presented in Table 6 is obtained by taking the total present value costs for cable and satellite systems separately for a given plan and dividing by the number of half circuit-years of capacity generated by each medium in the given plan. This results in an average unit cost measure for a given medium over the entire planning period.

the entire planning period (Table 7). A comparison of the cost of the various options considered for the ANZCAN North package of circuits indicates that the permanent circuits are less expensive on a per circuit-year basis, but more expensive on a straight IRU investment outlay basis. The least expensive ANZCAN North package in terms of the USISCs' total investment cost outlay involves the use of all temporary circuits. However, shifting AT&T's U.S. Mainland-Hawaii traffic to the COMSTAR system appears to result in the lowest USISC investment cost outlay even considering the possible downsizing of the ANZCAN North cable system.

I. Technological Risk

82. The historical record of facilities outages in the Pacific region indicates that both cables and satellites are quite reliable. The Pacific Ocean Basin cable systems are in deeper water than the Atlantic system, and there is less likelihood of breakage or failure caused by fishing trawler accidents. The international satellite facilities used in the Pacific region are introduced after having been deployed in other ocean basin regions first. The system problems have generally been corrected before these facilities enter the Pacific for operation. In addition, INTELSAT satellites are engineered to meet full performance requirements at the end-of-life period; consequently, there is no evidence of a significant risk of facilities failure due to technological problems in the international satellite system.

83. The North Atlantic planning proceeding, Docket No. 79-184, documented the technological risk associated with the development and availability of the optical fiber submarine cable. These risks are very difficult to quantify, but it can be safely assumed that they are significantly greater than the technological risks associated with the proven analog cable system design. The new generation of INTELSAT satellites being developed at the present time is not scheduled for deployment in the Pacific region until the latter part of the planning period.

84. Comsat assessed the overall risk of a delay in the availability of the optical fiber system for deployment in the Pacific region. The analysis measured the demand flexibility for the satellite system, given an unplanned delay in the fiber optic cable for up to two years (until 1990) in the context of Plan IIB.³⁶ Comsat's analysis shows a

satellite demand flexibility of 31 percent in 1989. Comsat's analysis assumes that the ANZCAN North circuits obtained by the USISC in Plan IIB are retained until after the introduction of the fiber optic system in 1990. The results show sufficient overall capacity available in the system to accommodate at least a two year delay in the introduction of the optical fiber technology in the region. Comsat's analysis ameliorates to some degree the technological risks associated with the development and implementation of the optical fiber system, since it demonstrates that a reasonable delay in implementation of this system could be accommodated with the capacity available in the region.

85. Our demand flexibility analysis was used to determine the effect of delay in the availability of an INTELSAT major path satellite on Plan IIB. Should the major path satellite not become available in 1987, Plan IIB would permit U.S. international traffic demands to be satisfied with a 5.3 percent demand flexibility. If the major path satellite and the digital optical fiber HAW-4 and TP-3 cables are delayed beyond 1988, Plan IIB capacity would fall short of satisfying traffic demand by approximately 911 circuits at year-end 1988.³⁷

86. Therefore, it seems reasonable to conclude that the technological risk associated with the current generation of satellites and the cable systems proposed for introduction in this region in the mid-1980s is not significant. Only in the event of a delay of 2 years in the availability of a major path satellite and a delay of the fiber optic cable would there be insufficient capacity to meet demand in 1988.

J. Analysis of ANZCAN South

87. The southern portion of the ANZCAN cable system, connecting Hawaii with Australia, New Zealand and Fiji, is a replacement for the retiring COMPAC cable system. All three facilities plans developed by the carriers include roughly the same USISCs participation in the ANZCAN South cable system. Plan IIB includes the USISCs procuring 648 half circuits in a cable whose total capacity is 1380 whole circuits. This means that 47 percent of the total circuits in the ANZCAN South cable will be used by the USISCs in

conjunction with their foreign correspondents.

88. Table 5 shows the cost of a half circuit IRU in the ANZCAN South cable to be 105,000 dollars and 130,000 dollars for the Hawaii/Australia and Hawaii/New Zealand lengths, respectively. This is equivalent to a cost of 4375 dollars and 5417 dollars on a one half circuit-year basis, respectively. The total USISC investment cost outlay for ANZCAN South participation, as shown in Plan IIB, is 71.2 million dollars. However, given the indications that some of the U.S. carriers may not have made a final determination of the number of ANZCAN South circuits they require, this amount may change.

89. The quality of service impact of not participating in the ANZCAN South cable is significant. Examination of the baseline Plan I (modified to assure that the INTELSAT primary path spacecraft in the Pacific region is replaced by the projected follow-on series at the end of its life) demonstrates that the percentage of total circuits on cable (the cable ratio) to Australia will steadily decline to zero by 1991 without participation in ANZCAN South. This will leave the United States with no cable route to Australia and other southern Pacific points. The only currently operating direct cable path between Hawaii and Australia, the COMPAC system, is due to be replaced by the new ANZCAN cable and retire in 1989 under Plan IIB. The only other cable route to Australia from the United States is via Guam and other southern Pacific points through the SEACOM system. However, SEACOM is due to reach retirement in 1991 and no replacement for it is indicated by the plans submitted by the carriers. In contrast, the participation of the U.S. carriers in ANZCAN South as shown in Plan II or III results in a cable ratio between the U.S. and Australia of 30 to 35 percent in the mid-1980's, declining to 25 percent in 1995.³⁸ Moreover, as demonstrated by the previously discussed flexibility analyses, U.S. carrier use of ANZCAN South circuits permits U.S. Pacific Region international traffic demand during the 1986-1988 period to be satisfied without the need to construct an analog TPC-3 cable system.

K. The Operational Spare Satellite

90. The concept of an operational spare satellite is designed to provide additional path diversity with no increase in overall satellite capacity.

³⁶ Comsat's December 10 submission to the record, Tab G, Table 1.

³⁷ If the total number of ANZCAN South circuits proposed to be acquired by the U.S. carriers in Plan IIB could be used by extending more of those circuits to the Mainland by use of either additional ANZCAN North circuits or additional domestic satellite circuits, Plan IIB could provide demand flexibilities of 23.8 percent in 1986 and 12.4 percent in 1987, if required.

³⁸ See AT&T submission of December 10, Tab 16, Table B-1, and Table 4 in this NPRM.

This results in an overall increase in quality of service. With the traffic split equally between a primary path and operational spare satellite, the failure of one of these facilities implies that one half the traffic flow continues to be maintained during the period in which an antenna points over to the remaining satellite to restore full service. Without the operational spare, all satellite traffic would be lost during the period of point over to the backup spare satellite.

91. Comsat states that the latest INTELSAT plans call for the operational spare satellite to be utilized starting in 1984 by four countries in addition to the U.S. (Australia, Taiwan, Japan, and New Zealand). The operational spare is obtained at minimal additional facilities cost for the United States.³⁹

V. Summary and Tentative Conclusions

92. The foregoing analyses demonstrates that existing Pacific Ocean Region facilities in place in 1988 will be unable to provide sufficient capacity to satisfy forecasted demands for international services between the U.S. and Pacific points in that year. U.S. acquisition and use of circuits in the ANZCAN South cables could provide sufficient additional capacity to permit predicted demands for U.S. international services to be satisfied at adequate levels of service quality during the mid-1980's to points on both the Hawaii-Australia and the Hawaii-Guam-Japan cable routes. Moreover, U.S. carrier acquisition and use of circuits in the ANZCAN South cable are required to provide media diversity to southern Pacific points between 1991 and 1995 since that facility is the only direct cable route between the U.S. and those points now projected to be available during the period. Consequently, we tentatively conclude that U.S. interests would be served by U.S. carrier investment based acquisition and use of half interest in circuits in the ANZCAN South cable system. However, since there are indications that some U.S. carriers may not have yet reached a final determination of number of ANZCAN South circuits they may require, we shall not express a tentative preference for the number of such circuits which should be acquired.

93. We tentatively conclude that U.S. carrier acquisition and use of half interests in the 538 ANZCAN North cable circuits proposed in Plan IIB to be

interconnected with ANZCAN South and TPC-2 circuit and in the 198 ANZCAN North circuits⁴⁰ proposed to be used for service between Hawaii and Canada and Europe would serve U.S. interests. We also tentatively conclude that U.S. carriers would be served by the U.S. record carriers' acquisition and use of whole interests in the 58 ANZCAN North circuits proposed in Plan IIB. However, in view of the additional costs of the proposed permanent acquisition of some of the ANZCAN North half circuits and the fact that no reasons for such permanent acquisition has been provided, we further tentatively conclude that all of the above ANZCAN North circuits should be acquired on a temporary infeasible right of user basis. We shall also request AT&T, the Hawaiian Telephone Company and ITT World Communications Inc., to apprise us of the reasons supporting permanent acquisition of the ANZCAN North half circuits they propose.

94. We are unable to tentatively conclude on the basis of the record before us that the temporary acquisition of 600 ANZCAN North whole circuits proposed for use in providing U.S. Mainland-Hawaii telephone services would serve U.S. interests. Given the indications that the AT&T domestic satellite system may have sufficient capacity to satisfy demands for that service during the mid-1980's and the apparent availability of capacity in other U.S. domestic satellite systems, acquisition of these circuits may not be warranted. However, because the record before us does not furnish adequate information pertaining to the amount of capacity available for U.S. Mainland-Hawaii services in the AT&T and other U.S. domestic satellite systems or the costs for use of capacity in those systems, we are also unable to tentatively conclude that acquisition of the 600 ANZCAN North whole circuits would not serve U.S. interests. Consequently, we shall make no tentative finding on these circuits and will require the parties to provide the information necessary to allow us to make this determination in our Report and Order in this rulemaking.

95. While construction and use of the analog HAW-4 and TPC-3 cables proposed in Plan III would provide increased demand flexibility and route and media diversity to some points in the Pacific Ocean region, we tentatively

conclude that these cables are not essential to satisfy projected demands for service at adequate levels of service quality during the mid-1980's. U.S. carrier temporary use of ANZCAN North circuits in conjunction with their permanent use of ANZCAN South circuits can adequately satisfy these service demands at less cost. Moreover, such use of ANZCAN North and South cable circuits would be more compatible with the early introduction of the more cost effective digital optical fiber cable technology into the Pacific Ocean region. Therefore, we tentatively conclude that construction and use of the analog HAW-4 and TPC-3 cables proposed in Plan III would not serve U.S. interests.

96. Given the additional route diversity which would be provided and the minimal U.S. costs which would be incurred, we tentatively conclude that configuration of the INTELSAT Pacific Ocean region in-orbit spare satellite as an operational spare satellite during the mid-1980's is desirable.

97. We tentatively conclude that the master plan approach to development of a circuit distribution methodology for the mid-1980's is acceptable if the plan developed (1) generally reflects the optimal service quality properties of a balanced loading circuit distribution; (2) gives due consideration to the costs to the ratepayers; and (3) includes a specific mechanism to deal with deviations for forecasted traffic levels. We also tentatively conclude that the U.S. record carriers should be exempted from a specific circuit distribution methodology because of the existence of customer preferences for cable or satellite circuits.

A. Additional Information To Be Supplied by the Carriers and Comsat

98. In addition to the various responses required earlier in this document, we request the U.S. carriers and Comsat to provide us with any updated information they now have which is relevant to this proceeding. Specifically, we request that these parties indicate any changes in the interests they propose to acquire in the ANZCAN North and ANZCAN South cable systems or in the costs for acquisitions of interests in those cables. We further request AT&T to indicate the maximum number of circuits which will be available in its domestic satellite system for U.S. Mainland-Hawaii use between 1984 and 1988. We further request AT&T to indicate any additional costs it would incur because of such use of those domestic satellite circuits. Operators of other U.S. domestic

³⁹ While AT&T's cost analysis includes an additional U.S. Mainland earth station antenna in 1984 for use with the operational spare satellite, Comsat's cost analysis does not. However, Comsat does assume construction of a complete third West coast earth station in 1987 to work with the major path Pacific satellite.

⁴⁰ The original number of circuits in Plan IIB for service to Europe and Canada was 203. In a December 15, 1981 supplemental filing, the Hawaiian Telephone Company reduced the number of ANZCAN North circuits it proposes to acquire for use to Europe from 42 to 35.

satellite systems which are willing to make U.S. Mainland-Hawaii capacity in their systems available to the U.S. international carriers should specify the number of circuits available, the period during which those circuits could be made available and the charges for use of those circuits. These operators should also indicate if new earth stations will have to be constructed to provide this capacity to the international carriers and the cost of any such earth stations. Changes in the costs for or availability of any other facilities being considered in this proceeding should also be submitted as well as any other relevant information. The effects of any changed information submitted on the parties' analyses and evaluation of the alternatives plans should also set forth. We further request AT&T, Hawaiian Telephone Company and ITT World Communications Inc. to indicate the reasons for, and the benefits accruing from, their proposal to acquire some ANZCAN North cable circuits on a permanent rather than a temporary basis. We also request the carriers and Comsat to file a master loading plan for the mid-80's facilities with their comments on this NPRM.

99. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding

must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

VI. Ordering Clauses

100. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403 (1970), and pursuant to Section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c) (1970), that a rulemaking looking toward development of the policy we shall apply in acting upon applications by the United States international service carriers and the Communications Satellite Corporation for authorization to construct and operate new cable and satellite transmission facilities to meet traffic demands in the Pacific Ocean region during the 1981-1995 period is hereby instituted.

101. It is further ordered that Alascom, Inc., the American Telephone and Telegraph Company, the Communications Satellite Corporation, the Department of Defense, FTC Communications, Inc., the Hawaiian Telephone Company, the State of Hawaii, ITT World Communications Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation and Western Union International, Inc. are made parties respondent to the rulemaking initiated herein.

102. It is further ordered that the U.S. international service carriers and Comsat shall, and the other entities named as parties herein and other interested persons may, by June 1, 1982 file comments pertaining to the record and various alternative facilities construction and use plans discussed above and to the Commission's tentative conclusions set forth above, and by June 14, 1982 shall file reply comments. In

reaching its decisions, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

103. It is further ordered that the petitions to intervene filed by the Department of Defense and the State of Hawaii and the requests to be made a party by Alascom Inc., FTC Communications, Inc. and TRT Telecommunications Corporation are hereby granted.

104. It is further ordered that the U.S. international service carriers and Comsat shall include in their comments the additional planning information requested by paragraph 98 above.

105. It is further ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1980), that the Chief, Common Carrier Bureau is hereby delegated authority to meet with the U.S. international service carriers, Comsat, other parties to this Docket, and other interested persons to facilitate acquisition of the information requested in paragraph 98.

106. It is hereby certified, pursuant to section 605(b) of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*, that sections 603 and 604 of that Act do not apply to this rulemaking since the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The primary economic impact of these rules, if promulgated, will be on the U.S. international carriers and the Communications Satellite Corporation.

107. It is further ordered that the Secretary shall provide a copy of the above certification and statement to the Chief Counsel for Advocacy of the Small Business Administration and shall cause said certification and statement to be published in the Federal Register.

Federal Communications Commission.
William J. Tricarico,
Secretary.

TABLE 1.—PARTIES TOTAL PLAN COSTS

[1982 Dollars in Millions]

Method	Plan	Cable	Satellite	Total
AT&T:				
Use	IIA	274.2	355.1	629.3
Related	IIIB	263.9	367.2	631.1
Investment	III	321.8	351.5	673.3
Related	IIA	274.2	202.4	476.6
	IIIB	263.9	205.9	469.8

TABLE 1.—PARTIES TOTAL PLAN COSTS—Continued

[1982 Dollars in Millions]

Method	Plan	Cable	Satellite	Total
Cosat ²	III	321.8	202.8	524.6
Investment	IIA	267.0	146.2	413.2
Related	IIB	262.7	146.2	408.9
	III	365.7	140.1	505.8

¹ AT&T response of December 10, 1981, tab 14.² Cosat response of December 10, 1981, tab G.

TABLE 2.—DEMAND FLEXIBILITY FOR PACIFIC SATELLITE

[Assumes no new cables]

	1984	1985	1986	1987	1988
Spare satellite capacity in circuits (no MP) ¹	1417	691	(182)	(677)	(1869)
Satellite demand flexibility in percent (no MP) ¹	45	18	(4)	(12)	(27)

¹ Cosat response of 12/10/81, tab G, table 2.

TABLE 3A.—INTERNATIONAL CABLE DEMAND FLEXIBILITY, U.S. MAINLAND-PACIFIC, A.T. & T. AND RECORD CARRIERS

[Derived From A.T. & T. Response of December 10, 1981, Tab 18—in Percent]

	North America-Hawaii		Hawaii-Australia		Hawaii-Guam-Japan	
	IIB	III	IIB	III	IIB	III
1984	90	290	414	393	32	32
1985	71	261	288	321	24	24
1986	45	141	204	222	7	157
1987	31	107	144	153	(3)	124
1988	162	76	110	114	230	91

TABLE 3B.—INTERNATIONAL SATELLITE DEMAND FLEXIBILITY

[Cosat Response of December 10, 1981, Tab G, Tables 4a and 5a]

	Percentage			Percentage	
	IIB	III		IIB	III
1984	53	53	1987	98	120
1985	27	26	1988	81	87
1986	7	18			

TABLE 3C.—COMBINED CABLE AND SATELLITE DEMAND FLEXIBILITY, INCLUDES A.T. & T. HTC AND IRCs, FOR HAWAII-SOUTHERN PACIFIC AND HAWAII-WESTERN PACIFIC REGION

[Derived from A.T. & T. and Cosat Response of December 10, 1982 and Supplement of A.T. & T. Dated January 21, 1982]

	Percentage			Percentage	
	IIB	III		IIB	III
1986	15.4	75.4	1987	78.0	129.0

TABLE 4.—QUALITY OF SERVICE

[For MTS Circuits Only]

		1984	1985	1986	1987	1988
Percent of total international MTS circuits on cable ¹	IIB	29	27	27	25	31
	III	29	26	34	33	33
Australia:						
Percent of MTS circuits on cable ²	IIB	29	32	35	37	36
	III	29	27	31	33	33
Number of independent routes ³	IIB	4	4	4	4	4
	III	3	3	3	3	3
Percent of surviving circuits ⁴	IIB	45	54	61	67	68
	III	45	54	61	67	68
Japan:						
Percent of MTS circuits on cable ²	IIB	33	31	34	33	44
	III	33	31	42	45	45
Number of independent routes ³	IIB	4	4	4	4	5
	III	4	4	5	5	5
Percent of surviving circuits ⁴	IIB	50	58	65	66	71
	III	50	58	65	71	72
Philippines:						
Percent of MTS circuits on cable ²	IIB	42	37	32	27	32
	III	42	37	46	39	36
Number of independent routes ³	IIB	3	3	3	4	5
	III	3	3	4	5	5
Percent of surviving circuits ⁴	IIB	42	37	31	42	51

TABLE 4.—QUALITY OF SERVICE—Continued
[For MTS Circuits Only]

		1984	1985	1986	1987	1988
Hawaii: ¹	III	42	36	46	54	61
Percent of MTS circuits on cable.....	I	12	9	8	7	6
	IIB	26	26	22	20	31
	III	26	39	37	36	37
Number of independent routes.....	I	4	4	4	4	4
	IIB	5	5	5	5	6
	III	5	5	5	5	5
Percent of surviving circuits.....	I	56	54	54	53	53
	IIB	63	63	61	60	65
	III	70	69	68	68	

¹ AT&T response of 12/10/81, Table 16, table A-1² Derived from AT&T response of Sept./Nov. 81—circuits distribution.³ AT&T response of 12/10/81, Table 16, table B-1.TABLE 5.—INDIVIDUAL FACILITY UNIT COSTS ¹

[1981 Dollars]

	Period of use—years	Dollars per one-half circuit-year ²	Dollars per one-half circuit IRU
ANZCAN (N)—Temporary.....	5	\$2,794	\$13,972
ANZCAN (N)—Permanent.....	24	1,667	40,000
HAW-4 (Analog).....	24	650	15,600
HAW-4 (Fiber Optic).....	24	329	7,900
TPC-3 (Analog).....	24	2,038	48,900
TPC-3 (Fiber Optic).....	24	538	12,900
ANZCAN (S)—Australia.....	24	4,375	105,000
ANZCAN (S)—N. Zealand.....	24	5,417	130,000
COMSTAR—Domestic Satellite ³	7	1,071	7,500

¹ Except as otherwise noted, source is AT&T Response of December 10, 1981, Tab 13.² The cost per 1/2 cir.-yr. is obtained by dividing the cost per 1/2 cir. IRU by the expected period of use (i.e. column 3 ÷ column 1).³ Assumes an initial purchase at \$40,000/1/2 cir., sell back at net book value at the end of 5 years, and obtaining a discounted present value cost (with a 4% discount rate).⁴ Source: AT&T letter of February 8, 1982 included in the record.

TABLE 6.—AVERAGE UNIT COST BY MEDIA

[Dollars Per One-Half Circuit-Year]

Method	Plan	Cable	Satellite
AT&T use related ¹	IIB	\$1,639	\$3,199
	III	1,693	3,249
AT&T investment related ¹	IIB	1,639	1,794
	III	1,693	1,875
Comsat investment related ²	IIB	4,610	1,470
	III	6,010	1,520

¹ AT&T Response of December 10, 1981, Tab 14.² Comsat Response of December 10, 1981, Tab G.

TABLE 7.—TOTAL US/SC FACILITY INVESTMENT

COST OUTLAY ¹
[Millions of Dollars]

ANZCAN (N)—Plan IIB.....	34.0
ANZCAN (N)—Modified IIB: replacing 300 temporary international circuits with 300 permanents.....	41.8
ANZCAN (N)—Modified IIB: all temporary.....	28.7
ANZCAN (N)—Modified IIB: all international circuits ² temporary, no domestic circuits for AT&T-HTC.....	11.9
HAW-4 (Analog)—Plan III.....	92.3
TPC-3 (Analog)—Plan III.....	66.8

¹ Based upon the number of circuits shown in the Plans IIB and III circuit distribution as being purchased by the USISC in the given facility using the IRU costs in Table 5.² Assumes that AT&T's 600 bearer and 504 TASI derived whole circuits are taken off ANZCAN North and all 1104 circuits are placed on AT&T's domestic satellite as bearer circuits. We also calculate the investment cost outlay will be increased to \$15.9 million if the ANZCAN North cable is reconfigured as 1380 (4 KHz) circuits cable.

Appendix 1

This appendix consists of a list of all documents which have been made a part of the record. The actual documents constituting the record are incorporated by reference in this proceeding and copies are available for public inspection in Room 230 (Dockets Branch) and Room 538 (International

Facilities Planning Division) of the Commission's headquarters at 1919 M Street, NW, Washington, D.C. 20554.

Document Description

1. Comments on the Commission's Notice of Inquiry and Reply Comments of Interested Parties:

(a) Includes Comments from American Telephone and Telegraph Company (AT&T), ITT World Communications Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), Western Union International, Inc. (WUI), Comsat, Hawaiian Telephone Company (Hawtel), FTC Communications, Inc., The Department of Defense, The State of Hawaii, and the Joint Council on Educational Telecommunications (submitted on July 15, 1981).

(b) Reply Comments From AT&T, Comsat, ITT Worldcom, WUI, and Alascom, Inc. (submitted on July 30, 1981).

2. Staff's Questionnaire: Part 1—Planning Information. Part 2—Alternative Plans and Analyses.

3. Responses to Staff's Questionnaire: (a) AT&T submissions of September, 1981 (including some amendments of November, 1981) and December 10, 1981—the alternative plans.

(b) Comsat submission of December 10, 1981.

(c) Actual use of current facilities: Hawtel, ITT Worldcom, RCA Globcom and WUI (submitted on July 2, 1981).

(d) IRCs joint response on the subject of Demand Forecast methodology (submitted on July 28, 1981).

(e) IRCs joint contribution on evaluation of the plans (submitted on December 10, 1981).

(f) IRCs joint contribution of Facility Loading Criteria (submitted on December 10, 1981).

(g) Hawtel submission of December 15, 1981.

4. A letter dated December 10, 1981 from Mr. Fred W. Morris, Telecommunications Consultant to the State of Hawaii, to Mr. J. Michael Cummins.

5. A letter dated December 23, 1981 from Mr. Willard L. Demory to Domestic Satellite Carriers.

6. Responses to Mr. Demory's letter from Domestic Satellite Carriers.

7. A letter dated January 21, 1982, with attachments, from Mr. J. A. McEntee, Jr. of AT&T to core group members.

8. A letter dated February 8, 1982 from Mr. J. A. McEntee, Jr. of AT&T to core group members.

Appendix 2

Note:—Because of the ongoing effort to minimize publishing costs, Appendix 2, which contains a series of questions developed by the Commission's staff and tabled at the first

public meeting in connection with this docket, will not be printed herein. However,

it may be reviewed in the FCC Dockets Branch, Room 239, 1919 M St., N.W., Washington, D.C.

Appendix 3.—Facility Plan Features and Assumptions

PLAN I

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
None				HAW-1 (Main-Haw.)	51	1984
				COMPAC (North) (Can.-Haw.)	81	1989
				COMPAC (South) (Haw.-Fiji-N. Zealand-Aust.)	81	1989
				HAW-2 (Main-Haw.)	143	1989
				TP-1		1989
				(Haw.-Guam)	142	
				(Guam-Japan)	138	
				SEACOM-1 (Guam-Hong Kong-Malaysia-Singapore)	82	1989
				SEACOM-2 (Guam-Papua, N.G.-Aust.)	166	1991

SATELLITE FACILITIES

Hawaii-Mainland			International			
Satellite capacity ¹	COM-STAR (3366)	No satellites	Satellite FM capacity ²	IV ³	IV-A (2700)	No satellites
Path 1	*1981	1987	Primary path	*1981	1982	1983
Path 2	*1981	1987	Major path			
			Spare	*1981	1982	1983

¹ AT&T does not provide a maximum capacity available for U.S.-Mainland-Hawaii services on its domestic satellites. The capacity figure shown is the maximum number of Mainland-Hawaii circuits placed on each satellite of the COMSTAR satellite paths under this plan.

² The COMSTAR satellites are already in place at the beginning of the planning period.

³ The capacity shown is the capacity Comsat indicates is available for U.S. traffic from the Mainland and Hawaii to other Pacific points.

* No capacity figure was provided for the INTELSAT IV satellites.

* The INTELSAT IV satellites are already in place at the beginning of the planning period.

PLAN IIA

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
ANZCAN (North) (Can.-Haw.)	¹ Analog STC	* 656 Whole	1984	Haw-1 (Main-Haw.)	51	1984
		748 Half		COMPAC (South) (Haw.-Fiji-N. Zealand-Aust.)	81	1984
ANZCAN (South)	* Analog			COMPAC (North) (Can.-Haw.)	81	1989
(Haw.-Fiji)		* 24	1984			
(Haw.-Aust.)		496				
(Haw.-N. Zealand)		128		Haw-2 (Main-Haw.)	143	1989
Haw-4 (Main-Haw.)	Digital Optical Fiber AT&T.	* 8,000	1988	TP-1		1989
				(Haw.-Guam)	142	
				(Guam-Japan)	138	
TP-3 (Haw.-Japan)	Digital Optical Fiber AT&T.	* 4,000	1988	SEACOM-1 (Guam-Hong Kong-Malaysia-Singapore)	82	1989
				SEACOM-2 (Guam-Papua N. G.-Aust.)	166	1991

SATELLITE FACILITIES

Hawaii-mainland			International						
Satellite capacity	COM-STAR ¹	TEL-STAR ²	Satellite FM capacity ³ with TDMA/DSI ¹¹	IV ¹²	IV-A (2700)	V (4600) (5400)	V-A (5100) (6000)	VI (8700) (11000)	VI-A ¹³
Path 1	* 1981	(*)	Primary Path	¹² 1981	1982	1984	1987	1991	1994
Path 2	* 1981	(*)	Major Path				1987	1992	1995
			Spare	¹² 1981	1982	1984	1987	1991	1994

¹ The Canada-Hawaii segment of the ANZCAN cable will utilize a Standard Telephone and Cables, Ltd. design and will be configured to provide 1840 3 kHz voice circuits.

² These figures indicate only the number of voice circuits the U.S. carriers propose to acquire in the Canada-Hawaii segment of the ANZCAN cable. The figures for 1984 reflect the carriers proposal to acquire 656 whole and 545 half circuits on a temporary basis for use during 1984-1988 inclusive in addition to 203 half circuits to be acquired on a permanent basis. The 656 whole circuits temporarily acquired will be used for U.S. Mainland-Hawaii traffic. The 545 temporarily acquired half circuits will be used for service between the U.S. Mainland and Australia, Fiji, New Zealand and other Pacific points. Of the remaining

203 permanently acquired half circuits, Hawtel will use 160 for Hawaii-Canada traffic and 42 for Hawaii-Europe traffic. ITT Worldcom will use the remaining half circuit for its Hawaii-Canada traffic.

² The ANZCAN cable south of Hawaii will consist of four segments—Hawaii-Fiji, Fiji-Norfolk Island, Norfolk Island-Australia and Norfolk Island-New Zealand. The first three segments will utilize the same STC design as ANZCAN North but will be equipped to provide 1,390 4 kHz circuits. The Norfolk Island-New Zealand segment will utilize a different STC cable design equipped to provide 480 4 kHz circuits.

³ These figures indicate the number of circuits in the ANZCAN South cable segments between Hawaii and Australia, Fiji and New Zealand being acquired by U.S. carriers on a one-half circuit permanent basis.

⁴ This cable will utilize AT&T's SL digital optical fiber cable design now being developed to provide two optical fiber paths; each one is capable of providing the equivalent of 4,000 basic voice grade circuits.

⁵ This cable will utilize AT&T's SL digital optical fiber cable design to provide one optical fiber path capable of providing the equivalent of 4,000 basic voice grade circuits.

⁶ AT&T did not indicate the maximum capacity available for U.S.-Mainland-Hawaii traffic in either the COMSTAR or TELSTAR satellites. It states that adequate capacity on these satellites was available for growth throughout the planning period. However, it also states that the availability of AT&T domestic satellite for service to offshore points (Hawaii, the U.S. Virgin Islands and Puerto Rico) has been planned and the maximum utilization of that capacity is reflected in the alternative facilities plans. It further states that because of increased demand requirements on AT&T's domestic satellite capacity, no additional planned capacity is available for use to offshore points.

⁷ The COMSTAR satellites are already in use for Mainland-Hawaii service.

⁸ AT&T does not indicate when the TELSTAR satellites will be introduced on the Mainland-Hawaii route.

⁹ The capacity shown for each satellite is Comsat's estimate of the capacity available for U.S. services from the Mainland and Hawaii to Pacific points utilizing only the 6 and 4 GHz capacity of the satellites. The INTELSAT V, V-A, VI and VI-A satellites will have the capability to provide additional capacity in the 14 and 11 GHz frequency bands. However, Comsat indicates that, because of the geography of the Pacific Ocean region and the constraints on the design of those satellites imposed by the requirements they must meet in other ocean basins, the 14/11 GHz capacity could only be used from the U.S. to one of the following Pacific points—Hong Kong, Japan, Korea or Taiwan. Comsat indicates that it is possible that both Japan and Korea might be able to access the 14/11 GHz capacity of the satellite if their 14/11 GHz earth stations are optimally located.

¹⁰ The satellite capacity shown is that available for U.S.-Pacific services assuming no use of the 14/11 GHz capacity of the satellites.

¹¹ No capacity figures are given for these satellites.

¹² The INTELSAT IV satellites are already in service in the Pacific Ocean region.

PLAN IIB

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
ANZCAN (North) (Can.-Haw.)	Analog STC	656 ^{1,2} Whole	1984	HAW-1 (Main.-Haw.)	51	1984
		741 Half		COMPAC (North) (Can.-Haw.)	81	1989
ANZCAN (South) (Haw.-Fiji)	Analog ³	24	1984	COMPAC (South) (Haw.-Fiji N. Zealand-Aust.)	81	1989
		496				
(Haw.-N. Zealand)	Digital, Optical, Fiber, AT&T	128	1988	HAW-2 (Main.-Haw.)	143	1989
HAW-4 (Main.-Haw.)		8000		TP-1 (Haw.-Guam)	142	1989
TP-3 (Haw.-Japan)	Digital, Optical, Fiber, AT&T	8000	1988	(Guam-Japan)	138	1989
				SEACOM-1 (Guam-Hong Kong-Malaysia-Singapore)	82	1989
				SEACOM-2 (Guam-Papua, N. G.-Aust.)	166	1991

SATELLITE FACILITIES

Hawaii-Mainland			International						
Satellite capacity	COM-STAR ¹	TEL-STAR ²	Satellite FM capacity ¹⁰ with TDMA/DSI ¹¹	IV ¹²	IV-A (2700)	V (4600) (5400)	V-A (5100) (6000)	VI (8700) (11000)	VI-A ¹³
Path 1	81981	8	Primary Path	121981	1982	1984	1987	1991	1994
Path 2	81981	8	Major Path	121981	1982		1987	1992	1995
			Spare				1987	1991	1994
			Operational Spare						

¹ See footnote 1 for Plan IIA.

² These figures indicate only the number of voice circuits the U.S. carriers propose to acquire in the Canada-Hawaii segment of the ANZCAN cable. The figures for 1982 reflect the carriers' proposal to acquire 656 whole circuits and 538 half circuits on a temporary basis for use during 1984-1988, inclusive. The 656 whole circuits temporarily acquired will be used for U.S. Mainland-Hawaii traffic. The 538 temporarily acquired half circuits will be used for service between the U.S. Mainland and Australia, Fiji, New Zealand and other Pacific points. The remaining 203 acquired half circuits are permanent; Hawtel will use 160 of them for Hawaii-Canada traffic and 42 for Hawaii-Europe traffic. ITT Worldcom will use the remaining half circuit for its Hawaii-Canada traffic.

³ See footnote 3 for Plan IIA.

⁴ See footnote 4 for Plan IIA.

⁵ See footnote 5 for Plan IIA.

⁶ See footnote 6 for Plan IIA.

⁷ See footnote 7 for Plan IIA.

⁸ See footnote 8 for Plan IIA.

⁹ See footnote 9 for Plan IIA.

¹⁰ See footnote 10 for Plan IIA.

¹¹ See footnote 11 for Plan IIA.

¹² See footnote 12 for Plan IIA.

¹³ See footnote 13 for Plan IIA.

¹⁴ Use of the in-orbit spare satellite as an operational spare entails dividing the traffic on the primary path satellite between that satellite and the in-orbit spare satellite. This provides two independent satellite paths in the Pacific Ocean region. However, use of the in-orbit spare satellite as an operational spare does not increase the total satellite capacity available in the region because of the need to maintain the capability to place all satellite traffic on a single satellite in the event of a satellite failure. Comsat indicates in its December 10 submission that the operational spare is expected to be used by the U.S., Taiwan, Japan, Australia, and New Zealand in 1984. Satellite capacity will be increased by the introduction of a major path satellite into the region in 1987.

PLAN III

Cables added				Cables retired		
Cable and route	Type and design	Basic circuit capacity	Year introduced	Cable and route	Basic circuit capacity	Year retired
ANZCAN (North) (Can.-Haw.)	Analog ¹	*161	1984	HAW-1 (Main.-Haw.)	51	1984
	STC			COMPAC (North) (Can.-Haw.)	81	1984
				COMPAC (South) (Haw.-Fiji-N. Zealand-Aust.)	81	1984
ANZCAN (South) (Haw.-Fiji) (Haw.-Aust.) (Haw.-N. Zealand) HAW-4 (Main.-Haw.) TP-3 (Haw.-Japan)	Analog ²	*24 496 128	1984			
	Analog AT&T	*4200	1984	HAW-2 (Main.-Haw.)	143	1989
	Analog	*1600	1986	TP-1 (Haw.-Guam)	142	1989
	XL			(Guam-Japan)	138	
HAW-5	Digital Optical Fiber AT&T	*8000	1991	SEACOM-1 (Guam-Hong Kong-Malaysia-Singapore)	82	1989
TP-4 (Haw.-Guam)	Digital Optical Fiber AT&T	*8000	1991	SEACOM-2 (Guam-Papua, N. G.-Aust.)	166	1991

SATELLITE FACILITIES

Hawaii-Mainland			International						
Satellite capacity	COM-STAR ³	TEL-STAR ⁴	Satellite FM capacity ¹² with TDMA/DSI ¹³	IV ¹⁴	IV-A (2700)	V (4600) (5400)	V-A (5100) (6000)	VI (8700) (11000)	VI-A ¹⁴
Path 1	¹⁰ 1981	(¹¹)	Primary Path	¹⁵ 1981	1982	1984	1987	1991	1994
Path 2	¹⁰ 1981	(¹¹)	Major Path				1987	1992	1995
			Spare	¹⁵ 1981	1982		1987	1991	1994
			Operational Spare			¹⁶ 1984			

¹See footnote 1 for Plan IIA.²The figure reflects 160 half circuits. Hawtel proposes to acquire on a permanent basis for the provision of Hawaii-Canada services and one half circuit ITT Worldcom proposes to acquire on a permanent basis for the provision of its Hawaii-Canada services.³See footnote 4 for Plan IIA.⁴See footnote 5 for Plan IIA.⁵This cable will utilize AT&T's SG analog design to provide 4200 3 KHz circuits.⁶This cable will utilize a Japanese analog design to provide 1600 3 KHz circuits.⁷See footnote 6 for Plan IIA.⁸See footnote 7 for Plan IIA.⁹See footnote 8 for Plan IIA.¹⁰See footnote 9 for Plan IIA.¹¹See footnote 10 for Plan IIA.¹²See footnote 11 for Plan IIA.¹³See footnote 12 for Plan IIA.¹⁴See footnote 13 for Plan IIA.¹⁵See footnote 14 for Plan IIA.¹⁶See footnote 15 for Plan IIA.

Additional U.S. Earth Station Facilities Assumed by the Alternative Plans

AT&T Assumptions

Plan IIA

One U.S. Mainland 6/4 GHz antenna—1987

One Guam 6/4 GHz antenna—1987
Plans IIB and III

One U.S. Mainland 6/4 GHz antenna—1984

One Guam 6/4 GHz antenna—1984¹

Comsat Assumptions

Plans IIA, IIB and III

One Guam 6/4 GHz antenna—1984²¹The stated plan assumptions as well as those stated for the cost analysis indicate construction of the additional Guam antenna in 1984. However, the distribution of AT&T circuits to Guam in these plans does not indicate use of the second satellite path to Guam until 1987.²Comsat does not identify this antenna by name in its cost assumptions. However, its description of the assumptions indicates that this is indeed the Guam antenna.One additional West Coast—1987
Earth Station with 2 6/4 GHz antennas

Note:—While none of the plans or cost study assumptions include it, the circuit distributions for at least some of the carriers (e.g., Hawaiian Telephone Company) appear to contemplate an earth station on Midway beginning in 1989 when Transpac 1 is retired, since existing cable circuits are transferred to satellite.

[FR Doc. 82-13249 Filed 5-19-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 2

[Gen. Docket No. 82-242; FCC 82-200]

Amendment of the Commission's Rules To Simplify the Equipment Authorization Procedures

AGENCY: Federal Communications Commission.

ACTION: proposed rule.

SUMMARY: This document proposes the implementation of a simplified equipment authorization that would reduce the time spent by applicants in obtaining approval of their equipment. This item is being issued to reduce the paperwork requirements placed on the public and this Commission.**DATES:** Comments must be filed on or before July 6, 1982 and Reply Comments on or before July 21, 1982.**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.**FOR FURTHER INFORMATION CONTACT:** John A. Reed, Office of Science and Technology, (202) 653-6288.**SUPPLEMENTARY INFORMATION:**

List of Subjects 47 CFR Part 2

Administrative practice and procedure, Communications equipment, Disaster assistance, Federal Communications Commission, Imports, Radio, Wiretapping and electronic surveillance.

In the matter of amendment of Part 2 of the Rules to simplify the equipment authorization procedures, Gen. Docket No. 82-242.

Adopted: April 29, 1982.

Released: May 7, 1982.

1. Notice is hereby given that we are considering the use of a simple method of notification to augment our equipment authorization procedures. This action, as contemplated, will reduce the regulatory requirements for the authorization of some of the equipment now covered under our equipment authorization programs. The matter of which equipment will be included under the new procedure is not contained in this proposal but will be the subject of future proceedings.

2. The current equipment authorization procedures that are used to determine if specific equipment is capable of complying with the applicable technical standards consist of the following: Type approval, where the actual equipment is tested at our laboratory prior to the issuance of an authorization; type acceptance, where test data and information submitted by the manufacturer concerning the equipment are evaluated by us, prior to the issuance of an approval; and other procedures, such as certification and registration, which apply to other categories of equipment but are similar to the type acceptance procedures.¹ The

¹Usually, type acceptance applies to transmitters that require a license to operate, certification applies to receivers and transmitters that do not require a license to operate, and registration applies to equipment connected to the telephone lines.

remaining procedure, verification, simply requires that the equipment supplier make the appropriate measurements to determine that the equipment complies with the necessary technical standards prior to marketing and keep records of that test data. Verification requires no report to the Commission and no submission of data unless specifically requested.² Under all of the equipment authorization programs, including the notification procedure being proposed, the rules provide authority for us to require a sample of the equipment to be sent to our laboratory for evaluation.³

3. Some types of equipment may not require the detailed review processes specified under the present equipment authorization procedures. We are currently reviewing our existing evaluation practices and any interference-related problems which may be associated with the equipment so evaluated. If we find the matter of interference control being effectively addressed through some other mechanism, such as licensing review (including required proof-of-performance testing), the equipment may be considered suitable for evaluation under a simpler authorization procedure than those currently required by our rules. Likewise, equipment that presents a low probability of causing interference problems or that has been demonstrated through our past evaluation experience to have a minimum of difficulty in complying with the current regulations could also be included. The latter situation could be considered to represent the "technical maturity" of the equipment design where the type of equipment has been manufactured for so many years as to no longer experience any substantial design problems (standard broadcast AM receivers, while not requiring any form of Commission approval, would be a good example of this concept). For such equipment, we may find that there is no need to continue the burden of either having equipment sent to us for testing or of having detailed measurement data and detailed information sent to us for review.

4. We believe under our mandate of interference control that in some cases a procedure which is less burdensome than the existing authorization procedures would be appropriate. According, we are considering the use of a notification procedure under which the applicant

files a brief description of the equipment and a statement attesting that the equipment has been tested and found to comply with the applicable FCC technical standards. This action would be taken in lieu of expanding the verification program under which no information is filed with the Commission.⁴ We have already determined that most of the equipment discussed in paragraph three of this item, especially higher powered licensed transmitters, can not be brought under verification without increasing the risk of interference problems to an unacceptable level, yet this same equipment may not be so prone to causing interference as to require its inclusion under our existing authorization procedures. Notification would be more stringent than verification but less burdensome than the existing authorization procedures with regard to the amount of data required to be submitted for an equipment authorization. The notification will provide a minimal amount of information to let us know what equipment is being marketed and who is marketing the equipment so that appropriate action may be taken in the event the equipment fails to comply with the regulations or radio frequency interference occurs. We will also have specific assurance from the party responsible for the equipment that it has been tested for compliance with our technical requirements.

5. Because of the above, we are proposing a procedure of notification, as detailed in the Appendix. Under this procedure, the equipment authorization applicant would notify us, in writing, that the equipment complies with the applicable standards and would also provide, on a standard form, certain minimal information concerning the equipment. A modified Form 731 is attached⁵ as an example of such a possible form. This application would be evaluated for completeness, consistency and the stated compliance with the appropriate regulations. The successful completion of this evaluation would result in the issuing of an authorization grant, similar to a grant of type acceptance. As with the type acceptance program, marketing of the equipment could commence upon the issuance of the grant.

6. Under the notification procedure, the delay experienced by an applicant

for receiving the authorization would be greatly reduced. The applicant would be required to make all of the tests to insure that the equipment complies with the applicable rules and would simply notify us to that effect. There would be no need to submit any measurement data, unless specifically requested to do so (for instance, in those cases where the equipment type has shown a greater tendency to causing interference than was anticipated before inclusion under the notification program or in cases where there is some question regarding the ability of the specific equipment to meet the applicable standards.) Since, in most cases, no measurements, schematics, or similar data would have to be evaluated, we anticipate that, ultimately, a grant of equipment authorization would be issued within a period of a few days instead of the current 30 to 90 days. This new procedure does not impose any additional costs on industry since the manufacturers seeking an equipment authorization under the existing procedures are required to bear the cost of their own equipment testing (under type approval, the equipment is tested by this Commission; however, a responsible manufacturer would test the equipment regardless of our testing requirements). By issuing the grant of authorization within a few days of the receipt of the application for notification, we would reduce the cost to the manufacturer by reducing the waiting time between the filing of the application and the allowed marketing of the equipment.⁶

7. In this proceeding, we are merely establishing a new equipment authorization procedure to be known as notification. We are not applying this notification procedure to any particular type of equipment. Specific proposals for moving a particular type of equipment from an existing equipment authorization procedure to the notification procedure will be made under one or more separate rule making proposals.⁷ These rule making proposals would reevaluate our equipment authorization procedures as they apply to various classes of equipment. Since this proceeding addresses only the establishment of a new notification procedure for authorizing equipment and not the technical standards which must

² Verification is a new procedure currently applied to all Class A (commercial, industrial or business environment) and some Class B (marketed for residential environment) computing equipment.

³ Such sampling is currently allowed under §§ 2.936, 2.943, 2.945, 2.956 and 2.957 of our rules.

⁴ Under verification, information is submitted to the Commission only when specifically requested pursuant to § 2.956 of our regulations.

⁵ Not printed herein, but available for review in the FCC Docket Branch, Room 239, 1919 M St. N.W., Washington, D.C., and filed as a part of the original document.

⁶ In accordance with § 2.803 of our regulations, equipment which requires an authorization from this Commission may not be marketed before that authorization is issued.

⁷ At this time, we are considering the inclusion of both licensed and Part 15 unlicensed devices under notification. This would remove the distinction between certification and type acceptance.

be met nor the equipment to which it is applied, suggestions for changes in the technical standards or the inclusion under notification of specific types of equipment are beyond the scope of this proceeding and will not be considered herein. Comments are, however, requested on the matter of retaining the existing equipment authorization procedures. As the notification procedure, and, possibly, the verification procedure become increasingly utilized, it is expected that the existing procedures would be needed for fewer types of equipment. Since the Commission could continue to request pre-grant or post-grant samples for any interference-prone equipment, could some of the existing authorization procedures be deleted?

8. In consideration of these proposals, it must be recognized that there are real risks that undesired radiation from inadequately tested equipment may cause more interference than would be the case were the equipment to remain under our existing authorization procedures. This possibly increased level of electromagnetic interference could affect U.S. Government operations as well as spectrum users licensed by the Commission, other U.S. citizens and operations in other countries. The danger of interference is particularly acute in the case of entirely new products, especially where test methods for the emission type utilized have not been well established, and in the case of consumer products produced in large quantities by foreign manufacturers outside the reach of FCC enforcement authority. As we have noted above, we do not propose in this document what type of equipment will fall under the new notification procedure, yet depending on the extent to which we utilize this procedure, these interference concerns must be factored into our considerations as to what types of equipment should be covered and whether this new authorization procedure should be finally adopted.

9. In order to minimize interference risks, we anticipate the extension of our program of spot checking to include equipment evaluated under notification. We plan to maintain detailed records of equipment placed on the market under the new program in order to facilitate enforcement efforts and to aid the public in determining what types of equipment may be utilized in a radio service that requires the use of approved equipment.⁸ Also, in the event that some

of the equipment eventually included under this program has a greater potential for causing interference or if some equipment submitted for notification appears to be designed for applications other than those contemplated, sampling of the product may have to be made prior to the issuance of a grant of authorization.

10. Because the rules proposed herein are merely procedural and we have not yet proposed their implementation with respect to any specific equipment, there is, by definition, no impact on any entity, large or small. Therefore, pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, an initial regulatory analysis is not required.

11. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contracts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time that a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is issued by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation, addressing matters not fully covered in any previously-filed written comments for the proceeding, must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

12. The proposed amendments to the regulations as set forth in the Appendix below are issued pursuant to the authority contained in Sections 4(i), 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended. In accordance with the applicable procedures set forth in § 1.415 of the regulations, interested

persons may file Comments on or before July 6, 1982 and Reply Comments on or before July 21, 1982. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of these Commission procedures governing *ex parte* presentations in informal rule making is available from the Commission's Consumer Assistance Office, Washington, D.C. 20554.

13. In accordance with the provisions of Section 1.419 of the regulations, an original and five copies of all comments, reply comments, briefs and other documents shall be furnished the Commission. To obtain the widest possible response in this proceeding, informal comments (without extra copies) will be accepted, but these comments should make specific reference to this proceeding. Responses will be available for public inspection during regular working hours in the Commission's Public Reference Room located at its headquarters at 1919 M Street, NW., Washington, D.C. 20554. For further information contact John A. Reed at (202) 653-6288.

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

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

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

Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

1. Section 2.803 is revised as follows:

§ 2.803 Equipment requiring Commission approval.

In the case of a radio frequency device, which, in accordance with the rules in this chapter must be type approved, type accepted, certificated or notified prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any such radio frequency device, unless, prior thereto, such devices shall have been type approved, type accepted, certificated or notified as the case may be: *Provided*,

⁸ Most of the licensed radio services require the use of approved equipment. It is envisioned that such equipment will continue to be published in the Commission's "Radio Equipment List, Equipment

Acceptable for Licensing" even if the equipment is brought under the notification program.

however, That the advertising or display of a device, which has not been granted type approval, type acceptance, certification or notification, will not be deemed to be an offer for sale if such advertising contains, and the display is accompanied by, conspicuous notice worded as follows:

This device has not been approved by the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained.

This provision does not apply to radio frequency devices that could not be granted an equipment authorization or be legally operated under our current rules. Such devices shall not be advertised or displayed or offered for sale or lease or sold or leased.

Provided further, That any non-approved device displayed under the terms of the above proviso may not be activated or operated.

2. Section 2.901 is revised as follows:

§ 2.901 Basis and purpose.

(a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum, the Commission has developed technical standards for radio frequency equipment and parts or components thereof. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards provided, the rules governing the service may require that such equipment be verified by the manufacturer or importer, or that such equipment receive an equipment authorization from the Commission by one of the following procedures: Type approval, type acceptance, certification, registration or notification.

(b) The following sections describe the verification procedure and the procedures to be followed in obtaining type approval, type acceptance, certification or notification from the Commission and the conditions attendant to such a grant.

3. A new § 2.904 is added to read as follows:

§ 2.904 Notification.

(a) Notification is an equipment authorization issued by the Commission where the applicant makes measurements to determine that the equipment complies with the appropriate technical standards and reports that such measurements have

been made and demonstrate the necessary compliance. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission pursuant to §§ 2.936, 2.943 or 2.945.

(b) Notification attaches to all items subsequently marketed by the grantee which are identical, as defined in § 2.908, to the sample(s) tested and found acceptable by the grantee.

(c) Permissive changes or other variations authorized by the Commission to equipment under the notification procedure shall be made in accordance with the restrictions contained in § 2.977.

4. The undesignated subheading after § 2.908 is revised to read as follows:

Application Procedures for Equipment Authorizations

5. Paragraphs (a) and (c) of § 2.915 are revised as follows:

§ 2.915 Grant of application.

(a) The Commission will grant an application for type approval, type acceptance, certification or notification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that:

(c) Neither type approval, type acceptance, certification or notification shall attach to any equipment, nor shall any equipment authorization be deemed effective, until the application has been granted.

6. Section 2.931 is revised, as follows:

§ 2.931 Responsibility of the grantee.

In accepting a grant of an equipment authorization the grantee warrants that each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) determined by the grantee for notification, filed with the application for type acceptance or certification, or measured by the Commission is the case of type approved equipment, continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

7. Paragraph (a) of § 2.932 is revised and a new paragraph (e) is added, as follows:

§ 2.932 Modification of equipment.

(a) A new application for an equipment authorization shall be filed

whenever there is a change in the design, circuitry or construction of an equipment or device for which an equipment authorization has been issued, except as provided in paragraphs (b), (c), (d) and (e) of this section.

(e) Permissive changes may be made in equipment subject to notification pursuant to § 2.977.

8. A new paragraph (b)(8) is added to § 2.933 and paragraph (c) is revised as follows:

§ 2.933 Change in identification of equipment.

(b) ***

(8) In the case of equipment subject to notification, only the information required by §§ 2.971 and 2.975 shall be filed.

(c) If the change in identification also involves a change in design or circuitry which falls outside the purview of a permissive change described in §§ 2.977, 2.1001 or 2.1043, a complete application shall be filed pursuant to § 2.909.

9. A new paragraph (a)(3) is added to § 2.938 to read as follows:

§ 2.938 Retention of records.

(a) ***

(3) For equipment covered under the notification procedure, a record of the test results that demonstrate compliance with the appropriate regulations.

10. Paragraph (a) of § 2.941 is revised as follows:

§ 2.941 Availability of information relating to grants.

(a) Grants of equipment authorization, other than receiver certifications and equipment authorized for use under Parts 15 or 18 of this chapter, will be publicly announced in a timely manner by the Commission. Information about a receiver certification or about the authorization of a specific model of equipment under Parts 15 or 18 of this chapter may be obtained by contacting the Commission's Office of Science and Technology.

11. Paragraph (a) of § 2.943 is revised as follows:

§ 2.943 Submission of equipment for testing.

(a) The Commission may require an applicant for type acceptance, certification or notification to submit one or more sample units for

measurement at the Commission's laboratory.

12. A new undesignated heading is added after § 2.969 and new §§ 2.971-2.979 are added to read as follows:

Notification

Sec.

- 2.971 Cross reference.
- 2.973 Limitations on notification.
- 2.975 Application for notification.
- 2.977 Changes in notified equipment.
- 2.979 Information required on identification label for notified equipment.

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

Notification

§ 2.971 Cross reference.

The general provisions of this subpart, § 2.901, *et seq.*, shall apply to applications for and grants of notification.

§ 2.973 Limitations on notification.

Notification is a grant of equipment authorization issued by the Commission that signifies that the applicant has determined that the equipment has been shown to be cable of compliance with the applicable technical standards in the Commission's rules if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. Compliance with these standards shall not be construed to be a finding by the applicant with respect to matters not encompassed by the Commission's rules.

§ 2.975 Application for notification.

(a) Subsequent to the determination by the applicant that the equipment complies with the applicable standards, the applicant, who shall retain the responsibility for ensuring that the equipment continues to comply with such standards, shall file a request for the issuance of an equipment authorization on FCC Form 731 for each FCC Identifier with all questions answered. Where a form item is not applicable, it shall be stated. The application shall be filed in the name of the party to whom the grantee code is assigned (see § 2.926 concerning the assignment of identifier codes). The following information shall be included in the filing, either in answer to the questions on the form or as attachments thereto:

(1) Name of the applicant indicating whether the applicant is the manufacturer of the equipment, a vendor other than the manufacturer, a licensee or a prospective licensee. Where the applicant is not the manufacturer of the

equipment, the name of the manufacturer shall be stated;

(2) Identification of the equipment for which notification is sought;

(3) A technical description of the equipment sufficiently complete to develop all of the factors concerning compliance with the technical standards of the applicable rule part(s). The description shall include the following items:

- (i) Type or types of emission (if applicable);
- (ii) Frequency range;
- (iii) Rated frequency tolerance (if applicable); and
- (iv) Rated radio frequency power output, if applicable (if variable, give the range);

(4) A statement concerning the intended use of the device including both the type of use for which the device has been designed and the part(s) or subpart(s) of the rules governing the device;

(5) The FCC Identifier for the device and a photograph or drawing of the equipment identification plate or label showing the information to be placed thereon in accordance with § 2.925;

(6) If required under the specific rule section(s) under which the equipment is to be operated, photographs of the equipment of sufficient clarity to reveal its external appearance and size, both front and back; and

(7) A signed statement attesting to the following or its equivalent:

This equipment has been tested in accordance with the requirements contained in the appropriate Commission regulations. To the best of my knowledge, these tests were performed using measurement procedures consistent with industry or Commission standards and demonstrate that the equipment complies with the appropriate standards. Each unit manufactured, imported or marketed, as defined in the Commission's regulations, will conform to the sample(s) tested within the variations that can be expected due to quantity production and testing on a statistical basis.

(b) The statement required in paragraph (a)(7) of this section shall be signed in a manner consistent with § 2.909(c).

(c) Upon the satisfactory completion of the necessary testing to determine that the applicable standards are met, the submission of the material required in paragraph (a) of this section and the issuance by this Commission of a grant of equipment authorization, marketing, as defined in § 2.803, is permitted.

(d) The authorization of the equipment through the notification procedure may be revoked by this Commission in a manner consistent with § 2.939.

§ 2.977 Changes in notified equipment.

(a) Under the notification procedure, the grantee warrants that each unit of equipment marketed will conform to the unit(s) tested and found acceptable by the grantee and that data on file with the grantee, as required in § 2.938, continues to be representative of the equipment being produced under such notification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) Permissive changes in the design of equipment subject to notification can be performed only under the conditions detailed in §§ 2.1001(a) and 2.1001(b)(1).

§ 2.979 Information required on identification label for notified equipment.

Each equipment for which a notification application is filed shall bear an identification plate or label pursuant to §§ 2.925 and 2.926. The FCC Identifier for such equipment will be validated by the grant of notification issued by the Commission.

[FR Doc. 82-13735 Filed 5-19-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Importation or Shipment of Injurious Wildlife; Raccoon Dog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to amend 50 CFR Part 16—Injurious Wildlife, Subpart B—Importation or Shipment of Injurious Wildlife, by adding the raccoon dog (*Nyctereutes procyonoides*), a nonindigenous predatory mammal of the Family Canidae, to the list of injurious mammals. The best available information indicates that this action is necessary to protect existing fish and wildlife resources from potential adverse effects which may result from purposeful or accidental introduction and subsequent establishment of the raccoon dog into existing ecosystems of the United States.

DATES: Public comments must be submitted on or before July 6, 1982 to be assured consideration.

ADDRESSES: Written comments may be mailed or delivered in person to: Chief, Division of Wildlife Management, Mail Code 355, U.S. Fish and Wildlife Service, 1717 H Street, NW., Room 512, Washington, D.C. 20240. Comments and

materials received in response to this proposal will be available for public inspection at the above address during normal working hours of 7:45 a.m. to 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Gillett, Chief, Division of Wildlife Management, 202-632-7463.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1981, the Service announced in the *Federal Register* (46 FR 58348) its intention to review available information on the raccoon dog (*Nyctereutes procyonoides*) for possible addition to the list of injurious wildlife within 50 CFR Part 16 as the means to prohibit importation of live animals. The notice solicited biological, economic, or other information concerning the raccoon dog to aid in determining if a proposed rule was warranted. The 45 day comment period ended on January 15, 1982. Copies of the notice were sent to all State clearinghouses and approximately 60 individuals, organizations, and Federal agencies which were considered to have knowledge of raccoon dogs or a vested interest in the outcome of the Service's review process. The mailing included zoos currently maintaining raccoon dogs, fur industry associations, professional wildlife management associations, universities, the U.S. Department of Health and Human Services, and agencies within the U.S. Department of Agriculture and the U.S. Department of the Interior. Written comments were received from thirteen respondents as follows:

- Government (State)—3
- Government (Foreign)—1
- Universities—3
- Animal welfare organizations—1
- Zoos and aquariums—2
- Professional wildlife societies—3

Ten respondents recognized the potential for harm to native fauna resulting from raccoon dog introductions and expressed support for listing the species as an injurious mammal.

Of the three other respondents, one recognized that the release of large numbers of raccoon dogs would probably lead to " * * * the establishment of a population on this continent as it did in Europe," but felt it unnecessary to list raccoon dogs as injurious unless a very serious concern existed that substantial numbers of the species would be released into the environment. Another respondent opposed listing the raccoon dog as an injurious species unless the Service conclusively demonstrated " * * * that the species was posing a threat to the

ecosystems of the United States." The last respondent stated that listing the species was not in conflict with their agency plans, goals and objectives.

Service involvement with the raccoon dog occurred as the result of an exchange of letters in September 1981 between the Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior and the Canadian Ministry of the Environment. The letters constituted a cooperative arrangement requiring both Governments " * * * to use their best efforts under existing " * * * legal authority to effect prohibition of the importation of raccoon dogs into the " * * * respective countries.

Raccoon dogs are indigenous to eastern Asia including Japan, Korea, parts of the eastern Soviet Union, Mongolia, mainland China, and northern Indochina. From 1929 to 1955 nearly 9,000 raccoon dogs were introduced into the western and central Soviet Union and Siberia in efforts to establish the species for fur harvest purposes. The introductions in the western region of the Soviet Union proved successful, and from these areas the species has migrated steadily northward and westward and now is reported to be established in Finland, Sweden, Romania, Hungary, Czechoslovakia, Poland, and East and West Germany. They have also been observed in Austria, Bulgaria, and Greece.

The species appears capable of adapting to a wide range of vegetational and climatic conditions. They are the only canids known to hibernate during extreme winter weather, and they readily inhabit areas occupied by humans. Studies have shown them to be highly omnivorous with their diet including small mammals, birds and bird eggs, amphibians, reptiles, fish, insects, mollusks, carrion, human garbage and vegetable matter including fruits, berries, and grains. They are known to prey on, and have been identified as important enemies of, waterfowl and upland game birds, including eggs, nestlings, and brooding adults. They are also known to be predators of muskrats (*Ondatra zibethica*), weasels (*Mustela* spp.), and other small furbearing mammals, and, in the absence of control efforts, may adversely effect populations of these species. In terms of interspecific competition, raccoon dogs are known to utilize muskrats den sites. Available biological evidence suggests that the species would compete for den sites and prey animals with native predators such as red and gray fox (*Vulpes fulva* and *Urocyon cinereoargenteus*) and raccoons (*Procyon lotor*). A number of parasites and diseases are known to

infect the species, which also presents a threat to the health of native wildlife and perhaps humans if they were introduced into the U.S.

During 1979, three pairs of raccoon dogs were imported to a mink ranch in Wisconsin Rapids, Wisconsin. Six additional animals were imported to a mink ranch in Freeport, Illinois. Available information indicates that these animals have increased through breeding to 35 (13 in Wisconsin and 22 in Illinois). No other raccoon dogs are known to exist on fur farms in the United States, and none are believed to exist in the wild.

Description of the Proposed Rule

The regulations contained in 50 CFR Part 16 implement the Lacey Act (18 U.S.C. 42), as amended. Under the terms of the Lacey Act, the Secretary of the Interior is authorized to prescribe by regulation those nonindigenous wild mammals which are deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interest of forestry, agriculture, and horticulture, or to the welfare and survival of the wildlife or wildlife resources of the United States. If it is determined that the raccoon dog is injurious or potentially injurious, then, as with all injurious wildlife, its acquisition, importation into, or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the district Director of Customs at the port of entry. In addition, no live raccoon dogs acquired under permit or progeny thereof may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the Director of the Service.

The need for the rule is based on currently available biological evidence which suggests that importation and introduction of the raccoon dog into the natural ecosystems of the United States or any territory or possession of the United States would pose a threat to migratory waterfowl, upland game birds, and other native wildlife species due to predation, interspecific competition for food and den sites, and introduction of exotic diseases or parasites. Adverse impacts from raccoon dog introductions would transcend State lines and become regional or national in scope.

The extent to which raccoon dogs, if introduced, could or would supplant native wildlife is not known. However, the Service has determined that importation and subsequent release of raccoon dogs into the natural ecosystems of the United States, whether accidental or intentional, would be injurious or potentially injurious to the welfare and survival of some species of native wildlife. Addition of the raccoon dog to the list of injurious mammals in 50 CFR Part 16 is the only means that has been identified which provides long-term protection to native wildlife from raccoon dog competition or predation resulting from introductions of this species.

An assessment of the environmental effects of this proposed rule has been prepared and a determination has been made that such proposal is not a major Federal action under the National Environmental Policy Act. It has also been determined that this proposal is not a major rule under Executive Order 12291. In addition, the best available information indicates that a total of 35 raccoon dogs exist on two fur farms in the U.S. Based on an average pelt price of \$80.00, the total value of these animals in the fur market should not exceed \$2,800. Adverse effects on small

entities as a result of the rule would be minimal and restricted to two fur farm operations. Pelts produced at these locations could be transported in interstate commerce within the conterminous U.S. excluding the District of Columbia without restrictions. Consequently, it has been determined that the proposed rule does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act.

The Environmental Assessment and the Determination of Effects of Rule are available for public inspection, as are all supporting documents, during regular business hours at the Service's Division of Wildlife Management, Room 512, 1717 H Street, NW., Washington, D.C.

List of Subjects in 50 CFR Part 16

Imports, Transportation, Wildlife, Animal diseases, Freight.

PART 16—INJURIOUS WILDLIFE

In consideration of the foregoing, and under authority of the Lacey Act, 18 U.S.C. 42, it is proposed to amend 50 CFR Part 16—Injurious Wildlife, Subpart B—Importation or Shipment of Injurious Wildlife, § 16.11 paragraph (a)—Importation of live wild mammals, to read as follows:

§ 16.11 Importation of live wild mammals.

(a) The importation, transportation, or acquisition is prohibited of live specimens of (1) Any species of so-called "flying fox" or fruit bat of the genus *Pteropus*; (2) any species of mongoose or meerkat of the genera *Atilax*, *Cynictis*, *Helogale*, *Herpestes*, *Ichneumia*, *Mungos*, and *Suricata*; (3) any species of European rabbit of the genus *Oryctolagus*; (4) any species of Indian wild dog, red dog, or *dhole* of the genus *Cuon*; (5) any species of multimammate rat or mouse of the genus *Mastomys*; and (6) any raccoon dog, *Nyctereutes procyonoides*: provided, That the Director shall issue permits authorizing the importation, transportation, and possession of such mammals under the terms and conditions set forth in § 16.22.

The principal author of this proposed rule is Jeffrey L. Horwath, Wildlife biologist, Division of Wildlife Management, U.S. Fish and Wildlife Service.

Dated: May 13, 1982.

J. Craig Potter,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-13759 Filed 5-19-82; 8:45 am]

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Notices

Federal Register

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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.

ACTION

Proposed Young Volunteers in ACTION (YVA) Guidelines

AGENCY: ACTION.

ACTION: Notice of proposed Young Volunteers in ACTION (YVA) Guidelines.

SUMMARY: The following proposed Notice sets out the guidelines under which the Young Volunteers in ACTION (YVA) program will operate in the future. The Guidelines are divided into nine sections which deal with the overall program philosophy, responsibilities of the YVA sponsor, staff, advisory council, volunteers, and volunteer stations. It also includes basic data on administration of a YVA project.

DATE: Written comments should be submitted no later than June 21, 1982, to Barbara P. Wyatt, Director of YVA, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Barbara P. Wyatt, Director of YVA, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. 800-424-8580; extension 229; or 202-254-8458.

SUPPLEMENTARY INFORMATION: YVA is a program of limited term and scope designed to mobilize the efforts of youth, ages 14-22, in a focused, effective way in serving the needs of their community by volunteering to work on a part-time, non-stipended basis.

Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guidelines, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30 day comment period except in certain limited circumstances. These Guidelines, although not regulations

under the Administrative Procedure Act (5 U.S.C. 551 et seq.), may, in whole or in part, be required by our Act to be published in proposed form for comments.

ACTION has determined that the YVA Guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule.

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I. Introduction

These Guidelines have been developed for the use of Young Volunteers in ACTION Program (YVA) project sponsors, project staff, Advisory Council members and ACTION staff. It contains material for the management and operation of YVA projects. (For definitive guidance on fiscal matters consult ACTION Handbook 2650.2, *Grant Management Handbook for Grantees*.)

1. Purpose and Objective

To involve youth: In serving the needs of their community; in efforts to eliminate poverty and poverty-related problems; in developing a sense of civic pride; in providing opportunities for career exploration; in encouraging youth to assist others, thereby creating a sense of selfworth and pride in being a young American; and in learning through community service.

To mobilize the efforts of full or part-time students, ages 14-22, in a focused, effective way to respond to community needs by volunteering to work on a part-time, nonstipended basis.

2. Legislative Authority

The Young Volunteers in ACTION Program (YVA) will operate under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113). Its purpose is to provide for a program of part-time or short-term service-learning to meet general community needs and to strengthen and supplement efforts to eliminate poverty and poverty-related problems.

3. Definition of Terms

Act is the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113).

Advisory Council is a group of persons formally organized by the project sponsor for the purpose of advising and supporting the sponsor in operating the project effectively.

Agency is the Federal ACTION agency.

Budget Period is the time interval for which the project grant is awarded, usually one year.

Director is the ACTION headquarters YVA Director.

Guidelines is the Young Volunteers In ACTION Program Operations Guidelines.

In-Kind Contribution refers to budgeted amounts which represent the value of non-cash contributions that shall be provided to the project. They represent values of real property, equipment, goods, maintenance and services that directly benefit the project. They are specifically identifiable and allowable.

Local Share refers to contributions to the budget from non-federal resources in cash or allowable in-kind contributions or a combination of both.

Memorandum of Understanding (M/U) is a statement prepared and signed by the administrator of a volunteer station and the Young Volunteers in ACTION project sponsor which identifies working relationships and mutual responsibilities.

Project is the locally planned and implemented YVA Program as agreed upon between ACTION and the sponsor.

Service Area is a geographically defined area in which YVA Volunteers are recruited, enrolled, and placed on assignments.

Sponsor is a public agency or private nonprofit organization which is responsible for the operation of the local YVA Program.

Volunteer Station is a public agency or private non-profit organization that accepts the responsibility for assignment and supervision of the volunteers under a M/U with the sponsor.

YVA refers to the Young Volunteers In ACTION Program, which includes full or parttime students ages 14-22 who are enrolled as full or part-time students in secondary, secondary vocational, or post secondary schools.

4. Grant Application Procedures

Grants will be awarded for a one year period with a renewal option for the second year based on factors for selection (I.5. below); compliance with YVA guidelines and grantee performance during the first year, particularly in the number of volunteer hours generated; and any other factors which may be relevant or appropriate to the Director's exercise of discretion in the allocation of YVA resources among competing uses. YVA funding will not exceed two years.

All YVA grant applications must consist of:

- a. ACTION Project Narrative which include a Project Work Plan, specifying projected number of volunteer hours by quarter and a minimum of 10 volunteer work stations.
- b. Application for Federal Assistance.
- c. CPA certification of accounting capability.
- d. Articles of Incorporation.

e. Proof of non-profit status, which may be made through an IRS certification.

f. Resume of proposed project director candidate(s), if available.

g. List of governing board members and their relationship to the community.

5. Factors For Selection

Grant applicants will be reviewed for selection according to the following factors:

a. For their replicability in other situations without the need for federal funding.

b. Compliance with ACTION and YVA Guidelines, regulations and legislation:

c. Project demonstrates a program design which allows maximum volunteer opportunities for youth to address community needs, especially those that are poverty related.

d. Project identifies development of volunteer service assignments which will generate a minimum of 13,000 hours of volunteer service during a 12 month period and provide for growth and learning opportunities for youth.

e. Proposal reflects a commitment from cooperating local agencies and organizations, including educational institutions, where such could be expected to contribute to the value or success of the project.

f. Proposal identifies adequate financial in-kind and public relations support from the community which will enhance the project and allow for contribution after federal funding ceases.

g. Proposal must contain a realistic work plan for project completion with measureable goals and objectives, and a feasible method for achievement.

h. Proposal must contain a feasible plan for volunteer recruitment from all segments of the community and appropriate events for recognition.

i. Applicant organization has a governing body or agency board and staff which understands and endorses the nature and purpose of the project and capability to implement the program.

j. Applicants must be able to demonstrate sufficient administrative and fiscal expertise to manage the YVA grant as well as the capability of providing adequate orientation, training and supervision to the work stations and volunteers.

k. The proposal must contain a realistic and adequately justified budget.

l. The sponsor must demonstrate that it has those characteristics set forth at II.2.

6. Review Process

Acceptable applications will be reviewed based upon the following process. Grant budget size will be based upon the availability of funds and ACTION's objective to achieve equitable geographic program resource distribution.

a. Applications are submitted through the appropriate ACTION State Office which will review, and assess for compliance with YVA Guidelines, regulations, ACTION laws and established factors for selection. All applications then will be submitted by the State Office to the Regional Office.

b. Regional Offices will similarly review and assess applications for compliance before submission to the YVA Director in Washington, D.C., who shall make the final decision.

c. The grant award will be made by the Regional Grants and Contracts Officer based upon notification from the Director of those projects selected for funding.

7. Refunding of Grants

Applications for renewal of grant awards will be processed using the factors identified in selecting initial grants as well as the grantee's compliance with YVA guidelines and grantee performance during the first year, particularly in the number of volunteer hours generated; and any other factors which may be relevant or appropriate to the Director's exercise of discretion in the allocation of YVA resources among competing uses. YVA funding will not exceed two years. Final determination for renewal will be by the YVA Director, upon such recommendations as the State and Regional offices may make.

II. The YVA Sponsor

1. Sponsor Eligibility

ACTION will award YVA grants to Federal, State, or local agencies, and to private, non-profit organizations or foundations in the United States which have the authority to accept and the capability to administer such grants. Any eligible organization may file an application for a grant. Applicants may also be solicited by ACTION pursuant to Agency objectives—for example, achieving equitable geographic program resource distribution.

A grant applicant is not assured of selection or approval and may have to compete, based on established ACTION criteria for grant applications, with other solicited or unsolicited applicants.

2. Sponsor Characteristics

Evidence of the following shall be a factor in the decision to award and refund YVA grant applications:

- a. A dedicated interest in or involvement with efforts to resolve community problems.
- b. A good working relationship with a variety of community agencies and organizations.
- c. Experience in developing volunteer service opportunities.
- d. A strong base of local financial support and the capacity to develop additional sources of local funding.
- e. A capability of designing and implementing a program which allows maximum volunteer opportunities for youth to address community needs.
- f. A commitment to or past experience in providing opportunities for growth and learning for youth.
- g. The capability to employ project staff with the initiative, skill, and experience to assume direct responsibility for project management.
- h. A governing body or agency board and staff which understands and endorses the nature and purpose of the project.
- i. An acceptable management and fiscal capability.

3. Sponsor Responsibility

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer stations as discussed in Section VI. The sponsor shall also abide by any relevant laws, Executive Orders, or regulations. The sponsor has the responsibility to:

- a. With the prior concurrence of ACTION, employ the YVA project director within 30 days of the notice of grant award. Resumes of candidate(s) for project director should be included, where possible, in the application package.
- b. Provide direction and support to the YVA project director, who is directly responsible to the sponsor for the management of the project, including training and supervision of project staff.
- c. Provide for the recruitment, assignment, supervision, and support of volunteers. All qualified youth from the community should be encouraged to participate.
- d. Provide for appropriate recognition and incentives for YVA Volunteers and their activities.
- e. Provide financial and/or in-kind support at a minimum level of 10% of the federal project budget.

f. Establish, orient and support a YVA Project Advisory Council as discussed in Section III.

g. Provide YVA orientation to volunteer station supervisors and/or station representatives.

h. Provide the YVA volunteers with appropriate accident and personal liability insurance. (Refer to Appendix for details on insurance.)

i. Ensure that appropriate automobile liability insurance is maintained on all vehicles owned or leased by the sponsor which are used in the project. (Refer to Appendix for details on insurance.)

j. Develop volunteer stations for placement of YVA volunteers.

k. Negotiate a written Memorandum of Understanding (M/U), acceptable to ACTION, with each volunteer station, prior to assignment of YVA Volunteers, identifying sponsor responsibilities, station responsibilities, and joint responsibilities.

l. Provide pre-service orientation to the volunteers on YVA goals and activities and the responsibilities of the volunteers to their stations and the community.

m. Establish lawful and nondiscriminatory performance standards and service policies for YVA Volunteers, consistent with the policies and purposes of the YVA program.

n. Ensure compliance with the Special Limitations as outlined in Section II.4 of this Handbook.

o. Provide for maintenance of project records in accordance with generally accepted accounting practices and prepare and submit reports on a timely basis as required by ACTION. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three (3) years following the completion of the grant.

p. Arrange for in-service orientation for the volunteers by volunteer stations and other sources of training as needed.

q. Ensure that volunteer stations meet safety standards.

r. Develop and maintain community support through a planned program which would include community communication as well as recognition events.

s. Seek to identify resources to permit continuance of the YVA program upon the conclusion of federal funding.

4. Special Limitations on YVA Sponsors

a. Political Activities. (1) Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

(2) No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any

action which would result in the identification or apparent identification of the YVA program with:

(a) Any partisan or non-partisan political activity associated with a candidate, or contending faction or group, in an election, or for public or party office.

(b) Any activity to provide voters with transportation to the polls or similar assistance in connection with any election.

(c) Any voter registration activity.

(3) No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(a) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a YVA Volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review or testify regarding measures or to make representation to such legislative body, committee or member, or

(b) In connection with an authorization or appropriation measure directly affecting operation of the YVA program.

Regulations found at 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities", apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each sponsor is obligated to know, and communicate to staff and volunteers, the prohibitions included therein.

b. Special Restriction on State or Local Government Employees. If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in Chapter A of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff

member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. While the staff member so covered may be a member of a political party, express views or partisan matters privately, and display his or her views through the wearing of buttons or the use of bumper stickers, he or she may not be an official of any partisan political organization, or run for partisan office, except in very few cases. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, D.C. 20525.

c. **Non-Discrimination.** No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap or political affiliation.

d. **Religious Activities.** Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services or engage in any form of proselytization, as part of their duties.

e. **Labor and Anti-Labor Activity.** No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organizations or related activity.

f. **Non-Displacement of Employed Workers.** A YVA Volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties.

g. **Non-Compensation for Services.** No volunteer or other person, organization or agency shall request or receive any compensation for services of YVA Volunteers. No work station nor any member or cooperating organization of a sponsor, shall be requested or required to contribute or to solicit contribution to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the sponsor or the YVA project for legitimate charitable purposes.

h. **Volunteer Status.** YVA volunteers are not considered employees while YVA volunteers, but their experience in volunteer work should be taken into account in the consideration of future applications for employment.

i. **Nepotism.** Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by the YVA Advisory Council and notification to ACTION.

III. YVA Project Advisory Council

1. Roles and Functions of Advisory Council

ACTION considers the Advisory Council to be an important and integral part of the YVA Volunteer Program. The Advisory Council is to advise and assist the project staff and sponsor in project planning, development, implementation, and monitoring as well as to provide assistance in developing local financial and in-kind resources.

The Advisory Council:

a. Is appointed by the sponsor within 30 days of the date of the grant award.

b. Should establish written by-laws and operating procedures.

c. Meets on a regularly scheduled basis (usually quarterly) and provides the YVA sponsor with copies of the minutes from each meeting.

d. Assists the sponsor by promoting community support for the project, particularly by providing ideas and contacts with regard to volunteer recruitment and volunteer stations.

e. Conducts an annual appraisal of project operations and submits a report to the sponsor. Areas of project operation to be appraised include volunteer stations and assignments, general project management, and the extent to which project goals and objectives are being met.

f. Develops and participates in recognition programs for YVA volunteers.

2. Composition of Advisory Council

a. Should be large enough to represent a cross section of the community and small enough to ensure its effectiveness as a working body.

b. Should include representatives of such groups as local government, business, labor, education, youth, religious, and service groups. The Advisory Council should include at least one YVA volunteer as a voting member. The sponsor's chief executive or designee, one member of its governing board, and the project director should be non-voting members, but not officers of the Advisory Council.

c. The YVA Advisory Council must be a separate body from the sponsor's Board of Directors.

d. A youth advisory council may be established to assist with recruitment and work station selections. Members from this group may be chosen to serve on the senior Advisory Council.

IV. YVA Project Staff

1. Relationship to Sponsoring Organization

a. Project staff are employees of the sponsor and are subject to its personnel policies and practices.

b. ACTION reserves the right to concur in writing with the sponsor's selection of any project director before such person is employed.

c. Hiring of project personnel must be in compliance with applicable federal, state and local government laws and ordinances.

2. Roles and Responsibilities

a. Project Director.

The sponsor delegates to a project director the day-to-day management of the project. The project director shall be knowledgeable about young people, their motivations and concerns, the community's problems, resources and leadership (both public and private). By his or her enthusiasm and creativity, the director will be the catalyst for the program. Advice and support of the Advisory Council are sought by the project director on program planning, major program issues and resource mobilization.

If there is cause for dismissal of a project director, the sponsor shall immediately notify ACTION, stating the reason(s) for the action. Provisions for temporarily continuing operations without a project director shall also be submitted to ACTION in writing.

The project director's duties include, but are not limited to:

- (1) Assessing volunteer needs of the community;
- (2) Selecting, training and supervising project staff;
- (3) Selecting appropriate work assignments and volunteer stations;
- (4) Recruiting, orienting, and placing YVA volunteers;
- (5) Arranging for pre-service orientation, in-service instruction, and overall supervision of volunteers by volunteer stations;
- (6) Maintaining required fiscal and program records and preparing reports and preserving records for submission to the grantee and to ACTION;
- (7) Maintaining close coordination with volunteer stations and monitoring their use of volunteers, including orienting volunteer station supervisors to the YVA program;
- (8) Developing active involvement with community organizations, school systems, youth and community service programs;
- (9) Keeping YVA Advisory Council members informed and soliciting advice

on matters affecting project operation, as well as providing staff assistance to the Advisory Council;

(10) Providing advice and information to YVA volunteers;

(11) Assessing YVA volunteers and volunteer stations' performance;

(12) Attending training conferences conducted by ACTION.

3. Relationship to ACTION Staff

a. The ultimate responsibility for the national YVA program is housed in ACTION headquarters located in Washington, D.C. This office, in consultation with ACTION Regional and State offices, determines policies, goals, objectives and budgetary requirements for effective program operation and monitors progress toward achievement of national program goals and priorities. The national office allocates YVA resources among the Regions and ensures that ACTION field staff and sponsors adhere to YVA policies and procedures. Sponsors are responsible for implementation of the YVA project in their community. ACTION field staff has responsibility for assisting prospective sponsors in developing new projects, for monitoring, and for providing assistance to existing YVA sponsors, and for serving as project grant managers.

b. ACTION's Evaluation Division is responsible for developing an evaluation instrument to collect data, in order to provide a means for measuring the impact of volunteer activity on each area identified.

c. ACTION's Office of Communication, Washington, D.C., assists in national YVA publicity and recruitment of volunteers through development of brochures, posters, and public service radio and TV spots. Any recruitment or publicity materials developed by the YVA sponsor require prior approval from the YVA national Director. The State and Regional offices will also provide recruitment and assistance to YVA sponsors.

V. YVA Volunteers

Each volunteer will serve an average of eight (8) hours per month. Recruitment and placement of volunteers should begin within the first month of the grant award. Sponsors are expected to generate a minimum of 13,000 hours of volunteer service during the twelve month grant period; proof thereof will be an important factor in applications for renewal.

1. Eligibility

Enrollment as a YVA Volunteer is regarded as an honor and as an opportunity for youth to make

significant contributions to their community.

Eligibility to be a YVA volunteer may not be denied on the basis of race, creed, color, national origin, sex, handicap or political affiliation.

YVA volunteers will not receive stipends.

YVA's may be reimbursed for reasonable travel expenses at the discretion of the project director within the limitation established by the travel line item in notice of grant award.

In order to be eligible for the YVA Program, volunteers must be:

- Between the ages of 14 and 22.
- Students, taking at least one course in secondary, secondary vocational or post-secondary school.
- Reflective of high standards of personal conduct and willingness to accept supervision as required.
- Willingness to serve on a regular basis for an average of eight (8) hours per month on the basis of an agreement drawn up between the sponsoring organization and volunteer station.

2. Recruitment and Selection of YVA Volunteers

a. Before YVA volunteers are recruited, a sponsor shall have a signed Memorandum of Understanding with a volunteer station. A variety of assignments shall be available to meet community needs.

b. Recruitment of eligible YVA volunteers is a project director responsibility. Recruitment assistance may come from the YVA sponsor, YVA Advisory Council, volunteer stations, or other volunteers.

c. Planning for YVA volunteer recruitment should include consideration of the following factors:

- Location and number of youth in the service area.
- Distance between the potential YVA volunteer and places of assignment.
- Modes and estimated costs of available public or private transportation.
- Number and types of schools in service area.

d. Potential YVA volunteers should be recruited through schools, youth organizations, places of worship and other ACTION volunteer programs. Notification about the project should also include adult groups to attract parental interest. The media—newspaper, radio, and television—should be alerted to the program. Every effort to provide broad exposure for YVA shall be made.

e. Assignments shall be matched to the interests, abilities, preferences and availability of volunteers. Assignments

should provide opportunities for growth, learning through community service, or improvement for YVA volunteers and may be changed in response to the needs of the volunteers.

f. It is important that this program add to the number of young people in volunteer activity and not compete for support with existing volunteer organizations.

3. Orientation and Training of YVA Volunteers

The sponsor and volunteer station will provide pre-service orientation to all YVA volunteers as an introduction to their assignments. Projects have found that a combination of formal orientation and on-the-job experience with volunteer stations works well.

4. Advantages of Volunteer Service

A variety of personal advantages accrue to YVA volunteers. These include an opportunity to think through career choices, gain learning experiences about various professions, or occupations and gather information about public, private and social organizations.

5. Termination and Separation of Volunteer Service

The project staff and volunteer stations should be alert to problems which may lead to assignment terminations. If the assignment is unsatisfactory, there should be a termination between the volunteer and the station.

If a volunteer fails to serve the required minimum number of hours of service because of reasons within the volunteer's control, that individual should be considered inactive. However, termination should not occur for one or two infractions. A volunteer should be given counseling and a written warning that continued failure to serve the required number of hours could result in termination.

If the volunteer is prevented from serving because an assignment concludes or the station fails to provide a suitable assignment, efforts should be made to transfer the volunteer, rather than immediately terminate him or her. If a transfer is unavailable, termination from the YVA program should follow.

Terms of removal should be stated in the Memorandum of Understanding.

6. Procedures for Appealing Termination and Separation of Volunteer Service

Sponsors must in conjunction with the Advisory Council establish a procedure that allows the volunteer an opportunity

to appeal any adverse actions—reprimands, suspensions, termination, or separation.

7. Parental Consent

Write parental consent for participation in the program must be obtained from parents of volunteers age 16 or under.

VI. Volunteer Stations

All YVA volunteers are recruited for and placed with or through volunteer stations. A volunteer station is a public agency or private nonprofit organization that accepts the responsibility for assignment and supervision of volunteers. A list of all volunteer stations must be submitted for initial prior review to the ACTION State Director.

1. Roles and Responsibilities

Responsibilities of YVA volunteer stations are to:

- Develop written and mutually signed individualized volunteer assignment agreements with each YVA covering the terms of his/her service.
- Provide volunteers with orientation, in-service training, and supervision as necessary.
- In conjunction with the project director, provide or help to arrange for volunteer transportation as necessary.
- Keep records and prepare reports as required by the sponsor.
- Prior to placement of volunteers, sign a Memorandum of Understanding with the sponsor, establishing working relationships and mutual responsibilities and provide for administrative support necessary for volunteers to perform assignments.
- Assist in appropriate volunteer recognition events.
- Assist in the recruitment of volunteers.

2. Volunteer Assignments

- Several assignments are to be developed prior to the recruitment of initial YVA volunteers. Consideration should be given to possible interests, abilities, preferences, and availability of volunteers with opportunities for meaningful community service. As the need for more work stations arises, new ones can be identified.
- Assignments and terms of service, including service hours, should reflect individual YVA volunteer preference. Project and volunteer station staff should assure that a range of service opportunities is available to provide a choice.

3. Orientation of Volunteer Station Supervisors

Orientation of volunteer station supervisors may vary among projects. However, characteristics of orientation include, but are not limited to:

- Obligations of volunteer station to the sponsoring organization and project.
- YVA program goals and objectives.
- Guidance on working with young volunteers.
- Advantages to volunteers.
- Selection of appropriate volunteer assignments.
- Supervision of volunteers.
- Motivation, incentives, and recognition of volunteers.
- Evaluating volunteer service.

4. Memorandum of Understanding

A Memorandum of Understanding (M/U) is signed by the administrator of a volunteer station and the YVA sponsor, identifying working relationships and mutual responsibilities. It includes special conditions applicable to the volunteer station and the YVA project. Revisions may be made by mutual agreement of the parties at any time. See Appendix for M/U that should be used. Revisions from this standard M/U must receive the approval of the ACTION State Director.

VII. Project Management

Sponsors shall manage grants awarded to them in accordance with ACTION Handbook 2650.2 entitled *Grants Management Handbook for Grantees* and the provisions of this Handbook. A copy of 2650.2 will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

1. Local Support and Contributions

The YVA sponsor is responsible for generating a minimum of 10% of the federal cost from local, non-federal sources in cash or in-kind contributions. For example, if ACTION provides \$20,000, the sponsor must provide \$2,000, which equals a total project cost of \$22,000.

The YVA sponsor will supplement the ACTION grant with local support to the fullest extent possible. Ten percent of the total federal costs can be identified as cash or in-kind contributions such as office space, office equipment, vehicles, printing supplies or services. The need for additional funds will be dependent

on the design of individual projects. Soliciting of additional means of support will broaden the program.

2. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in Handbook 2650.2, and with the following quarterly program report items:

- A comparison of actual accomplishments with the goals established for the period.
- The number of volunteers actively participating in the program during the quarter by volunteer station and activity.
- Number of volunteer hours generated during the quarter.
- Reasons why established goals were not met.
- A listing of volunteer training events during the quarter.
- Participation and activities of the Advisory Council.
- Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives.
- Listing of recognition events held during quarter.

The quarterly report shall be submitted to the ACTION State Director no later than 30 days after the end of each program quarter. The State Director will forward a copy to the YVA Director.

(In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.)

3. Insurance

Upon assignment YVA Volunteers must be provided with ACTION specified minimum levels of accident, and personal liability insurance. Excess automobile liability insurance is an optional coverage for volunteers. (Refer to Appendix for details.)

4. Transportation

a. Many YVA volunteers will not own, or have access to cars or may prefer not to drive. Projects must ensure that all volunteers are afforded an opportunity to participate in the program through the development of other arrangements and modes of transportation as necessary. Sponsors should attempt to structure assignments to minimize transportation expenses and requirements.

b. When transportation is not provided, volunteers may be reimbursed for actual costs within the limitation prescribed by the local project, ACTION transportation policies, and the availability of funds. Transportation reimbursement should be provided on the basis of need, at the discretion of the project director.

VIII. Community Relations

1. Public Awareness

A strong community relations program ensures public awareness of start-up activities and continuing project development. It is essential for the successful recruiting of volunteers and for the recognition of volunteers' good work. Both the project sponsor and the project director should inform all sectors of the community, city and county officials, and the media about development, growth and the success of the project.

a. Public awareness of the nationwide program and of the local project should be promoted regularly through local media. Systematic contacts with newspapers, radio and TV should be established and maintained. Announcements of local news value should be prepared and forwarded to the media.

b. Public awareness can be advanced through public speaking appearances before service clubs, youth organizations, church groups and meetings with local, county and state governmental units.

c. Active YVA Advisory Council support enhances community interest in project activities. Some Advisory Councils have formed community relations committees which assist the project in coordinating and speaking about YVA volunteers before organizations they represent.

2. Volunteer Recognition

There are many possible ways to give recognition to volunteers, such as at least annually to plan and arrange for formal public recognition of YVA volunteers for their service to the community. Projects are also authorized to provide recognition to local individuals and agencies or organizations for significant activities in support of project goals.

IX. Appendix

Insurance

YVA volunteers must be provided with the ACTION specified minimum levels of accident and personal liability insurance. Excess automobile liability insurance is an optional coverage for volunteers.

1. Accident Insurance

Protection shall be provided against claims in excess of that provided by other insurance. This covers the volunteer for personal injury arising from volunteer activities. The insurance applies where the volunteer is participating in an activity sponsored by YVA. The sponsor shall provide YVA volunteers with the following insurance coverage:

a. Minimum coverage of \$20,000 for accidental medical expenses;

b. For eyeglasses, a benefit of \$25.00 for repair or replacement of damaged frames and \$25.00 for replacement of broken eyeglasses lenses or contact lenses;

c. A benefit of \$500.00 for injury to teeth and repair of dentures;

d. \$1,000 for accidental death or dismemberment.

2. Personal Liability Insurance

Protection shall be provided against claims in excess of protection provided by other insurance. The sponsor shall provide third party protection for volunteers against injury or property damage claims arising out of their volunteer service activities.

Notes.—Personal liability insurance does not include, nor is it a substitute for, malpractice insurance which some volunteer stations need for their professional staff and for some volunteers who assist professionals. The amount of protection shall be \$1,000,000 for each occurrence of personal injury or property damage and shall be in excess of any other valid and collectible insurance.

3. Excess Automobile Liability Insurance

This is optional insurance coverage. To avoid a gap in coverage between that provided by the YVA volunteer's personal vehicle insurance and claims in excess of that coverage, the sponsor has the option of providing Excess Automobile Liability Insurance coverage to a minimum number of volunteers of not less than \$500,000 per accident for bodily injury and/or property damage for volunteers carrying out project assignments.

Other

1. Automobile Liability Insurance

The sponsor shall have adequate automobile insurance coverage for vehicles used by the project whether sponsor owned, privately owned, or leased. This shall include liability insurance with minimum limits of \$100,000 each person and \$300,000 each occurrence for bodily injury, and \$50,000 each occurrence for property damage or, if a single limit policy is issued, \$300,000 each accident. Cost of liability insurance

to the project must be prorated where applicable to reflect percentage of time each vehicle is actually used by the project. The insurance may be obtained from any reputable source.

2. Liability Insurance on Personal Vehicles of Volunteers

This insurance is a personal expense of the volunteer. YVA volunteers who use their personal vehicles to drive from home to their place of assignment or in connection with project-related activities must keep their automobile liability insurance in effect for their own protection.

Memorandum of Understanding between

Sponsoring Organization Name _____

Address _____

Telephone () _____

Project Director/Coordinator: _____

Volunteer Station Name _____

Address _____

Telephone () _____

Volunteer Station _____

Coordinator name _____

Telephone () _____

Number of volunteers requested _____

Telephone () _____

This Memorandum identifies the responsibilities of the Young Volunteers in ACTION (YVA) sponsoring organization and the Volunteer Station to which YVA volunteers will be assigned. Volunteer stations are required to conform to YVA program guidelines, and federal laws.

I. The volunteer Station will:

a. Assist the sponsoring organization in the development and monitoring of volunteer assignments.

b. Provide the project director with a list of planned volunteer assignments.

c. Interview each YVA volunteer before placement.

d. Keep a record of YVA volunteer hours and report them to the sponsoring organization as required.

e. Provide on-the-job training and supervision to all volunteers assigned.

f. Confer regularly with the sponsoring organization to assess the program and needs of the program.

g. Designate a coordinator to serve as liaison with the sponsoring organization.

h. Have the right to request the sponsor to remove a volunteer from the work station assignment.

II. The Sponsoring Organization will:

a. Recruit, interview, select and enroll volunteers in the project.

b. Develop volunteer assignments, orientation, training and other project related activities with assistance from the volunteer station.

c. Refer volunteers to the volunteer station for placement upon review and acceptance of volunteer assignment.

d. Furnish adequate accident and liability insurance coverages as required by the YVA Guidelines.

e. Retain full responsibility for the management and fiscal control of the project.
f. Regularly monitor project activities at the volunteer station to assess and/or discuss the needs of volunteers, and the project.

g. Provide YVA orientation to volunteer station supervisors.

h. Review any changes in volunteer assignments.

III. Other:

a. Volunteer Transportation:

Will/will not be provided by the YVA volunteers.

Will/will not be provided by the volunteer station.

Will/will not be reimbursed by the sponsoring organization.

b. Separation from Volunteer Service:

The volunteer station may request the removal of a volunteer at any time. The sponsoring organization may recall a volunteer at any time. A volunteer may resign from service to a volunteer station or from the program at any time. (Terms of removal from service must be stated).

c. Restricted Activities:

The sponsoring organization and the volunteer station will not request, assign or permit volunteers to conduct or engage in religious, sectarian or political activity or instruction, or other restricted activities as stated in the YVA Guidelines.

d. Displacement of Employees:

The sponsoring organization and volunteer station will not assign volunteers to any assignment which would displace employed workers or impair existing contracts for services.

e. Prohibition of Discrimination:

The sponsoring organization and volunteer station will actively comply with provisions of Title VI of the Civil Rights Act of 1964.

f. Amendments:

This Memorandum of Understanding may be amended at any time in writing by concurrence of both parties.

Sponsoring Organization

By _____
(signature)

Title _____

Address _____

Date _____

Volunteer Station

By _____
(signature)

Title _____

Address _____

Date _____

(42 U.S.C. 4974; 5042(14))

Dated in Washington, D.C. on April 20, 1982.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 82-13761 Filed 5-19-82; 8:45 am]

BILLING CODE 6050-01-M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Public Access and Information; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-163), notice is

hereby given of a meeting of the Committee on Public Access and Information of the Administrative Conference of the United States, scheduled to be held at 9:30 a.m., Friday, May 21, 1982, in the Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, D.C.

The Committee will meet to discuss further the scope and substance of comments by the Committee on a proposed recommendation of the ACUS Committee on Regulation of Business regarding treatment of confidential business information under the FOIA. Specifically to be discussed are areas of disagreement with the Committee on Regulation of Business' revised recommendation.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers (202-254-7065). Minutes of the Committee meetings will be available on request.

Richard K. Berg,

General Counsel.

May 17, 1982.

[FR Doc. 82-13780 Filed 5-19-82; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on Monday, June 21, 1982, at 10:00 a.m. at the Lion's Hall, 311 Church Street, Bayfield, Colorado. The Board was established in accordance with provisions of the Federal Land Policy and Management Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) recommendations for the development of allotment management plans; (3) discussion of effects of the Draft San Juan National Forest Land and Resource Plan on allotment management plans and utilization of range betterment funds.

The meeting will be open to the public. Persons who wish to attend and participate should notify H. E. Bond, San Juan National Forest (303-247-4874) prior to the meeting. The public may participate in discussions during the meeting or may file a written statement following the meeting.

P. C. Sweetland,

Forest Supervisor.

May 11, 1982.

[FR Doc. 82-13698 Filed 5-19-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Agenda and Notice of Open 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 Connecticut Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on June 10, 1982, at the Connecticut Education Association Building, 21 Oak Street, Second Floor, Hartford, Connecticut, 06103. The purpose of this meeting will be to review the current projects and discuss future program activities with the newly rechartered Committee.

Persons desiring additional information should contact the Chairperson, Richard Brown, 151 Farmington Avenue, Hartford, Connecticut, 06156, (203) 273-6389 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., May 11, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13774 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Open 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 Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 2:00 p.m. on June 4, 1982, at the JCK Federal Building, 230 South Dearborn Street, in Room 3280, Chicago, Illinois, 60604. The purpose of this meeting will be a staff report on the status of the housing project and the Special Education Handbook.

Persons desiring additional information should contact the Chairperson, Thomas J. Pugh, 500 West Melbourne Avenue, Peoria, Illinois, 61604, (309) 686-3121 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 11, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13775 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda and Notice of Open 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 Indiana Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on June 7, 1982, at the Board of Public Works, County and City Building, 227 West Jefferson Boulevard, on the 13th Floor, South Bend, Indiana, 46601. The purpose of this meeting will be to discuss the status of the Housing Discrimination Study in Indiana, current and future projects, and a subcommittee report on new federalism.

Persons desiring additional information should contact the Acting Chairperson, Lotte Meyerson, 650 North Tippecanoe Street, Gary, Indiana, 46403, (219) 938-1933 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 11, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13776 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

Maine Advisory Committee; Agenda and Notice of Open 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 7:00 p.m. and will end at 9:30 p.m., on June 24, 1982, at the University of Southern Maine, Luther Bonney Building, 96 Falmouth Road, in Room 208, Portland, Maine 04106. The purpose of this meeting is to discuss the Legal Services Corporation and access to the

legal system, program plans for Committee projects and activities for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Lois G. Reckitt, 38 Myrtle Avenue, South Portland, Maine 05106, (207) 775-1415 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., May 14, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13777 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Open 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 Minnesota Advisory Committee will convene at 7:00 p.m. and will end at 9:00 p.m., on June 25, 1982, at the Radisson Downtown Duluth Hotel, 505 West Superior Street, Duluth, Minnesota 55802. The purpose of this meeting will be to report on the Duluth desegregation plan; discuss police training in the Minnesota college system and a new short term project; and introduce and orient the new members of the Committee.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Lupe Lopez, 2105 Stillwater, White Bear Lake, Minnesota 55101, (612) 227-8954 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13778 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Open 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 Rhode Island Advisory Committee to the Commission will convene at 2:00 p.m. and will end at

3:30 p.m., on June 14, 1982, at the Gilbane Construction Company, Seven Jackson Walkway, in Room number 3, Providence, Rhode Island 02903. The purpose of this meeting is to conduct a subcommittee discussion on affirmative action in the State of Rhode Island.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dorothy D. Zimmering, 12 Chapin Road, Barrington, Rhode Island 02808, (401) 245-3515 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., May 14, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-13779 Filed 5-19-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before June 9, 1982.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00153. Applicant: University of Utah, Salt Lake City, UT 84112. Article: Nanosecond Excitation Lamp. Manufacturer: Photochemical Research Associates, Canada. Intended use of article: The article is intended to be used for the investigation of the static

and dynamic nature of the solute orienting mechanism in uniaxial media, in particular, stretched polyethylene. Another investigation will determine whether biaxial solute orientation could be achieved using "single crystal texture" polyethylene as a substrate. Specific aims of these investigations are:

(1) Characterize the static aspects of the anisotropic global orientation distribution of several selected aromatic solutes by determining all five of its second and fourth moments, using relatively broad-band excitation of fluorescence (bandwidth ca. 10Å^2).

(2) Characterize the anisotropic molecular rotation of the solutes as a function of temperature by means of time-resolved fluorescence polarization and dielectric as well as mechanical relaxation measurements.

(3) Explore the potential of vibrational spectroscopy (IR, Raman) for measurements on solutes in stretched sheets.

(4) Explore the potential of stretched sheet-photoacoustic spectroscopy combination.

(5) Investigate the potential of "single crystal texture" polyethylene as a substrate.

(6) Determine the location of solute relative to polymer morphology.

Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00154. Applicant: University of Wisconsin, Hospital and Clinics, 600 Highland Avenue, Madison, WI 53792. Article: Automated-Ultrasonic Body Imager. Manufacturer: Ausonics Pty., Ltd., Australia. Intended use of article: The article is intended to be used for clinical and scientific research in the field of human ultrasonic diagnosis. The precise reproducibility of scan planes and scanning geometry permits computer-based ultrasound data acquisition and development of a reconstructive allegro rhythm for human soft tissue imaging and tissue signature research. In addition, the extra ordinarily wide field of view of this instrument permits large image reconstruction of body parts for precise organ volume calculation. The water path feature of the article is ideal for imaging certain organs not well studied by contact B-scanning techniques. The article will also be utilized in extensive educational programs of both physicians and technologists in which trainees from multiple disciplines are exposed to the state of the art of imaging capabilities of various instrumentation types.

Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00155. Applicant: North Carolina State University, Purchasing Department, Box 5635, Raleigh, NC 27650.

Article: Impulse Generators.

Manufacturer: Avtech Electro-Systems Ltd., Canada. Intended use of article: The articles are intended to be used to generate ultra short optical pulses from semiconductor laser. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00156. Applicant: University of Wisconsin, School of Veterinary Medicine, 333 North Randall Avenue, Madison, WI 53715. Article: Electron Microscope, Model EM 410 and Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: The article is intended to be used for studies of biological materials or infective agents of significance to the study of the biology and health of domesticated animals, primarily animals of economic significance in American animal agriculture. The article will allow veterinary scientists to study the ultrastructural morphology of animal cells and tissues in health and in disease and thereby increase understanding of the disease process. Experiments to be conducted will include the following:

(1) Documenting that each normal articular chondrocyte has 1 cilium and that each cilium is highly oriented in 3-dimensional space,

(2) Study of the cells of the growth plate in growing swine and to compare the ultrastructure of cells in the growth plate of domestic swine in similar cells in miniature swine,

(3) Focuses on the cells of the growth plate and particularly some amorphous electron dense material surrounding the hypertrophying cells in the growth plate, and

(4) Characterization of retinal terminals of the superficial and intermediate layers of the superior colliculus and retinal terminals within the intralaminar zones of the dorsal lateral geniculate.

Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00157. Applicant: Sandia National Laboratories, Albuquerque, New Mexico 87185. Article: Dye Laser, Model FL 2000 with FL-43 Pump System. Manufacturer: Lambda Physik GmbH & Co., West Germany. Intended use of article: The article will be used to study kinetic processes in explosions and the products of shock dissociation of explosive and high energy materials.

Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00158. Applicant: University of Georgia, Central Electron Microscopy Lab., Barrow Hall, Athens, Georgia 30602. Article: Electron Microscope, Model EM 400 with

Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of Article: The article is intended to be used to study ultrastructural features of microbiological organisms and a wide variety of plant and animal tissues. Most tissues will be subjected to fixation, embedment, ultrathin sectioning and staining. Some specimens will be examined by freeze etch replication and others by negative staining. Geological specimens will be prepared by dispersing fine particles onto thin plastic or carbon support films and examining them in the transmission electron microscope. The article will also be used in the courses Biology 701, Theory of Electron Microscopy and Biology 703, Electron Microscopy Laboratory to train graduate students and some technicians in techniques of electron microscopy sufficient to enable them to understand and to professionally perform all aspects of electron microscopy, including tissue preparation, operation of the microscope and interpretation of the scientific data revealed by the electron micrographs and the analytical data obtained from energy dispersive X-ray analysis. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00159. Applicant: Northwestern University/Medical School, Department of Cell Biology and Anatomy, 303 East Chicago Ave.—Ward 7-315, Chicago, IL 60611. Article: Electron Microscope, Model JEM 100CX/ SEG and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used for studies of the molecular architecture of tissues, cells, and isolated molecules obtained as part of the experimental data derived from biomedical research projects. The experiments to be conducted will revolve around determining structural alterations in cells during different physiological activities. Ultimately it is hoped that new light will be shed on the function of cells and their organelles in both normal and diseased cells. The article will also be used for the instruction of graduate students, postdoctoral fellows, medical students and dental students. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00160. Applicant: Helen Haynes Hospital, Route 9W, West Haverstraw, NY 10993. Article: Electron Microscope, Model JEM 1200 EX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies on the ultrastructure and chemical

composition (using x-ray microanalysis) of bone. These experiments will include:

Morphological and microanalytical studies on the process of bone mineralization and of mineralization disorders, e.g. anticonvulsant-induced osteomalacia in children.

Studies on the response of bone cells and matrix to novel treatments for a variety of bone disorders, such as Paget's disease and osteoporosis.

Studies on the interaction between prosthetic devices and bone tissue.

Studies on the localization and function of trace elements in bone.

Studies on the origin and fate of bone cells, using tritium labeled amino acids.

Cytochemical studies on bones formation and resorption.

The article will also be used in the training of graduate students requiring fine structural work in their masters and doctoral thesis research. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00161. Applicant: University of Medicine and Dentistry of N.J., N.J. School of Osteopathic Medicine, 300 Broadway, Camden, New Jersey 08103. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in a wide variety of experiments in support of studies in anatomy, endocrinology, biochemistry, physiology, pharmacology, pathology, microbiology, immunology, cell biology, medicine, and surgery (and their subspecialties). The materials to be studied will include human and laboratory animal tissues, fluids, and secretions obtained from studies of man and laboratory animals in health and disease. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00162. Applicant: University of Michigan, Department of Naval Architecture & Marine Engineering, N.A.M.E. Building, Ann Arbor, MI 48109. Article: Propeller Dynamometer R45. Manufacturer: Kämpf & Remmers GmbH, West Germany. Intended use of article: The article is intended to be used to measure torque and thrust characteristics of model propellers in open water. The article is also intended to be used to teach fundamental hydrodynamics to students of Naval Architecture. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00163. Applicant: University of Hawaii at Manoa, Procurement and Property Management Office, Bachman Hall Annex No. 3, 2444 Dole Street, Honolulu, Hawaii 96822. Article: Ship Motion Meter. Manufacturer: Osaka Design Model

Kabushiki, Kaisha, Japan. Intended use of article: The article will be used in the laboratory by Ocean Engineering students in their studies of harbor and offshore engineering for the measurement of motions of ships and platforms. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00164. Applicant: Stanford University, Procurement Department, AEL-109, Stanford, CA 94305. Article: Infrared Gas Analyzer. Manufacturer: Binos, West Germany. Intended use of article: The article is intended to be used for the measurement of photosynthesis and transpiration of plants. The gaseous state of water vapor and CO₂ will be studied. Experiments will be conducted to determine the effects of temperature, light and humidity on photosynthesis and transpiration. Application received by Commissioner of Customs: April 7, 1982.

Docket No. 82-00165. Applicant: University of Utah Medical Center, Department of Surgery, 50 No. Medical Drive, Salt Lake City, Utah 84132. Article: Neodymium YAG Surgical Laser. Manufacturer: M.B.B.-A.T. G.M.B.H., West Germany. Intended use of article: The article is intended to be used in a research process to control bleeding, especially from the gastrointestinal tract and obliteration of tumors of the gastrointestinal tract. The absorption of the mucosa of the stomach and gastrointestinal tract by the article and depth of penetration is to be investigated. Several experiments are to be utilized using chronic and acute specimens of the gastrointestinal tract subjected to Neodymium YAG irradiation measuring the ability to control bleeding and depth of penetration into the muscularis and serosa by laser. The objectives pursued are those of developing a safe, reliable technique for hemostasis and tissue obliteration of the gastrointestinal tract by endoscopic means. The article will also be used in the course Surgical Gastroenterology. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00166. National Radio Astronomy Observatory, 2010 N. Forbes Blvd., Suite 100, Tucson, AZ 85745. Article: Repair of Klystron VRB21130A40, SN 0603G8. Manufacturer: Varian Canada, Inc., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received

by Commissioner of Customs: April 9, 1982.

Docket No. 82-00167. Applicant: Louisiana State University Medical Center, Biochemistry Dept., Medical Education Building, 1901 Perdido Street, New Orleans, LA 70112. Article: Custom Synthesis of Air Incubator for Tissue Culture Observation on Nikon Microscope Stage. Manufacturer: A. A. Rafflen Science Workshops, Carleton University, Canada. Intended use of article: The article is intended to be used for the study of growth, division, movement, etc. of heart cells in long-term culture, using a phase contrast microscope. Experiments will be conducted to determine the effects of drugs, gases, and other cell types on heart cells. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00168. Applicant: Massachusetts Institute of Technology, Department of Ocean Engineering, Room 1-207, Cambridge, MA 02139. Article: Elements of a Cavitation Susceptibility Meter. Manufacturer: Delft Hydraulics Laboratory, The Netherlands. Intended use of article: The article is intended to be used for studies of sources of hull vibration induced by propeller cavitation sponsored by the U.S. Maritime Administration. The properties of the phenomena being investigated are cavity volume velocity, water temperature, density, pressure, velocity, viscosity, total gas content, free gas content, bubble concentration, bubble size distribution, and cavitation susceptibility. Application received by Commissioner of Customs: April 9, 1982.

Docket No. 82-00169. Applicant: Memorial Medical Center, 800 North Rutledge, Springfield, IL 62781. Article: Electron Microscope, Model H-600-3. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article is intended to be used for the study of the ultrastructural pathology of glomeruli, skeletal muscles, peripheral nerves and malignant and benign tumors. In addition, the article will be used for the training of Pathology residents, medical students and technicians. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00170. Applicant: Department of the Army, Tripler Army Medical Center, Department of Pathology, Honolulu, Hawaii 96859. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for the examination of specimens of human biological material (biopsies and surgical tissue specimens).

Experiments to be conducted will consist of ultrastructural examination of tissue demonstrating a variety of diseases by transmission electron microscopy. Fine details of disease processes will be photographed and these photographs will become permanent records for teaching, diagnosis and research. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00171. Applicant: Central State University, 100 University, Edmond, Oklahoma 73034. Article: Period Meter. Manufacturer: Science Workshop—Carleton University, Canada. Intended use of article: The article is intended to be used for detection of bat ultrasonic cries in a descriptive study to determine foraging areas and times of various bat species in Oklahoma. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00172. Applicant: Cornell University, Department of Chemistry, Baker Laboratory, Ithaca, NY 14853. Article: Excimer Laser Model TE-861M-2 with 505FX and 503RX Quartz Optics and Dye Laser. Manufacturer: Lumonics Research, Ltd., Canada. Intended use of article: The article is intended to be used to investigate the storage and transfer of energy in gaseous materials. Of special interest here will be the elucidation of mechanisms leading to the formation and destruction of electronically excited species in the gas phase. Special emphasis will be placed on the oxygen/iodine system currently being exploited for use as a chemical laser as well as other potential candidates for optical gain. These include metal vapor/rare gas mixtures and complexes of volatile lanthanides. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00174. Applicant: U.S. Department of Energy, Laramie Energy Technology Center, P.O. Box 3395, Laramie, WY 82071. Article: Model MMZAB1F Ultra High Resolution Mass Spectrometer with Accessories. Manufacturer: VG Instruments, United Kingdom. Intended use of article: The article is intended to be used in the study and characterization of fuel and waste materials produced from alternative fossil fuel sources—oil shale, tar sands, and coal products. The makeup of these materials consists of a complex mixture of many different types of chemical compounds. The material have a very broad range of chemical and physical properties. The primary application of the article will be towards analyzing the above materials under

ultra-high resolution conditions, for the types and amounts of compounds present. Undergraduate and graduate students will have the opportunity to use this instrumentation as part of their training when they work at the Laramie Energy Technology Center as Associated Western Universities fellowship recipients. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00175. Applicant: The University of Chicago, 950 East 59th Street, Chicago, Illinois 60637. Article: Electron Microscope, Model H-600-2 and Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article will be used to perform ultrastructural studies on plasma membranes and gap junctions isolated from rat and rabbit hearts and prepared for electron microscopy by three methods: thin sectioning, negative staining, or freeze fracture. The purpose of these studies is to determine the changes produced in the internal structure of the membranes by experimental conditions that alter membrane permeability or ion transport. Immunelectron microscopy using ferritin-labeled primary or secondary antibodies against membrane proteins will be used to trace the assembly and degradation of these proteins. Changes in structure will be measured where appropriate by optical diffraction of the electron microscopic negatives and image reconstruction techniques will be applied to maximize the information obtained from optical diffraction of gap functional membrane channel arrays. Graduate students and post-doctoral fellows participate in this research and thereby receive training in the use of this electron microscope for investigating the cell biology of heart muscle and its diseases. Application received by Commissioner of Customs: April 15, 1982.

Docket No. 82-00177. Applicant: Calhoun MEBA Engineering School, 9 Light Street, Baltimore, MD 21202. Article: Self Cleaning Purifier with Accessories. Manufacturer: Alpha-Laval, Sweden. Intended use of article: The article is intended to be used in diesel engineering training conducted on two levels—licensed engineers diesel course and an apprentice diesel course. In addition to presenting general diesel engineering principles, both courses deal extensively with the associated fuel systems. Particular emphasis is placed on the handling and treatment of heavy residual fuels currently being burned in large low speed propulsion diesels. Application received by Commissioner of Customs: April 19, 1982.

Docket No. 82-00178. Applicant: Brookhaven National Laboratory, Upton, New York 11973. Article: Monochromator Crystals. Manufacturer: Cristal Tec, France. Intended use of article: The article is intended to be used in a research program involving the study of the properties of solids using neutrons from the Brookhaven High Flux Beam Reactor. The neutrons emerge from the pile with a smooth distribution of energies, neutrons of a single energy may be selected from the pile spectrum and then used in study of the properties of solids. Application received by Commissioner of Customs: April 19, 1982.

Docket No. 82-00179. Applicant: Brigham Young University, Department of Chemistry, 226 ESC, Provo, UT 84062. Article: Kelvin AC Double Bridge & Automatic Switch Unit. Manufacturer: Automatic Systems Laboratories, United Kingdom. Intended use of article: The article is an essential component in a system being designed to make precision adiabatic heat capacity measurements. This article will be used to measure very accurately the resistance and thence, the temperature of a platinum resistance thermometer. The temperature changes caused by the input of a known amount of electrical energy will be determined and used to calculate the heat capacity. The temperature and changes in temperature are two of the most important quantities in this research and must be determined as accurately and with the highest precision possible. The article will be used by graduate students conducting thermodynamic research for their dissertations etc., and by undergraduate students working in the research group. Application received by Commissioner of Customs: April 19, 1982.

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

Frank W. Creel,
Acting Director, Statutory Import Programs
Staff.

[FR Doc. 82-13744 Filed 5-19-82 8:45 am]
BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Circular Dichroism Spectrophotometers

The following is a consolidated decision on applications for duty-free entry of circular dichroism spectrophotometers 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 Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00367. Applicant: University of California, Berkeley, Department of Chemistry, 529 Latimer Hall, Berkeley, CA 94720. Article: Circular Dichroism Spectrophotometer, Model J-500-C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: See Notice on page 48280 in the *Federal Register* of October 1, 1981. Advice submitted by: National Bureau of Standards—March 15, 1982 and Department of Health and Human Services—December 18, 1981.

Docket No. 82-00028. Applicant: Stanford University, Stanford, CA 94305. Article: Circular Dichroism Spectrophotometer, J-500C and Attachment. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: See Notice on page 60044 in the *Federal Register* of December 8, 1981. Advice submitted by: National Bureau of Standards—March 18, 1982 and Department of Health and Human Services—March 17, 1982.

Comments: No comments have been received with respect to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States.

Reasons: Each foreign article to which the foregoing applications relate provides circular dichroism measurement and high frequency switching. The Department of Health and Human Services, and the National Bureau of Standards advise in their respectively cited memorandums that (1) the capabilities of the foreign articles described above are pertinent to the purposes for which each article is intended to be used and (2) they know of no domestic instrument or apparatus of equivalent scientific value to either of the foreign articles for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to either of the foreign articles to which the foregoing applications relate, for such purposes as these articles are 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 W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13743 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Cornell 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 Part 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 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00387. Applicant: Cornell University, Department of Agricultural Engineering, 218 Riley-Robb Hall, Ithaca, New York 14853. Article: Falling Weight Deflectometer. Manufacturer: A/S Dynastest Engineering, Denmark. Intended use of article: See Notice on page 51628 in the *Federal Register* of October 21, 1981.

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 purpose as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article can generate a variable amplitude (500 to 12,000 pounds) pulse load of approximately 28 milliseconds duration. The National Bureau of Standards advises in its memorandum dated April 13, 1982 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 W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13742 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Paris Processing Corporation, 543 West 43rd Street, New York, New York 10036, producer of women's coats and jackets (accepted April 28, 1982); (2) Colorado Forge Corporation, 327 West Vermijo, Colorado Springs, Colorado 80903, producer of "C" clamps and other forgings (accepted April 28, 1982); (3) The Egging Company, 1000 Egging Boulevard, Gurley, Nebraska 69141, producer of tractor cabs and agricultural equipment (accepted April 29, 1982); (4) Strydes, Inc., 969 South Village Oaks Drive, Covina, California 91724, producer of women's jackets, pants and skirts (accepted April 29, 1982); (5) F.K. & K., Inc., 1236 E. Joppa Road, Towson, Maryland 21204, producer of skateboards and sports protective equipment (accepted May 3, 1982); (6) MXR Innovations, Inc., 740 Driving Park Avenue, Rochester, New York 14613, producer of sound equipment (accepted May 4, 1982); (7) Essex Plastics Finishing Company, Inc., 135 Tonawanda Street, Buffalo, New York 14207, producer of plastic containers, tables, bushings, and other products (accepted May 6, 1982); (8) Carus Corporation, 1500 Eighth Street, LaSalle, Illinois 61301, producer of chemicals, magazines and books (accepted May 5, 1982); (9) William Atkin Company, Inc., 350 Fifth Avenue, New York, New York 10118, producer of men's shirts (accepted May 7, 1982); (10) The Glass Crafters, Ltd., P.O. Box 384, Lebanon, New Jersey 08833, producer of lighting fixtures (accepted May 7, 1982); (11) Aetna Shirt Corporation, 8801 Kelso Drive, Baltimore, Maryland 21221, producer of men's shirts and women's blouses and dresses (accepted May 10, 1982); (12) K.W.B. Manufacturing Company, 1801 South Main Street, Los Angeles, California 90015, producer of uniforms and linens (accepted May 10, 1982); (13) Kommit Industries, Inc., 1114 N.E. 28th Avenue, Portland, Oregon 97232, producer of coolers, freezers and store fixtures (accepted May 10, 1982); (14) King Laboratories, Inc., 127 Solar Street, Syracuse, New York 13204, producer of electronic components

(accepted May 11, 1982); and (15) Frank Maddocks, Inc., 10933 Camarillo Street, North Hollywood, California 91602, producer of display and exhibit materials (accepted May 13, 1982).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 82-13745 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Pig Iron From Canada; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pig iron from Canada. The review covers the three known manufacturers and two known exporters of this merchandise to the United States presently covered by the

finding and the period July 1, 1980 through June 30, 1981.

As a result of the review, the Department has preliminarily determined to assess dumping duties for certain firms equal to the calculated differences between United States price and foreign market value on each of their shipments during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT:

Betsy E. Stillman or David R. Chapman, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4833/2657).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1981 the Department of Commerce ("the Department") published in the *Federal Register* (46 FR 39871-39872) the final results of its first administrative review of the antidumping finding on pig iron from Canada and announced its intent to conduct the next administrative review by the end of July, 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of pig iron, currently classifiable under item numbers 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated (TSUSA). This review covers the three known manufacturers and two known exporters of pig iron to the United States presently covered by the finding and the period July 1, 1980 through June 30, 1981.

One exporter did not ship pig iron to the United States during the period. The estimated duty deposit rate for this non-shipping firm shall be the most recent information for the firm.

One exporter, a new shipper, did not respond to our questionnaire. The rate for assessment and for deposit of estimated duties for this non-responsive firm not previously investigated shall be the highest rate calculated during the original fair value investigation, since it is higher than current rates for responding firms with shipments in the current period.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772(b) of the Tariff Act. Purchase price was calculated on

the basis of the ex-mill price to an unrelated United States purchaser. Where applicable, deductions were made for freight equalization and commissions to unrelated parties. Freight equalization is a price adjustment that allows a manufacturer to sell at the same price to customers located at different distances from that manufacturer. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773(a) of the Tariff Act. Home market price was based on the ex-mill price and adjusted, where applicable, for freight equalization. In the case of Stelco, we used price list prices as the basis for foreign market value for certain months in the absence of sales in those months. These price lists were adhered to for sales in all other months. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Abex Industries, Limited.....	7/1/80-6/30/81	10
Algoma Steel Corporation, Ltd.	7/1/80-6/30/81	0
Dofasco Inc.	7/1/80-6/30/81	2.08
Stelco Inc.	7/1/80-6/30/81	0
Philipp Brothers (Canada), Ltd.	7/1/80-6/30/81	7.3

¹ No shipments during period.

Interested parties may submit written comments on these preliminary results on or before June 21, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first working day thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the time period involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement

instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit based upon the margins stated above shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

May 14, 1982.

[FR Doc. 82-13740 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Solar Energy Research Institute; 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 Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00362. Applicant: Solar Energy Research Institute, 1617 Cole Boulevard, Golden, CO 80401. Article: MBX, X-Ray Microanalysis System. Manufacturer: Cameca, France.

Intended use of article: See Notice on page 56855 in the Federal Register of August 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, was being manufactured in the United States at the time the foreign article was ordered (December 31, 1979).

Reasons: The foreign article provides both cathode luminescence spectroscopy and selected area diffraction. The National Bureau of Standards advises in its memorandum dated March 30, 1982 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 which was available at the time the foreign article was ordered.

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 was being manufactured in the United States at the time the foreign article was ordered.

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

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13740 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

Steel Wire Strand for Prestressed Concrete From Japan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding and tentative determination to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. The review covers the 13 known manufacturers and exporters of this merchandise to the United States presently covered by the finding, generally for the period April 1, 1978 through November 30, 1980. This review indicates the existence of dumping margins in particular periods for certain firms.

As a result of the review the Department has preliminarily determined to assess dumping duties for those firms equal to the calculated difference between United States price and foreign market value on each of their shipments during the period of review.

The Department also has tentatively determined to revoke the finding with respect to Sumitomo Electric Industries, Ltd. All of the firm's sales were made at not less than fair value during the period April 1, 1978 through December 31, 1980. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Phillip Gallas or Robert Marenick, Office of Compliance, International Trade

Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4023/2496).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1978, a dumping finding with respect to steel wire strand for prestressed concrete ("strand") from Japan was published in the Federal Register as Treasury Decision 78-487 (43 FR 57599). On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the Federal Register of March 28, 1980 (45 FR 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on steel wire strand for prestressed concrete from Japan. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

The imports covered by the review are shipments of steel wire strand, other than alloys steel, stress-relieved and suitable for use in prestressed concrete. Steel wire strand for prestressed concrete is currently classifiable under item 842.1120 of the Tariff Schedules of the United States Annotated (TSUSA).

This review covers the 13 known firms engaged in the manufacture or exportation of Japanese steel wire strand for prestressed concrete to the United States presently covered by the finding. One company, Kawatetsu Wire Products Co., Ltd., was discontinued during the original fair value investigation. In general, this review covers the period April 1, 1978 through November 30, 1980.

Sumitomo Electric Industries, Ltd. ("SEI") has requested a revocation of the finding with regard to its sales of strand. Our review indicates that all of the SEI's sales were made at not less than fair value during the period April 1, 1978 through December 31, 1980. As provided for by § 353.54(e) of the Commerce Regulations, SEI has agreed in writing to an immediate suspension of

liquidation and reinstatement of the finding if circumstances develop which indicate that strand manufactured by SEI and thereafter imported into the United States is being sold by SEI at less than fair value.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act or section 203 of the 1921 Act.

Purchase price was based on the packed delivered price, either to an unrelated purchaser in the United States or to an unrelated Japanese trading company for export to the United States, as appropriate. Where applicable, deductions were made for inland freight, F.O.B. charges, ocean freight, and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, or prices to a third country (Kuwait for the period April 1, 1978 through March 31, 1979, and Iraq for the period April 1, 1979 through November 30, 1980) when home market sales were insufficient, both as defined in section 773 of the Tariff Act or section 205 of the 1921 Act.

During our review, the petitioner alleged sales below the cost of production with respect to four of the Japanese manufacturers. Also during the review but prior to the submission of these allegations, the Department has requested and verified cost data from the two largest Japanese manufacturers of strand, Shinko and Sumitomo. Our analysis of this verified cost data had revealed sufficient sales above the cost of production to proceed on a sales price basis of comparison for these two firms. The Department has compared petitioner's allegations with the verified cost data and finds that no further cost of production investigation is warranted.

Where applicable, adjustments to foreign market value were made for inland freight, rebates, technical services, differences in interest costs, packing differentials, and differences in merchandise (differences in diameter, lead patenting, and billet grinding), in accordance with §§ 353.15 and 353.16 of the Commerce Regulations and §§ 153.10 and 153.11 of the Customs Service Regulations. No other adjustments were claimed or allowed.

In its fair value determination, the Department of the Treasury denied any adjustment for billet grinding. Billet grinding is a process employed in the production of strand for home consumption to assure compliance with Japanese standards, which process is

not used on strand sold for export. In now allowing the adjustment, the Department has verified that billet grinding is part of the home market production process only, and that higher production costs are incurred in the home market than in the export market, thereby warranting adjustment.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Kokoku Steel Wire, Ltd./all exporters.	4/1/78-3/31/79	0
Shinko Wire Company, Ltd./all exporters.	4/1/79-11/30/80	0
Shinko Wire Company, Ltd./Mitsubishi Corporation/Freyssinet International.	4/1/78-3/31/79	0
Shinko Wire Company, Ltd./all other exporters.	4/1/79-11/30/80	0
Sumitomo Electric Ind., Ltd./all exporters.	4/1/78-3/31/79	0
Suzuki Metal Industry Co., Ltd./all exporters.	4/1/79-12/31/80	0
Suzuki Metal Industry Co., Ltd./Mitsubishi Corp.	4/1/78-3/31/79	0
Suzuki Metal Industry Co., Ltd./Mitsui & Co., Ltd.	4/1/79-11/30/80	0
Suzuki Metal Industry Co., Ltd./Nissho-Iwai Co., Ltd.	4/1/79-12/31/79	0.29
Suzuki Metal Industry Co., Ltd./Nissho-Iwai Co., Ltd.	1/1/80-11/30/80	0
Teikoku Sangyo Co., Ltd./all exporters.	4/1/79-12/31/79	0.17
Teikoku Sangyo Co., Ltd./Nissho-Iwai Co., Ltd.	1/1/80-11/30/80	0
Teikoku Sangyo Co., Ltd./all other exporters.	4/1/79-12/31/79	0.03
Teikoku Sangyo Co., Ltd./all other exporters.	1/1/80-11/30/80	0
Toyko Rope Mfg. Co., Ltd.	4/1/78-3/31/79	0
Toyko Rope Mfg. Co., Ltd./all exporters.	4/1/79-11/30/80	0
Toyko Rope Mfg. Co., Ltd./all exporters.	4/1/78-3/31/79	0
Toyko Rope Mfg. Co., Ltd./all exporters.	4/1/79-11/30/80	0

Tentative Determination

Also as a result of our review, we tentatively determine to revoke the finding on steel wire strand for prestressed concrete from Japan with regard to Sumitomo Electric Industries, Ltd. If this revocation is made final it will apply to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results on or before June 21, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first workday

thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins above shall be required on all shipments of steel wire strand for prestressed concrete by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,
Deputy Assistant Secretary for Import Administration.

May 12, 1982.

(FR Doc. 82-13739 Filed 5-19-82; 8:45 am)

BILLING CODE 3510-25-M

University of Hawaii; 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 Part 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 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00218. Applicant: University of Hawaii, 2444 Dole Street,

Honolulu, Hawaii 96822. Article: Electron Spectrometer, ESCLAB 5. Manufacturer: VC Scientific Instruments, Ltd., United Kingdom. Intended use of article: See Notice on page 31465 in the Federal Register of June 16, 1981.

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 is equipped with a monochromatized AlKa X-ray source. The National Bureau of Standards advises in its memorandum dated April 5, 1982 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 W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-13741 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Land Remote Sensing Satellite Advisory Committee; Open Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Committee was established on August 12, 1981, to advise the Secretary of Commerce on management of the U.S. civil operational land remote sensing satellite program to be administered by NOAA beginning January 1983, and on proposals for transfer of the program to the private sector. Initial members were appointed April 27, 1982.

Time and Place: An open meeting will be held on June 7, 1982, from 1:00 to 4:00 p.m., and June 8, 1982, from 8:30 to 11:30 a.m., and 1:30 to 4:30 p.m. at Main Commerce Building, Room 4830, 14th Street and Constitution Avenue NW., Washington, D.C. (Public entrance to the building is on 14th Street, between Constitution Avenue and E Street.)

Tentative Agenda

(1) Orientation for New Members on the U.S. Civil Operational Land Remote Sensing Program (first day).

(2) Discussion of Program Management Issues (second day, a.m.).

(a) Data Acquisition Plans and User Requirements.

(b) Data Distribution Plans, Pricing Structure, and the Market.

(3) Discussion of the Decisions of the Cabinet Council on Commerce and Trade and Steps leading to Commercialization (second day, p.m.).

Public Participation

The meeting will be open to public attendance, and approximately 60 seats will be available for the public, including 10 seats reserved for media representatives on a first-come, first-served basis.

The last 30 minutes of each half-day session will be set aside for comments from the floor. Written statements may be submitted by the public at any time before or after the meeting, and should be directed to Dr. John H. McElroy, Assistant Administrator for Satellites, NOAA, Washington, D.C. 20233.

Minutes of the meeting will be available for public reference after certification by the Committee Chairperson 30 days following the meeting.

FOR FURTHER INFORMATION:

Contact the Committee Control Officer, Ms. Jennifer Clapp at (301) 763-5904 or the Committee Staff Officer, Ms. Peggy Harwood, at (301) 763-7822. They are located in the Office of External Relations, National Earth Satellite Service, NOAA, (Sx3) Washington, D.C. 20233.

Dated: May 14, 1982.

Francis J. Balint,

Director, Office of Information and Management Services.

[FR Doc. 82-13704 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Radian Corp.; Grant of Limited Exclusive Patent License

Notice is hereby given that the National Technical Information Service (NTIS), U.S. Department of Commerce, granted to Radian Corporation a limited exclusive right in the United States and in certain foreign countries for the manufacture, use and sale of the products embodied in U.S. Patent Application No. 6-261,415 (dated May 7, 1981), "Echometry Device and Method for Remote Measurement of Temperature Utilizing Interferometric Principles."

The limited exclusive license granted by NTIS is a royalty-bearing license for a term of five years from the date of the first commercial sale. The license may be revoked in accordance with 41 CFR 101-4.104.5.

Dated: May 13, 1982.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service.

[FR Doc. 82-13099 Filed 5-19-82; 8:45 am]

BILLING CODE 3510-04-M

National Bureau of Standards

Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the Federal Register on February 23, 1982 (47 FR 7872), the National Bureau of Standards (NBS) announced proposed changes to the exclusion list pertaining to Federal Information Processing Standards Publication 60-1, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems; and Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems. Interested parties were allowed until April 9, 1982, to submit written comments regarding the proposed changes to the exclusion list.

As a result of a review and analysis of comments received, NBS has made a determination that the following additions will be made to the exclusion list:

Manufacturer	Model
Apple Computer Inc.	Apple II Plus Series.
Apple Computer Inc.	Apple III Series.
IBM Corp.	IBM System/23 Datamaster.
Vector Graphic, Inc.	VIP 1600.
Vector Graphic, Inc.	System 8.
Vector Graphic, Inc.	Vector 3105.
Vector Graphic, Inc.	Vector 2800.
Vector Graphic, Inc.	Vector 3005.
Vector Graphic, Inc.	Vector 2600.
Vector Graphic, Inc.	Vector 5005.

Interested parties are invited to submit written comments or recommendations identifying candidate systems which should be added or removed from the exclusion list to the Director, Institute for Computer Sciences and Technology, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Comments should include

information supporting any proposed additions (or removals) to that list according to the criteria described in the Federal Register notice of March 19, 1979 (44 FR 16466), which announced the availability of a proposed initial exclusion list. Any comments submitted which are deemed by the sender to contain confidential or proprietary information should be appropriately designated and marked.

NBS maintains a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments or recommendations regarding the exclusion list.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: May 14, 1982.

Ernest Ambler,
Director.

[FR Doc. 82-13782 Filed 5-19-82; 8:45 am]
BILLING CODE 3510-CN-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Toxicological Advisory Board.

SUMMARY: This notice announces a meeting of the Toxicological Advisory Board on Monday, June 7, 1982, from 9:30 a.m. until 4:00 p.m., and Tuesday, June 8, 1982, from 8:30 a.m. until 1:00 p.m. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Susan Guenette, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; 301-492-6957.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is an established nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid

treatment labeling. In addition, the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act and recommends revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978, under the authority of Section 10 of the 1978 CPSC Authorization Act (Pub. L. 95-631).

On June 6-7, 1982, the board will consider new information pertaining to its previous review of zinc and magnesium silicofluorides and resolve the recommended labeling for these substances. The sensitization potential of a number of compounds discussed at the April 1982 meeting will be reviewed in greater depth. The board will attempt to determine only if sufficient presumptive evidence of strong sensitization exists to suggest the substance for further study by the Commission. The following compounds will be discussed: ethylenediamine, diethylenetriamine, benzethonium chloride, benzoyl peroxide, castor beans, and nickel salts. The balance of the board's time will be spent in discussing the format and narrative content of its final report.

The two-day meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations should notify Susan Guenette (see address above) or Dr. Fred Marozzi (same address, Rm. 724) by Tuesday, June 1, 1982. The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requestors will be informed of the decision before the meeting.

Sadye E. Dunn,
Secretary.

May 18, 1982.

[FR Doc. 82-13897 Filed 5-19-82; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Enhancement of Airlift in Force Projection will meet at the National Academy of Sciences Study Center, Woods Hole,

Massachusetts on June 28-July 9, 1982. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. each day.

The committee will consider all facts presented to them and outline, draft, and prepare a report recommending new or improved technology which will enhance the Military Airlift Command's current capability to meet and sustain a surge operation. The briefings and discussions will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1).

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Winnibel F. Holmes,
Air Force Federal Register Liaison Officer.

[FR Doc. 82-13746 Filed 5-19-82; 8:45 am]
BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group, Air Force Systems Command, will hold meetings on July 14, 1982, from 8:30 a.m. to 5:00 p.m., and on July 15, 1982, from 8:30 a.m. to 12:00 p.m., at Hanscom Air Force Base, Massachusetts, in the Command Management Center, Building 1606.

The group will receive classified briefings and hold classified discussions on selected Air Force Command, Control, and Communications programs.

The meetings concern matters listed in section 522b(c) of Title 5, United States Code, specifically subparagraph (1) thereof and, accordingly, the meetings will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Winnibel F. Holmes,
Air Force Federal Register Liaison Officer.

[FR Doc. 82-13747 Filed 5-19-82; 8:45 am]
BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent To Revise Transmission Policy; Outline of Future Procedures

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to revise transmission policy; outline of future procedures. File No.: TrP-1.

SUMMARY: On February 17, 1981 (46 FR 12658), BPA announced its intention to revise its transmission policy. On March

30, 1981 (46 FR 19296), BPA extended the period within which it would accept recommendations concerning transmission policy from March 31, 1981, to the later of April 30, 1981, or the last day of BPA's hearings on its proposed transmission rate adjustment.

By this notice, BPA is reopening the period in which recommendations concerning transmission policy will be accepted and requesting that all documents which become part of the Official Record compiled in the process of developing the transmission policy contain the file number designation TrP-1. This notice also identifies the Responsible Official, amends the tentative schedule previously announced, and describes the proposed scope of issues to be treated in the final policy in light of comment which has already been made a part of the Official Record.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Oregon callers may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551;

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-345-0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Gordon H. Brandenburger, Kalispell District Manager, P.O. Box 758, Kalispell, Montana 59901, 406-755-6202.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Thomas M. Noguchi, Acting Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Roy Nishi, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

SUPPLEMENTARY INFORMATION:

1. *Documents Comprising the Official Record.* In response to BPA's notices of February 17, 1981 (46 FR 12658) and March 30, 1981 (46 FR 19296) comments

have been received from the following sources:

Coos Curry Electric Coop, Inc., David A. Smith—04/20/81

Culham, William B., Portland, Oregon—02/26/81

Eugene Water & Electric Board, Harold S. Worcester—05/01/81

Grant County PUD, R. O. Ingebrigtsen—05/15/81, 04/20/81

ICP, Robert H. Hartley—11/05/81, 05/22/81

ICP, Merrill Schultz—11/09/81

League of Women Voters, Ellen Knight—04/20/81 (rcv'd)

McMinnville, City of; Jack L. Nicholls—02/20/81

Montana, State of; Leo Berry, Jr.—05/04/81

Oregon DOE, Michael W. Grainey—08/21/81

Pacific Gas & Electric, A. Kirk

McKenzie—05/04/81

Pend Oreille County PUD No. 1, James E. Sewell—04/29/81

PPC, Robert M. Greening—04/29/81

Seattle, City of; Arthur T. Lane—05/04/81

Seattle City Light, Gerald R. Garman—05/22/81, 05/08/81, 04/17/81, 03/31/81

Seattle City Light, Dennis M. Gray—04/29/81

Washington Water Power Co., Gregory Prekeges—05/14/81

All of the above-listed comments are part of the Official Record in the TrP-1 file, even though some were filed after the specified deadlines. In addition, the entire record of the transmission rate adjustment hearing which began in February 1981 is part of the Official Record in the TrP-1 file.

Persons wishing to add documents to the Official Record should file such additional documents with BPA's Public Involvement Coordinator, clearly marked with the TrP-1 file designation. If such additional documents are voluminous and are already on file with BPA, interested persons need only indicate their date and where they are on file, and the Coordinator will make them part of the TrP-1 file.

Documents which become part of the TrP-1 file by September 1, 1982, will be considered in the formulation of the proposed transmission policy.

Documents received after this date will not be considered in the formulation of the proposed transmission policy, but will be considered in the formulation of the final transmission policy.

2. *Responsible Official.* James L. Jones, Deputy Power Manager, is hereby designated as the Responsible Official for the development of the proposed transmission policy.

3. *Amended Schedule.* BPA will hold preliminary discussions on the proposed

transmission policy. All customers and interested parties will be advised of meeting schedules once they are set.

October 1982—publication of proposed transmission policy with generic draft contract or contracts and request for public comment. Public hearings will be held during which public comments will be received.

January 1983—publication of notice of final transmission policy with generic draft contract or contracts.

4. *Scope of Issues for Proposed Transmission Policy.* The final transmission policy will address issues arising in the following areas:

a. BPA's objectives for wheeling services,

b. the types of transmission services BPA intends to offer and their major features, and

c. compensation methodology for transmission losses.

While development of this policy will require parallel development of certain rate concepts, the final transmission policy will not contain those rate matters which will, instead, be addressed in the next transmission rate adjustment following the publication of the final transmission policy.

Issued in Portland, Oregon, May 12, 1982.

Marvin Klinger,

Acting Administrator.

[FR Doc. 82-13771 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

T.W. Oil, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with T.W. Oil, Inc. (formerly JOC OIL, INC.) as a final order of the Department.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Robert J. McKee, Director, Philadelphia Field Office, Economic Regulatory Administration, 1421 Cherry Street, Philadelphia, Pa. 19102 (215/597-2633).

SUPPLEMENTARY INFORMATION: On February 8, 1982, Vol 47, FR 5759-5760, the ERA published a notice in the Federal Register that it had executed a proposed Consent Order with T.W. Oil, Inc. (formerly JOC OIL, INC.) on October 13, 1981 which would not become effective sooner than 30 days

after publication of that notice. Pursuant to 10 CFR 205.199(c), interested persons were invited to submit comments concerning the terms and conditions of the Proposed Consent Order.

As the notice of February 8, 1982 stated, the period during which the alleged violations occurred was November 1, 1973 through June 30, 1974 and the products involved were No. 2 and No. 6 oil. As that notice also stated, under the Consent Order T.W. Oil, Inc. is required to refund to an identified end-user customer, the Commonwealth of Virginia, the amount of \$294,739.00 while the remaining sum of \$313,069.00 together with any applicable installment interest is to be remitted to the Department of Energy which will "determine the ultimate disposition of these monies." Specifically, until such ultimate disposition is determined, the money is to be held in escrow.

No comments were received questioning any of the terms and conditions of the Consent Order.

Two comments were received, one from the State of Maine and the other from the New York State Energy Office, making suggestions with regard to the ultimate disposition of those funds currently being paid into escrow. Both agreed, as does the ERA, that an effort must first be made to determine whether there are identified end-users who were overcharged to whom the funds can properly be returned, and both suggest that the remaining amount be distributed to the states in which the overcharges purportedly occurred for use in energy related programs.

Accordingly, both comments will be properly considered at the time ERA makes a determination with regard to the disposition of the escrow fund, but neither suggests any reason why the ERA should not proceed to make the proposed Consent Order final.

The proposed Consent Order is therefore made final and effective on the date of publication of this Notice issued in Philadelphia, PA on 6th day of May, 1982.

Robert J. McKee Jr.,
Director, Philadelphia Field Office, Economic
Regulatory Administration.

[FR Doc. 82-13769 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

Thomas P. Reidy, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration hereby gives notice of a Proposed Remedial Order which was issued to Thomas P. Reidy, Inc. of Houston, Texas.

This Proposal Remedial Order charged Thomas P. Reidy, Inc. with pricing violations in the amount of \$8,463,808.04, plus accrued interest in sales of motor gasoline and fuel oil during the time periods of November 1, 1973 through May 31, 1975.

A copy of the Proposal Remedial Order, with confidential information deleted, may be obtained from David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64108-2466. On or before June 4, 1982, any aggrieved person may file a Notice of Objections with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri on the 7th day of May 1982.

David H. Jackson,
Director, Kansas City Office, Economic
Regulatory Administration.

Concurrence:

Jeanmarie Homan,
Office of General Counsel.

[FR Doc. 82-13770 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective June 1, 1982. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, Room 4121, Washington, D.C. 20461, Telephone: (202) 633-9710.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per BTU's
Alabama ¹	\$3.60
Arizona ¹	3.50
Arkansas ¹	3.22
California ¹	3.42
Colorado ¹	3.91
Connecticut ¹	3.72
Delaware ¹	3.60
Florida	3.48
Georgia	3.56
Idaho ¹	3.91
Illinois ¹	3.59
Indiana ¹	3.59
Iowa ¹	3.39
Kansas ¹	3.39
Kentucky ¹	3.59
Louisiana ¹	3.22
Maine	3.72
Maryland ¹	3.60
Massachusetts ¹	3.61
Michigan	3.43
Minnesota	3.26
Mississippi ¹	3.60
Missouri ¹	3.39
Montana ¹	3.91
Nebraska ¹	3.39
Nevada ¹	3.50
New Hampshire ¹	3.72
New Jersey	3.37
New Mexico	2.96
New York ¹	3.60
North Carolina ¹	3.60
North Dakota ¹	3.39
Ohio	3.55
Okahoma	3.16
Oregon ¹	3.50
Pennsylvania ¹	3.60
Rhode Island ¹	3.72
South Carolina ¹	3.60
South Dakota ¹	3.39
Tennessee ¹	3.60
Texas ¹	3.13
Utah ¹	3.91
Vermont ¹	3.72
Virginia ¹	3.60
Washington ¹	3.50
West Virginia	3.43
Wisconsin ¹	3.59
Wyoming ¹	3.91

¹ Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79-21.

² Region based price and State based price are the same.

Section II Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during March 1982 was \$35.69 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective June 1, 1982, is \$8.00 per million BTU's.

Section III Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of January 1982, February 1982, and March 1982.¹ All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective June 1, 1982 (shown in Section I), are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, January 1982, February 1982, March 1982. Reported prices for sales in January 1982 were adjusted by the

percent change in the nationwide volume-weighted average price from January 1982 to March 1982. Prices for February 1982 were similarly adjusted by the percent change in the nationwide volume-weighted average price from February 1982 to March 1982. The volume-weighted 3-month average of the adjusted January 1982 and February 1982, and the reported March 1982 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the

State (expressed in dollars per million BTU's).

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oligram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oligram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 sulfur residual fuel oil for the ten trading days ending May 13, 1982, and dividing that price by the corresponding weighted average price computed from prices published by *Platt's* for the month of March 1982. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

¹ Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Region E

Iowa
Kansas
Missouri
Minnesota

Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico

Oklahoma
Texas

Region G

Colorado
Idaho
Montana

Utah
Wyoming

Region H

Arizona
California
Nevada

Oregon
Washington

Issued in Washington, D.C., May 18, 1982.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information
Administration.

[FR Doc. 82-13817 Filed 5-19-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-10-FRL-2127-5]

Notice of Issuance of Prevention of Significant Deterioration (PSD) Permit to Tacoma City Light

Notice is hereby given that on May 11, 1982, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to Tacoma City Light for approval to construct a mixed fuel cogeneration facility at Tacoma, Washington.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR 52.21) regulations, subject to certain conditions specified in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location:

EPA, Region 10, 1200 Sixth Avenue, Room
11C, M/S 524, Seattle, Washington 98101

May 11, 1982.

John R. Spencer,

Regional Administrator.

[FR Doc. 82-13756 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Docket 79-184]

Meeting of Interested Parties To Prepare for Senior Level Meeting of North Atlantic Consultative Process

May 12, 1982.

Members of the Common Carrier Bureau staff will convene a meeting of all interested parties to prepare for the Senior Level Meeting of the North Atlantic Consultative Process in Rome, Italy (July 6, 7, 8, 1982) in Room A-110, 1229 20th Street, NW, Washington, D.C. (FCC Annex) at 10:00 a.m. on Thursday, May 26, 1982.

The agenda of the meeting will include: (1) The circulation of final reports to update the Montreal record; (2) the finalization of plans for the Rome meeting.

This meeting will be open to the public and anyone who wishes to attend and express views is invited. For additional information, contact Margot Bester (202) 632-4047.

William J. Tricarico,

Secretary, Federal Communications
Commission.

[FR Doc. 82-13783 Filed 5-19-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Senior Executive Service; Performance Review Board Updated Membership

In accordance with Title IV of the Civil Service Reform Act of 1978, the Federal Home Loan Bank Board hereby gives notice of new memberships on the SES Performance Review Board. Current members are D. James Croft (Chairman), Richard L. Petrocci, Charlotta A. Chamberlain, Richard C. Pickering, Rebecca H. Laird, and John S. Buchanan.

For Further Information Contact: Doris H. McGhee, Director of Personnel, Federal Home Loan Bank Board, (202) 377-6050.

J. J. Finn,

Secretary to the Board, Federal Home Loan
Bank Board.

[FR Doc. 82-13723 Filed 5-19-82; 8:45 am]

Billing Code 6720-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice 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 voting shares or assets of a bank. 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 indicated for the application. With respect to the application, interested persons may express their views in writing to the address indicated for the application. 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.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *The Sumitomo Bank, Limited*, Osaka, Japan; to acquire 13.7 percent of the voting shares of CPB, Inc., Honolulu, Hawaii. Comments on this application must be received not later than June 12, 1982.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13718 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice 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 voting shares or assets of a bank. 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 indicated for the application. With respect to each application, interested persons may express their views in writing to the address indicated for the application. 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.

A. Federal Reserve Bank of St. Louis, (Delmer P. Weisz, Vice President) 411 Locust street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares or assets of The Harpeth National Bank of Franklin, Franklin, Tennessee. Comments on this application must be received not later than June 13, 1982.

Board of Governors of the Federal Reserve System, May 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13720 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice 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)(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 the 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 the 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 11, 1982.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island (formerly Industrial National Corporation;

mortgage banking activities; Massachusetts): To engage, through its subsidiary, Mortgage Associates, Inc., in the origination, sale and servicing of residential and commercial mortgage loans and loans secured by junior liens on residential real estate. These activities would be conducted from offices located at 175 Andover Street, Danvers, Massachusetts and 34 Willard Street, Quincy, Massachusetts, serving the Commonwealth of Massachusetts.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13716 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Citibank International; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Citibank International, Miami, Florida, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under § 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a *de novo* branch in Fort Lauderdale, Florida. Citibank International operates as a subsidiary of Citibank, New York, New York.

The factors that are to be considered in acting on this 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 New York. 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 June 11, 1982. 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, May 12, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13715 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Shively Bancshares Corporation*, Shively, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of the Bank of St. Helens, Shively, Kentucky. Comments on this application must be received not later than June 12, 1982.

B. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *CPB, Inc.*, Honolulu, Hawaii; to become a bank holding company by acquiring 100 percent of the voting shares of Central Pacific Bank, Honolulu, Hawaii. Comments on this application must be received not later than June 12, 1982.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13717 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application.

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.

A. Federal Reserve Bank of Minneapolis (Lester G. Gable, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gale Bank Holding Company, Inc.*, Galesville, Wisconsin; to become a bank holding company by acquiring 86 percent of the voting shares of Bank of Galesville, Galesville, Wisconsin. Comments on this application must be received not later than June 13, 1982.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Group, Ltd.*, Fort Dodge, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The State Bank, Fort Dodge, Iowa. Comments on this application must be received not later than June 13, 1982.

2. *McLean County Bancshares, Inc.*, Bloomington, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to McLean County Bank, Bloomington, Illinois and 80 percent of the voting shares of Stanford State Bank, Stanford, Illinois. Comments on this application must be received not later than June 13, 1982.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Highland Bancshares, Inc.*, Highlands, Texas; to become a bank holding company by acquiring 93.5 percent of the voting shares of Highlands State Bank, Highlands, Texas. Comments on this application must be received not later than June 9, 1982.

2. *Lometa Bancshares, Inc.*, Lometa, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The Citizens State Bank of Lometa, Lometa, Texas. Comments on this application must be received not later than June 13, 1982.

3. *Stamford Bancshares, Inc.*, Stamford, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Stamford Financial Corporation, Stamford, Texas, and thus indirectly acquiring The First National Bank in Stamford, Stamford, Texas. Comments

on this application must be received not later than June 13, 1982.

4. *US Bancshares of Texas, Inc.*, Benton, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of USBank, Denton, Texas. Comments on this application must be received not later than June 13, 1982.

5. *Wilson Bancshares, Inc.*, Wilson, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Wilson State Bank, Wilson, Texas. Comments on this application must be received not later than June 13, 1982.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *American Bancorp of Nevada*, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Commerce, Las Vegas, Nevada. Comments of this application must be received not later than June 13, 1982.

Board of Governors of the Federal Reserve System, May 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-13721 Filed 5-19-82; 8:45am]

BILLING CODE 6210-01-M

Northwest Bancorporation; Proposed Acquisition of Dial Corporation

Northwest Bancorporation, Minneapolis, 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 acquire voting shares of Dial Corporation, Des Moines, Iowa.

Applicant states that the proposed subsidiary would engage in the activities of consumer and commercial finance, leasing, agricultural lending, data processing, and the offering of time and savings deposits and thrift certificates. These activities would be performed from offices of Applicant's proposed subsidiary in 37 states: Alabama; Arizona; California; Colorado; Connecticut; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Jersey; New Mexico; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Rhode Island; South Carolina; Tennessee; Texas; Utah; Washington; Wyoming. Applicant's proposed subsidiary does business through the following direct and indirect

subsidiaries: Dial Financial Corporation; Mid-States Enterprises, Inc.; DialPlan, Inc.; DialPlan Corporation, Inc.; The Money Center, Inc.; Dial Leasing Corporation; Dial Leasing Corporation of Iowa; Dial Leasing Corporation of Des Moines; Dial Computer Systems Corporation; Centurion Casualty Company; Dial Loan and Investment Company (also, "of Omaha"); Dial Industrial Finance Company of Minnesota; Centurion Life Insurance Company; Dial Mortgage Company of Nevada; Dial Consumer Discount Company; Dial Finance Acceptance Company; Dial Industrial Loan Company.

A complete list of the locations of all of the offices involved is contained in the application filed by Northwest Bancorporation, and this list is available for inspection at offices of the Board of Governors and at the Federal Reserve Bank of Minneapolis.

With respect to certain of these activities the area to be served is the county/city in which such subsidiary is located and contiguous counties or cities or portions thereof. With respect to other activities the market is regional or national in scope. It appears that such activities are permissible for bank holding companies, within the meaning of section 225.4(a) of Regulation Y, subject to Board approval of individual proposals in accordance with the procedures of section 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 views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 12, 1982.

Board of Governors of the Federal Reserve System, May 13, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-13719 Filed 5-19-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

Audit of Transportation Payment Documents by Commercial Firms; Pre- Solicitation Conference

Notice is hereby given of a conference, prior to solicitation of bids, to address considerations relevant to a proposed procurement by contract of the identification of overcharges on Government paid transportation bills during FY 1983 (October 1, 1982 to September 30, 1983). It will be held at the Office of Transportation Audits, Transportation and Public Utilities Service, on June 3, 1982, at 10 a.m., Room 2006, Chester A. Arthur Building, 425 I Street, NW., Washington, D.C. The conference will be devoted to an open discussion concerning the scope and method of the proposed procurement. Those desiring further information may contact Mr. Kenneth G. Leib, Chief, Special Projects, Transportation Audits Division, Transportation and Public Utilities Service, General Services Administration (202-275-1077).

Dated: May 3, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-13703 Filed 5-19-82; 8:45 am]

BILLING CODE 6820-AM-M

[E-82-15]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Energy Regulatory Commission involving electric rates, Docket No. ER82-423.

2. *Effective date.* This delegation is effective immediately.

3. Delegation.

a. Pursuant to the authority vested in the Administrator of General Services by the Federal Property and Administrative Services Act of 1949, 63

Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Energy Regulatory Commission involving the application of the Virginia Electric and Power Company for changes in rates and charges to its resale, cooperative, and municipal wholesale customers, Docket No. ER82-423. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add GSA to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: May 6, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-13702 Filed 5-19-82; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13648-821]

Child Welfare Services Training Grants Program; Availability of Grant Funds

AGENCY: Administration for Children, Youth and Families, Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Grant Funds for the Child Welfare Services Training Grants Programs.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for *Teaching Grants* authorized under Section 426 of the Social Security Act (part B of title IV, 42 U.S.C. 626).

DATES: Closing date for receipt of applications is July 6, 1982.

Scope of this Announcement

This Program Announcement is one of two for the Child Welfare Services Training Grants Program and covers Teaching Grants to be awarded for Fiscal Year 1982. All Teaching Grants are awarded and administered by the regional Administration for Children, Youth and Families Program Offices.

Program Purpose

The purpose of this program is to develop, expand, and improve educational programs and resources for preparing students for work in the field of child welfare.

Program Goals and Objectives

The goal of this program is to provide education and training opportunities for persons who are committed to entering the field of child welfare services, or who are already working in the field of child welfare services, to enable them to more effectively achieve the following outcomes for children and families:

- To provide support to families in their own homes in order to prevent separation of children from their families.
- Where separation is necessary, to develop permanent plans and provide support services to enable children to be returned to their families.
- Where these options are inappropriate, to provide quality services which enable the children to become adopted or where it is the plan of choice in exceptional circumstances to be placed in a permanent foster home.

Applications for projects should specify that the proposed project will achieve or is capable of achieving one of the following specific program objectives:

- To develop and implement practice-oriented demonstration training institutes in one or more states which address critical child welfare issues and problems as identified by the states, and which can be continued or integrated into on-going staff development activities conducted by the appropriate state or local public and voluntary agencies; or
- To provide technical assistance to one or more states to improve their capacity to provide on-going practice-relevant child welfare training, and related staff development functions.

Eligible Applicants

Teaching grants are awarded to public or nonprofit private colleges and universities accredited by an appropriate accrediting authority (e.g. national or regional associations of colleges and secondary schools;

National Council for Accreditation of Teacher Education; Council on Social Work Education; American Assembly of Collegiate Schools of Business; Council on Education for Public Health; Association of American Law Schools, et al.).

Available Funds

Of the total appropriation of \$3,473,000 available in Fiscal Year 1982, the Administration for Children, Youth and Families expects to award approximately \$2,150,000 for new teaching grants. A new grant is the initial award made in support of a project. The project period is of one year duration. An indirect cost of 8% of the direct costs (or the institution's actual indirect cost if less than 8%) is allowable for this grant program.

In Fiscal Year 1982, \$1,150,000 will be awarded to support 10-16 child welfare training institutes at funding levels ranging from a minimum of \$70,000 to a maximum of \$145,000. An additional \$1,000,000 will be awarded to support ten child welfare technical assistance projects at a maximum funding level of \$100,000 per project.

Funding allocations showing the total level of support available to each Region for Training Institutes and Technical Assistance Projects are as follows:

Allocations Per Region

Child Welfare Services Teaching Grants

Region I, \$170,000
Region II, \$245,000
Region III, \$245,000
Region IV, \$245,000
Region V, \$245,000
Region VI, \$245,000
Region VII, \$170,000
Region VIII, \$170,000
Region IX, \$245,000
Region X, \$170,000

Grantee Share of the Project

There is no cost sharing or matching requirement for grants under this program.

The Application Process

Availability of Forms

Application for a grant under the Child Welfare Training Grants Program must be submitted on standard forms provided for this purpose. Application kits which include the forms, instructions and program information, including the complete Program Guidance for Fiscal Year 1982 may be obtained by writing to the "Project Officer, Child Welfare Services Training Grants" in the appropriate regional office listed in Appendix I.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be submitted to the Regional Office address indicated in Appendix II. In order to facilitate processing of a grant application, please submit one signed original and six copies. Applications must be submitted to the Regional Office in the region in which the applicant institution is located. *The applicant must clearly identify the program announcement for which the application is to compete.* The application must be signed by an individual authorized to act for the applicant institution and to assume for the institution the obligations imposed by the terms and conditions of the grant award.

A-95 Notification Process

This program does not require the A-95 notification and review process.

Application Consideration

The Regional Program Director, Administration for Children, Youth and Families, determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families. The results of the review assist the Regional Program Director, Administration for Children, Youth and Families, in considering competing applications. If the Regional Program Director has reached a decision to disapprove a competing grant application, the unsuccessful applicant is notified in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, and the total period for which project support is contemplated. Final decisions on grant awards are expected to be completed by the end of August, 1982.

Criteria for Review and Evaluation of Teaching Grant Applications

Completed grant applications will be reviewed and evaluated against the following criteria:

(1) That the project objectives are identical with or are capable of achieving one of the specific program objectives listed in this announcement under Program Goals and Objectives. (Points 10.)

(2) That the applicant identifies the specific child welfare issues which the state plans to address, and describes how the project will improve the child welfare resources and training capability of the state. (Points 10.)

(3) That the applicant provides documentation on the nature and extent of consultations held in planning this project with state and/or local administrators of public social service agencies including, where appropriate, voluntary agencies or organizations. The application must include written verification from the State Commissioner of Social Services, State Commissioner of Human Resources (or the equivalent) or his designee that its content addresses child welfare service needs of the state. (Points 10.)

(4) That the application includes a viable work plan designed to achieve the results required by the program objectives. The work plan should include: (Points 25.)

(a) The proposed methodology for collaborating with an affiliated state or local public child welfare agency (including, where appropriate, voluntary agencies) to conduct specific state/local child welfare training or technical assistance projects.

(b) Timetables for accomplishing program goals, objectives, and sub-objectives as identified and further defined by the applicant in the proposal;

(c) A management plan which describes how the project will be implemented, and insures continued collaboration between the affiliated state or local child welfare agency and project staff; and

(d) The proposed process and procedures that will be used to coordinate training and technical assistance projects with the activities of the Regional Resource Centers, to be established in FY '82.

(5) That the applicant describes the state's or local public and voluntary agencies' plans projected to implement successful training institutes or successful results of the technical assistance projects into an on-going training program within the state or local agency. Agency plans should include projected information about the qualifications of staff who will conduct the training or technical assistance activities, the courses to be offered, and the types of students and/or practitioners who will be eligible or required to participate. (Points 15.)

(6) That the curriculum currently offered by the applicant demonstrates that the applicant has the organizational, professional and educational capacity to address the

critical child welfare training issues facing states, with particular emphasis on the program goals of this announcement, including but not limited to such critical areas as prevention, foster care, case review, adoption of special needs children, etc. (Points 10.)

(7) That the project personnel are or will be well qualified to provide child welfare training or technical assistance and the applicant agency has or will have adequate resources to conduct the project. (Points 10.)

(8) That the estimated cost to the government and to the project is reasonable considering the anticipated results, and that the applicant has included funds to send at least one key person to a state-wide or regional meeting on child welfare training issues. (Points 10.)

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is July 6, 1982. An application will be considered received on time if:

- The application was sent by registered or certified mail not later than July 6, 1982 as evidenced by the U.S. Postal Service Postmark, or the original receipt from the U.S. Postal Service; or
- The application is received on or before close of business (COB) July 6, 1982 in the Department of Health and Human Services Regional Office mailroom. In establishing the date of receipt, consideration will be given to the time date stamp of such mailrooms or the documentary evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline or sent address other than the regional office in the region in which the applicant institution is located will not be accepted and will be returned to the applicant.

(Catalog of Federal Domestic Assistance Program Number 13.648, Training Grants in the Field of Child Welfare)

Dated: April 13, 1982.

Clarence E. Hodges,

Commissioner, Administration for Children, Youth and Families.

Approved: May 14, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Appendix I—Regional Project Officers, Child Welfare Services Training Grant Program, Administration for Children, Youth and Families, Office of Human Development Services, Department of Health and Human Services, Regions I–X

Region I

Regional Project Officer, Administration for Children, Youth and Families, Room 2011—JFK Federal Building, Government Center, Boston, Massachusetts 02203, (617) 223-6450

Region II

Regional Project Officer, Administration for Children, Youth and Families, Federal Building, 26 Federal Plaza—Room 4149, New York, New York 10007, (212) 264-4118

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Regional Project Officer, Administration for Children, Youth and Families, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19101, (215) 596-6763

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Regional Project Officer, Administration for Children, Youth and Families, 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (312) 353-8065

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Regional Project Officer, Administration for Children, Youth and Families, 1200 Main Tower Building—Room 2025, Dallas, Texas 75202, (214) 729-6596

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Regional Project Officer, Administration for Children, Youth and Families, Federal Building, 601 E. 12th Street—3rd Floor, Kansas City, Missouri 64106, (816) 374-5401

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Regional Project Officer, Administration for Children, Youth and Families, 1961 Stout Street, Denver, Colorado 80294, (303) 327-3106

Region IX

Regional Project Officer, Administration for Children, Youth and Families, Federal Office Building, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-6153

Region X

Regional Project Officer, Administration for Children, Youth and Families, Mail stop 622—Arcade Plaza Building, 1321-2nd Avenue, Seattle, Washington 98101, (206) 399-0838

Appendix II—Directors, Office of Fiscal Operations, Regions I Thru X

Region I

Mr. St. Clair Phillips, Director, OFO/HDS, Room 2000—JFK Federal Building, Boston, Mass. 02203, (8) 223-1107

Region II

Mr. Nicholas Cordasco, Director, OFO/HDS, Federal Building, 26 Federal Plaza, New York, N.Y. 10007, (8) 264-4117

Region III

Mr. William Chesser, Director, OFO/HDS, 3535 Market Street, Box 13716, Philadelphia, Pa. 19101, (8) 596-6565

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Mr. Ed Shulz, Acting Director, OFO/HDS, 101 Marietta Tower, Atlanta, Georgia 30323, (8) 242-2211

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Mr. Russell Armstrong, Director, OFO/HDS, 300 South Wacker Drive, 13th Floor, Chicago, Illinois 60606, (8) 886-3378

Region VI

Mr. Marvin Layne, Director, OFO/HDS, 1200 Main Tower Building, Dallas, Texas 75202, (8) 729-6235

Region VII

Mr. William Howard, Director, OFO/HDS, 601 East 12th Street, Kansas City, Mo. 64106, (8) 758-2911

Region VIII

Mr. Masaru Yoshimura, Director, OFO/HDS, 1961 Stout Street, Room 7440, Denver, Colorado 80202, (8) 327-2011

Region IX

Mr. Al Huerta, Director, OFO/HDS, 50 United Nations Plaza, San Francisco, California 94102, (8) 556-5480

Region X

Mr. Gary Griffith, Director, OFO/HDS, 1321 Second Avenue, Mail Stop 813, Seattle, Washington 98101, (8) 399-1105

[FR Doc. 82-13784 Filed 5-19-82; 8:45 am]

BILLING CODE 4130-01-M

[Program Announcement No. 13648-822]

Child Welfare Services Training Grants Program; Availability of Grant Funds

AGENCY: Administration for Children, Youth and Families, Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Grant Funds for the Child Welfare Services Training Grants Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for *Traineeship Grants* authorized under Section 426 of the Social Security Act (part B of title IV, 42 U.S.C. 626).

DATE: Closing date for receipt of application is July 6, 1982.

Scope of This Announcement

This Program Announcement is one of two for the Child Welfare Services Training Grants program and covers Traineeship Grants to be awarded for Fiscal Year 1982. All Traineeship Grants are awarded and administered by the regional Administration for Children, Youth and Families Program Offices.

Program Purpose

The purpose of this program is to develop the skills and qualifications of full- and part-time students who have as their career objective the provision of services to children and their families by providing financial support through accredited schools of social work.

Financial support is provided: (a) For part-time degree (at graduate level) or non-degree candidates already employed by public or voluntary agencies with responsibility for providing services to children and families;

(b) For full-time baccalaureate degree students in their senior year only;

(c) For full-time degree students in their first or second year at the Master's of Social Work Level; and

(d) For full-time Doctoral candidates.

Program Goals and Objectives

The goal of this program is to provide education and training opportunities for persons who are committed to entering the field of child welfare services or who are already working in the field of child welfare services to enable them to more effectively achieve the following outcomes for children and families:

- To provide support to families in their own homes in order to prevent separation of children from their families.
- Where separation is necessary, to develop permanent plans and provide support services to enable children to be returned to their families.
- Where these options are inappropriate, to provide quality services which enable the children to become adopted or where it is the plan of choice, in exceptional circumstances, to be placed in a permanent foster home.

Applications should specify that the proposed project will achieve or is capable of achieving one of the following program objectives:

- To enable workers currently employed by public and voluntary child welfare agencies to upgrade the practice skills and to acquire

specialized information and expertise related to the delivery of services to children and families; and

- To enable full-time students who have child welfare as a career objective to gain special knowledge and experience in providing services to children and their families.

For both objectives the content of the child welfare curriculum and field placement experience should focus on the critical child welfare issues of prevention of separation, foster care, case review, adoption of special needs children, etc.

Eligible Applicants

Traineeship Grants are awarded to public or nonprofit private colleges and universities offering baccalaureate or graduate degree programs in social work which are accredited or have been granted candidacy status by the Council on Social Work Education, including any school of continuing education affiliated with the applicant school of social work. Applications submitted by applicants not accredited or not granted candidacy status by the Council on Social Work Education will not be accepted for review.

Preference will be given to institutions offering traineeships to part-time degree and/or non-degree students participating in programs structured to provide training or educational opportunities specific to child welfare for persons already employed by public or voluntary agencies with responsibility for providing services to children and families.

Available Funds

From the total appropriation of \$3,473,000 available in Fiscal Year 1982, the Administration for Children, Youth and Families expects to award approximately \$1,323,000 for new traineeship grants. A new grant is the initial award made in support of a project. The project period is of one year duration. Awards are made for student costs only. In Fiscal Year 1981, 126 traineeship grant applications were received for competitive review and 67 awards were made, averaging approximately \$22,851 each.

Funding allocations for Fiscal Year 1982 showing the level of support available to each Region for Traineeship Grants are as follows:

Allocations per Region

Child Welfare Services Traineeship Grants

Region I—\$66,679.
Region II—\$160,612.
Region III—\$134,814.
Region IV—\$222,661.

Region V—\$268,966.
Region VI—\$153,997.
Region VII—\$66,679.
Region VIII—\$43,130.
Region IX—\$158,760.
Region X—\$46,702.

Additional Requirements

Part-Time Students (Degree or Non-Degree)

1. Traineeship grants which are awarded to part-time students who are already employed by public or voluntary child welfare agencies may pay for the cost of tuition, educational fees and books.

2. A candidate for a child and family service traineeship in a part-time degree or non-degree program must meet the following requirements:

(a) Be currently employed by an agency or organization providing child welfare services;

(b) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(c) Take the training at the educational institution designated in the traineeship award;

(d) Be duly enrolled for part-time study at the grantee institution, either for credit or non-credit;

(e) Express a commitment to a career in the field of child and family services and to continue employment in child welfare services; and

(f) Meet requirements established by the grantee institution for part-time students which do not negate federal requirements.

Full-Time Degree Students

1. Traineeship grants which are awarded to full time, degree oriented students enrolled in a graduate program may pay for stipends, tuition and educational fees, and dependency allowances. Traineeship grants which are awarded to full time, degree oriented students enrolled in an undergraduate program shall not exceed \$1,000 for a full academic year, which may be used for tuition, fees, stipends and travel expenses.

2. No other direct or indirect costs are allowable except for the following: If a separate field placement unit is established in a state or local public welfare agency, which has an identifiable child welfare service unit, for the sole purpose of supervising trainee field placement, those costs directly attributable to the field supervision of the students will be allowable as a direct cost to the institution. An indirect cost rate not to exceed 8% of the direct costs (excluding

traineeship costs) may be charged to the program (or the institution's actual indirect cost if less than 8%). The unit must consist of at least five students but not more than eight, to qualify for payment of costs for one full-time supervisor. A maximum of 7% of the total Regional Traineeship allocation may be used for field supervisory costs. Funding for this cost, however, is at the option of the Regional Office.

3. A candidate for a child and family service traineeship in a full-time degree oriented program must meet the following requirements:

(a) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(b) Take the training at the educational institution designated in the traineeship award;

(c) Not be an employee of the federal government;

(d) Not currently receiving educational allowances from any other federal, state, or local public or voluntary agency when that allowance is conditional on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans, or educational allowances of benefits payable under the Veterans Education and Training Amendment Act of 1977: As limited by Section 213 of said Act;

(e) Be enrolled for full-time study in the grantee institution;

(f) Be in the senior year if enrolled in a program leading to a baccalaureate degree;

(g) Express a commitment to a career in the field of child and family services;

(h) Express a commitment to return to or to seek employment in a state or local social service agency or in another child and family service agency or facility from which the state or local agency secures services. There should be reasonable assurance of his employment in a child and family service program, public or private, upon completion of training;

(i) Meet requirements established by the grantee institution which do not negate federal requirements; and

(j) For Doctoral students, provide evidence that they have selected or will select dissertation subjects clearly related to the field of child welfare.

Grantee institutions will select the candidates to whom traineeships will be awarded on the basis of their qualifications and will document the files to reflect the eligibility of candidates. To the extent possible, the awarding of traineeships should give special attention to recruiting and selecting eligible, qualified minority

candidates, and should give preference to students with limited financial resources.

4. *Stipends and Allowances for Full-Time Students.* At the undergraduate level, the total perstudent cost shall not exceed \$1,000 for an academic year which may include stipends, tuition, fees or other costs. At the graduate level, costs which may be covered include tuition, fees, stipend, dependency allowances and travel expenses. Traineeship grants may be awarded for partial support of students at the discretion of the institution.

Dependency allowances for the dependents of graduate level students will be \$600 per support year for each eligible dependent. Dependents are as

defined in the Internal Revenue Code. Dependency allowances are not available to baccalaureate level trainees.

Domestic travel allowances for students from their residence to the training institution will not be provided except, in those cases of extreme need or hardship for individual students where a one-way travel allowance may be granted at the rate of up to 20 cents per mile. A travel allowance for reimbursement for travel to field instruction may be paid when it is the policy of the institution to pay such costs.

The chart below should be used in calculating graduate level stipends and allowances for full-time students.

STIPENDS AND ALLOWANCES

Year of training	Annual rate	Monthly rate
STUDENTS WITH LITTLE OR NO RELATED PROFESSIONAL EXPERIENCES—MASTER'S LEVEL		
First post-baccalaureate year	\$2,400	\$200
Years between first and terminal year	2,600	217
Terminal year ¹	2,800	233

Previous related professional experience master's level	Year of training					
	1		2		3	
	Annual	Monthly	Annual	Monthly	Annual	Monthly
STUDENTS WITH RELATED PROFESSIONAL EXPERIENCE—MASTER'S LEVEL ²						
6 to 11 months	\$3,000	\$250	\$3,300	\$275	\$3,600	\$300
12 to 23 months	3,300	275	3,600	300	3,900	325
24 to 35 months	3,600	300	3,900	325	4,200	350
36 to 47 months	4,200	350	4,200	350	4,200	350
48 or more months	4,200	350	4,200	350	4,200	350

Previous related professional experience doctoral level	Year of training					
	1		2		3	
	Annual	Monthly	Annual	Monthly	Annual	Monthly
STUDENTS WITH RELATED PROFESSIONAL EXPERIENCE—DOCTORAL-LEVEL						
6 to 11 months	\$4,100	\$342	\$4,400	\$367	\$4,700	\$392
12 to 23 months	4,400	367	4,700	392	4,700	392
24 to 35 months	4,700	392	4,700	392	4,700	392
36 to 47 months	4,700	392	4,700	392	4,700	392
48 or more months	4,700	392	4,700	392	4,700	392

¹ Applicable only to programs extending beyond 2 years. The second year of Master's Degree Program is at the \$2,600 rate.

² A trainee, who is awarded a "Master's Level Experience Student" Stipend, must have had professional experience in a field relevant to the professional training to be undertaken. A complete and detailed record of the trainee's employment must be maintained by the grantee institution so that the stipend level can be properly justified.

Grantee Share of the Project

There is no cost sharing or matching requirement for grants under this program.

The Application Process

Availability of Forms

Application for a grant under the Child Welfare Services Training Grants

Program must be submitted on standard forms provided for this purpose. Application kits which include the forms, instructions and program information, including the complete Program Guidance for Fiscal Year 1982 may be obtained by writing to the "Project Officer, Child Welfare Services Training Grants" in the appropriate Regional Office listed in Appendix I.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be submitted to the Regional Office address indicated in Appendix II. In order to facilitate processing of a grant application, please submit one signed original and six copies. Applications must be submitted to the appropriate Regional Office in the region in which the applicant institution is located.

The applicant must clearly identify the program announcement number for which the application is to complete. The application must be signed by an individual authorized to act for the applicant institution and to assume for the institution the obligations imposed by the terms and conditions of the grant award.

A-95 Notification Process

This program does not require the A-95 notification and review process.

Application Consideration

The Regional Program Director, Administration for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families. The results of the review assist the Regional Program Director for Children, Youth and Families in considering competing applications. If the Regional Program Director has reached a decision to disapprove a competing grant application, the unsuccessful applicant is notified in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, and the total period for which project support is contemplated. Special consideration will be given to applicants who offer traineeship grants to part-time degree or non-degree students participating in programs structured to provide training or educational opportunities specific to child welfare for persons already employed by public or voluntary agencies, and to applicants who identify and select minority students who will be awarded traineeship grants. In making decisions about grant awards, the Regional Program Director will take into consideration the applicant's plan to

recruit minority students. Final decisions on grant awards are expected to be completed by the end of August, 1982.

Criteria for Review and Evaluation of Traineeship Grant Applications

Completed grant applications will be reviewed and evaluated against the following criteria:

- That the project objectives are identical with or are capable of achieving one of the specific program objectives listed in this announcement under "Program Goals and Objectives". (Points 10.)

- That proposed procedures of the work program, if well executed, will be capable of achieving the results required by the program and further defined and elaborated by the applicant including assurance that all student eligibility requirements for full or part-time students specified in the Program Announcement are met. (Points 20.)

- That the application includes a viable plan designed to recruit program eligible minority candidates into the traineeship program, especially those who have limited financial resources. This plan must specify activities and timetables by which the school will seek out, identify, and, when implemented, focus traineeship selection on minority candidates. (Points 15.)

- That the applicant documents that for part-time students it will provide a program of study which is specially designed to develop or update practice oriented skills required for effective delivery of services to children and families in subject areas related specifically to the program goals and objectives identified in this announcement; and that for all full-time students (except Doctoral candidates) it will provide a field placement program in which they will have an opportunity to integrate academic and field placement experiences into a more comprehensive understanding of the field of child welfare including the following: (Points 20.)

(a) The type of schedule the field placement follows and the number of hours a week, month, semester, etc., it entails; or

(b) For each traineeship requested, specific description of and commitment in writing from an agency for a full academic year of field placement as defined by the institution, in a child welfare setting which will enable the undergraduate or Master level trainee to, (1) carry a caseload or participate in the management of a caseload primarily involving child welfare services, and, (2) work under the direction of a trained social work supervisor; or

(c) A description of the policies and procedures the applicant will follow in the supervision of the students' field placements including, (1) whether there is a supervisor or director of field placement and that person's role and responsibility; (2) who provides direct supervision (the school or the field placement agency); (3) the criteria for the selection of field placements in child welfare; (4) the nature and quality of the supervisory contact required; and (5) the relationship between the field placement and the classroom instruction; or

(d) In the case of doctoral programs, the applicant provides a specific list of criteria for selection of Doctoral students and documentation to insure that (1) they have well established interest and experience in child welfare and will work in a child welfare setting upon completion of the degree program; and, (2) they have selected or will select dissertation subjects clearly related to the field of child welfare.

- That the application include the following documentation: (Points 10.)

(1) In the case of part-time students, documentation that the applicant will obtain from each agency employing participating students that the student is working in a position related to providing services to children and their families and that this employment is intended to continue during the time of the traineeship and for at least one year following. Where course work will take place during the work hours, the documentation should include agreement by the agency to release the employee for the required time. The applicant has stated that it will submit this documentation for each participating student with the first quarterly report.

(2) In the case of full-time students, the applicant documents that it has sought to obtain a letter of intent or commitment from a public or voluntary social service agency to release employees for the pursuit of a graduate or undergraduate degree in social work. The letter of intent or commitment must specify the number of employees to be released and enrolled, describe efforts made by the agencies to select minorities and employees with limited financial resources, and indicate that the person(s) released will be providing services, teaching, conducting research or administering programs in child welfare when they return to work.

- That project personnel are or will be well-qualified to provide direction and supervision to students specializing in child welfare, and the applicant organization has or will have adequate

facilities and resources to conduct the project. (Points 10.)

- That the estimated cost to the government of the project is reasonable considering the anticipated results. (Points 5.)

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is July 6, 1982. An application will be considered received on time if:

- The application was sent by registered or certified mail no later than July 6, 1982 as evidenced by the U.S. Postal Service postmark, or the original receipt from the U.S. Postal Service; or

- The application is received on or before close of business (COB) July 6, 1982 in the Department of Health and Human Services Regional Office mailroom. In establishing the date of receipt, consideration will be given to the time date stamps of such mailrooms or other documentary evidence of receipt maintained by the Department of Health and Human Services.

Applications received after the deadline or sent to any address other than the Regional Office in the region in which the applicant institution is located will not be accepted and will be returned to the applicant.

(Catalog of Federal Domestic Assistance Program Number 13.648, Training Grants in the Field of Child Welfare)

Dated: April 13, 1982.

Clarence E. Hodges,

Commissioner, Administration for Children, Youth and Families.

Approved: May 14, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Appendix I—Regional Project Officers Child Welfare Services Training Grant Program, Administration for Children, Youth and Families Office of Human Development Services, Department of Health and Human Services, Regions I–X

Region I

Regional Project Officer, Administration for Children, Youth and Families, Room 2011—JFK Federal Building, Government Center, Boston, Massachusetts 02203, (617) 223-6450

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Regional Project Officer, Administration for Children, Youth and Families, Mail Stop 622—Arcade Plaza Building, 1321-2nd Avenue, Seattle, Washington 98101, (206) 399-0838

Appendix II—Directors, Office of Fiscal Operations Regions I Thru X

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Region VI

Mr. Marvin Layne, Director, OFO/HDS, 1200 Main Tower Building, Dallas, Texas 75202, (8) 729-6235

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Mr. William Howard, Director, OFO/HDS, 601 East 12th Street, Kansas City, Mo. 64106, (8) 758-2911

Region VIII

Mr. Masaru Yoshimura, Director, OFO/HDS, 1961 Stout Street, Room 7440, Denver, Colorado 80202, (8) 327-2011

Region IX

Mr. Al Huerta, Director, OFO/HDS, 50 United Nations Plaza, San Francisco, California 94102, (8) 556-5480

Region X

Mr. Gary Griffith, Director, OFO/HDS, 1321 Second Avenue, Mail Stop 813, Seattle, Washington 98101, (8) 399-1105

[FR Doc. 82-13785 Filed 5-19-82; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Granting of Waivers of Payment Under Section 334(b) of the Public Health Service Act; Delegation of Authority to Director, Bureau of Health Personnel Development and Service, HSA and Regional Health Administrators

Notice is hereby given that the following delegations of authority have been made regarding the granting of waivers for the National Health Service Corps assignees under section 334(b) of the Public Health Service Act (42 U.S.C. 254g), as amended by Pub. L. 94-484.

1. Delegation from the Acting Administrator, Health Services Administration (HSA), to the Director, Bureau of Health Personnel Development and Service, HSA, of the authority under section 334(b) of the Public Health Service Act (42 U.S.C. 254g) to waive loans approved under section 335(c) of the Public Health Service Act.

2. Delegation from the Acting Administrator, Health Services Administration, to the Regional Health Administrators, without authority to redelegate, all of the authorities under section 334(b) of the Public Health Service Act (42 U.S.C. 254g), excluding the authority to waive loans approved under section 335(c) of the Public Health Service Act.

The July 15, 1977, delegation is hereby superseded insofar as it pertains to the authority under section 334(b) of the Public Health Service Act.

The above delegations were effective on April 30, 1982.

Dated: April 30, 1982.
 John H. Kelso,
 Acting Administrator, Health Services
 Administration.

[FR Doc. 82-13690 Filed 5-19-82; 8:45 am]
 BILLING CODE 4610-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project, Arizona; Fiscal Year Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs,
 Interior.

ACTION: General notice.

SUMMARY: The purpose of this general notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project to properly reflect the cost of labor, materials, equipment and services. The change is from \$15.53 to \$23.37 per acre per year.

EFFECTIVE DATE: This general notice shall become effective July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Walt Parks, Acting Project Engineer, San Carlos Irrigation Project, P.O. Box 456, Collidge, Arizona 85228, telephone: (602) 723-5439.

SUPPLEMENTARY INFORMATION: An analysis of the costs of operation and maintenance of the Joint Works of the San Carlos Irrigation Project was made and on November 24, 1981, was presented to the fact finding Committee which is made up of representatives from the San Carlos Irrigation Drainage District, San Carlos Irrigation Project, Gila River Indian Community, Pima Agency, and the Phoenix Area Office. Objections to three budget items were received. After careful consideration, it was determined to eliminate one item, to reduce one item, and to leave the third item unchanged.

Pursuant to § 191.1(e) Part 191, Chapter 1, subchapter R of Title 25 of the Code of Federal Regulations, this general notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

The principal author of this document is Thomas W. Neumann, Bureau of Indian Affairs, Phoenix, Arizona 85011, telephone (602) 241-2285. The authority to issue this regulation is vested in the Secretary of the Interior by 5 U.S.C. 201 and 25 U.S.C. 385.

The General Notice shall read as follows:

San Carlos Irrigation Project Assessment, Joint Works

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476 and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and the San Carlos Irrigation and Drainage District, and in accordance with applicable provisions of the order of the Secretary of the Interior of June 15, 1938, the cost of the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for the Fiscal Year 1984 is estimated to be \$2,336,705 and the rate of assessment for the said fiscal year and subsequent fiscal years until further order, is hereby fixed at \$23.37 for each acre of land.

Note.—It is hereby certified that the economic and inflationary impacts of this general notice have been evaluated in accordance with Executive Order 12291.

Vernon Palmer
 Acting Assistant Area Director.
 [FR Doc. 82-13758 Filed 5-19-82; 8:45 am]
 BILLING CODE 4310-02-M

Bureau of Land Management

Alaska; Realty Action

AGENCY: Bureau of Land Management,
 Interior.

ACTION: Notice of realty action.

SUMMARY: Notice is hereby given that the Port of Anchorage has submitted a proposal for a lease to construct a cargo storage and intermodal cargo transfer system on Federal lands. The location of the proposed lease area is adjacent to the existing Port of Anchorage Terminal facilities north of Ship Creek in Anchorage, Alaska.

The land use proposal submitted by the port of Anchorage may be authorized under Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2762).

The proposed lease area lies within:

Seward Meridian, Alaska

T. 13 N., R. 3 W.,
 Sec. 6, lot 5 (fractional).
 Containing 9.87 acres.

The Bureau of Land Management is responsible for administration of the above described lands which are withdrawn for use by the Air Force under E.O. 8102 (April 29, 1939) and PLO 2962 (March 5, 1963).

A non-competitive lease was requested to enable the Port of Anchorage to develop the cargo storage and systems handling area. The lot will be filled and leveled, with subsurface and hillside drainage systems installed. Paving and fencing will be completed after a one year fill settling period.

Railroad track and railcar ramps may be included to complete an intermodal transfer facility in the future.

The Port of Anchorage has submitted a letter of non-objection from the Alaska Railroad as well as an Environmental Analysis of the proposal completed by the U.S. Air Force. This analysis indicates there are no significant environmental or other adverse impacts associated with this proposal.

DATE: Comments will be accepted on or before July 10, 1982.

ADDRESS: Send comments to: John W. Merrick, Peninsula Area Manager, Bureau of Land Management, Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Joette Storm, Public Information Officer, Bureau of Land Management, Anchorage District, (907) 267-1284.
 Richard J. Verninen,
 Associate District Manager.

June 10, 1982.
 [FR Doc. 82-13731 Filed 5-19-82; 8:45 am]
 BILLING CODE 4310-84-M

[U-50514]

Utah; Proposed Withdrawal and Opportunity for Public Hearing

On January 7, 1982, the Richfield District Manager requested a petition-application for approposed withdrawal for the Hanksville Office and Housing Complex from operation of the public land laws and from location and entry under the mining laws, subject to valid existing rights as to the following described lands:

Salt Lake Meridian, Utah

T. 28 S., R. 11 E.,
 Sec. 21, NW ¼ NE ¼.

Also the following two parcels:

Parcel #1—Beginning at the NE corner of SW ¼ NE ¼ of said Section 21; thence south 1°18'39" west 45.14 ft. along the ¼ section line to fenceline; thence south 89°55'48" west 335.47 ft. along said fenceline; thence north 1°16'36" east 49.99 ft. to the northwest corner of the E ¼ NE ¼ SW ¼ NE ¼ of said Section 21; thence south 89°14'35" east 335.42 ft. to the point of beginning. Containing 0.37 acres.

Parcel #2 Beginning at the NE corner of the W ¼ NE ¼ SW ¼ NE ¼ of said Section 21; thence south 1°16'39" west 49.99 ft. to a fenceline; thence south 89°55'48" west 670.92 ft. along said fenceline and its extension; thence north 1°12'29" east 59.67 ft. to the NW corner of the E ¼ NW ¼ SW ¼ NE ¼ of said Section 21; thence south 89°14'35" east 670.83 ft. to the point of beginning. Containing 0.84 acre.

The areas described aggregate 41.21 acres in Wayne County.

The purpose of the withdrawal is to protect the Hanksville Office and Housing Complex containing approximately \$952,000 in improvements consisting of an office, warehouse, seven (7) homes, a water system, paved streets, tennis courts, and other improvements.

On or before August 16, 1982, 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 officer of the Bureau of Land Management.

In accordance with Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned at the address shown below. Upon determination by the authorized officer that a public hearing will be held a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the *Federal Register* the lands will be segregated from operation of the public land laws and from location and entry under the mining laws as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those consistent with the proposed withdrawal.

The temporary segregation of the lands in connection with this proposed withdrawal shall not affect administrative jurisdiction over the lands.

All communication in connection with this proposed withdrawal should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Department of the Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: May 11, 1982.

Darrell Barnes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-13752 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[PHX 075454, etc.]

Arizona; Order Providing for Opening of Public Lands; Correction

May 7, 1982.

In FR Doc. 81-37222 appearing at pages 63398 and 63399 in the issue of December 31, 1981, make the following changes:

On Page 63399, second column, 3rd paragraph is changed to read as follows:

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open to operation of the public land laws, generally. All valid applications received at or prior to February 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

On February 15, 1982, the lands referred to in paragraph 2 shall be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

Mario L. Lopez,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-3695 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Casper District Office; Applications for Coal Lease Exchanges in the Powder River Basin, Wyoming

Public Law 95-554 authorized the Secretary of the Interior to exchange specific federal coal leases in Wyoming that were affected by construction of Interstate Highway 90. Several lease holders have applied for exchanges, which are being processed in accordance with Title 43 of the Code of Federal Regulations, Subpart 3435.

Lands that the applicants have requested in exchange for existing lease areas are described below.

Lands Selected for the I-90 Exchanges

Belco Petroleum Corporation

T. 52 N., R. 72 W.,
Sec. 7, All;
Sec. 8, W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 21, All.

T. 52 N., R. 73 W.,
Sec. 12, N $\frac{1}{2}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 13, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 24, SE $\frac{1}{4}$.

Carter Mining Company

T. 48 N., R. 71 W.,
Sec. 9, E $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 10, All;
Sec. 13, NE $\frac{1}{4}$, SW $\frac{1}{4}$;
Sec. 21, NW $\frac{1}{4}$;
Sec. 23, W $\frac{1}{2}$;
Sec. 24, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 51 N., R. 72 W.,
Sec. 8, E $\frac{1}{2}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$.

T. 52 N., R. 72 W.,
Sec. 31, S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

Gulf Oil Corporation

T. 52 N., R. 73 W.,
Sec. 3, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 53 N., R. 73 W.,
Sec. 34, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Kerr-McGee Coal Corporation

T. 43 N., R. 70 W.,
Sec. 4, All;
Sec. 5, All;
Sec. 8, All;
Sec. 9, All.
T. 44 N., R. 70 W.,
Sec. 28, All;
Sec. 29, All;
Sec. 32, All;
Sec. 33, All.

Wyodak Resources Development Corporation

T. 50 N., R. 71 W.,
Sec. 27, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 34, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$.

Big Horn Coal Co.

T. 57 N., R. 84 W.,
Sec. 28, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Public participation is requested during the processing of the exchange applications. Please send any data concerns, or issues to the Casper District Manager, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601. Information received before 1 July will be considered during the further processing of the lease exchange applications.

If you have any questions please contact Chuck Wilkie in the BLM-Casper District Office at (307) 261-5597.

Paul W. Arrasmith,
District Manager.

[FR Doc. 82-13692 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 23733-PS]**Colorado; Notice of Conveyance**

May 10, 1982.

Notice is hereby given that, pursuant to the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), Clarence E. Canterbury, 412 Orchard, Canon City, Colorado 81212, has purchased by noncompetitive sale public lands in Fremont County described as:

New Mexico Principal Meridian, Colorado

T. 48 N., R. 10 E.,
Sec. 10, Lot 2.

The lot contains 0.85 acres.

The purpose of this Notice is to inform the public and interested state and local governmental officials of the issuance of conveyance documents to Mr. Canterbury.

Ronald J. Cole,

Chief, Division of Technical Services.

[FR Doc. 82-13691 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 34289]**Colorado; Realty Action Non-Competitive Lease of Public Lands in Grand County**

The following described land has been examined and identified as suitable for lease under Section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat 2762; 43 U.S.C. 1732) at no less than the appraised fair market rental:

Sixth Principal Meridian

T. 1 N., R. 76 W.,

Sec. 22, portions within W $\frac{1}{2}$ NW $\frac{1}{2}$.

The area within the above-described lands that will actually be used is approximately 15 acres in Grand County, Colorado. This area is shown on a map titled "Conceptual Mountain Plan, Silver Creek, Granby, Colorado" filed with the Kremmling Area Office, Bureau of Land Management of March 12, 1982.

Lease of the above-described land has been proposed by the Val Moritz Investment Group of Granby, Colorado. The land is proposed for use to locate a skier unloading terminal, operator's cabin, ski patrol ready station, snowmaking hydrants, access roads and skier trails.

Information concerning the proposed use is in the final Environmental Assessment (CO-018-82-09) and associated land report completed by the Bureau of Land Management on April 30, 1982. The lease of these lands will serve important public and private objectives which cannot be achieved on

lands other than public lands administered by the Bureau of Land Management. These values outweigh alternative land uses such as timber harvesting, dispersed recreational opportunities, and forage production.

The Bureau of Land Management is considering a 30 year, direct, non-competitive lease to Val Moritz Investment Group; dependent upon the company filing an application for lease and including information required by Title 43 Code of Federal Regulations, Part 2920.5-2. The terms and conditions applicable to any lease issued under this notice are those in 43 CFR 2920.7. Special stipulations that would be included in a lease, as well as other information about the proposal can be reviewed in the Bureau of Land Management Kremmling Resource Area Office, 1116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459 (303-724-3437).

On or before July 6, 1982, interested parties may submit comments to the District Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 6, 1981.

Lee Carie,

District Manager.

[FR Doc. 82-13689 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

[M 20539]**Montana; Termination of Proposed Withdrawal and Reservation of Land**

May 13, 1982.

The Forest Service, United States Department of Agriculture, filed an application for withdrawal of the following described land from operation of the public land laws, including location and entry under the mining laws. The Notice of Proposed Withdrawal was published in the Federal Register on February 1, 1972, Volume 37, No. 21, page 2459, and republished on August 4, 1977, Volume 42, No. 150, page 39480. The applicant agency has cancelled its application as to the following:

Principal Meridian

Lewis and Clark National Forest Wood Lake Campgrounds

Unsurveyed, but probably will be when surveyed:

T. 19 N., R. 9 W.,

Sec. 6, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 80 acres in Lewis and Clark County.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b)(1), at 8 a.m. on July 5, 1982, such land will be relieved of the segregative effect of the above mentioned application.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-13694 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Nevada; Airport Lease Application

May 11, 1982.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), Lincoln County Board of County Commissioners has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 4 S., R. 63 E.

Sec. 24, E $\frac{1}{2}$ E $\frac{1}{2}$ (within).

T. 4 S., R. 64 E.

Sec. 7, S $\frac{1}{2}$ (within);

Sec. 18, Lots 3 and 4, N $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ (within);

Sec. 19, Lot 1(within).

The area under application involves a 500 foot wide airstrip located in Lincoln County, Nevada. The application was filed on April 8, 1982, and on that date the land was segregated from all other forms of appropriation under the public land laws.

Interested persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 28569, Las Vegas, NV 89126.

Charles E. Hancock,

Acting Chief, Division of Operations.

[FR Doc. 82-13693 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Office Hours; Eastern States Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Office Hours.

In accordance with 43 CFR 1821.2-1(a), this notice confirms that the office hours for use of the public room, filing applications and other documents, and other public services at the Bureau of Land Management, Eastern States Office are 7:30 a.m. to 4:00 p.m., Monday

through Friday, except for those days when the office may be closed for a national holiday or by administrative order. In order to allow additional time for records maintenance, however, the hours for inspection of case files are now 9:00 a.m. to 3:45 p.m.

The Bureau of Land Management Eastern States Office is located at 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 235-2830.

Pieter J. VanZanden,
Acting Eastern States Director.

[FR Doc. 82-13513 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Planning Criteria for South Sierra Foothills Planning Area Category D Transition Management Framework Plan in the Caliente Resource Area, Bakersfield District, California

May 12, 1982.

In accordance with 43 CFR 1601.3, notice is hereby given of the availability of the Planning Criteria to direct the South Sierra Foothills (SSF) Planning Area Category D Transition Management Framework Plan (MFP) in the Caliente Resource Area.

The Bakersfield District of the Bureau of Land Management has prepared the initial Planning Criteria to direct this planning effort in the Caliente Resource Area. The Plan will involve the public lands located in Kern and Tulare Counties and will carry out the requirements of the Federal Land Policy and Management (FLPMA) of 1976.

As new information surfaces during the planning process, and/or from public input, additional planning criteria will be developed for future guidance of this planning effort.

This initial planning criteria is available for review at the following locations: Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, California, 93301, (805) 861-4191; and Caliente Resource Area Office, 1430 Truxtun Avenue, Room 456, Bakersfield, California 93301, (805) 861-4236.

For further information contact Glenn A. Carpenter, Caliente Resource Area Manager, 1430 Truxtun Avenue, Room 456, Bakersfield, California, 93301, (805) 861-4236.

H. Edward Lynch,
Acting District Manager.

[FR Doc. 82-13753 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Initial Land Classifications

Correction

In FR Doc. 82-10280, appearing at page 16212, in the issue of April 15, 1982, make the following corrections:

On page 16214, in land description I-2375, the second line should read:
"Section 27: W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;"

On page 16214, in land description I-6506, the third line should read:
"NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$; Section 26;"

On page 16214, in the third column, in the land description I-6820, the second line should read: "E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$; Section"

On page 16216, after the second line in the first column, insert the following:

Section 19: Lot 4, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 30: Lot 3, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$

Section 31: Lots 3 and 4, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ 1,255.28 acres."

On page 16217, in the first column, in the land description for T. 7S., R. 3E., B.M., the line beginning Section 11: should read: "Section 11: SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$; Section".

BILLING CODE 1505-01-M

[OR 26326 and OR 26328]

Public Lands in Lake County Oregon; Realty Action—Noncompetitive Sale

The following described land has been identified as suitable for disposal by noncompetitive sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at the fair market value shown:

Parcel No.	Legal description	Acres
1	T. 25 S., R. 14 E., W.M., Lake County, OR. Sec. 32: W $\frac{1}{2}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$... Sec. 33: W $\frac{1}{2}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$...	20 20
Total acres		40
2	T. 25 S., R. 14 E., W.M., Lake County, OR. Sec. 33: S $\frac{1}{2}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$.	5
Total acres		5

The appraised fair market value of parcel number 1 is \$14,000.00 (\$350.00 per acre).

The appraised fair market value of parcel number 2 is \$1,875.00 (375.00 per acre).

The sale will be made on or after August 1, 1982. The lands are being sold to Lake County, Oregon because of the need for land by the community of Fort Rock for community expansion.

The proposed direct sale has been found to be in the public interest. The need for these parcels for community expansion has been identified in both County and Bureau of Land Management land use plans.

The terms and conditions applicable to the sale are:

Parcels 1 and 2

1. The total purchase price for the lands will be paid at the time of the sale.
2. The patent will contain a reservation for ditches and canals.
3. All minerals will be reserved to the United States.
4. The patent will be subject to all existing rights.

Parcel 2 Only

5. At the Bureau of Land Management's request, the purchaser shall relocate all boundary fences to include only the 5 acre parcel as described. All expense of relocating the fences shall be borne by the purchaser.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of public discussions, is available for review at the Lakeview District office, 1000 Ninth Street S., P.O. Box 151, Lakeview, Oregon 97630.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Lakeview District Manager. Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become a final determination of the Department of the Interior and the required payment requested of Lake County. Such payment, in full, shall be in accordance with 43 CFR 1822.1-2.

Richard A. Gerity,
District Manager.

May 12, 1982.

[FR Doc. 82-13668 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Twenty-Percent Set-Aside of Production From Outer Continental Shelf (OCS) Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice Pertaining to 20 Percent Set-Aside of Production From Outer Continental Shelf (OCS) Leases Issued After September 18, 1978.

SUMMARY: Section 205(a) of the OCS Lands Act Amendments of 1978 provides that oil and gas leases issued

pursuant to that section include a requirement that the lessee offer 20 percent of the crude oil, condensate, and natural gas liquids produced, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners. In order to assist interest refiners, the Minerals Management Service will make available in the Public Records Office of each OCS Region a listing of producing leases issued after September 18, 1978. At the present time, only the Gulf of Mexico OCS Region will have a listing of production from such leases. It is anticipated that the Pacific OCS Region will not list production from such leases until late 1984. It is not known when the Alaska or Atlantic OCS Regions will be able to list production from such leases.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, U.S. Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 640, Reston, Virginia 22091, telephone (703) 860-7564.

SUPPLEMENTARY INFORMATION: The regional OCS offices' addresses are as follows:

Minerals Management Service, Alaska OCS Region, 800 A Street, Suite 201, Anchorage, Alaska 99501.

Minerals Management Service, Gulf of Mexico OCS Region, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.

Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Minerals Management Service, Pacific OCS Region, 1340 West Sixth Street, Los Angeles, California 90017.

Dated: May 14, 1982.

James N. Parrish,

Acting Chief, Offshore Minerals Management Division.

[FR Doc. 82-13713 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4463, Block 192, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and

that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 11, 1982.

Lowell G. Hammons,
Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13772 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that ODECO Oil & Gas Company, Unit Operator of the Ship Shoal Block 113 Federal Unit Agreement No. 14-08-001-2931, submitted on May 5, 1982, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Ship Shoal Block 113 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway

Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 11, 1982.

Lowell G. Hammons,
Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-13773 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Reclamation

[INT-FES 82-15]

Proposed Creston Steam Electric Station, Creston, Wash.; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement jointly with the State of Washington Energy Facility Site Evaluation Council on the proposed Creston Steam Electric Station to be constructed and operated by the Washington Water Power Company. The Creston Steam Electric Station Project is intended to assist in meeting regional energy supply deficiencies projected to occur in the years following 1987.

Copies are available for inspection at the following locations:

Department of the Interior, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Washington, DC 20240, Telephone (202) 343-4991

Grand Coulee Project Office, Bureau of Reclamation, P.O. Box 620, Grand Coulee, Washington 99133, Telephone (509) 633-1360

Energy Facility Site Evaluation Council, Building 1, Row 6, 4224 6th Avenue, Lacey, Washington 98504, Telephone (206) 753-7384

Office of Regional Director, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724, Telephone (208) 334-2108

Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, Telephone (503) 234-3361

Single copies of the statement may be obtained upon request to the Commissioner or Regional Director,

Bureau of Reclamation, or Executive Secretary, Energy Facility Site Evaluation Council. Copies will also be available for inspection in libraries in the project vicinity. Please refer to the statement number above.

Dated: May 14, 1982.

R. N. Broadbent,
Commissioner of Reclamation.

Approved:

Bruce Blanchard,
Director, Environmental Project Review.

[FR Doc. 82-13751 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 41.8.1]

Director, Office of Commodity Management; Redelegation of Authority Regarding Furnishing of Commodities

Pursuant to the authority delegated to me by Redelegation of Authority No. 41.8, dated January 22, 1982 (47 FR 7346) from the Assistant to the Administrator for Management, I hereby redelegate to the Director, Office of Commodity Management the following authority:

To execute transfer or transfer/trust agreements with respect to the furnishing of commodities to international organizations having a membership consisting primarily of foreign governments, the American Red Cross, and voluntary nonprofit agencies registered with and approved by the Advisory Committee on Voluntary Foreign Aid pursuant to determinations made under section 607(a) of the Foreign Assistance Act of 1961, as amended.

The authority herein redelegated to the officer named above may not be redelegated further by that officer, but may be exercised by persons authorized by that officer to perform the functions of that office in an "Acting" capacity.

This Redelegation of Authority amends and supersedes Redelegation of Authority No. 41.7, dated August 16, 1979 (44 FR 50667).

This Redelegation of Authority shall be effective immediately.

Dated: April 22, 1982.

John F. Owens,
Deputy Assistant to the Administrator for Management, Program and Management Services.

[FR Doc. 82-13748 Filed 5-19-82; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.96, Amdt. No. 3]

Principal AID Officers, Africa; Redelegation of Authority Regarding Operational Program Grants

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant to the Administrator for Management of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.96, dated October 31, 1978, to change the post of concurrence in executing operational program grants for Sierra Leone from Director, USAID/Monrovia to Director, REDSO/WA.

Except as provided herein, the Redelegation of Authority remains and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: April 28, 1982.

Hugh L. Dweilley,
Director, Office of Contract Management.

[FR Doc. 82-13749 Filed 5-19-82; 8:45 am]

BILLING CODE 6116-01-M

Director, Defense Security Assistance Agency, Department of Defense; Amendment to Delegation of Authority No. 1

I. By virtue of the authority vested in me by the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.) (hereinafter referred to as the Act), title IV of the International Development Cooperation Act of 1979 (22 U.S.C. 3501 et seq.), Executive Order No. 12163 of September 29, 1979 entitled "Administration of Foreign Assistance and Related Functions" (hereinafter referred to as the Executive Order), and Reorganization Plan No. 2 of 1979 (44 FR 41165), it is ordered that IDCA Delegation of Authority No. 1 be amended as follows:

II. By adding the following new section 1-7:

1-7. Functions Delegated to the Director, Defense Security Assistance Agency, Department of Defense

1-701. Exclusive of the functions otherwise delegated, or reserved to the Director of IDCA herein, there is hereby delegated to the Director, or in his absence, the Deputy Director, Defense Security Assistance Agency, Department of Defense, authority to waive the provisions of Section 636(i) of the Act as they apply to procurement under programs administered under the Act by the Department of Defense.

III. By renumbering sections 1-7, 1-8, 1-9, 1-10, and 1-11 as "1-8", "1-9", "1-10", "1-11", and "1-12", respectively and

by renumbering subsections of such sections accordingly.

IV. The effective date of this Amendment shall be the date of signature.

Dated: May 7, 1982.

M. Peter McPherson,
Acting Director.

[FR Doc. 82-13701 Filed 5-19-82; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[MC-F-14708]

Motor Carriers, A & A Transfer and Storage Co., Inc., et al.; Pooling

AGENCY: Interstate Commerce Commission.

ACTION: Modified procedure decision.

SUMMARY: The Commission is unable at this time to make the necessary statutory findings as to whether a pool of 61 carriers (including the 49 additional carriers who have sought entry into the pool) will be of major transportation importance and whether there is substantial likelihood that such agreement or combination will unduly restrain competition. In lieu of the information required under 49 CFR Part 1139 we are requesting certain specific information of the parties to this proceeding (and other interested parties) to enable us to make these statutory findings with regard to the original pool and the expanded pool. The original 12 members of the pool and those that seek entry are parties in interest. Any other interested parties may seek to intervene within 30 days of the date of publication of this notice and simultaneously submit a verified statement containing the requested information addressing the issues raised in this document. The Department of Defense and GSA are particularly urged to participate in this proceeding because of their interest in the transportation of government traffic.

DATES: Petitions for intervention and verified statements containing the requested information and addressing the issues raised in this document must be filed within 30 days of the publication of this notice in the Federal Register. Any reply statements must be filed within 15 days after the date verified statements are due.

ADDRESSES: The original and one copy of each submission should be sent to: Interstate Commerce Commission, Section of Finance, Washington, D.C. 20423. Copies of the full decision can be purchased by contacting TS

Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, D.C. 20423, or by calling 289-4357 in the Washington area or toll free 800-424-5403.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245. Bruce Kasson, (202) 275-7655.

SUPPLEMENTARY INFORMATION: A decision in this proceeding contains additional information. Copies of the decision may be obtained from the Secretary of the Commission. Parties to this proceeding should supply the following information and address the following issues in their verified statements:

Information To Be Supplied

1. Explain from an operations standpoint how Government agencies or government contractors ship government traffic and select motor carriers for such movements.

2. The original applicants are requested to submit specific information as to how the pool will operate (i.e. what are the variety of quality and price options to be offered to the government; how will the pool promote economical, efficient and competitive service).

3. Affected governmental agencies (i.e., Defense Department; General Services Administration) are requested to submit any available market analyses of overall government traffic flows and such flows between specific points or areas, including evidence pertaining to the top twenty five carriers participating in such traffic in 1981, further including their traffic volumes and revenues as compared to the total. If such analyses and market studies are not available, state why such information cannot be submitted in another form.

4. Please submit copies of the government traffic authority or proof thereof if not previously given.

5. What is the volume of government traffic that you have transported or shipped during 1981; from and to what points did the traffic move?

6. What were the revenues or costs of the government traffic that you transported or shipped during 1981?

7. What is the projected volume and revenue (costs) for the transportation or shipment of such government traffic during 1982? Where is the traffic expected to be moved?

8. For governmental agencies: State the government's position on approval of a pool involving the original 12 applicants, or of an expanded pool.

Issues To Be Addressed

A. What would be the effect on the competition for government traffic by allowing the original 12 applicants or all

requesting authorized carriers to join the pool? Would a denial of additional carriers (beyond the original 12 applicants) to enter the pool improve the competitive balances between such authorized carriers? Comment on the appropriateness of denying the entry of additional carriers into the pool but permitting the independent formation of additional pools for such traffic. Would pooling substantially injure or disadvantage nonpool carriers for such traffic?

B. Will pooling increase or decrease rates on government traffic and, if so, the amount thereof?

C. Government traffic is said to be sporadic and directionally imbalanced. Would pooling improve the efficiency of carrier services or create a more productive use of equipment and energy resources?

D. Would a pool of the original 12 applicants or an expanded pool disadvantage small or minority enterprises or carrier employees in any way?

E. What would be the effect of the original or expanded pool on the level of service to rural and small communities?

* Decided: April 16, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13708 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers, Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be

construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1110.241. 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, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments, (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Vol. No. OP2-95A

Decided: May 13, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC-F-14841, filed April 15, 1982. GENERAL ELECTRIC COMPANY (GEC) (Applicant), 3135 Easton Tpke, Fairfield, CT 06431—continuance in control—Product Distribution Company, 4715 Pinewood Dr., Louisville, KY, 40232. Representative: Michael F. Morrone, 1150 17th St., NW., Suite 1000, Washington, D.C. 20036. Applicant seeks authority to continue in control of Product Distribution Company upon the institution by Product Distribution Company of operations, in interstate or foreign commerce, as a contract carrier. Applicant seeks to acquire control of said rights and property through the transaction. Applicant, a non-carrier, is a publicly traded corporation, not controlled by any person. GEC is the sole stock holder of East Erie Commercial Railroad, a Class III switching and Terminal Railroad.

Note.—(1) Applicant has filed a Petition for Exemption from the requirements of 49 U.S.C. 11348 so that, despite having acquired control of a Commission regulated rail carrier and motor carrier, it may hereafter issue securities and/or assume obligations and liabilities without first having to seek the Commission's prior consent to such transactions as otherwise required by the provisions of 49 U.S.C. 11301 and 11302. GEC also requests a waiver from any requirement that it file ICC Form M Annual Reports (49 CFR 1249.3).

(2) Product Distribution Company has filed as a directly related application its initial contract carrier application docketed MC-161523, published in this same Federal Register issue.

The following finance applications are dated May 7, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-F-14851, filed April 29, 1982. BOB'S TRANSPORT & STORAGE CO., INC. (BTS) (7081 Oakland Mills, Columbia, MD 21046)—purchase—Intercity Transportation Company (Intercity) (600 Turnpike Street, Route 138, So. Easton, MA 02375). Representatives: Michael R. Werner, 241 Cedar Lane, Teaneck NJ and John A. Glasson, 86 Weybosset St., Providence, RI 02903.

BTS seeks authority to purchase the interstate operating rights of Intercity. Robert J. Pfeffer, Sr., sole stockholder of BTS, also seeks authority to acquire control of said rights through the transaction.

The operating rights to be purchased are contained in Intercity's certificate No. MC-47904 (Sub-No. 7) which

authorizes the transportation of *general commodities* (usual exceptions) between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI and VT.

BTS is a motor common carrier pursuant to certificates issued in MC-148624 and sub numbers thereunder.

Note.—(1) An application for temporary authority has been filed. (2) A directly related gateway extension application has been filed, MC-148624 (Sub-No. 3), published this same Federal Register issue.

No. MC-F-14844, filed April 19, 1982. TROJAN FREIGHT LINES LIMITED (Trojan), 5280 Mainingate Drive, Mississauga, Ontario, Canada L5A 3S3—Purchase (Portion)—J. M. McMAHON TRUCKING, INC. (McMahon), P.O. Box 6767, 360 Dingens Street, Buffalo, NY 14240.

Representatives: Jack Goodman, Axelrod, Goodman, Steiner & Bazelon, 29 South La Salle Street, Chicago, IL 60603; Michael Beilewech, Jr., 20 Cathedral Park, Buffalo, NY 14202; and William J. Hirsch, Suite 1125, 43 Court Street, Buffalo, NY 14202.

Authority is sought by Trojan to purchase a portion of the interstate operating rights of McMahon. Trojan is controlled by a carrier, TNT Canada, Inc. (TNT), which, in turn, is controlled by a non-carrier, Alltrans Canada, Inc. (ACI), which, in turn, is controlled by a non-carrier, Thomas Nationwide Transport Limited (TNTL), whose stock is widely held. TNT is also in control through stock ownership of a carrier, Overland Western International, Inc., and a non-carrier, Champlain Sept-Iles Express, Inc., which, in turn, is in control of a carrier, Maheu Transport, Inc., and a 49% ownership of a non-carrier, Cowansville Express, Inc., which, in turn, is in control of a carrier, Champlain Transport (International). TNTL is also in control of a non-carrier, Alltrans Holdings, Inc., which, in turn, is in control of a carrier, Alltrans Express U.S.A., Inc., which, in turn, is in control of carriers Alltrans Alaska Trucklines, Inc.; and All Trans Roadfast, Inc. (formerly MMar Transportation, Inc.); and a freight forwarder, Alltrans Alaska Feight, Inc. Alltrans Holdings is also in control of a non-carrier, Alltrans Pilot Inc., which is, in turn, in control of a carrier, Pilot Freight Carriers, Inc. TNTL corporate-system carriers hold operating rights generally authorizing the transportation of general and specified commodities in all of the contiguous 48 states.

Trojan proposes to purchase operating rights covered by Certificate of Registration No. MC-68098 (Sub-No. 2) which is supported by a Certificate of Public Convenience and Necessity granted in No. 1392, dated December 1,

1968, transferred and reissued June 6, 1968, as corrected August 13, 1968, and again reissued May 12, 1976 by the New York Public Service Commission, generally authorizing the transportation of general commodities generally between New York, NY, and points in Chautauqua, Erie, Genesee, Monroe, and Niagara Counties, NY.

Note.—(1) Trojan has filed an application for temporary authority to lease a portion of the operating rights of McMahon, (2) A directly related application seeking a certificate of public convenience and necessity has been filed in No. MC-148095 (Sub-No. 4) in lieu of the certificate of registration issued to McMahon in No. MC-68098 (Sub-No. 2) and (3) Trojan also seeks an extension of authority as supported by certain shipper support statements.

MC-F-14849, filed April 27, 1982. SOUTH RIVER BUS COMPANY, INC. (South River) (148 Whitehead Ave., South River, NJ 08882)—Purchase (Portion)—STARR TRANSIT COMPANY, INC. (Starr) (2531 East State St., Trenton, NJ 08619). Representative: Edward F. Bowes, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068.

South River seeks to purchase a portion of the interstate operating rights to Starr. Elliott Hodges and Betty L. Hodges seek authority to acquire control of said rights through the transaction.

South River is purchasing the rights contained in Starr's certificate in MC-111504, which authorizes the transportation of passengers and their baggage and newspapers, in the same vehicle with passengers, over regular routes, between Hightstown and Trenton, NJ and between Hightstown and New Brunswick, NJ, with service at all intermediate points.

South River, a contract carrier by motor vehicle is authorized under MC-144833 (Sub-No. 1).

DECISION-NOTICE

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Person wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. 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. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the applicant under the governing section of the Interstate Commerce Act. 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 regulations. 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 the absence of legally sufficient protests in the form of verified statements as to the finance application or to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later become unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

Dated: May 7, 1982.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.
MC 148095 (Sub-4), filed April 19, 1982. Applicant: TROJAN FREIGHT

LINES LIMITED—CONVERSION AND EXTENSION, 5280 Maingate Drive, Mississauga, Ontario, Canada L5A 3S3. Representative: Jack Goodman, 29 South La Salle Street, Chicago, IL 60603. Transporting (1) *general commodities* (except classes A and B explosives, commodities in bulk and household goods, as defined by the Commission), (a) between all points in Erie County, NY; (b) between points in Erie County, NY, on the one hand, and, on the other, all points in Chautauqua, Genesee, Monroe, Niagara Counties, NY, and New York City, NY; (2) *store, office, restaurant and kitchen fixtures and equipment*, (a) between all points in Cattaraugus, Chautauqua, Genesee, Wyoming Counties, NY; (b) between points in Erie County, NY, on the one hand, and, on the other, points in Allegany, Orleans, Ulster, Westchester, Genesee, Cattaraugus and Wyoming Counties, NY.

Note.—This application is directly related to MC-F-14844, filed concurrently herewith wherein Trojan Freight Lines Limited seeks to purchase a portion of the operating rights of J. M. McMahon Trucking, Inc., contained in a certificate of registration, MC-68098 as summarized in number one above. The purpose of this application is to convert said certificate of registration to a certificate of public convenience and necessity. In number two above applicant seeks an extension of authority as supported by certain shippers.

MC 148624 (Sub-3), filed April 29, 1982. Applicant: BOB'S TRANSPORT & STORAGE CO., INC., 7081 Oakland Mills, Columbia, MD 21046. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666. To operate as a common carrier, by motor vehicle, over irregular routes, transporting *such commodities* as are used in and dealt by grocery stores, between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI and VT, on the one hand, and, on the other, points in VA, WA, WV and DC.

Note.—This application is directly related to MC-F-14851, published in this same Federal Register issue.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13709 Filed 5-19-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly section 5) of the

Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notice within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-79716. By decision of May 7, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 3 approved the transfer to Isadora Spiegel d/b/a Spiegel Trucking Co. of Permit No. MC-125770 (Sub-No. 8) issued February 12, 1925 to Spiegel Trucking, Inc. authorizing the transportation of Steel ammunition boxes and steel office and library furniture, from the facilities of and metal-U.S.C. of Newark, NJ to points in the United States (including AK but excluding HI) under authority contract or contracts with Artic Metal

U.S.S., of Newark, NJ. Applicant's representative is: Harold L. Reckson, 33-28 Halsey Road, Fair Lawn, NJ 07410.

MC-FC-79751. By decision of May 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to REDIEHS EXPRESS, INC. of Lake Station, IN of all the authorities contained in certificate No. MC-128270 issued November 27, 1968, and subsequently issued sub-numbered certificates to REDIEHS INTERSTATE, INC. also of Lake Station, IN, evidencing a right to engage generally in transportation in interstate commerce over irregular routes transporting generally (1) *such commodities as are dealt in or used by wholesale metal dealers, wholesale metal processors, and automobile crushers, jobbers, and distributors and wholesalers of metal products, building materials, plastic products, lumber and wood products, clay, concrete, glass, or stone products and machinery* generally between points in the United States in and west of OH, KY, TN, GA, and FL (except AK and HI) and (2) *general commodities*, (with the usual exceptions) between the Bethlehem Steel Corp. plantsites at Burns Harbor, Porter County, IN on the one hand, and, on the other, points in IL north of U.S. Highway 40, and points in MO (except St. Louis).

MC-FC-79765. By decision of May 7, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to James A. Hiers d/b/a Hiers Trucking Co., of Ocean Springs, MS of Certificate No. MC-151551 (Sub-No. 1F) issued to All American Freight Lines, Inc., of Birmingham, AL authorizing the transportation of (1) *machinery* and (2) *building materials* between points in AL, AR, FL, GA, LA, MS, NC, SC, TN and TX, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Applicant's representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. TA lease is sought. Transferee is not a carrier.

MC-FC-79778. By decision of May 7, 1982, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Mortorano Transport Systems, Inc., d/b/a K.C.S. Express Company, of Poughkeepsie, NY, of Certificate of Registration No. MC-98068 (Sub-No. 2F) issued 5/5/81, to K.C.S. Express Co., Inc., of Poughkeepsie, NY corresponding in scope to state certificate No. 1920 dated 3/28/81 issued by the New York State Department of Transportation. The

certificate authorizes general commodities between all points in the Counties of Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester, NY. Applicant's representative is: Harold L. Reckson, 33-28 Halsey Rd., Fair Lawn, NJ 07410.

MC-FC-79780. By decision of 5/11/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to LTL DISTRIBUTION, INC. d/b/a/ LEAVENWORTH-TONGANOXIE LINES, of Tonganoxie, KS of Certificate No. MC-60178 and MC-60178 (Sub-No. 5) issued June 4, 1969 and May 22, 1974, respectively, to TONGANOXIE MOTOR FREIGHT, INC., of Tonganoxie, KS, authorizing the transportation by regular routes of *general commodities* (with the usual exceptions) between Tonganoxie, KS and McLouth, KS, serving intermediate points and Oskaloosa, KS as an off-route point and between points in KS and MO, and *livestock* from Tonganoxie, KS to Kansas City, MO, serving intermediate and off-route points within 20 miles of Tonganoxie, over U.S. Highway 24. Applicant's representative: Arden R. Waters, Route #1, Tonganoxie, KS 66086.

MC-FC-79781. By decision of May 7, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Western Liquid Transport, of Pittsburg, CA, of Permit No. MC-144798 (Sub-No. 3F), (Sub-No. 4F), and (Sub-No. 6F) issued, respectively, December 26, 1979, August 12, 1980, and November 10, 1980, to James W. Berg and John W. Berg, d/b/a/ the Dutch Line authorizing the transportation of (A) *liquid paraffin wax*, in bulk, in tank equipment, (1) between South San Francisco, CA, and Scappoose, OR, under continuing contract(s) with Paragon Wax Refining Company, of South San Francisco, CA, (2) between Richmond, CA, and Scappoose, OR, under continuing contract(s) with Neu-Glo Candles, Incorporated, of Scappoose, OR, and (B) *lubricating oils, used lubricating oils, oil additives, and drain oil* between points in Alameda, San Mateo, Ventura, and Los Angeles Counties, CA, and points in ID, NV, OR, UT, and WA, under continuing contract(s) with Ekotek Lube, Inc. Representative is: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. Transferee is not a carrier.

MC-FC-79782. By decision of May 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to RONALD KRAMER, d.b.a. Kramer & SONS TRUCKING, of Lima,

OH, of Permit Nos. MC-113429 and Sub-Nos. 3 and 6, issued to MIKE CONTRIS, d.b.a. CONTRIS TRUCKING, of Harrod, OH, which authorize the transportation of *specified and general commodities* (with exceptions), between points in the U.S., under continuing contract(s) with Clark Equipment Company, of Lima, OH. Representative: James Duvall, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017.

Note.—Transferee is not a carrier.

MC-FC-79785. By decision of May 11, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to BLUE GRASS TRANSPORTATION, INC. of Nashville, TN Certificate No. MC-41064 and all subs issued to KENT EXPRESS, Inc. of Aurora, IN authorizing: general commodities, with exceptions, regular and irregular routes in OH, KY, and IN authorizing: general commodities, with exceptions, over regular and irregular routes in OH, KY and IN. Representative: Roland M. Lowell, 5th FL 501 Union Street, Nashville, TN 37219. TA lease is not sought. Transferee is not a carrier.

MC-FC-79790. By decision of decision of May 6, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1133, Review Board Number 3 approved the transfer to Barbara J. and Leo J. Wachter, d.b.a. of License No. ROTHRAUFF WORLD TRAVEL SERVICE, issued to Richard M. Rothrauff, d/b/a Rothrauff World Travel Service authorizing the transportation of *passengers and their baggage* in special and charter operations, beginning and ending at points in Blair, Cambria, Huntingdon, and Bedford Counties, PA, and extending to points in the United States including AK an HI. Applicants' representative: John F. Sullivan, 2229 Broad Avenue, Altonna, PA 16602.

Notes.—Transferee presently holds no authority from the ICC.

MC-FC-79794. By decision of 5/11/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to REALCO ENTERPRISES, INC., of Arcadia, IN, of Permit No. MC-136718 (Sub-No. 2X), issued to GLENN'S INC., of Sheridan, IN, which authorizes the transportation of *furniture and fixtures*, between points in the U.S., under continuing contract(s) with The Harris Pine Mills, of Pendleton, OR. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240.

Note.—Transferee is not a carrier.

Agatha L. Mergenovich
Secretary.

[FR Doc. 82-13711 Filed 5-19-82; 8:45 am]
BILLING CODE 7035-01-M

[Vol. No. OP2-95]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. 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. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that 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 properly 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 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 the absence of legally sufficient protests in the form of verified statements as to the finance application or to the following operating rights applications directly related thereto

filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

Decided: May 13, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier. Member Parker not participating.

Agatha L. Mergenovich,
Secretary.

MC 161523, filed April 15, 1982.
Applicant: PRODUCT DISTRIBUTION COMPANY, 4715 Pinewood Dr., Louisville, KY 40232. Representative: Michael F. Morrone, 1150 17th St., N.W., Suite 1000, Washington, DC 20036. Transporting such commodities as are dealt in or used by manufacturers of electrical equipment, electrical products, energy systems, and plastic items, between points in the U.S., under continuing contract(s) with General Electric Company, of Fairfield, CT.

[FR Doc. 82-13710 Filed 5-19-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP3-075

Decided: May 13, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 111045 (Sub-195), filed April 20, 1982, previously noticed in the *Federal Register* on May 5, 1982. Applicant: REDWING CARRIERS, INC., P.O. Box 30063, Tampa, FL 33630. Representative: Stephen F. Wilkens (same address as applicant), (813) 621-2046. Transporting *steel and steel products*, between points in AL, on the one hand, and, on the other, points in AR, AL, FL, GA, LA, MS, NC, SC, TN, and TX.

Note.—This republication corrects the docket number and the territorial description.

MC 120924 (Sub-14), filed April 30, 1982. Applicant: B & W CARTAGE CO., INC., 2932 West 79th Street, Chicago, IL 60652. Representative: Carl L. Steiner, 29 South LaSalle Street, Chicago, IL 60603, (312) 236-9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MN, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, LA, MA, MD, ME, MS, NC, NJ, NH, NY, OK, PA, RI, SC, TN, TX, VA, WV and DC.

MC 127955 (Sub-10), filed April 30, 1982. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Ave. & Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting *foodstuffs and related products*, (1) between points in Monroe County, NY and Oswego County, NY, on the one hand, and, on the other, Monmouth County, NJ; and (2) between points in Baltimore County, MD and Westmoreland County, PA, on the one hand, and, on the other, Atlantic City, NJ.

MC 127955 (Sub-11), filed April 30, 1982. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Ave. & Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting *foodstuffs and related products*, (1) between points in Hudson and Cumberland Counties, NJ, on the one hand, and, on the other, points, points in the U.S. (except AK and HI), and (2) between points in Houston County, GA, on the one hand, and, on the other, points in NJ.

MC 134134 (Sub-106), filed May 4, 1982. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Ave., Omaha, NE 68107. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397-9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of floor and wall covering, between those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 136635 (Sub-71), filed May 3, 1982. Applicant: WHITEFORD TRUCK LINES, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Archie B. Culbreth, Suite 202, 2200 Century Pkwy., Atlanta, GA 30345, (404) 321-1765. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of (1) pulp, paper and related products, (2) rubber and plastic products, (3) lumber and wood products, (4) chemicals and related products, (5) home improvement centers, (6) photocopying machinery and equipment and parts, (7) advertising materials and supplies and advertising specialty items and accessories (including key holders, wallets, card cases, desktop accessories and clocks), and (8) film and film products, between points in the U.S. (except AK and HI).

MC 140475 (Sub-10), filed April 30, 1982. Applicant: S & P TRUCKING INC., R. R. No. 3, Kennett, MO 63857. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102, (314) 636-2321. Transporting *fertilizer and fertilizer ingredients*, between points in Pemiscott and Scott Counties, MO, on the one hand, and, on the other, points in AR, IL, KY and TN.

MC 142935 (Sub-27), filed April 30, 1982. Applicant: PLASTIC EXPRESS, 2301 E. Francis St., Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633, (714) 738-3889. Transporting *rubber and plastic products and chemicals and related products*, (a) between those points in and west of LA, AR, MO, IL, IA and MN, and (b) between points in NJ, on the one hand, and, on the other, those points in and east of MS, TN, KY, IA and WI.

MC 142935 (Sub-28), filed April 30, 1982. Applicant: PLASTIC EXPRESS, 2301 E. Francis St., Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633, (714) 738-3889. Transporting *building materials*, between those points in and west of LA, AR, MO, IA and MN.

MC 143185 (Sub-7), filed April 30, 1982. Applicant: CHARLES G. LAWSON TRUCKING, INC., P.O. Box 2805, Montgomery, AL 36105. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210, (703) 525-4050. Transporting (1) *foodstuffs* and (2) *such commodities* as are utilized in the manufacture and distribution of foods, between points in St. Landry Parish, LA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145935 (Sub-1), filed May 3, 1982. Applicant: ALL STATES TRANSPORTATION, INC., Route 1, Box 27, Fort Worth, TX 76179.

Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112, (817) 457-0804. Transporting (1) *insulators and parts*, and (2) *wiring*, between Washington County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147695 (Sub-2), filed April 26, 1982. Applicant: ONAHU TRANSPORTATION COMPANY, INC., P.O. Box 39, Bethune, CO 80805. Representative: Winston A. Hollard, P.O. Box 1169, Arvada, CO 80001, (303) 425-0384. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between Lenexa, KS and Denver, CO, (b) between Denver and Longmont, CO, on the one hand, and, on the other, Salina, Wichita and Kansas City, KS and (c) between Lenexa, KS, on the one hand, and, on the other, Commerce City and Denver, CO.

MC 149014 (Sub-7), filed May 3, 1982. Applicant: EAGLE LINES, INC., P.O. Box 902, Merrimack, NH 03054. Representative: Henry Sepessy, 10 Canterbury Way, Merrimack, NH 03054, (603) 434-2400. Transporting *food and related products*, between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the eastern boundary of Itasca County, MN, thence northward along the eastern boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the U.S. and Canada.

MC 154714, filed April 30, 1982. Applicant: APACHE EXPRESS CORPORATION, P.O. Box 45, Great Valley, NY 14741. Representative: James E. Brown, 36 Brunswick Rd. Depew, NY 14043, (716) 681-7190. Transporting (1) *new office furniture*, (2) *office equipment* and (3) *transportation equipment*, between Leroy, Ellicottville and Jamestown, NY, on the one hand, and, on the other, points in AL, AR, CO, DE, FL, GA, IL, IN, KS, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, WI and DC.

MC 157074, filed April 30, 1982. Applicant: BREMEN TRANSFER & STORAGE, INC., 1403 West Dewey Street, Bremen, IN 46506. Representative: Andrew K. Light, 1301 Merchants Plaza, Indianapolis, IN 46204-3491, (317) 638-1301. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in LaPorte, St. Joseph, Elkhart, Starke,

Marshall, Kosciusko, Pulaski, Fulton and Allen Counties, IN.

MC 157595 (Sub-1), filed May 3, 1982. Applicant: PM TRANSPORT, INC., 2459 Campbell Ave., Lynchburg, VA 24501. Representative: Terrence D. Jones, 2033 K St., N.W., Washington, DC 20006, (202) 429-9090. Transporting (1) *petroleum, natural gas and their products*, and (2) *chemicals and related products*, (a) between Charleston, SC, and points in Johnston and Guilford Counties, NC, and Delaware County, PA, on the one hand, and, on the other, points in VA, and (b) between Charleston, SC, and points in Roanoke and Bedford Counties, VA, on the one hand, and, on the other, points in WV.

MC 158625 (Sub-2), filed April 30, 1982. Applicant: REMICK TRUCKING LTD., 215 E. 37th, Boise, ID 83704. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with E. E. Greer Ltd. of Edmonton, Alberta, Canada.

MC 159995, filed April 26, 1982. Applicant: SILVER DOLLAR CORP., 89 W. Main St., Suite 12, Vernal, UT 84078. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531-1777. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 160784, filed May 3, 1982. Applicant: A.T.L., INC., 3865 West Wells St., Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 633 West Wisconsin Ave., Milwaukee, WI 53203, (414) 276-2260. Transporting (1) *automotive parts*, and (2) *magazines, periodicals, and other dated materials*, between points in WI, on the one hand, and, on the other, points in the Upper Peninsula of MI, under continuing contracts with Seewhy, Inc., of Milwaukee, WI, and NAPA Distribution Center, of Stevens Point, WI.

MC 161634, filed April 30, 1982. Applicant: SUNDANCE EXPRESS CORPORATION, Suite 460, 400 Wendell Court, P.O. Box 43386, Atlanta, GA 30336 Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340, (404) 491-1896. Transporting (1) *textile mill products*, (2) *rubber and plastic products*, and (3) *clay, concrete, glass or stone products*, between points in the U.S. (except AK and HI), under continuing contract(s) with (1) Pykettes Manufacturing Company of Salt Lake City, UT, (2) Delta Tire Corporation of

Forest Park, GA, and (3) Buchtal Corporation USA of Atlanta, GA.

MC 161734, filed April 29, 1982. Applicant: RICHARD R. IDING, d.b.a. IDING TRUCKING, 846 S. 77th St., West Allis, WI 53214. Representative: William P. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273-7410. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of abrasives, between points in the U.S. (except AK and HI), under continuing contract(s) with Sancap Abrasives, Inc., of Alliance, OH.

MC 161755, filed April 30, 1982. Applicant: ROBERT G. SPRANDO, 3010 SE 36th Ave., Portland, OR 97202. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226-3755. Transporting *general commodities* (except household goods, Classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Handyman of San Diego, CA.

MC 161755, filed April 30, 1982. Applicant: CLARK & SNIVELY TRUCKING LIMITED, P.O. Box 512, Leamington, Ontario, Canada N8H 3W5. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226, (313) 962-6492. Transporting *lumber and wood products*, between ports of entry on the International Boundary line between the U.S. and Canada, in MI, between points in the U.S., under continuing contract(s) with MacMillan Bloedel Limited, of Thunder Bay, Ontario.

MC 161764, filed April 30, 1982. Applicant: NEWTON BUS SERVICE, INC., Route 1, Box 77, Gloucester, VA 23061. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840-8565. Transporting *passengers and their baggage*, when moving in the same vehicle with passengers, in charter and special operations, beginning and ending at points in VA, and extending to points in the U.S.

MC 161814, filed May 3, 1982. Applicant: TRI-STATE CARRIERS, INC., 1616 South 14th St., P.O. Box 300, Leesburg, FL 32748. Representative: Norman J. Bolinger, Suite 225, 3100 University Blvd., So., Jacksonville, FL 32216, (904) 724-7539. Transporting *dry commodities in bulk*, between points in AL, FL, and GA.

MC 161815, filed May 3, 1982. Applicant: JEWEL FOLIAGE COMPANY, a corporation, 9035 Aero Lane, San Antonio, TX 78217. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956,

(414) 725-2177. Transporting *such commodities* as are dealt in or used by florists, manufacturers and distributors of floral and floral accessories, between points in the U.S., under continuing contract(s) with Smithers-Oasis, Division of the Smithers Company, of Kent, OH.

MC 161824, filed May 3, 1982. Applicant: ARIES TRANSPORTATION COMPANY, INC., 13932 E. Valley Blvd., City of Industry, CA 91744. Representative: James Bowers (same address as applicant), (213) 968-9648. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, WY, AK and HI, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, UT, WA, WY, AK and HI.

Volume No. OP4-172

Decided: May 12, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 48937 (Sub-2), filed May 6, 1982. Applicant: (John) CLARK TRUCKING & RIGGING CO., 7685 Fields Ertel Rd., Cincinnati, OH 45241. Representative: Norbert B. Flick, 2250 Beechmont Ave., Cincinnati, OH 45230, (513) 231-4831. Transporting *machinery and machinery parts*, between points in the U.S. (except AK and HI).

MC 149067 (Sub-2), filed May 6, 1982. Applicant: SUN VALLEY TRUCKING, INC., 149 Franklin St., Oakland, CA 94607. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *food and related products*, between points in AZ, CA, ID, NV, OR and WA.

MC 156417 (Sub-1), filed May 4, 1982. Applicant: GREAT SMOKIES FREIGHT LINES, INC., P.O. Box 253, Cherokee, NC 28719. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133, (404) 949-7756. Transporting *such commodities* as are dealt in, used or distributed by retail department stores between points in GA, NC, SC and TN, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, OK and TX.

MC 161857, filed May 6, 1982. Applicant: FLORIDA CONTAINER EXPRESS, INC., 1532 Kingsley Ave., Suite 105, Orange Park, FL 32073. Representative: Norman J. Bolinger, 3100 University Blvd., S, Suite 225, Jacksonville, FL 32216, (904) 724-7539. Transporting *general commodities* (except classes A and B explosives,

household goods and commodities in bulk), between points in FL, on the one hand, and, on the other, points in AL, FL, GA, MS, NC, SC, and TN.

Volume No. OP4-173

Decided: May 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 36556, (Sub-51), filed May 6, 1982. Applicant: BLACKMON TRUCKING, INC., P.O. Box 186, Somers, WI 53171. Representative: Fred H. Figge (same address as applicant), (414) 859-2223. Transporting *food and related products*, between points in IL, IN, IA, KS, KY, MI, MN, MO, OH, and WI.

MC 61396 (Sub-403), filed May 6, 1982. Applicant: HERMAN BROS., INC., 2565 St Mary's Ave., Omaha, NE 68101. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh PA 15219, (412) 471-1800. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Penn-West Cement Company, Inc., of Cabot, PA.

MC 136766 (Sub-5), filed May 6, 1982. Applicant: CARL DITTFIELD, 33 Drake St., Pittston, PA 18640. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Bleyer, Industries, Inc., of Mt. Union, PA.

MC 145396 (Sub-9), filed May 6, 1982. Applicant: BOYCE HOWARD, d.b.a. HOWARD TRUCKING, Hwy 67 North, P.O. Box 165, Newport, AR 72112. Representative: John Paul Jones, P.O. Box 3140, Front St. Station, 189 Jefferson Ave., Memphis, TN 38103, (901) 527-2482. Transporting *metal products*, between points in AL, CT, FL, GA, IL, IN, IA, KS, KY, MI, MO, MN, NC, NY, OH, OK, PA, SC, VA, and WV.

MC 152546 (Sub-1), filed May 6, 1982. Applicant: GRIMM TRANSPORT CO., 1801 Morton Ave., Morton, IL 61550. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544-5468. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Hiram Walker & Sons, Inc., of Ft. Smith, AR, and Midwest Solvents Co. of Illinois, of Pekin, IL.

MC 153896 (Sub-1), filed May 6, 1982. Applicant: LONNIE POWELL, d.b.a. PACIFIC TANK LINES, 825 W. Olympic Blvd., Montebello, CA 90640.

Representative: Lonnie Powell (same address as applicant), (213) 726-1251. Transporting *lacquers, paints, resins, and related products*, between points in the U.S., under continuing contract(s) with McCloskey Varnish, of Commerce, CA.

MC 154026 (Sub-2), filed May 7, 1982. Applicant: ADVANCE EXPRESS, INCORPORATED, 1200 S. State St., Girard, OH 44420. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. Transporting *general commodities*, (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Hynes Industries, Inc., of Youngstown, OH, Sharon Tube Company, of Sharon, OH, and Syro Steel Company, of Girard, OH.

MC 156766 (Sub-1), filed May 7, 1982. Applicant: G.A.L. & S. TRUCKING, INC., P.O. Box 709, Enumclaw, WA 98022. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055-3273, (206) 235-1111. Transporting *lumber and wood products, hardware, building materials, and paint and paint supplies*, between points in AR, AZ, CA, CO, IA, ID, IL, IN, KS, LA, MI, MN, MS, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, and WY.

MC 160016, filed May 6, 1982. Applicant: ROMA TRANSPORT SERVICE, INC., 2201 Baker Dr., Allentown, PA 18103. Representative: Joel Tanis, Jr., River and Range Rds., Fair Lawn, NJ, (215) 791-0483. Transporting *dry cement*, between points in Lehigh and Northampton Counties, PA, on the one hand, and, on the other, Newark and Trenton, NJ, and points in Bergen, Passaic, Middlesex, Burlington, Sussex, and Monmouth Counties, NJ.

MC 161866, filed May 6, 1982. Applicant: KENNETH H. FLAGG, P.O. Box 213, Belfast, ME 04915. Representative: Kenneth H. Flagg (same address as applicant), (207) 338-2300. Transporting *printed matter*, (1) between points in Waldo County, ME and Merrimack County, NH, and (2) between points in Waldo County, ME, on the one hand, and, on the other, Boston, MA, Hartford and Bridgeport, CT, and New York, NY, under continuing contract(s) with Rumford National Graphics, Inc., of Belfast, ME, d.b.a. Journal Press.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13714 Filed 5-19-82; 6:45 am]

BILLING CODE 7035-01-M

[AB 18 (SDM)]

Chessie System; Amended System Diagram map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Chessie System has filed with the Commission its amended color-coded system diagram map in docket No. AB 18 (SDM). The Commission on May 3, 1982, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 18 (SDM).

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13705 Filed 5-19-82; 6:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No.130)]

Missouri Pacific Railroad Co.; Exemption for Contract Tariff ICC-MP-0039

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioners are granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Missouri Pacific Railroad Company (MP) filed a petition on April 27, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). Petitioners request that we permit supplement 1 to contract tariff ICC-MP-0039 to become effective on one day's notice. It provides for the transportation of motor vehicles.

¹ AB 18(SDM), The Chesapeake and Ohio Railway Company; AB 19(SDM), The Baltimore and Ohio Railroad Company; and AB 69(SDM), The Western Maryland Railway Company.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. One of the primary rail routes utilized by the shipper to ship its motor vehicles was inadvertently omitted from the underlying contract. The exclusion of the traffic over the omitted route has prevented the shipper from receiving the financial incentives provided in the contract. We find this to be the type of circumstances which warrants a provisional exemption.

Petitioners' contract tariff ICC-MP-0039 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission has permitted the amended contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, or review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the *Federal Register*.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 13, 1982.

By the Commission, Division 2,
Commissioners Gresham, Taylor, and
Simmons. Commissioner Simmons did not
participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc 82-13706 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Sec. 5b Application Nos. 2, 3, and 6]

Western, Eastern, and Southern Railroads; Agreements

AGENCY: Interstate Commerce
Commission.

ACTION: Clarification of prior decision.

SUMMARY: The Commission in its decision served April 24, 1981 (46 FR 23829, April 28, 1981) found that proposed government rates should be treated as single-line rates for the purpose of the voting prohibitions of 49 U.S.C. 10706(a)(3)(A)(i). This decision, however, should not be construed as prohibiting a change in car allowances submitted as a section 10721 quotation from being handled collectively under existing rate bureau procedures where the car allowances are not particularized and involve broad tariff changes.

FOR FURTHER INFORMATION CONTACT:

Donald J. Shaw, Jr., (202) 275-7656.

SUPPLEMENTARY INFORMATION:

Railroad subscribers to section 5b Application No. 7 (petitioners) seek clarification of the application of single-line voting prohibitions of 49 U.S.C. 10706¹ to proposed mileage allowances tendered for government freight cars under 49 U.S.C. 10721.² This clarification is sought to assist petitioners in responding to a request from the Military Traffic Management Command (MTMC) for increased car or mileage allowances for flatcars owned by the Department of Defense.

In our 1981 decision³ we stated that car compensation demurrage and car allowance would not be considered single-line rates in the context of the voting prohibitions of Section 10706(a)(3)(A)(i), but that surcharges and contract rates would be. In a latter decision, served April 24, 1981, we found that government rates under Section 10721 correspond to contract rates and should also be treated as single-line rates. We emphasized that, as with contract rates, permitting a carrier's competitors to participate, discuss, or vote on its government rate proposal thwarts effective competition.

The question arises whether a change in car allowances submitted as a section 10721 quotation may continue⁴ to be

¹ Section 10706(a)(3)(A)(i) prohibits a rate bureau from permitting a member carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another carrier.

² Section 10721 (formerly section 22) provides that a common carrier may transport property for the United States Government, or a state or municipal government without charge or at reduced rates.

³ 364 I.C.C. 635 (1981) at 644.

⁴ The current practice with regard to car allowances submitted as section 10721 quotations originated in 1954 at the request of the Department of the Army. In Ex Parte No. 297, *Rates Bureau Investigation*, 349 I.C.C. 811, 834-837 (1975), the Commission found that in the absence of approved special collective section 22 procedures, antitrust immunity would not be available. Petitioners thereafter amended their Agreement to specifically provide Section 10721 quotation procedures. See Section 5B Application No. 7, Article IX.

handled collectively under existing rate bureau procedures, in view of our April 24, 1981, decision. We conclude that it may be, under certain circumstances.

A single-line rate is "a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier." 49 U.S.C. 10706(a)(1)(B). Car compensation, demurrage and car allowances, however, are not to be considered single-line rates. H.R. Rep. No. 1430, 96th Cong., 2d Sess. 114 (1980). This is because of their nationwide importance and the need for a high degree of coordination.

It is particularly significant that Congress excepted car compensation, demurrage, and car allowances from the new restrictions on rate bureau activity imposed by the Staggers Act. In so doing, Congress recognized that car allowances are not analogous to single-line rates, but rather are equivalent to broad tariff changes which are nationwide in effect. The character of these items would not change merely because section 10721 tenders are involved. These exceptions should, therefore, supercede our general finding that section 10721 activity is to be considered single-line.

In view of the above, we conclude that the April 24, 1981, decision should not be construed to preclude all collective consideration of car allowances for the government pursuant to section 10721. However, collective consideration is precluded where the allowance, demurrage, or car compensation is particularized and does not fall within the definition of a broad tariff change.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10706 and 10721)

Dated: May 12, 1982.

By the Commission, Chairman Taylor,
Vice-Chairman Gilliam, Commissioners
Gresham, Sterrett, Andre, and Simmons.
Commissioner Simmons did not participate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-13707 Filed 5-19-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action To Enjoin Discharge of Air Pollutants

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 30, 1982, a proposed consent decree in *United States of America v. Central Illinois Light Company*, Civil No. 82-1099, was lodged with the United States District Court for the Central District of Illinois. The proposed decree requires modifications to pollution control equipment and other measures to assure compliance with the Clean Air Act New Source Performance Standard for nitrogen dioxide emissions from fossil fuel-fired steam generating units at defendant's Duck Creek Generating Station in Canton, Illinois, and payment of a civil penalty.

The proposed consent decree may be examined at the office of the United States Attorney, Room 271, U.S. Post Office & Federal Building, 100 N.E. Monroe Street, Peoria, Illinois, 61601; at the Region V office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice.

Comments should be directed to the Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530 and should refer to *United States of America v. Central Illinois Light Company*, DOJ Reference #90-5-2-1-424.

Carol E. Dinkins,
Assistant Attorney General, Land and
Natural Resources Division.

[FR Doc. 82-13750 Filed 5-19-82; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**Literature Advisory Panel (Residencies); 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 Literature Advisory Panel (Residencies) to the National Council on the Arts will be held on June 3-4, 1982, from 9:00 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 4, from 4:30 p.m.-5:30 p.m. to discuss policy.

The remaining sessions of this meeting on June 3rd, from 9:00 a.m.-5:30 p.m. and June 4th from 9:00 a.m.-4:30 p.m., are 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 applications. 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.

John H. Clark,

Director, Officer of Council and Panel
Operations, National Endowment for the Arts,
May 13, 1982.

[FR Doc. 82-13700 Filed 5-19-82; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION**Advisory Committee for Information Science and Technology; Renewal**

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, it is hereby determined that the renewal of the Advisory Committee for Information Science and Technology is necessary and is in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, GSA, as required by the Federal Advisory Committee Act and other applicable regulations.

Authority for this Advisory Committee shall expire on May 16, 1984, unless the Director of the National

Science Foundation formally determines that continuance is in the public interest.

Dated: May 17, 1982.

John B. Slaughter,
Director.

[FR Doc. 82-13789 Filed 5-19-82; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD**Performance Review Board, Senior Executive Service; Appointment of Members**

Appointments of Performance Review Board members are required to be published in the Federal Register by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on Performance Review Boards for senior executives in the National Transportation Safety Board: Patricia A. Goldman, John R. Wheatley, Robert W. Pyle, Lloyd F. Miller, B. Michael Levins, Frank T. Taylor, S. Walter Sweet, John M. Stuhldreher, Barbara Dixon.

Robert W. Pyle,

Chief, Personnel and Training Division.

May 14, 1982.

[FR Doc. 82-13791 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-58-M

Recommendations, Responses; Availability**Safety Recommendations to:**

Federal Aviation Administration, May 5, A-82-42: Amend 14 CFR 135 by incorporating a 90-day recency of experience requirement of three takeoffs and landings for pilots conducting operations in aircraft required by certificate to have more than one pilot.

Research and Special Programs Administration, May 13, P-82-12: Emphasize to field personnel and State agents the importance of requiring natural gas operators to establish hydrostatic test procedures to comply with 49 CFR 192.751.

State of New York, May 4, H-82-14: Adopt an "Operation Lifesaver" program as a foundation for a statewide effort to reduce train/highway vehicle accidents at grade crossings in New York.

American Gas Association and Interstate Natural Gas Association of America, May 13, P-82-16: Notify member companies of the circumstances of the accident at Flatwoods, West Virginia on Nov. 30, 1981 and urge them to develop detailed safety procedures for each hydrostatic test project.

Columbia Gas Transmission Corp., May 13, P-82-13 through-15: Develop procedures prescribing precautions to be taken while hydrostatically retesting pipelines, including the initial and continuing testing requirements for the presence of natural gas, particularly when work is being performed while pipelines remain connected to a source of gas.

Recommendation Responses from:

Secretary of Transportation, May 7, A-81-17: Considers the FAA's present overall aircraft weight and balance program and spot checking of cargo weights adequate and safe; does not concur in need for joint agency guidelines specifying responsibilities for shippers, freight forwarders, and air carrier certificate holders in determining unit weights.

Federal Aviation Administration, Apr. 27, A-81-163 through-169: Will ask regional offices to remind air traffic service facilities of their incident reporting responsibilities, especially regarding violations of 14 CFR 105; revised Handbook 7210.3F, paragraph 650 to include more guidelines for personnel coordinating nonemergency parachute jumping; does not concur with recommendation to establish special transponder code for parachute jump operations; will revise Advisory Circular 90-48B to include detailed information regarding the psychophysiological factors affecting pilot ability to see and avoid other aircraft; has modified Handbook 7110.10F, paragraphs 690 and 691 to ensure that traffic information is provided directly to the jump aircraft by the appropriate controller; does not concur that traffic advisories should be mandatory to transitioning jump aircraft; Handbook 7110.65, paragraph 1490 already requires controllers to coordinate jump information with other affected ATC facilities/sectors. *May 3, A-81-147:* Will incorporate change to Handbook 7210.3F to ensure qualified personnel are available for assistance when a first-line supervisor is working on operating positions involving the direct control of air traffic. *May 3, A-82-4 and -5:* An Aerospace Service Letter will be issued for Aerospace Lama Model 315B and Lama Series helicopters recommending identification of the rear support by measurement and marking "315" with paint and verification of the turbo shaft powerplant and main gear box alignment after certain work is performed. *May 7, A-82-16:* To minimize possible damage to aircraft landing gear from inadvertent excursions off the runway, the aboveground portion of the arresting barrier will be modified. *May 11, A-81-12 and -13:* Research program will provide a comprehensive reevaluation of the concept and regulatory standards for the Class D cargo compartment. *May 12, A-81-35:* Believes that adherence to the FAR, following the guidance provided in Advisory Circular 00-24A on thunderstorms, and appropriate use of "Flight Watch" and "Hazardous Inflight Weather Advisory Service" programs will allow an aircraft without a weather detection device to operate safely. *May 12, A-81-92:* Has issued an amended Type Inspection Authorization to evaluate electrical system test under variable loads, noise assessment of the electrical system, and verification of electrical portions of the Airplane Flight Manual and Supplementals; the Supplemental Type Certificate will be amended per revised data submitted by the holder.

Federal Highway Administration, May 4, H-81-72 through -77: Is considering the formation of a multidisciplinary advisory group in each State to deal with problem of

accidents involving hazardous materials carriers at rail-highway crossings; will issue an On Guard bulletin alerting drivers of trucks carrying bulk hazardous materials to the dangers of crossings; is studying the role of rail-highway crossings in hazardous materials routing; agrees that the feasibility of requiring drivers to have additional licensing or endorsements to transport bulk hazardous materials is of significant importance; accident data gathered by the BMCS and the FRA do not support modifying Section 392.10 of the FMCSR at the present time.

Federal Railroad Administration, May 5, R-81-39 and -40: Will determine if rulemaking should be initiated concerning the reflectorization of railroad rolling stock upon review of a Transportation Systems Center study currently underway to evaluate the benefits and costs of reflectorization as a means of improving rail-highway crossing safety.

U.S. Coast Guard, May 8, M-81-93 and -94: Believes there are sufficient regulatory requirements and policy statements to adequately maintain safety standards aboard "laid-up" and "idle" vessels; agrees in the need to promulgate guidelines regarding the connection of engineroom bilge spaces with the cargo tanks; does not believe a review of approved plans of vessels which have been modified to permit retention of engineroom bilge water in cargo tanks is necessary. *May 4, M-78-39 and -38, and M-80-91:* Has studied the problem of providing means of escape from tankers by gangways or brows; will propose no changes to the regulations for waterfront facilities or for vessels.

Association of American Railroads, May 3, I-80-3: AAR report R-510 concluded that there is no reason to believe that the current welding practices used in the fabrication of tank car tanks are deficient.

American Public Works Association, May 5, P-82-10: Sent a copy of the recommendation to each member of the Utility Location and Coordination Council's Executive Committee for review and comment.

National Association of Regulatory Utility Commissioners, May 6, I-82-5: Sent a copy of the recommendation to each member of the Committee on Railroads for review and comment.

The Construction Specifications Institute, May 3, P-82-11: May publish the recommendation in newsletter and also place it on the next meeting agenda of the Engineering Joint Contract Documents Committee for consideration of its impact on the standard engineering documents currently under development.

The Kansas City Southern Railway Company, May 11, R-81-82: Believes that the presence of a radio would encourage the lax attitude that was displayed in the instance in question; Missouri Pacific crews are not under our control, and we are unable to enforce correct rule observance on that property.

Note.—Single copies of recommendation letters (identified by recommendation number) and responses are free on written request to: Public Inquiries Section, National

Transportation Safety Board, Washington, D.C. 20594.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

May 20, 1982.

[FR Doc. 82-13792 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-498 OL and STN 50-499 OL]

Atomic Safety and Licensing Board; Order Cancelling Hearings

May 14, 1982.

In the matter of Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Dockets Nos. STN 50-498 OL, STN 50-499 OL; Order (Cancelling Hearings).

On May 6, 1982, the Commission issued an Order in which it decided to review on an expedited schedule the Appeal Board's disqualification of Judge Ernest Hill from this proceeding. The briefing schedule adopted by the Commission indicates that its decision on this matter could not issue prior to the next scheduled hearing dates (June 2-5, 1982). As a result of the continuing outstanding questions concerning Judge Hill's further participation in this proceeding, it is, this 14th day of May, 1982

Ordered

That the evidentiary hearings scheduled for the June 2-5, 1982 are hereby cancelled.

Future hearings remain scheduled (to the extent necessary) for June 15-19, June 21-26, and July 6-10, 1982. These hearings will be held in Houston, Texas, beginning at 9:00 a.m. each day, at the Joe M. Green, Jr. Auditorium, South Texas College of Law, 1303 San Jacinto Street.

Dated at Bethesda, Md., this 14th day of May, 1982.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 82-13797 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Commonwealth Edison Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 71 to Provisional Operating License No. DPR-19, issued to

Commonwealth Edison Company (the licensee), which revised the Technical Specifications for operation of the Dresden 2 Station (facility) located in Grundy County, Illinois. This amendment is effective as of its date of issuance.

The amendment authorizes an increase in the set point of the main steam line radiation monitor trip level during the Hydrogen Addition Test scheduled for May 1982 and June 1982.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 11, 1982, (2) Amendment No. 71 to License No. DPR-19, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Morris Public Library, 604 Liberty Street, Morris, Illinois.

A single copy of items (2) and (3) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of May, 1982.

For the Nuclear Regulatory Commission,
Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5,
Division of Licensing.

[FR Doc. 82-13793 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc.; Issuance of Amendment of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 77 to Facility

Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications relating to operational and surveillance requirements for the installed post-accident engineered safeguards feature (ESF) atmosphere cleanup system air filtration and absorption units.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior to public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 4, 1980, (2) Amendment No. 77 to License No. DPR-26, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 14th day of May, 1982.

For the Nuclear Regulatory Commission,

Steven A. Varga,
Chief, Operating Reactors Branch No. 1,
Division of Licensing.

[FR Doc. 82-13794 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2061]

Kerr-McGee Chemical Corp.; Availability of Draft Environmental Statement for the Rare Earths Facility, West Chicago, Du Page County, Ill.

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (DES) prepared by the Commission's Office of Nuclear Material Safety and Safeguards, related to the decommissioning of the Rare Earths Facility located in West Chicago, Illinois, is available for inspection by the public in the Commission's Public Documents Room at 1717 H Street NW., Washington, D.C. 20555. The DES is also available for inspection at the Commission's Local Public Document Room in the West Chicago Public Library, 332 E. Washington Street, West Chicago, Illinois 60185. Kerr-McGee's proposed decommissioning and stabilization plan involves demolition of the existing buildings, removal of building rubble and contaminated soil to an adjacent disposal site, and stabilization of building rubble, contaminated soil, ore tailings and ore residues on the disposal site. The Kerr-McGee proposed plan and alternatives to the plan are discussed in the DES. The DES is being provided to the State Clearinghouse, Bureau of the Budget, Lincoln Tower Plaza, 524 S. Second Street, Springfield, Illinois 62706. The DES is also being sent to the Metropolitan Clearinghouse, Northeastern Illinois Planning Commission, 400 West Madison Street, Chicago, Illinois 60606.

Requests for copies of the Draft Environmental Statement (identified as NUREG-0904) should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Division of Technical Information and Document Control.

The licensee's stabilization plan and subsequent documents are also available for public inspection at the above-designated locations. Notice of the availability of the applicant's stabilization plan and the Commission's intent to prepare a DES was published in the Federal Register on December 13, 1979 (44 FR 72246).

Interested persons may submit written comments on the DES for the Commission's consideration to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Uranium Fuel Licensing Branch. Federal, State and local agencies are being provided with copies of the document.

All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Local Public Document Room in West Chicago, Illinois. Comments are due by July 6, 1982. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the *Federal Register*.

Dated at Silver Springs, Md., this 5th day of May 1982.

R. G. Page,

Chief, Uranium Fuel Licensing Branch,
Division of Fuel Cycle and Material Safety,
NMSS.

[FR Doc. 82-13795 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric & Gas Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. DPR-70, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 1 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modifies the Technical Specifications to provide an alternative sampling method for steam generator tube inspections during the refueling outage for Cycle 4.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need

not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 5, 1982, as supplemented March 5, 1982, (2) Amendment No. 43 to License No. DPR-70, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 13th day of May 1982.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Chief, Operating Reactors Branch No. 1,
Division of Licensing.

[FR Doc. 82-13796 Filed 5-19-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review

Forms under Review by Office Management and Budget, Agency Clearance Officer—George G. Kundahl—(202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Revision

Form ADV, for application for registration of investment adviser, and for amendments to such registration statement.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance the proposed revision of Form ADV (17 CFR 279.1) the form for application for registration of investment adviser, and for amendments to such registration statement.

The potential respondents are new applicants for registration of investment advisers, and registrants who required to file an amendment to Form ADV. The effects of the amendments to the form include relieving applicants and registrants of the obligation to file certain information with the Commission.

Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814.

George A. Fitzsimmons

Secretary.

[FR Doc. 82-13796 Filed 5-19-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18740; File No. S7-787]

Order Granting Extension Of Temporary Exemption

May 14, 1982.

On February 25, 1982, the Commission issued an order granting the National Association of Securities Dealers, Inc. ("NASD") a temporary exemption until May 15, 1982 from providing to vendors of securities transaction information last sale reports for national market system ("NMS") securities over NASDAQ Level I service¹ as required by Rule 11Aa3-1² under the Securities Exchange Act of 1934 ("Act").³ On May 6, 1982, the NASD informed the Commission that due to unanticipated delays in installation of communications circuits at vendors' sites, the necessary two to three week testing schedules were in turn delayed.⁴ As a result of these delays the NASD indicated that an additional two weeks after May 15th would be necessary to ensure that vendors will be able to receive the enhanced NASDAQ Level I service for NMS securities. Accordingly, the NASD has applied to the Commission for an extension of the temporary exemption until June 1, 1982 from the requirement of Rule 11Aa3-1 that it provide vendors with transaction reports over its NASDAQ Level I service for NMS securities.⁵

¹ NASDAQ Level I service currently makes available the best bid and offer ("BBO") with respect to each security quoted in the NASDAQ system.

² 17 CFR 240.11Aa3-1.

³ Securities Exchange Act Release No. 3418514 (February 25, 1982), 47 FR 9388. In that release, the Commission stated that the temporary exemption was appropriate in light of the NASD's indication that Vendors of securities transaction information had not acquired the requisite communications facilities nor effected the software modifications needed to receive this information by April 1, 1982, the start-up of Tier 1.

⁴ Letter to George A. Fitzsimmons, Secretary, SEC, from S. William Broke, Secretary, NASD, dated May 6, 1982.

⁵ The NASD indicated that it will begin disseminating last sale information for NMS securities over its NASDAQ Level I service on June 1, 1982 since the major vendors for the broker-dealer industry will be capable of accessing this information by that date. In this connection, the Commission encourages other interested vendors and the wire services to start or continue developing their access capabilities for this information even though they might not acquire actual access thereto until after June 1, 1982.

While the Commission believes that it is important for investors to receive access to the last sale information for NMS securities available from NASDAQ Level I service as soon as possible, the Commission believes that the NASD is warranted in seeking an extension of the temporary exemption as a result of the unforeseeable delays experienced by the vendors in accessing this information. Moreover, the Commission believes that it is desirable for, at least, all of the major vendors to commence disseminating last sale information for NMS securities at the same time. The Commission therefore determines that granting the NASD its requested exemption from the requirements of Rule 11Aa3-1 is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanism of, a national market system.

Accordingly, the NASD is granted an extension of the temporary exemption until June 1, 1982 from providing last sale data with respect to its NASDAQ Level I service for NMS securities. This exemption is subject to modification or revocation at any time if the Commission judges that such action is necessary or appropriate in light of progress made toward a national market system or otherwise in furtherance of the purposes of the Act.

By the Commission.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-13780 Filed 5-19-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12436; 812-5057]

Dean Witter Reynolds InterCapital Inc., et al.; Filing of Application

May 14, 1982.

In the Matter of Dean Witter Reynolds InterCapital Inc., Dean Witter Reynolds Inc., InterCapital Dividend Growth Securities Inc., InterCapital High Yield Securities Inc., InterCapital Income Securities Inc., InterCapital Industry-Valued Securities Inc., InterCapital Liquid Asset Fund Inc., InterCapital Natural Resource Development Securities Inc., InterCapital Tax-Exempt Securities Inc., InterCapital Tax-Free Daily Income Fund Inc., Active Assets Money Trust, Active Assets Tax-Free Trust, Active Assets Government Securities Trust, Sears U.S. Government Money Market Trust, Dr. Irwin Friend, John R. Haire, John J. Scanlon, Albert T. Sommers, Five World Trade Center, New York, New York 10048; Dean Witter Reynolds Organization Inc., 45

Montgomery Street, San Francisco, California 94104; Sears, Roebuck and Co., Sears Tower, Chicago, Illinois 60684.

Notice is hereby given that InterCapital Dividend Growth Securities Inc., InterCapital High Yield Securities Inc., InterCapital Income Securities Inc., InterCapital Industry-Valued Securities Inc., InterCapital Liquid Asset Fund Inc., InterCapital Natural Resource Development Securities Inc., InterCapital Tax-Exempt Securities Inc., InterCapital Tax-Free Daily Income Fund Inc., Active Assets Money Trust, Active Assets Tax-Free Trust, Active Assets Government Securities Trust, and Sears U.S. Government Money Market Trust (collectively, the "Funds"), each of which is a management investment company registered under the Investment Company Act of 1940 ("Act"); Dean Witter Reynolds InterCapital Inc. ("InterCapital"), a registered investment adviser and manager of the Funds; Dean Witter Reynolds Inc. ("DWR"), distributor of certain of the Funds; Dr. Irwin Friend, John R. Haire, John J. Scanlon and Albert T. Sommers, directors or trustees of the Funds; Dean Witter Reynolds Organization Inc. ("DWRO") and Sears, Roebuck and Co. ("Sears"), a New York corporation (collectively, the "Applicants"), filed an application on December 22, 1981, and an amendment thereto on April 28, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting from the definitions of "interested person" of an investment company and its investment adviser and principal underwriter under Section 2(a)(19) of the Act certain natural persons who might otherwise come within such definitions solely by reason of their holding interests in securities of Sears or certain of its subsidiaries. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicants state that InterCapital and DWR a wholly-owned subsidiaries of DWRO, which in turn is wholly-owned subsidiary of Sears. Sears acquired DWRO in late 1981 in a two-step transaction involving a cash tender offer and subsequent merger of DWRO into a subsidiary of Sears. Applicants represent that, accordingly, Sears can now be deemed to be a "controlling person" of InterCapital and DWR.

Section 2(a)(19)(B)(iii) of the Act defines an "interested person" of an investment adviser of or principal underwriter for any investment company to include any person who

knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter. Section 2(a)(19)(A)(iii) of the Act defines an "interested person" of an investment company to include any interested person of any investment adviser of or principal underwriter for such company.

Applicants represent that Sears and its consolidated subsidiaries comprise one of the world's largest publicly held companies, with total operating revenues of over \$25 billion and net income of over \$609 million for the fiscal year ended December 31, 1980, and total operating revenues of over \$19 billion and net income of over \$297 million (both unaudited) for the nine month period ended September 30, 1981. Applicants state that revenues from all operations of DWRO and consolidated subsidiaries for the fiscal years ending on August 31, 1981 and 1980 were approximately \$902 million and \$707 million, respectively. Applicants represent that, in this context, the investment company-related activities of InterCapital and DWR would have represented an extremely small portion of Sears total business.

Applicants submit that securities of Sears and its subsidiaries are and will likely continue to be held and traded widely throughout the domestic and international economy. On February 26, 1982, Sears had outstanding 344,792,442 shares of common stock, as well as eight issues of long-term debt which aggregated \$1.520 billion. All such issues are traded on the New York Stock Exchange. On February 18, 1982, Sears subsidiaries had an additional 12 issues of long-term debt which aggregated \$1.602 billion.

Applicants also represent that on February 19, 1982, Sears had 360,822 shareholders and that, as of that same date, individuals owned approximately 34.5% of Sears outstanding shares, bank nominees held another 35.3% thereof, investment organizations and brokers together held 7.0% and most of the remaining shares (approximately 21.6%) were held by The Savings and Profit Sharing Fund of Sears Employees (the "Profit Sharing Fund"), which at December 31, 1981, had 233,446 employee members, each of which is entitled to direct the voting of the shares held in his or her account. Applicants represent that, other than the Profit Sharing Fund, they are not aware of any

person who beneficially owns more than 5% of Sears shares. Debt securities of Sears and its subsidiaries are also held widely by individuals and institutions.

Applicants submit that Section 2(a)(19) of the Act may cause to be classified as interested persons of the Funds, and any other investment companies for which Sears or any of its subsidiaries may serve as investment adviser or principal underwriter in the future (hereinafter referred to with the existing Funds as the "Funds"), or their investment adviser or principal underwriter a large group of individuals who generally would have no direct interest in Sears securities but who might own such securities indirectly through interests in mutual, pension or profit sharing funds, or because of their ownership, employment, directorship or other ties with banks, insurance companies, other corporations or charitable endowments. Applicants contend that it may, therefore, be extremely difficult for the Funds to maintain boards of directors and trustees which continue to meet the requirements of the Act.

Applicants therefore believe it necessary and appropriate for the Commission to grant an order which would provide an exemption from Section 2(a)(19) so that persons may serve as disinterested directors and trustees of the Funds if their holdings in Sears securities come within certain limitations. Although Applicants believe that Section 2(a)(19)(B)(iii) would not apply to ownership of securities issued by Sears subsidiaries which do not serve as investment adviser or principal underwriter for any of the Funds and are not controlling persons of any investment adviser or principal underwriter, Applicants are concerned that at some future time Section 2(a)(19)(B)(iii) may be interpreted to apply to such securities.

Accordingly, Applicants have requested an order of the Commission pursuant to Section 6(c) of the Act exempting from the definitions of "interested person" as defined in Section 2(a)(19) of the Act any director or trustee of any of the Funds (including any director or trustee elected in the future) who would otherwise be deemed to be an interested person of one or more of the Funds, Sears, DWRO, InterCapital or DWR (or any other subsidiary of Sears which may serve as investment adviser or principal underwriter for one or more of the Funds) solely by reason of such person having an indirect beneficial interest in, or being designated a trustee, executor or guardian of a legal interest in, any

security issued by Sears or any subsidiary of Sears (other than DWRO, InterCapital, DWR or any other subsidiary of Sears which serves as investment adviser or principal underwriter for one or more of the Funds or which controls any such subsidiary), provided:

(1) Such person's knowing indirect beneficial interest in such securities (other than interests held through or on behalf of any pension, profit sharing, retirement, dividend reinvestment, stock accumulation, stock appreciation or employee benefit plan or fund other than plans or funds designed primarily for, or involving participation primarily of, employees of Sears or its subsidiaries), including such indirect beneficial interests of such person's spouse and dependents, does not in total exceed any of the following: (a) 5% of such person's net worth; (b) 0.1% of the outstanding shares of any class of equity security involved or 0.1% of the outstanding principal amount of any class of debt security involved; or (c) 0.1% of the aggregate market value of all classes of such debt and equity securities; and

(2) Such person has no knowing beneficial interest in such securities arising from his or her acting as a director or trustee or in any other fiduciary capacity for any business corporation or any trust (including a business trust) other than the Funds, or any nonprofit organization or pension, profit sharing, retirement, dividend reinvestment, stock accumulation, stock appreciation or employee benefit plan or fund which either (a) holds interests in such securities which in the aggregate represent more than 5% of the net assets of such entity, or (b) derives income from interests in such securities which in the aggregate represents more than 5% of the net income of such entity.

For purposes of the application, including the tests set forth in paragraphs (1) and (2) above, a person shall be deemed to hold an indirect, but not a direct, beneficial interest in a security by virtue of his or her being designated a trustee, executor or guardian of a legal interest in such security. The application further states that, as a means of complying with the requested order, the Funds undertake to solicit from their directors and trustees such appropriate information regarding (i) their ownership of securities of Sears and its subsidiaries, and (ii) the ownership of such securities by entities referred to in paragraph (2) above, as is available on December 31 of each year and at any other time at which a material change in such information

occurs, and the Funds intend to evaluate compliance with such order on the basis of such information.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants believe that the exemptions requested are fair and reasonable ways to preserve the protective purposes of the Act while at the same time recognizing the unique circumstances created by the relationship of the Funds and their adviser and distributor to a company like Sears. Applicants assert that the exemptions generally would apply to individuals who through indirect ownership hold securities of Sears in amounts which are not significant from the standpoint either of control of Sears or of the individual's personal finances. They would not exempt from the definitions of interested person any person who would come within these definitions by reason of any provision of the Act other than Section 2(a)(19)(B)(iii). According to Applicants, the exemptions would thus apply only to persons whose independence is not impaired by virtue of their relationship with any of the Funds' investment advisers or principal underwriters and are fashioned specifically to meet the Congressional concern that the persons responsible for providing "an independent check on management" and "a means for a representation of shareholder interests" are truly capable of doing so. Applicants submit that the requested exemptions are both necessary and appropriate so that the significant investment vehicles provided by the Funds now and in the future remain under the guidance of the most capable boards of directors and trustees possible.

Notice is further given that any interested person may, not later than June 8, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed:

Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-13787 Filed 5-19-82; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Proposed Rule Change by National
Association of Securities Dealers, Inc.,
Relating To Proposed Subscriber Fees
for Computer Assisted Execution
System and Elimination of Transaction
Reporting Fees**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1) notice is hereby given that on May 12, 1982, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The proposed rule change eliminates a current charge of \$.10 per transaction report of trades in listed securities and proposes subscriber fees for users of the Computer Assisted Execution System ("CAES").

**II. Self-Regulatory Organization's
Statements Regarding the Proposed
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change.** The proposed CAES subscriber fee is designed to recover the costs of developing and operating CAES. This rule change is being submitted under Section 15A(b)(5) of the Act.

**B. Self-Regulatory Organization's
Statement on Burden on Competition.** The Association believes these proposals do not impose a burden on competition.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received from
Members, Participants or Others.** Comments were neither solicited nor received.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before June 10, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1982.

George A. Fitzsimmons
Secretary.

[FR Doc. 82-13788 Filed 5-19-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-82-052]

Ship Structure Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ship Structure Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I, section 10 (a)(2)).

DATE: June 8, 1982, 9:15 a.m. to 11:30 a.m.

ADDRESS: U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., Room 3201.

FOR FURTHER INFORMATION CONTACT: LCDR D. B. Anderson, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters (G-MTH-4), Washington, D.C. 20593, (202) 426-2197.

SUPPLEMENTARY INFORMATION: The agenda for this meeting is as follows: To approve research projects of the Committee for fiscal year 1983 and to review ongoing research projects of the Committee. Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify LCDR D. B. Anderson, Secretary, Ship Structure Committee not later than the day before the meeting. Any member of the public

may present a written statement to the Committee at any time.

Dated: May 11, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82-13556 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-2 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of concepts for airspace and procedures in the terminal environment, including criteria, design, complexity, and application.

DATE: Beginning June 7, 1982, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference rooms 9 A/B, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1004, Federal Aviation Administration, 800 Independence Avenue, S.W., AAT-30 Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 4, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on May 14, 1982.

Willard H. Reazin,

Program Manager, National Airspace Review Advisory Committee.

SUPPLEMENTARY INFORMATION:

[FR Doc. 82-13763 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-1 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: A review of the Military Training Route (MTR) program, including existing procedures, requirements, depiction, and dissemination.

DATE: Beginning June 7, 1982, at 11:00 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference rooms 5 A/B, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, S.W., AAT-30 Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 4, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued at Washington, D.C., on May 14, 1982.

Willard H. Reazin,

Program Manager, National Airspace Review Advisory Committee.

[FR Doc. 82-13764 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 1-5 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: Development of a formal Memorandum of Agreement between the United States Federal Aviation Administration and the Canadian Air Transportation Administration on matters that affect transborder operations.

DATE: Beginning June 21, 1982, at 11:00 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed one week.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 9 C, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, S.W., AAT-30 Washington, D.C. 20591, (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 18, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on May 14, 1982.

Willard H. Reazin,

Program Manager, National Airspace Review Advisory Committee.

[FR Doc. 82-13765 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective June 1, 1981, First National Bank of Oregon, Portland Oregon, changed its name to First Interstate Bank of Oregon, N.A.

Dated: May 14, 1982.

By Order of the Maritime Administrator.

Robert J. Patton, Jr.,
Secretary.

[FR Doc. 82-13679 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-81-M

Maritime Advisory Committee; Meeting

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice.

SUMMARY: The Maritime Advisory Committee will hold its first meeting on June 7, 1982, at 9:30 a.m. in Room 4234, Department of Transportation, 400 7th Street, S.W., Washington, D.C. This meeting will be of an organizational nature and will be open to the public.

Dated: May 18, 1982.

By order of the Maritime Administrator.

Robert J. Patton, Jr.,
Secretary.

[FR Doc. 82-13613 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-81-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an Environmental Impact Statement (EIS) is being prepared for a group of potential highway and transit improvements in the San Francisco metropolitan area. These substitute transportation projects would receive funding as a result of the withdrawal of the incomplete segment of I-280 in San Francisco. UMTA will work in cooperation with the California Department of transportation (CALTRANS), the Metropolitan Transportation Commission, and the City and County of San Francisco to prepare the EIS.

The I-280 Transfer Concept Program was adopted by the three local agencies in January 1981. Potential projects that could be implemented within the available funding are:

1. *I-280 Touchdown Ramps:* To link the elevated structure of the I-280 freeway to the local street system in San Francisco.

2. *Embarcadero Freeway and Embarcadero Surface Roadway:* Removal of the existing Embarcadero Freeway viaduct from Beale Street to Broadway; a new off-ramp from the Bay Bridge; reconstruction of the surface Embarcadero roadway, with associated traffic control and pedestrian access improvements.

3. *Muni-Metro Extension:* Subway extension from the Embarcadero Station (incorporating a turnback capability), coming to grade at Steuart Street and continuing at grade to the Southern Pacific Depot. An alternative to be considered is an extension of Southern Pacific commuter trains to downtown San Francisco.

4. *E-Line Connection:* A light rail facility from Fort Mason, along Jefferson/Beach Streets, then along the Embarcadero, tying into Muni-Metro Extension just south of Mission Street.

5. *Intercept Parking:* Parking areas near freeway access, connecting to rail and shuttle transit services serving the downtown core and the northeastern waterfront.

6. *Transportation Systems Management (TSM):* Low-cost improvements along major arterials to improve the flow of traffic and transit in the area between the Embarcadero projects and the Golden Gate Bridge.

The EIS will consider a number of alternative projects. These may consist of combinations of elements in the Transfer Concept Program or substitute proposals for one or more of the elements which are developed during the EIS study process. Information describing the proposed alternatives and soliciting comments will be sent to appropriate federal, state, regional and local government agencies, as well as to private organizations and citizens who have expressed interest in the proposed projects or will be affected by them. A public scoping meeting to encourage early public input to the project will be held on June 1, 1982, at the State Building on 350 McAllister Street, San Francisco, from 4 p.m. to 7 p.m.

For further information on the I-280 Transfer Concept Program or to comment on the scope of this EIS, contact: Mr. Russell Sayre, California Department of Transportation, 150 Oak Street, San Francisco, California 94102,

telephone (415) 557-8968 or Mr. Stuart Eurman, Urban Mass Transportation Administration, 2 Embarcadero Center, Suite 620, San Francisco, California 94111, telephone (415) 556-9368. In Washington, contact Mr. Abbe Marner, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590, telephone (202) 426-2360.

Dated May 11, 1982.

Charles H. Graves,
Director, Office of Planning Assistance.

[FR Doc. 82-13407 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period May 7 through 13, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. NW., Washington, D.C. 20220; and to the OMB reviewer listed at the end of each entry.

Date Submitted: May 7, 1982

Submitting Bureau: Internal Revenue Service

OMB Number: 1545-0134

Form Number: 1128

Type of Submission: Revision

Title: Application for Change in Accounting Period

Purpose: Used by taxpayers when prior approval of a change of accounting period is required. The information requested is used to determine whether the application should be approved

OMB Reviewer: Karen P. Sagett (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 10, 1982

Submitting Bureau: Internal Revenue
Service

OMB Number: 1545-0015

Form Number: 706

Type of Submission: Revision

Title: United States Estate Tax Return

Purpose: Internal Revenue Service uses
the information to enforce this tax by
verifying that the tax has been
properly computed.

OMB Reviewer: Karen P. Sagett (202)
395-6880, Office of Management and
Budget, Room 3201, New Executive
Office Building, Washington, D.C.
20503.

Joy Tucker,

Departmental Reports Management Officer.

May 14, 1982.

[FR Doc. 82-13730 Filed 5-19-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 98

Thursday, May 20, 1982

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, June 11, 1982.

PLACE: 2033 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-751-82 Filed 5-18-82; 12:45 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, June 4, 1982.

PLACE: 2033 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-750-82 Filed 5-18-82; 12:41 pm]

BILLING CODE 6351-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

Additional Item to be Considered at Commission Open Meeting, Thursday, May 20, 1982.

The Federal Communications Commission will consider this

additional item on the subject listed below at the Open Meeting scheduled for Thursday, May 20, 1982, starting at 9:30 a.m., in Room 858, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Broadcast—2—Title: Waiver of Section 73.1510(c)(6). *Summary:* The Commission will consider the requests of Teleco Indiana, Inc., (licensee of TV Station WTTV) and the Board of Trustees of the University of Illinois (licensee of noncommercial, educational Stations WILL-AM/FM/TV) to charge for services provided on a TV aural subcarrier under an experimental authorization.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: May 17, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-750-82 Filed 5-18-82; 2:56 pm]

BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, May 24, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for consent to merge and establish two branches:

Bank of Dothan, Dothan, Alabama, for consent to merge, under its charter and with the title "AmSouth Bank of Houston County," with The Farmers & Merchants Bank of Ashford, Ashford, Alabama, and to establish the two offices of The Farmers &

Merchants Bank of Ashford as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,210-L—East Gadsden Bank, Gadsden, Alabama

Case No. 45,220-SR—Bank of Lake Helen, Lake Helen, Florida

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Doval, Munoz, Acevedo, Otero & Trias, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce Puerto Rico.

Reports of committees and officers:

Minutes of the actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Corporate Audits:

Audit Report re: Securities Analysis Activities—Division of Bank Supervision, dated April 5, 1982.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan J. Kaplan, Deputy Executive Secretary of the Corporation, at (202) 389-4446.

Dated: May 17, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-748-82 Filed 5-18-82; 11:38 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that

at 2:30 p.m. on Monday, May 24, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings, (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Metropolitan Industrial Bank, Denver, Colorado, an operating noninsured industrial bank.

Application for consent to establish a branch:

First Mutual Savings Bank, Bellevue, Washington, for consent to establish a branch at 10430 N.E. 8th Street, Bellevue, Washington.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan J. Kaplan, Deputy Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 17, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-749-82 Filed 5-18-82; 11:38 am]

BILLING CODE 6714-01-M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 25, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Litigation. Audits, Personnel.

* * * * *

DATE AND TIME: Thursday, May 27, 1982 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Advisory Opinion 1982-37: Don Edwards, Member of Congress
Legislative recommendations (continued from May 20, if necessary)
Revision to debt settlement procedures
Letter from Senator Mathias re Citizens' Research Foundation and request from CFR re Waiver of Fees
Appropriations and budget: FY 82
Management Plan
Routine Administrative Matters: Distribution of Agency Publications Agency Personnel Security

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Public Information Officer; Telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-753-82 Filed 5-18-82; 2:48 pm]

BILLING CODE 6714-01-M

7

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, May 26, 1982.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: May 18, 1982.

James McAfee,

Associate Secretary of the Board.

[S-752-82 Filed 5-18-82; 2:43 pm]

BILLING CODE 6210-01-M

8

NUCLEAR REGULATORY COMMISSION

DATE: Week of 3 and 10 May, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: Thursday, May 6:

3:00 p.m.:

Affirmation of SECY-82-179 "Review of ALAB-672 (In the Matter of Houston Lighting and Power Co. Et. al.) (public meeting) (Replaced scheduled item)

Thursday, May 13:

4:00 p.m.

Affirmation of SECY-82-190 "Approval Under Section 145 b. Of The Atomic Energy Act Of 1954, As Amended, For The Employment Of Mr. James P. Jordan As A Consultant To Commissioner Thomas M. Roberts And For Access To National Security Information And Restricted Data" (public meeting)

Thursday, May 13:

9:30 a.m.:

Discussion of Management-Organization and Internal Personnel Matters. (closed)

ADDITIONAL INFORMATION:

The briefing on Cold/Hot Shutdown was postponed from May 12 to May 19. The Commission determined by votes of 3-0 (Comm. Gilinsky absent), 4-0 and 3-0 (Comm. Ahearne absent), respectively, that Commission business required that the three meetings listed above be held on less than one week's public notice.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee (202) 634-1410.

May 17, 1982.

Walter Magee,

Office of the Secretary.

[S-747-82 Filed 5-18-82; 3:54 pm]

BILLING CODE 7905-01-M

9

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 10 a.m., May 27, 1982.

PLACE: Board's meeting room, eighth floor, headquarters building, 844 Rush Street, Chicago, Illinois, 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public.

(1) Revision of Board Order 75-3 concerning the Board's agency grievance procedure.

(2) Appeal of Ite Corporation.

(3) Appeal of Rail Car Corporation.

(4) Detection and prevention of fraud, waste, and abuse at the Board—Bureau of Audit and Investigation.

(5) Survey of the division of disability benefits.

(6) Suggestion re shortening public service hours in district offices.

(7) OMB Circular A-76 study of the Board's print shop.

Portion closed to the public:

A. Appeal from referee's denial of disability annuity, George Perry.

B. Appeal from referee's denial of disability annuity, Alvin E. Romaker.

CONTACT PERSON FOR MORE

INFORMATION: Beatrice Ezerski; COM No. 312-751-4920; FTS No. 387-4920.

[S-747-82 Filed 5-18-82; 8:45 am]

BILLING CODE 7905-01-M

Test Report

Thursday
May 20, 1982

Part II

Department of Agriculture

Animal and Plant Health Inspection
Service

National Poultry Improvement Plan and
Auxiliary Provisions on National Poultry
Improvement Plan

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket 82-021]

National Poultry Improvement Plan and Auxiliary Provisions on National Poultry Improvement Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends portions of the provisions governing the National Poultry Improvement Plan and Auxiliary Provisions to incorporate new provisions for the control of certain poultry diseases. Duties of the General Conference Committee are also revised.

The changes are being made in an effort to reduce the cost of the testing programs and to use more reliable laboratory techniques in evaluating specimens which have had a positive or suspicious blood test. New programs will permit the participating breeding flocks to be blood tested and officially classified as to their freedom from the diseases for which they were tested. Certain portions of the present provisions are being deleted because recent scientific findings show they are no longer pertinent or because there is no longer any interest on the part of the poultry industry in them. The intended effect of these amendments is to continue providing valid tests for the different diseases at lower cost to the owner, to provide more definitive techniques to confirm suspected reactors, and to offer new testing and classification programs which permit prospective buyers to know the health status of products before making a purchase.

EFFECTIVE DATES: These rules are effective on May 20, 1982 except for paragraph (d) of § 145.43 which is effective on January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond D. Schar, USDA, APHIS-VS, Building 265, BARC-East, Beltsville, MD 20705 (301) 344-2227.

SUPPLEMENTARY INFORMATION:**Classification**

The amendments reduce the maximum size of the sample of breeding chickens to be blood tested for *Mycoplasma gallisepticum* and *Mycoplasma synoviae* (MG and MS) under the official control program for the diseases caused by these two organisms. They provide for a new program to identify flocks of started

poultry which have had a negative test for MG, and change certain criteria for determining the MG and MS classification of breeding flocks. Two new procedures, bacteriological examination and in vi vo bio-assay, are included to further evaluate the status of mycoplasma reactors. A program to blood test and classify turkey breeding flocks for *Mycoplasma meleagridis*, to be effective January 1, 1983, is being added for the first time. Waterfowl which are located on the same premises, but are not part of the participating flock of breeding chickens, turkeys, or other fowl will no longer have to be blood tested for *Salmonella pullorum* or *S. gallinarum* as a condition for the classification of a participating flock. Recommended procedures for the bacteriological examination of salmonella reactors are being amended to include new techniques and diagnostic materials.

This final action has been reviewed in conformance with Executive Order 12291, and has been classified as not a "major rule." The Department has determined that this action will have an annual effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because the amendments will only affect owners of hatcheries who are voluntarily participating in the National Poultry Improvement Plan (NPIP) programs. Presently there is a total of 1062 hatcheries in the NPIP, of which 90 commercial egg- and meat-type chicken hatcheries and 13 turkey hatcheries are considered to be small entities which could be affected. However, only three of these small entities have ever blood tested for the particular diseases with which these amendments are concerned. Thus, a substantial number of small entities will not be affected. Furthermore, it is considered unlikely that the balance of the small entities which participate in the NPIP will blood test for *Mycoplasma gallisepticum*, *M. synoviae*, or *M.*

meleagridis in the foreseeable future. Additionally, it is not anticipated that this action will have a significant economic impact on small organizations or small governmental jurisdictions.

Background

The National Poultry Improvement Plan (NPIP) is a cooperative State-Federal program through which new technology can be effectively applied to the improvement of poultry breeding stock and hatchery products through the control of certain hatchery-disseminated diseases. The provisions of this voluntary program are changed from time to time to conform with the development of the industry and to utilize new information as it becomes available. These changes are based on recommendations initiated at the biennial National Plan Conference by the official delegates representing participating flockowners, breeders, and hatcherymen from all cooperating States. Since this is a voluntary program, these provisions apply only to those who wish to participate in the program. On June 20, 1980, there was published in the *Federal Register* (45 FR 41683) a notice of the July 7-10, 1980, meeting of the General Conference Committee and the biennial National Plan conference. The recommended amendments contained in this final rule were made by the delegates to that conference.

Proposed amendments to the regulations (9 CFR Parts 145 and 147) concerning the provisions of the National Poultry Improvement Plan were published in the *Federal Register* (46 FR 50965) on Friday, October 16, 1981. A 60-day comment period was provided for receipt of comments.

COMMENTS: Four letters were received which endorsed all or certain amendments published in the proposed rulemaking. Two commenters were opposed to the "U.S. M. Meleagridis Clean" program for turkeys. One of the commenters did not specify why he opposed this program. The other commenter believed that there were too many unanswered questions about how to eradicate *M. meleagridis* and then remain free of the disease. The Department disagreed with this comment because data compiled by the Department reveals that the disease has been eradicated from certain turkey flocks and premises and that these flocks and premises have remained free of the disease. However, two additional comments were submitted which stated that the industry was not ready or capable of undertaking a testing program at this time and recommended

the program be delayed for at least 1 year. Since this would be a voluntary program and since a delay of 1 year would assist other turkey breeders in being able to attain this classification, the Department is delaying the effective date of this voluntary program for the control of *M. meleagridis* until January 1, 1983.

Two commenters were opposed to the "U.S. M. Meleagridis Tested" classification. They believe that there was very little to be gained by this classification since a "U.S. M. Meleagridis Tested" flock would actually be infected with *M. meleagridis*, as compared to a "U.S. M. Meleagridis Clean" flock which was negative when tested for the *M. meleagridis* organism. These commenters felt the classification "U.S. M. Meleagridis Tested" would be misleading as to the actual disease status of the flock. The Department agreed with these commenters and the paragraph providing for the "U.S. M. Meleagridis Tested" classification was deleted from this final rulemaking.

One comment was received which questioned the procedure for the bacteriological examination of pullorum-typhoid reactors which suggested collecting 10-15 grams of a tissue or organ for analysis. The commenter stated that occasionally 10-15 grams would not be available from certain organs. The Department agrees. Therefore, the proposed regulations in § 147.11(c) and (e) have been changed by adding the words "or whatever lesser amount is available."

Comments were received from six nationally-recognized mycoplasma experts who questioned parts of the amendments relating to the examination of mycoplasma reactors. Four of these experts were members of the technical committee that assisted with the drafting of the amendments. These comments were as follows: Three letters suggested changes for rearranging the phrases used in the sentences in a more orderly manner without changing the meaning. Another commenter recommended deleting the reference to a 1:10 dilution in the *M. meleagridis* testing provision since interpretation of tests is more accurately defined in § 147.6 for mycoplasma reacting flocks. In order to be more assured of finding mycoplasma organisms in infected birds, a fifth commenter suggested that additional organs, tissues, and sites be analyzed in the in vivo procedure for mycoplasma reactors, as found in § 147.16(c). In this regard, trachea mucosa and lung exudates were added as material to be used in the inoculation

of test birds. The sixth commenter suggested that three specific airsacs, the cervical, thoracic, and abdominal airsacs, be specified as sites from which to collect material for injecting into the test birds. Also one scientific commenter suggested that the period for the birds under test in the in vivo bio-assay, as outlined in § 147.16(c)(3), be extended from 28 days to 35 days, since some of the less pathogenic mycoplasmas take longer to develop antibodies and lesions. The Department favorably considered all of these suggestions and has changed the amendments accordingly.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, Poultry and poultry products, National Poultry Improvement Plan.

Accordingly, Parts 145 and 147, Title 9, Code of Federal Regulations will be amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. In § 145.1, paragraphs (ee) and (ff) are added to read as follows:

§ 145.1 Definitions.

(ee) *Equivalent or equivalent requirements.* Requirements which are equal to the program, conditions, criteria, or classifications with which compared, as determined by the Official State Agency and with the concurrence of the Service.

(ff) *Sexual Maturity.* The average age at which a species of poultry is biologically capable of reproduction.

§ 145.4 [Amended]

2. Section 145.4, paragraph (d) is amended by removing the following:

(d) * * * except turkey breeding stock, hatching eggs, and poult produced in a State qualified for phase 1 or 2 of the pullorum-typhoid eradication program described in the November 6, 1972, Memorandum Number 565.1 of the Veterinary Services of the Animal and Plant Health Inspection Service of the Department.

3. In § 145.4, paragraph (e) is added to read as follows:

(e) Each participant shall be assigned a permanent approval number by the Service. This number, prefaced by the numerical code of the State, will be the official approval number of the participant and may be used on each certificate, invoice, shipping label, or other document used by the participant in the sale of his products. Each Official

State Agency which requires an approval or permit number for out-of-State participants to ship into its State should honor this number. The approval number shall be withdrawn when the participant no longer qualifies for participation in the Plan.

§ 145.9 [Amended]

4. Section 145.9 is amended by removing the 2nd, 3rd, and 4th sentences.

§ 145.10 [Amended]

5. In § 145.10, paragraph (f) is added to read as follows:

(f) *U.S. M. Meleagridis Clean*—(See § 145.43(d)).



Figure 7

§ 145.13 [Amended]

6. Section 145.13 is amended by removing paragraph (a) and redesignating paragraph (b) as paragraph (a).

§ 145.14 [Amended]

7. Section 145.14 is amended by adding the following sentence to the end of the introductory paragraph:

* * * For those programs where a sample of the poultry may be tested in lieu of the entire flock, the poultry tested shall be a representative sample drawn from all pens or units of the flock.

8. Section 145.14, paragraph (a)(5) is amended by removing the 2nd sentence and by removing the following from the 4th sentence:

(a) * * *
(5) * * * except that when the flock involved is turkeys, the period during which all birds must be tested shall be 2 years.

§ 145.23 [Amended]

9. Section 145.23 is amended by adding to paragraph (b)(3)(ii) the phrase "except waterfowl," between the words "domesticated fowl" and "are maintained"

10. In § 145.23, paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(ii)(a) are revised to read as follows:

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, a minimum of 150 birds shall be tested at intervals of not more than 90 days: *And provided further*, That a sample comprised of less than 150 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 150 birds per flock has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, the flock shall be subjected to one of the following procedures:

(a) At intervals of not more than 90 days, a sample of 75 birds, with a minimum of 30 birds per pen, whichever is greater, shall be tested; or

11. In § 145.23, paragraph (c)(1)(ii)(c) is removed.

12. Section 145.23, paragraph (d)(1)(v) is amended by deleting the semicolon and the word "and" from the end of the paragraph and adding the following in lieu thereof:

(d) * * *

(1) * * *

(v) * * * or handled in a sanitary manner equivalent to §§ 147.22 and 147.25(a) of this part, which has been approved by the Official State Agency with the concurrence of the Service; and

13. In § 145.23, paragraphs (e)(1)(i) and (e)(1)(ii) are revised to read as follows:

(e) * * *

(1) * * *

(i) It is a flock in which a minimum of 300 birds has been tested for *M. synoviae* as provided in § 145.14(b)

when more than 4 months of age:

Provided, That to retain this classification, a sample of at least 150 birds shall be tested at intervals of not more than 90 days: *And provided further*, That a sample comprised of less than 150 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. *synoviae* Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, a sample of 50 birds shall be tested at intervals of not more than 90 days: *And provided further*, That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period.

14. In § 145.23, paragraph (f) is added to read as follows:

(f) U.S. M. Gallisepticum Clean Started Poultry. (1) A flock which originated from U.S. M. Gallisepticum Clean breeding flocks and was hatched in a hatchery approved by the Official State Agency for the production of U.S. M. Gallisepticum Clean chicks.

(2) All other poultry on the premises of the candidate flock must originate from U.S. M. Gallisepticum Clean sources.

(3) The flock is maintained in compliance with the provisions of § 147.26.

(4) The flock's freedom from *M. Gallisepticum* is demonstrated by a negative blood test, as provided in § 145.14(b), of a sample of 75 birds, with a minimum of 50 birds per poultry house, between 15-20 days prior to the flock being moved to laying quarters.

(5) Started poultry shall be delivered to and from the farm premises in crates and vehicles which have been cleaned and disinfected as described in § 145.24(a) of this chapter.

§ 145.33 [Amended]

15. Section 145.33 is amended by adding to paragraph (b)(3)(ii) the phrase "except waterfowl," between the words "domesticated fowl" and "are maintained."

16. In § 145.33, paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(ii)(a) are revised to read as follows:

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, a minimum of 150 birds shall be tested at intervals of not more than 90 days: *And provided further*, That a sample comprised of less than 150 birds may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. Gallisepticum Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 150 birds per flock has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, the flock shall be subjected to one of the following procedures:

(a) At intervals of not more than 90 days, a sample of 75 birds, with a minimum of 30 birds per pen, whichever is greater shall be tested; or

17. Section 145.33, paragraph (d)(1)(v) is amended by deleting the semicolon and the word "and" from the end of the paragraph and adding the following in lieu thereof:

(d) * * *

(1) * * *

(v) * * * "or handled in a sanitary manner equivalent to §§ 147.22 and 147.25(a) of this part, which has been approved by the Official State Agency with the concurrence of the Service; and"

18. In § 145.33, paragraphs (e)(1)(i) and (e)(1)(ii) are revised to read as follows:

(e) * * *

(1) * * *

(i) It is a flock in which a minimum of 300 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, a sample of at least 150 birds shall be tested at intervals of not more than 90 days: *And provided further*, That a sample comprised of less than 150 birds may be tested at any one

time, with the approval of the official State Agency and the concurrence of the Service, provided that a minimum of 150 birds is tested within each 90-day period; or

(ii) It is a multiplier breeding flock which originated as U.S. M. *Synoviae* Clean chicks from primary breeding flocks and from which a sample comprised of a minimum of 75 birds has been tested for *M. synoviae* as provided in § 145.14(b) when more than 4 months of age: *Provided*, That to retain this classification, a sample of 50 birds shall be tested at intervals of not more than 90 days: *And provided further*, That a sample of less than 50 birds may be tested at any one time, provided that a minimum of 30 birds per flock with a minimum of 15 birds per pen, whichever is greater, is tested each time and a total of at least 50 birds is tested within each 90-day period.

* * * * *

§ 145.43 [Amended]

19. Section 145.43 is amended by adding to paragraph (b)(3)(ii) the phrase "except waterfowl," between the words "domesticated fowl" and "are maintained".

20. In § 145.43, paragraph (d) is added to read as follows:

(d) U.S. M. *Meleagridis* Clean.¹ (1) A block in which freedom from *M. meleagridis* has been demonstrated under the following criteria:

(i) A sample of 60 birds from each flock has been tested for *M. meleagridis* when more than 4 months of age: *Provided*, That to retain this classification, a minimum of 30 samples from male flocks and 60 samples from female flocks shall be retested at 28-30 weeks of age and at 4-6 week intervals thereafter.

(2) The official blood tests for *M. meleagridis* shall be the serum plate agglutination, the tube agglutination, or the microagglutination tests. The hemagglutination inhibition tests, serum plate dilution test, and microagglutination tests may be used as supplemental tests to determine the status of the flock, in accordance with § 174.6(b).

(3) The tests shall be conducted using *M. meleagridis* antigens and the protocols for testing approved by the Department or the Official State Agency.

(4) When reactors to the official test are found and can be identified, 10 tracheal swabs and/or vaginal or phallus swabs and their corresponding blood samples shall be submitted to a

laboratory for serological and cultural examination. If reactors cannot be identified, at least 30 tracheal swabs and/or vaginal or phallus swabs and their corresponding blood samples shall be submitted. In a flock with a low reactor rate (less than 5 reactors) the reactors may be submitted to the laboratory within 10 days for serology, necropsy, and thorough bacteriological examination.

(5) If a mycoplasma is isolated, the organism must be serotyped. If *M. meleagridis* is isolated, the block shall be considered infected.

§ 145.53 [Amended]

21. Section 145.53 is amended by adding to paragraph (b)(3)(ii) the phrase "except waterfowl," between the words "domesticated fowl" and "are maintained".

22. Section 145.53 is amended by adding to paragraph (b)(5) the words "or serological examination monitoring program for game birds" between the words "bacteriological examination monitoring program" and "acceptable" and by adding the word "annual" between the words "in lieu of" and "blood testing."

23. In § 145.53, paragraph (c)(1)(i) is revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(i) It is a flock in which all birds or a sample of at least 300 birds has been tested for *M. gallisepticum* as provided in § 145.14(b) when more than 4 months of age or upon reaching sexual maturity: *Provided*, That to retain this classification, a sample of at least 5 percent of the birds in the flock, with a minimum of 100 birds, shall be tested at intervals of not more than 90 days: *And provided further*, That a sample comprised of less than 5 percent may be tested at any one time, with the approval of the Official State Agency and the concurrence of the Service, provided that a total of at least 5 percent of the birds in the flock, with a minimum of 100 birds, is tested within each 90-day period; or

* * * * *

24. Section 145.53, paragraph (c)(1)(ii) is amended by changing the figure "300" to "200" and by inserting after the phrase "4 months of age" and before the first colon, the phrase "or upon reaching sexual maturity".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

25. Table of Contents: Part 147, Subpart B is amended by revising the heading of § 147.11 to read as follows:

Subpart B—Bacteriological Examination Procedure

Sec.

147.11 Laboratory procedure recommended for the bacteriological examination of salmonella reactors.

* * * * *

26. Table of Contents: Part 147, Subpart B is further amended by adding the heading for two new sections, § 147.15 and § 147.16, to read as follows:

Sec.

* * * * *

147.15 Laboratory procedure recommended for the bacteriological examination of mycoplasma reactors.

147.16 Procedure for the evaluation of mycoplasma reactors by in vivo bio-assay (enrichment).

27. Table of Contents: Part 147, subpart D is amended by removing §§ 147.31, 147.32, 147.33, and 147.34 and changing the heading of subpart D to read [Reserved].

§ 147.6 [Amended]

28. Section 147.6 is amended by adding at the end of the last sentence in the introductory statement the phrase "and §§ 147.15 and 147.16 of this part."

29. In § 147.6, the introductory portion of paragraph (b) is amended by removing, from the last sentence, the words "supplemental serological" and interesting in lieu thereof the phrase "additional agglutination and hemagglutination inhibition (HI)."

30. Section 147.6 is amended by adding to paragraph (b)(2) the words "and/or the Serum Plate Dilution (SPD) test" between the words "inhibition (HI) test" and "shall be."

31. Section 147.6, paragraph (b)(3) is revised to read as follows:

* * * * *

(b) * * *

(3) If the tube agglutination or serum plate tests are positive and HI and/or the SPD tests are negative, the flock shall be retested in accordance with paragraph (b)(6) of this section.

* * * * *

32. Section 147.6 is amended by adding to paragraph (b)(4) the words "or SPD titers of 1:5" between the words "titers of 1:40" and "are found."

33. Section 147.6 is amended by adding to paragraph (b)(5) the words "or

¹ Effective Date: January 1, 1983.

SPD titer of 1:10" between the words "titers of 1:80" and "or higher."

34. In § 147.6, the first sentence of paragraph (b)(6) is amended by removing the words "5 percent of the birds in the flock, with a minimum of 100, whichever is greater," and inserting in lieu thereof the words "75 birds."

35. Section 147.6 is amended by adding to paragraph (b)(8) the words "and/or SPD" between the words "the HI" and "test shall."

36. Section 147.6(b)(9) is revised to read as follows:

(b) * * *

(9) On the retest, if the tube agglutination or serum plate tests are positive at the same or higher rate and the HI or SPD tests are negative, the flock shall be considered suspicious and shall be retested in accordance with paragraph (b)(6) of this section.

37. Section 147.6(b)(10) is amended by adding the words "and/or SPD titers of 1:10" between the words "titers of 1:80" and "or higher."

38. Section 147.6 is amended by adding to paragraph (b)(11) the words "and/or SPD titers of 1:10" between the words "titers of 1:80" and "or higher."

39. Section 147.6, paragraph (b) (12), (13), (14), and (15) are added to read as follows:

(b) * * *

(12) If the tube agglutination or serum plate tests are found on the second retest to be positive at the same or higher rate and the HI and/or SPD tests are negative, the flock should be considered infected: *Provided*, That if the status of the flock is considered to be equivocal, the Official State Agency may examine reactors by the in vivo bio-assay and/or culture procedures before final determination of the flock status is made.

(13) If the in vivo bio-assay and culture procedures are both negative, the Official State Agency may qualify the flock for the classification for which it was tested.

(14) If the in vivo bio-assay or culture procedures are positive, the flock shall be considered infected: *Provided*, That if only the bio-assay is positive, additional in vivo bio-assay or cultural examinations may be conducted by the Official State Agency before final determination of the flock status is made.

(15) If the in vivo bio-assay or cultures are positive on retest, the flock shall be considered infected for the mycoplasma for which it was tested.

§ 147.11 [Amended]

40. Section 147.11 is amended by revising the section title to read as follows:

§ 147.11 Laboratory procedure recommended for the bacteriological examination of salmonella reactors.

41. In § 147.11, paragraph (a) is revised to read as follows:

(a) Grossly normal or diseased liver, heart, pericardial sac, spleen, lung, kidney, pancreas, peritoneum, drained gall-bladder, oviduct, misshapen ova, testes, inflamed or unabsorbed yolk sac, and other visibly pathological tissues where purulent, necrotic, or proliferative lesions are seen (including cysts, abscesses, hypopyon, and inflamed serosal surfaces), should be directly cultured by means of a flamed wire loop or with sterile swabs.¹ Careful aseptic technique must be utilized throughout the process of collecting tissues.

Selective media should not be relied upon to deal with contaminants, since some strains may not dependably survive and grow in certain selective media. Inoculate veal infusion (VI) and brilliant green (BG) agar plates. Incubate the plates for 24 and 48 hours at 37°C. The digestive system should always be cultured separately (see paragraph (f) of this section) after other anatomical organs and systems have been collected and cultured.

42. In § 147.11(b)(5) is revised to read as follows:

(b) * * *

(5) Pancreas and kidneys; and

43. Section 147.11(c) is revised to read as follows:

(c) Aseptically collect 10-15 g or whatever lesser amount is available of each organ or site listed in paragraph (b) from each reactor, and grind or blend them completely in 10 times their volume of VI broth. Organs may be processed individually or in combinations where appropriate. Suspensions should be transferred in 10-ml aliquots to 100-ml of both VI and tetrathionate brilliant green (TBG) broth and incubated at 37°C for 24 hours. Plate the VI broth on VI and BG agar and plate the TBG broth on BG agar and incubate at 37°C. Examine these plates

¹ Culture media preparation and biochemical identification charts can be obtained from *Culture Methods for the Detection of Animal Salmonellosis and Arizonosis*, Committee on Salmonellosis and Arizonosis, AAVLD, 1976 Iowa State University Press, Ames, IA 50010.

after 24 and 48 hours of incubation. The contents of the gallbladder can be cultured separately by inoculating 10-ml of VI and TBG broth with cotton swabs and incubating at 37°C for 24 hours. Plate on BG agar and incubate at 37°C. Examine these plates after 24 and 48 hours of incubation. If contamination with pseudomonas or proteus is a problem, make platings on BG sulfapyridine (BGS) agar.

44. Section 147.11(d) is revised to read as follows:

(d) Where field samples are directly inoculated into enrichment broths and a delay of several days occurs before they reach a laboratory, or if recovery of low numbers or organisms is expected from a primary culture, a secondary enrichment culture should be prepared. Subculture a week-old primary culture by transferring 1-ml of inoculum into a fresh tube 10-ml of enrichment broth. This secondary enrichment should be incubated at 37°C for 24 hours before plating. (See paragraph (a) of this section.) TBG broth is recommended for this procedure.

45. Section 147.11, paragraph (e) is revised to read as follows:

(e) Make a composite sample of the following parts of grossly normal or diseased tissues from the digestive tract: Crop wall, duodenum, jejunum (including remnant of yolk-sac attachment), both ceca, cecal tonsils, and rectum-cloaca. Aseptically collect 10-15 g of each organ or tissue, or whatever lesser amount is available, and grind or blend them completely in 10 times their volume of TBG broth. Transfer 10-ml of a composite sample of a suspension from the digestive tract into 100-ml of TBG broth, and incubate flasks at 42°C for 24 hours. Cultures may be incubated at 37°C if 42°C incubators are not available. The higher incubation temperatures for TBG broth reduce populations of competitive contaminants common in gut tissue. Plate on BG agar and incubate at 37°C. Examine the plates after 24 and 48 hours of incubation. If contamination with pseudomonas or proteus is a problem make platings on BGS agar.

46. Section 147.11(f) is revised to read as follows:

(f) If preferred, individual cotton swab samples may also be taken from the upper, middle, and lower intestinal tract (including both ceca and the rectum-

cloaca). Deposit swabs in 10-ml of TBC broth and incubate and plate as described in paragraph (e) of this section.

47. Section 147.11(g) is revised to read as follows:

(g) Transfer suspect colonies to triple-sugar-iron (TSI) agar and lysine-iron (LI) agar and incubate at 37°C for 24 hours.

48. Section 147.11(h) is revised to read as follows:

(h) Cultures revealing typical reactions of salmonellae or arizonae on TSI and LI agar slants should be transferred to any of the following appropriate biochemical tests for final identification: Dextrose, lactose, sucrose, mannitol maltose, dulcitol, malonate, gelatin, urea broth, citrate, lysine decarboxylase, ornithine decarboxylase, methyl red and Voges-Proskauer, KCN, salicin broths, indole, and hydrogen sulfide. Motility or non-motility is demonstrated by inoculating a suitable semisolid medium.² The Analytical Profile Index for Enterobacteriaceae (API) system may be utilized for identification if feasible. For arizonae identification, make readings daily up to 10 days. An O-nitrophenyl-beta-D-galactopyranoside (ONPG) disc may be used to identify slow lactose fermenters.³

49. In § 147.11, paragraph (i) is added to read as follows:

(i) All salmonella cultures should be serologically typed.

50. Part 147, Subpart B, is amended by adding §§ 147.15 and 147.16 to read as follows:

§ 147.15 Laboratory procedure recommended for the bacteriological examination of mycoplasma reactors.⁴

(a) Turbinates, trachea, air sacs, sinuses, nasal passages, respiratory exudates, synovial fluid, eggs (including yolk, yolk sacs, membranes and allantoic fluid), should be directly sampled with sterile swabs. Aseptic techniques are very important as some organisms may not be suppressed by the antimicrobial agents used in this procedure. Tissue suspensions from large volumes are sometimes desirable

from the sites listed above and occasionally from the oviduct and cloaca. Tissues should be ground or blended completely in 10 times their volume of Mycoplasma Broth Medium (MBM). (See paragraph (e) of this section.) Specimens submitted to referral laboratories in order of preference for recovery of the mycoplasma organisms are: (1) live birds, (2) refrigerated fresh tissues, (3) tissue specimens packed with dry ice.

(b) Inoculate 5–10 ml of MBM with a swab, wire loop or 0.1 ml of the tissue suspension. When evidence of growth is observed (lowered pH or turbidity of broth) transfer each broth culture as needed to maintain the original isolates. Incubate tubes at 37°C for at least 21 days before discarding as negative. When growth is first observed or if no growth occurs by the 4th or 5th day of incubation, inoculate broth culture onto a plate of Mycoplasma Agar Medium (MAM). (See paragraph (f) of this section.) Several cultures may be inoculated on one plate by using a wire loop or a cotton swab. Incubate plates 3–5 days at 37°C in a high humidity chamber. If preferred, 5 percent CO₂ may be added or a candle jar may be used. Tiny circular and translucent colonies with elevated centers are very suggestive of mycoplasma. Indirect lighting and a low power or dissecting microscope are recommended for observation of the colonies as they are rarely more than 0.2–0.3 mm in diameter.

(c) Isolates must be serotyped.

(1) Isolates may be shipped in MBM with ice packs if shipment will be in transit less than 2–3 days. Longer shipments require freezing of the MBM with dry ice, or shipping MAM slants at room temperature. Isolates must have indications of growth before shipment is made.

(2) Isolates may be stored in MBM at –20°C for 2–3 weeks, or they may be stored at –68°C for several years.

(d) Alternate method of culture: An overlay enrichment culture for fastidious and sensitive mycoplasma, especially for *M. meleagridis* should be included.

(1) Pour 2–3 ml of MAM into a test tube and tilt the tube until a slant (approximately 45°) is obtained. Other containers are acceptable.

(2) Overlay the slant with sufficient MBM, so that the media (including inoculum) covers the agar slope.

(3) Inoculate the culture as indicated in paragraph (b) of this section.

(4) Incubate and examine the overlay as indicated in paragraph (b) of this section.

(e) Preparation of media components:⁵

(1) Deionized distilled water suitable for cell culture fluids should be used.

(2) All glassware should be carefully washed with a nonresidue detergent such as Alcojet and rinsed three times in tap water and twice in deionized distilled water.⁶

(3) Thallium acetate in a 10 percent solution is added to an approximate final concentration of 1:4000; however, highly contaminated specimens may require a final concentration of 1:2000.⁷ Thallium acetate is added to deionized distilled water first, except as noted in paragraph (e)(4) of this section, to prevent the precipitation of proteins.

(4) Mycoplasma Broth Base, dextrose, phenol red, and cysteine hydrochloride are added to deionized distilled water first if autoclave sterilization is used.⁸ Thallium acetate and then the remaining components are added aseptically after cooling the autoclaved media to 45°C or less.

(5) Use sterile deionized distilled water to reconstitute penicillin.

(6) Sterile serum should be inactivated by heating at 56°C for 30 minutes. Swine serum may be used for *M. gallisepticum*, *M. synoviae*, *M. gallinarum*, and *M. meleagridis* isolation; however, horse serum is usually recommended for *M. meleagridis* isolation.

(7) Phenol red should be prepared as a 1 percent solution.

(8) NAD (beta nicotinamide adenine dinucleotide or coenzyme I) should be prepared as a 1 percent solution.⁹

(9) Cysteine hydrochloride, prepared as a 1 percent solution, is used to reduce the NAD for *M. synoviae* growth.

(10) A purified agar product such as Nobel (Special agar) is used in the MAM.¹⁰

(11) Adjust the pH with NaOH.

(12) Sterilization may be accomplished by two methods:

(i) Filtration sterilization through a 0.20 micron filter is the recommended

⁵ Trade names are used in these procedures solely for the purpose of providing specific information. Mention of a trade name does not constitute a guarantee or warranty of the product by the U.S. Department of Agriculture or an endorsement over other products not mentioned.

⁶ Alcojet is available from: Alconox, Inc., New York, NY 10003.

⁷ Thallium acetate may be obtained from Fischer Scientific Company.

⁸ Mycoplasma Broth Base may be obtained from: (a) Product #M 33600, Gibco Diagnostics, 2801 Industrial Drive, Madison, WI 53711. (b) Product #3900-3212, Scott Laboratories, Inc., 8 Westchester Plaza, Elmsford, NY 10523.

⁹ NAD Grade III may be obtained from: Sigma Chemical Company, P.O. Box 14508, St. Louis, MO 63178.

¹⁰ Noble Agar may be obtained from: Difco Laboratories, Box 1058-A, Detroit, MI 48201.

² Formulation for the semisolid motility medium can be obtained from: *Isolation and Identification of Avian Pathogens*, American Association of Avian Pathologists, Texas A&M University, College Station, TX 77843, 1980.

³ ONPG discs are available from: Baltimore Biological Laboratories, Cockeysville, MD 21030.

⁴ Yoder, H. W., Jr., "Mycoplasmosis." In: *Isolation and Identification of Avian Pathogens*. (Stephen E. Hitchner, Chairman, Charles H. Domermuth, H. Graham Purchase, James E. Williams.) 1980, pp. 40–42, Creative Printing Company, Inc., Endwell, NY 13760.

method. Aseptic techniques must be utilized.

(ii) Autoclave sterilization at 120°C, 15 pounds pressure (103 kPa), for 15 minutes may be used, if preferred, when following the procedure described in paragraph (e)(4) of this section.

(13) Phenol red, dextrose, and NAD may be omitted when culturing for *M. meleagridis* and *M. gallinarum*.

(14) When culturing for *M. meleagridis* from contaminated samples include 100 units/ml of Polymyxin B in MBM.

(f) Mycoplasma Broth Medium (Frey) is prepared as follows: To 850-880 ml of deionized distilled water;

Add:

Thallium acetate (ml)—2.5 (1:4000)
Potentially contaminated samples (ml)—5.0 (1:2000)

Mycoplasma Broth Base (g)—22.5

Aqueous penicillin (units)—500,000

Sterile serum (ml)—120 to 150.0

Phenol red plus (ml)—2.5

NAD (ml)—12.5

Cysteine hydrochloride (ml)—12.5

Dextrose (g)—1.0-1.5

Adjust pH to 7.8

Filter sterilize

(1) Broth may be stored at 4°C for at least 2 weeks or at -40°C for longer periods.

(g) Mycoplasma Agar Medium (Frey) is prepared as follows: To 850-880 ml of deionized distilled water;

Add:

Mycoplasma Broth Base (g)—22.5

Adjust pH to 7.8

Purified agar (g)—18.0

Autoclave and cool in 45°C water bath

Thallium acetate (ml)—2.0; (1:4000)

Sterile serum at 45°C (ml)—150.0

Aqueous penicillin (units)—400,000

NAD (ml)—12.5

Cysteine hydrochloride (ml)—12.5

(1) Rotate flask gently and pour about 15 ml of media into each petri dish.

(2) Stack petri dishes only 2-3 high in a 37°C incubator up to 2 hours to remove excess moisture.

(3) Wrap inverted plates in sealed bundles and store at 4°C for not more than 15 days.

(h) New component or media batches should be monitored to compensate for changes in formulation due to alterations of purity, concentration, preparation, etc. A known series of titrations from a single culture should be made on both new and old media. The media should be compared on the basis of growth, colony size, and numbers of colonies which develop.¹¹

¹¹ "Laboratory Procedures and Medium For The Isolation Of Mycoplasma From Clinical Materials," Laboratory Diagnosis of Mycoplasma in Food Animals, Proceedings of Nineteenth Annual

§ 147.16 Procedure for the evaluation of mycoplasma reactors by in vivo bio-assay (enrichment).

This procedure has been shown to be sensitive enough to detect less than 100 mycoplasma organisms under proper conditions.¹² Proper conditions are defined in this section.

(a) Obtain chickens or turkeys (test birds) which are at least 3 weeks of age and are free of *M. gallisepticum*, *M. synoviae*, and *M. meleagridis* and transport them in a manner to prevent their being contaminated by any infectious avian disease.

(1) Maintain test birds in an area that has been effectively cleaned and disinfected.

(2) The area should be isolated from other birds or animals.

(3) Personnel caring for the test birds should take the necessary precautions (see § 147.26(b)) to prevent the mechanical transfer of infectious avian diseases from other sources.

(b) Test birds to be used for inoculation with contaminated tissues should be serologically negative by the serum plate agglutination test.

(1) Inoculated test birds should be isolated from non-inoculated control birds for the length of any experiment.

(c) Aseptically obtain tracheal, turbinate, and sinus mucosa, lung and sinus exudates, cervical, thoracic, and abdominal airsac tissues (including lesions), and portions of oviduct and synovial fluid from at least four suspect, donor birds. In a sterile device, blend the tissues completely in four times their volume of Mycoplasma Broth Medium (Frey), (see § 147.15(e)). Suspensions may be made from tissue pools. Inoculate test birds within 30 minutes for preparation of suspensions.

(1) Inoculate at least four test birds for each suspension pool via the abdominal air sac and infraorbital sinus, with up to ½ ml of inoculum per site.

(2) Test birds should be bled every 7 days for 35 days to identify sero-converters.

(3) At 35 days, test birds should be sacrificed and bacteriologic isolation and identification of mycoplasma attempted (see § 147.15). Note especially the sites of inoculation for typical gross or microscopic mycoplasma lesions.

Meeting, The American Association of Veterinary Laboratory Diagnosticians, 1978, pp. 106-115, AAVID, 6101 Mineral Point Road, Madison, WI 53705.

¹² Research results are described in the following two publications: (a) Bigland, C. H. and A. J. DaMassa, "A Bio-Assay for Mycoplasma Gallisepticum." In: United States Livestock Sanitary Association Proceedings, 67th, 1963, pp. 541-549. (b) McMartin, D. A., "Mycoplasma Gallisepticum in the Respiratory Tract of the Fowl." In: The Veterinary Record, September 23, 1967, pp. 317-320.

(d) Donor birds are considered infected when:

(1) Test birds have serum plate antibodies for the mycoplasma for which the donor birds were tested, regardless of HI test results, and control birds stay serologically negative; or

(2) Mycoplasma organisms are isolated from the test birds and serotyped positive for the mycoplasma for which the donor birds were tested, and control birds stay serologically and culturally negative.

(e) Laboratory findings may be verified by direct cultures of material from sick birds or by inoculating seronegative birds from the suspect flock and comparing serological findings with those from the test birds.

§ 147.26 [Amended]

51. In § 147.26, paragraph (b) is amended by adding subparagraph (15) to read as follows:

§ 147.26 Procedures for establishing isolation and maintaining sanitation and good management practices for the control of salmonella and mycoplasma infections.

(b) * * *

(15) Use only crates and vehicles that have been cleaned and disinfected in accordance with the provisions of § 147.24(a) to haul live poultry to and from the premises.

§§ 147.31-147.34 (Subpart D) [Removed and Reserved]

52. Part 147 is amended by removing subpart D and redesignating it [Reserved] and by removing §§ 147.31, 147.32, 147.33, and 147.34.

53. Section 147.43, paragraph (d) is revised to read as follows:

§ 147.43 General Conference Committee.

(d) The duties and functions of the General Conference Committee shall be as follows:

(1) Assist the Department in planning, organizing, and conducting the biennial National Poultry Improvement Plan Conference.

(2) Recommended whether new proposals (i.e., proposals that have not been submitted as provided in § 147.44) should be considered by the delegates to the Plan Conference.

(3) During the interim between Plan Conferences, represent the cooperating States in:

(i) Advising the Department with respect to administrative procedures and interpretations of the Plan provisions as contained in 9 CFR.

(ii) Assisting the Department in evaluating comments received from interested persons concerning proposed amendments to the Plan provisions.

(iii) Recommending to the Secretary of Agriculture any changes in the provisions of the Plan as may be necessitated by unforeseen conditions when postponement until the next Plan Conference would seriously impair the operation of the program. Such

recommendations shall remain in effect only until confirmed or rejected by the next Plan Conference, or until rescinded by the committee.

(4) Serve as a forum for the study of problems relating to poultry health and as the need arises, to make specific recommendations to the Secretary of Agriculture concerning ways in which the Department may assist the industry in solving these problems. (Sec. 101(b),

Pub. L. 425, 78 Cong. 58 Stat. 734, as amended 7 U.S.C. 429)

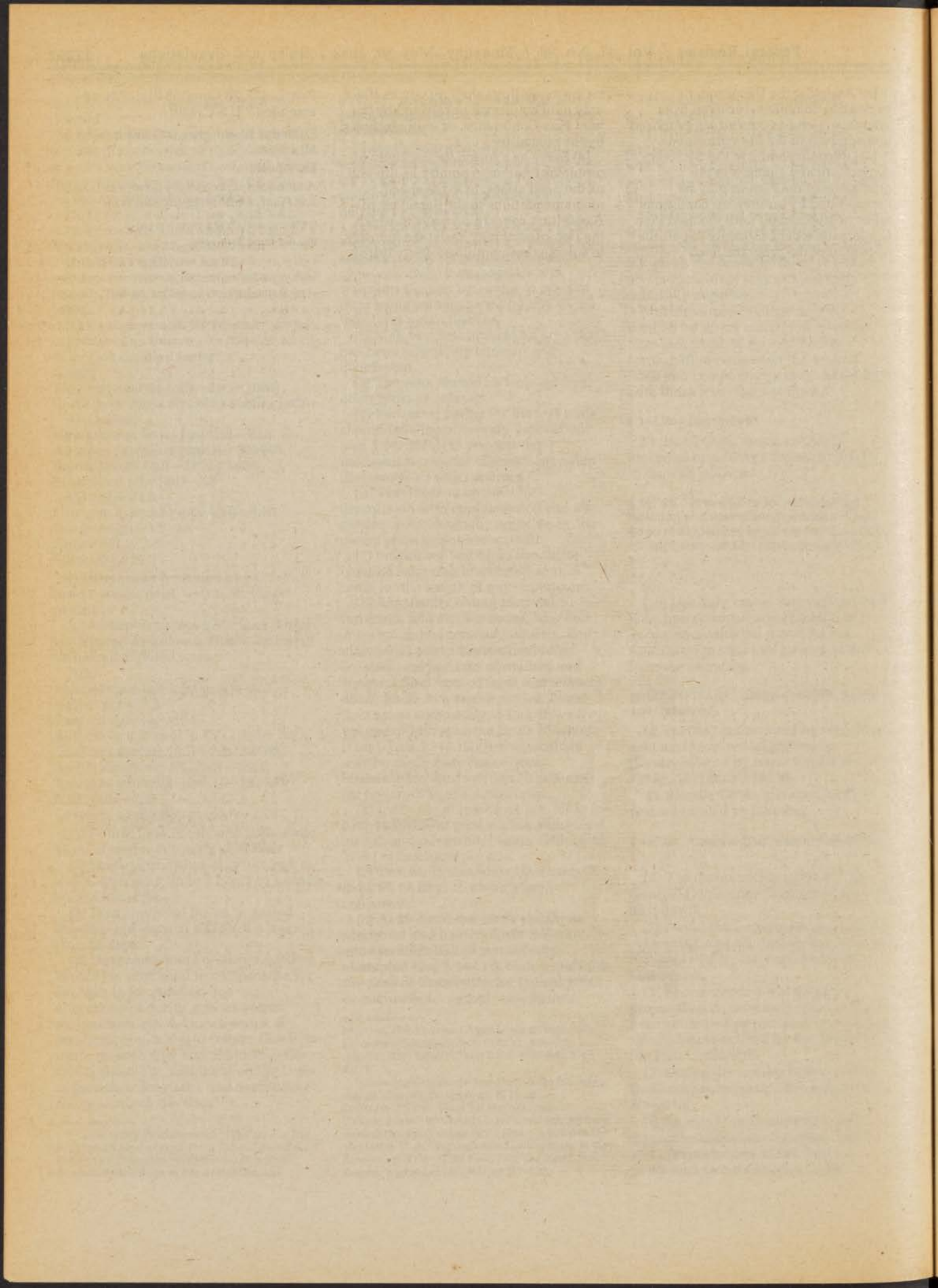
Done at Washington, D.C. this 13th day of May 1982.

J.K. Atwell,

Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 82-13470 Filed 5-19-82; 8:45 am]

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Prisoners of War

Thursday
May 20, 1982

Part III

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates

DEPARTMENT OF JUSTICE

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: The Bureau of Prisons is publishing its rules for the control, custody, care, treatment, and instruction of inmates. This installment contains the Bureau of Prisons revised rule on its Central Inmate Monitoring System. The rule gives Bureau procedures to monitor and control the transfer, temporary release, and community activities of certain inmates who present special needs for management. As revised, the rule narrows the definition of who may be classified a central inmate monitoring (CIM) case, and establishes a time period for deciding whether an inmate's interim CIM assignment is based on substantive information. The amendments to this rule are a result of the Bureau's efforts to refine the policies and procedures that govern the CIM system. To continue towards this goal, the rule on the CIM System is published as an interim rule with public comments invited.

EFFECTIVE DATE: June 1, 1982. Public comments on the interim rule will be considered if received on or before July 30, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534. Public comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202-724-3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing an interim rule on its Central Inmate Monitoring System. This subject was published in the *Federal Register* as a final rule December 19, 1980 (at 45 FR 83920 et seq.).

In the months since publication of the final rule, the Bureau of Prisons has striven to refine and improve the CIM system. A major improvement occurred August 1981 when the Bureau of Prisons automated its Central Inmate Monitoring System. SENTRY is the Bureau of Prisons' on-line, real-time computer system. SENTRY makes information immediately available to staff. It gives the Bureau a more effective way to operate the CIM system

and provides staff support never before available.

In making the conversion to SENTRY, the entire CIM process was examined. This review resulted in a revision of the CIM System. The existing 12 CMC categories were reduced to 8 CIM assignments. Criteria considered in giving an inmate a CIM assignment is better defined. Another change concerns an inmate's tentative CIM classification. Under the existing rule, an inmate can receive a tentative central inmate monitoring classification and not know when a final decision would occur. The interim rule revises this procedure. Certain inmates, by the nature of their status (e.g., state prisoner), are classified CIM cases without further review. Other inmates may receive an interim classification, not to exceed 60 days. If the inmate is not notified of a change in this status within 60 days, the inmate may consider the CIM classification a final decision.

The amended rule makes several other changes. These revisions are not intended to place a burden on either the inmate or the public. The rule is not intended to preclude inmates from transfer, temporary release, or participation in community activities, when the inmate is otherwise eligible, but is intended to provide protection for all concerned and to ensure the safe and orderly operation of federal institutions. The revisions are intended to refine and improve the process by which an inmate is given as CIM assignment, provided a review of that assignment, etc. The amended rule is intended to more effectively implement and operate the Central Inmate Monitoring System. For these reasons, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. The Bureau of Prisons is interested, however, in receiving public comment and suggestions on the CIM system and has decided to publish this document as an interim rule. Public comments and suggestions received will be considered during an assessment of the CIM system to be conducted later this year.

Interested persons may participate in this rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 First Street, N.W., Washington, D.C. 20534. Comments received on or before July 30, 1982, will be considered before final action is taken. The interim rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and the regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes.

1. Section 524.70—Section 524.70 is reworded. For clarity, the phrase "temporary release (e.g., on writs)" is added as the Bureau of Prisons monitors and controls the transfer, temporary release, and community activities of certain inmates who present special needs for management. Throughout the interim rule, the term "central inmate monitoring" case is used interchangeably with "CIM" (was "CMC" in existing rule).

2. Section 524.71—The phrase "Central Inmate Monitoring Network" is substituted for "Central Inmate Monitoring System". The interim rule states that Community Programs Managers are designated CIM coordinators for inmates at contract facilities.

3. Section 524.72—This section is retitled "Central Inmate Monitoring Assignments." Throughout the interim rule, the term "assignment" is substituted for the term "category". As revised, § 524.72 reduces the existing 12 CMC categories into 8 CIM assignments. For each assignment, information is provided identifying factors considered in making the CIM classification.

Existing § 524.72(a)(1) becomes new § 524.72(a). Deleted is a reference to where these inmates are housed. The interim rule describes who may be placed in this assignment (person whose safety is in jeopardy because of cooperation with the government). Placement in this assignment is made only upon authorization of the Office of Enforcement Operations, Criminal Division, Department of Justice.

Section 524.72(a)(2) is deleted. The Bureau of Prisons no longer identifies inmates as Bureau of Prisons witness security cases.

Section 524.72(a)(3) becomes interim § 524.72(b). Subsection (b) is expanded to include criteria considered in making this assignment. A RICO conviction (Racketeer Influenced and Corrupt Organizations—18 U.S.C. 1961-1968) or a Continuing Criminal Enterprise conviction (21 U.S.C. 848) will

automatically result in assignment as sophisticated criminal activity. Also included is an elected or appointed public official at a local, county, state, or federal level who violated the trust of that position as shown by conviction for a felony offense related to that position.

Examples of sophisticated criminal activity which may require further review include drug offenses, property offenses, white collar offenses, or a criminal history of involvement in such offenses. To be classified sophisticated criminal activity in one of these areas, three conditions must be met: (1) That the offense was planned and organized and geographically operated on a municipal, county, state, national, or international scale; (2) that the offender occupied a position of management for the criminal organization or activity from which substantial income or resources could be obtained; and (3) that the monetary value of the offense totaled \$500,000 or more for drug offenses, and \$250,000 or more for property or white collar offenses. These provisions identify the stringent criteria required for this assignment. The interim rule raises the monetary amount from \$100,000 and deletes a previous provision that an individual did not need to be part of the leadership structure to qualify as sophisticated criminal activity.

Section 524.72(a)(4), now interim § 524.72(c), is titled "Threats to Government Officials." The interim rule adds the phrase "in writing" to show how the information is given. Section 524.72(a)(5) becomes interim § 524.72(d). An example of the criteria used for making this assignment is national media coverage or continued news coverage by the local media.

Section 524.72(a)(6) becomes final § 524.72(e). The interim rule now includes those persons who may not be confined in the same institution with specified disruptive group members.

Section 524.72(a)(7) and (a)(8) are deleted as other Bureau policy gives the needed supervision. Section 524.72(f), "State Prisoners," is new. This assignment includes persons, other than witness security cases, accepted into the Bureau of Prisons for service of their state sentences. This assignment provides the Bureau with a management tool to quickly identify state prisoners. The information is necessary for several reasons, including, where appropriate, to separate state prisoners. Section 524.72(a)(9), now interim § 524.72(g), is reworded. The interim rule identifies factors that the Bureau of Prisons considers (for example, geographic location) in making this assignment. This assignment may be given to a

person whose previous position (for example, in the criminal justice field) might subject that person to indiscriminate retaliation from unknown persons. Section 524.72(g) also includes those persons, other than witness security cases, whose safety might be in jeopardy because of their cooperation with the government. Section 524.72(a)(10)-(a)(12) are now included within interim § 524.72(h). The interim rule identifies factors that should be considered in making this assignment. Such factors include, but are not limited to, testimony or information provided by or about an individual, demonstrated aggressive behavior, etc.

Section 524.72(b) and (c) is deleted. Later sections of the interim rule discuss this aspect.

4. Section 524.73—The phrase "tentative classification" is deleted from the entire interim rule. Under the revised procedure, an inmate is given an "interim classification" (discussed in § 524.75) as a CIM case. This classification ordinarily does not exceed 60 days. After 60 days, the classification is either removed or considered final.

Section 524.73(a) is revised by deleting the requirement that the CIM classification takes effect when notification is made to the Central or Regional Office. To take effect, the institution where the inmate is confined or is designated for confinement is notified. For consistency with § 524.71, the interim rule recognizes that a Community Programs Manager may classify an inmate as a CIM case.

Section 524.73(b) is reworded. The word "ordinarily" is deleted from the interim rule because staff are not expected to place the names of separatees on the notification form. The interim rule adds language stating that the inmate signs for and receives a copy of the notification form. The original of the form is placed in the inmate privacy file. The rule also gives staff procedures to follow when the inmate refuses to sign the notification form.

Existing § 524.73(c)-(e) is deleted from interim § 524.73. The deleted sections pertain to the confirmation procedure. This procedure has been revised in the interim rule and is now discussed in interim §§ 524.74-75. Existing § 524.73(f), now interim § 524.73(c), is revised. The interim rule requires that CIM information either be removed from the central inmate file or, where part of a larger document, be amended (to avoid the unnecessary cost of retyping the larger document) to show removal of the CIM assignment. The interim rule identifies that information which may be retained (for example, the notification form) in the inmate privacy file.

5. Section 524.74—§ 524.74, "Final CIM classification," is new. This section recognizes that certain CIM assignments do not require further review. For example, a witness security case (a voluntary placement) or state prisoner does not require an interim CIM assignment because the basis for placement is clear. If substantive information exists, the Central or Regional Office may directly classify an inmate to any other final CIM assignment which that respective office is authorized to make. This procedure benefits both the Bureau of Prisons and the inmate. The Bureau eliminates an unnecessary review. The inmate, if desired, is able to use the Administrative Remedy Procedure more effectively because the CIM decision is a final as opposed to interim decision.

6. Section 524.75—§ 524.75, "Interim CIM classifications," is new. It improves procedures previously given in final § 524.73(c)-(e). As revised, the interim rule allows staff to classify an inmate to an interim CIM assignment. This interim status ordinarily may not exceed 60 days. Section 524.75(a)(1)-(3) identifies the reviewing authority for interim CIM assignments. Section 524.75(b)-(d) revises existing § 524.73(c)-(e). The interim rule continues to require that the inmate be notified of the interim CIM assignment. Staff shall advise the inmate that objections to the interim CIM assignment are submitted directly by the inmate to the reviewing authority (as opposed to "confirming authority" in the final rule). This procedure allows the inmate to present his own material and rationale for objecting to the CIM assignment. Staff responsibility is to forward to the reviewing authority information regarding the interim CIM assignment. The reviewing authority has 60 days from the date the inmate was notified of the interim CIM assignment to make a final decision on the CIM assignment. The reviewing authority is to notify the institution's CIM coordinator of the final decision.

If no final decision is reached within 60 days the inmate may consider the CIM classification a final decision. The inmate who disagrees with the classification may appeal that decision through the Administrative Remedy Procedure. While an appeal of an interim CIM classification may also be made, staff are to encourage the inmate to submit objections to an interim assignment to the reviewing authority, rather than file an appeal through the Administrative Remedy Procedure.

7. Section 524.76—Final § 524.74 becomes interim § 524.76. Section 524.76(a)-(b) is reworded but its basic

intent is unchanged. Because the interim rule is revised to more clearly identify exceptions, the exception language in existing § 524.74(b) is deleted. Section 524.76(b)(3) substitutes the more expansive word "temporary" for "writ" release.

Section 524.76(c) identifies the Regional Director or designee as the clearance authority on transfers, temporary releases, and participation in community activities for inmates identified as CIM cases. Exceptions to this authorization are given in § 524.76(d)-(i). These exceptions generally correspond to final § 524.74(c)-(f). Interim § 524.76(d) identifies the Central Office as the clearance authority (confirming authority in the existing rule) for witness security cases. Section 524.76(e) authorizes the Warden to transfer a CIM inmate (other than witness security) to the satellite camp of the Warden's institution. Existing § 524.74(e) is now contained within § 524.76 (f) and (h), as these sections discuss both non-medical and medical escorted trips. The clearance authority for each CIM assignment is identified within these sections. Section 524.76(g) is new and authorizes the Warden to transfer a CIM inmate to a local hospital for emergency medical care not available at the institution. Final § 524.74(f) is revised and now becomes interim § 524.76(i). The interim rule still requires both Central and Regional Office approval for community activities for sophisticated criminal activity, broad publicity, and threats to government officials but deletes the previously included disruptive group assignment.

8. Section 524.77—Final § 524.75, now interim § 524.77, is expanded. The new rule states that except for witness security and state prisoner cases, staff are to consider an inmate's CIM status at each program review (ordinarily held every 90-180 days). The existing rule required this review semi-annually. The revised rule also discusses the procedures for removing or modifying a CIM assignment as the result of this review. Briefly, these include notifying the institution CIM coordinator and appropriate reviewing authority. Only the reviewing authority may determine if the CIM assignment should be removed or modified. The interim rule recognizes that an inmate classified as a witness security case may request removal from this assignment at any time. It also states that an inmate classified as a state prisoner will retain this assignment while that inmate is solely in service of the state sentence.

9. Section 524.78—§ 524.78, "Appeals of central inmate monitoring classification", is new. This section states that an inmate may appeal the CIM assignment at any time. An inmate objecting to an interim assignment, however, is encouraged to submit objections directly to the reviewing authority because this person will make the final CIM decision. An interim assignment appealed through the Administrative Remedy Procedure is not likely to be granted prior to a final decision on the inmate's interim CIM status.

Another aspect of § 524.78 addresses the status of federal inmates housed in non-federal facilities. These inmates are advised that an appeal of their CIM assignment is to be forwarded by private correspondence to the appropriate Regional Office.

10. Section 524.79—§ 524.76, now interim § 524.79, is revised. The revised rule includes the inmate who is recommitted on the basis of a new conviction. The rule states that, for other than witnesses security cases, the required review is ordinarily conducted as part of the unit classification process. For witness security cases, the review is conducted by the Inmate Monitoring Branch, Central Office.

Interim § 524.79(a) discusses the removal procedures contained in existing § 524.76(b). Interim § 524.79(b) is new and discusses procedures to follow (contact reviewing authority for final decision) when staff determine that a modification of the inmate's CIM assignment is appropriate. Interim § 524.79(c) expands the notification requirements contained in existing § 524.76(a). The interim rule requires that an inmate be notified when removal from, modification of, or continuation as a CIM case is indicated, or when an interim CIM classification is initiated. The inmate is also notified, where appropriate, of any subsequent decision by the reviewing authority to either remove or modify that inmate's CIM assignment. The first sentence of existing § 524.76(b) is deleted with its intent included in the first paragraph of interim § 524.79.

List of Subjects in 28 CFR Part 524

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below:

In Subchapter B, Part 524, Subpart F is revised.

Dated: May 12, 1982.

Norman A. Carlson,
Director, Bureau of Prisons.

Subchapter B, Part 524, Subpart F is revised, to read as follows:

PART 524—CLASSIFICATION OF INMATES

* * * * *

Subpart F—Central Inmate Monitoring System

Sec.

524.70 Purpose and scope.

524.72 Central inmate monitoring assignments.

524.73 Procedures.

524.74 Final CIM classifications.

524.75 Interim CIM classifications.

524.76 CIM activities clearance.

524.77 Review of CIM status.

524.78 Appeals of central inmate monitoring classification.

524.79 CIM classification of parole/mandatory release violators.

Subpart F—Central Inmate Monitoring System

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, P.L. 91-452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95-0.99.

§ 524.70 Purpose and scope.

The Bureau of Prisons monitors and controls the transfer, temporary release (e.g., on writs), and community activities of certain inmates who present special needs for management. Such inmates, known as central inmate monitoring (CIM) cases, require Central Office and/or Regional Office approval for transfers, temporary releases, or community activities recommended by the Warden. This monitoring is not for the purpose of precluding inmates classified as central inmate monitoring cases from transfers, from temporary releases, or from participation in community activities, when the inmate is otherwise eligible, but rather is to provide protection for all concerned and to contribute to the safe and orderly running of Federal institutions.

§ 524.71 Responsibility.

Authority for actions relative to the Central Inmate Monitoring Network is delegated to the Assistant Director, Correctional Programs Division, to Regional Directors, and to Wardens. Each of these persons shall designate a CIM coordinator (for the Central Office, each Regional Office, and each institution, respectively). Community Programs Managers are designated CIM

coordinators for inmates confined at contract facilities.

§ 524.72 Central inmate monitoring assignments.

Central inmate monitoring cases are classified according to the following assignments.

(a) *Witness Security Cases:* Inmates who are identified by the Department of Justice as witness security cases. This assignment includes persons whose safety is in jeopardy because of their cooperation with the government. Placement in this assignment may be made only upon authorization of the Office of Enforcement Operations, Criminal Division, Department of Justice.

(b) *Sophisticated Criminal Activity:* Inmates who have been involved in sophisticated criminal activity. A RICO conviction (Racketeer Influenced and Corrupt Organizations—18 U.S.C. 1961–1968) or a Continuing Criminal Enterprise conviction (21 U.S.C. 848) will automatically result in a classification to this assignment. An elected or appointed public official at a local, county, state, or federal level who violated the trust of that position as evidenced by conviction for a felony offense will automatically be classified "sophisticated criminal activity." Other examples of sophisticated criminal activity include drug offenses, property offenses, white collar offenses, or a criminal history of involvement in such offenses. An inmate may be classified to this assignment when all the following minimum criteria are met:

(1) The offense was planned and organized and involved criminal activity that geographically operated on a municipal, county, state, national, or international scale;

(2) The offender occupied a position of organizer, a supervisory position, or any other position of management for the criminal organization or activity from which substantial income or resources could be obtained; and

(3) The monetary value of the offense totaled \$500,000 or more for drug offenses, and \$250,000 or more for property offenses or white collar offenses.

(c) *Threats to Government Officials:* Inmates who have made threats to government officials or have been identified in writing by the U.S. Secret Service as requiring special surveillance.

(d) *Broad Publicity:* Inmates who have received widespread publicity (for example, national media coverage or continued news coverage by the local media) as the result of their criminal activity.

(e) *Disruptive Groups:* Inmates who belong to or are closely associated with disruptive groups (e.g., prison gangs), which have a history of disrupting institution operations and security in either state or federal penal facilities. This assignment also includes those persons who may not be confined in the same institution with specified disruptive group members.

(f) *State Prisoners:* Inmates, other than witness security cases, who have been accepted into the Bureau of Prisons for service of their state sentences. This assignment includes cooperating state witnesses, contractual boarders, and court-ordered federal placements of state prisoners.

(g) *Special Supervision:* Inmates who require monitoring for their protection from unknown inmates who are identified only by geographic location, i.e., institution, region, or correctional system. This assignment may include persons (for example, former criminal justice personnel) who may be subject to indiscriminate retaliation from individuals who cannot be identified. This assignment may also include those persons, other than witness security cases, whose safety is in jeopardy because of their cooperation with the government. Placement in this assignment because the inmate cooperated with the government may be made only upon authorization of the Assistant Director, Correctional Programs Division.

(h) *Separation:* Inmates who may not be confined in the same facility with other specified individuals regardless of their location. This includes federal inmates boarded in state facilities for separation and protection purposes, and those who may come into federal custody in the future. Factors to consider in classifying an individual to this assignment include, but are not limited to, testimony provided by or about an individual (in open court, to a grand jury, etc.), and whether the inmate has exhibited aggressive behavior towards other specific individuals either in the community or within the institution. This assignment also includes those inmates who have provided authorities with information concerning the unauthorized or illegal activities of others and those inmates who may be affected by any other event or circumstance which could result in a physical confrontation between at least two persons or which could jeopardize the orderly operation of the institution.

§ 524.73 Procedures.

Staff shall use the following procedures in making central inmate monitoring classifications:

(a) An inmate may be classified at any time as a central inmate monitoring case by a Community Programs Manager or by appropriate staff at the Central Office, Regional Office, or institution. This classification takes effect when proper notifications are made to authorities at the institution where the inmate is confined or is designated for confinement.

(b) The institution's CIM coordinator shall ensure that the affected inmate is notified in writing as promptly as possible of the classification and the basis for it. The notice of the basis may be limited in the interest of security or safety. For example, in separation cases under § 524.72, notice will not include the names of those from the inmate must be separated. On the other hand, in sophisticated criminal activity cases under § 524.72, adequate notice shall include specific reference to the sophisticated criminal activity, that is, the crime or crimes for which the inmate was convicted, or explicit and reliable information of other sophisticated criminal activity. The inmate shall sign for and receive a copy of the notification form, with the original form placed in the inmate privacy folder. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this fact on the notification form and then sign the form.

(c) When an inmate's name is ordered removed for any reason from the Central Inmate Monitoring System (for example, because the reviewing authority either disapproves the interim CIM classification or approves removal of a final CIM classification based on new information), the CIM coordinator shall ensure that the relevant portions of the inmate central file are either removed or, when part of a larger document, are amended to clearly reflect removal of the CIM assignment. The form providing for notification of the central inmate monitoring classification, the summary sheet, supportive documentation, and the written basis for removal are to be retained in the inmate privacy file.

Staff shall notify the inmate in writing of the removal of a specific CIM classification. The inmate shall sign for and receive a copy of this notification form, with the original placed in the inmate privacy folder. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this refusal on the notification form and then sign the form.

§ 524.74 Final CIM classifications.

A final CIM classification may be made where the basis for the classification is well established at the

time of the initial review. The inmate is to be notified of the CIM classification and of the right to appeal the classification through the Administrative Remedy Procedure.

(a) Witness security cases are designated by the Central Office. An inmate's participation in this program is voluntary. A pre-commitment interview and an admission and orientation interview are to be conducted with the witness security inmate to ensure that the inmate understands the conditions of confinement within the Bureau of Prisons. Central Office classification of an individual as a witness security case does not require additional review. Classification of an inmate as a witness security case overrides any other CIM assignment.

(b) State prisoners accepted into the Bureau of Prisons from state or territorial jurisdictions are designated by appropriate staff in the Central Office or Regional Office. All state prisoners are automatically included in the Central Inmate Monitoring System to facilitate designations, transfers, court appearances, and other movements. Central Office or Regional Office classification of an individual as a state prisoner does not require additional review.

(c) Designated staff in the Central Office or Regional Office may assign an inmate to any other CIM classification which they are authorized to make, without an interim classification, based upon substantive information at staff disposal. Staff in the Central Office or Regional Office shall notify the appropriate institutional CIM coordinator of the final classification.

§ 524.75 Interim CIM classifications.

(a) An interim classification, ordinarily not to exceed 60 days, may be made at any level to achieve the immediate effect of requiring prior clearance for an inmate's transfer, temporary release, or participation in community activities. An interim classification is appropriate when additional review is required to determine whether a sound basis exists for the classification. Reviewing authorities for interim CIM classifications are:

(1) Designated staff in the Central Office Inmate Monitoring Branch who reviews interim CIM classification decisions for all future separation assignments and for any combination of assignments involving a witness security case;

(2) The Warden who reviews interim CIM classification decisions for all separation assignments other than future separation; and

(3) Designated staff in the Regional Office who reviews interim CIM classification decisions for all other central inmate monitoring assignments and for any combination of assignments, except for those involving a witness security case.

(b) The inmate is to be notified of the interim CIM classification. The inmate is to be advised that any objections to the interim CIM classification may be submitted by the inmate directly to the reviewing authority. If the inmate is not notified of a change in the interim CIM classification within 60 days from the date of initial notification, the inmate may consider the CIM classification a final decision. After a final decision is reached on an inmate's CIM status, the Administrative Remedy Procedure may be used more effectively since a completed action (final CIM decision) exists.

(c) The Warden shall forward to the reviewing authority complete information regarding the inmate's interim CIM classification.

(d) The reviewing authority shall make a final decision on the appropriateness of the CIM classification, ordinarily within 60 days of the date the inmate was initially notified of the interim classification. The reviewing authority shall notify the institution's CIM coordinator in writing of the final decision.

§ 524.76 CIM activities clearance.

(a) An inmate classified as a central inmate monitoring case may not be transferred (except for medical emergencies), may not be given a temporary release, and may not participate in community activities without prior approval from the appropriate authority.

(b) Clearance by the Central Office or Regional Office (depending upon CIM classification) is required prior to the inmate's participation in the following activities:

- (1) Transfer to another Federal facility;
- (2) Transfer to non-Federal facilities or contract community treatment centers (for continued service of federal sentence);
- (3) Temporary release (e.g., on writs) to federal, state, and/or local jurisdictions;
- (4) Furloughs;
- (5) Escorted trips outside commuting distance of the institution; and
- (6) Work or Study Release.

(c) Except as provided in the following paragraphs of this section, the Regional Director or designee shall be the clearance authority on all transfers, temporary releases, and participation in

community activities for inmates assigned central inmate monitoring status.

(d) The Central Office Inmate Monitoring Branch shall be the clearance authority on all transfers, temporary releases, and participation in community activities for witness security cases.

(e) The Warden may approve the transfer of a CIM inmate (other than a witness security case) to the satellite camp of the Warden's institution.

(f) The Warden may approve non-medical escorted trips within the local community for separation cases. Witness security cases are to be cleared through the Central Office. All other CIM assignments are to be cleared through the appropriate Regional Office.

(g) The Warden may approve the transfer of a CIM inmate to a local hospital for emergency medical care not available at the institution.

(h) The Warden may approve local escorted medical trips for all CIM assignments except witness security cases. The Warden may approve only emergency local escorted medical trips for witness security cases.

(i) Except as provided in paragraphs (e)-(h) of this section, the Central Office Inmate Monitoring Branch will clear all community activities for inmates in the following assignments: witness security, sophisticated criminal activity, broad publicity, and threats to government officials. Except for witness security cases, final clearance from the Central Office shall be requested only if the activity is first reviewed and recommended by the Regional Director or designee. Requests for community activities for witness security cases are to be submitted directly by the institution to the Central Office Inmate Monitoring Branch.

§ 524.77 Review of CIM status.

(a) Except for witness security and state prisoner assignments, the Warden shall ensure that the status of an inmate's CIM assignment is considered at each program review in respect to any new information, or change in behavior or status which might affect the inmate's central inmate monitoring classification. When staff believes that removal or modification of a CIM classification is appropriate, the institution's CIM coordinator and the appropriate reviewing authority are to be notified. Only the reviewing authority shall determine if removal or modification of the CIM classification is appropriate. The institution's CIM coordinator shall ensure that the inmate

is notified of any decision made by the reviewing authority.

(b) Participation of an inmate in the witness security program is voluntary. An inmate classified as a witness security case may request removal from this assignment at any time.

Staff shall forward to the Central Office Inmate Monitoring Branch a request by a witness security inmate for removal from the witness security program. An inmate may not be removed from the CIM assignment as a witness security case without the acknowledgement of the Department of Justice, Office of Enforcement Operations.

(c) A state prisoner accepted into the Bureau of Prisons from a state or territorial jurisdiction shall keep the CIM assignment "state prisoner" while solely in service of the state sentence.

§ 524.78 Appeals of central inmate monitoring classification.

An inmate may at any time appeal (through the Administrative Remedy Procedure) the inmate's classification as a central monitoring case. While this means that an inmate may appeal an interim classification through the Administrative Remedy Procedure, staff shall advise the inmate that any objections to an interim CIM classification are more appropriately submitted to the reviewing authority because it is the reviewing authority who makes the final decision on an inmate's CIM assignment. After a final decision is reached on an inmate's CIM status, the Administrative Remedy Procedure may be used more effectively since a completed action (final CIM decision) exists.

Federal inmates housed in non-federal facilities do not have access to the Administrative Remedy Procedure. Inmates in this status who wish to appeal their CIM status may forward their complaints by private correspondence to the appropriate Regional Office.

§ 524.79 CIM classification of parole/mandatory release violators.

An inmate who is recommitted to federal custody because of a parole/mandatory release violation, or a new conviction, and who, at the time of release was classified as a CIM case shall retain this classification pending a review of the CIM status by appropriate staff. Except for witness security cases, this review ordinarily is completed as a part of the unit classification process. Review for witness security cases is completed by the Inmate Monitoring Branch at the time that an institution is designated for recommitment.

(a) When staff determines that the inmate's removal as a CIM case is appropriate, staff shall forward its recommendation, and the justification for this recommendation to the appropriate reviewing authority for a final decision on removal of the CIM classification. The inmate retains the CIM classification pending a decision by the reviewing authority.

(b) When staff determines that a modification (addition or deletion of one or more CIM assignments) of the CIM classification is appropriate, staff shall forward its recommendation, and the justification for this recommendation to the appropriate reviewing authority for a final decision on modification of the CIM classification. The inmate retains the existing CIM classification pending a decision by the reviewing authority.

(c) When removal from, modification of, or continuation as a CIM case is indicated, or when an interim classification is effected, the institution's CIM coordinator shall ensure that the inmate is provided notification of the initial action. The institution CIM coordinator shall also ensure that an inmate is provided notification of any subsequent decision by the reviewing authority to either modify or remove the inmate's CIM assignment.

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BILLING CODE 4410-05-M

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document amends a final rule relating to the Bureau of Prisons policy on Correspondence. The amendment substitutes the phrase "Threats, extortion, obscenity, or gratuitous profanity" for "Clear harassment of a member of the public, including invasion of privacy." The revised rule is intended to more narrowly define this particular basis for rejecting general correspondence.

DATE: Effective date: June 1, 1982.

ADDRESS: OFFICE OF GENERAL COUNSEL, BUREAU OF PRISONS, ROOM 760, 320 1ST STREET, NW., WASHINGTON, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is amending its final rule relating to "Correspondence." The present

amendment places no increased burden on either the inmate or the public and is intended to clarify the scope of the Bureau's present rule. For these reasons, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

Members of the public may submit comments concerning this amendment by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this amendment does not constitute a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354) does not have a significant impact on a substantial number of small entities.

Summary of Change

Section 540.13—For clarity, § 540.13(e)(4) is amended by substituting the phrase "Threats, extortion, obscenity, or gratuitous profanity" for "Clear harassment of a member of the public, including invasion of privacy." This language more narrowly defines the conditions that must be present to reject general correspondence under this particular subsection. The amendment adopts language suggested by a recent judgment in the case of *Samuels, et al. v. Smith, et al.* (United States District Court Southern District of Indiana, TH 79-124-C).

List of Subjects in 28 CFR Part 540

Prisoners.

Conclusion

Accordingly pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V, is amended by revising Part 540, Subpart B.

Dated: May 12, 1982.

Norman A. Carlson,
Director, Bureau of Prisons.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

The authority citation for Part 540 reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

In Subchapter C, Part 540, Subpart B is amended by revising § 540.13(e)(4) to read as follows:

§ 540.13 General correspondence.

(e) * * *

(4) Threats, extortion, obscenity, or gratuitous profanity;

[FR Doc. 82-13725 Filed 5-19-82; 8:45 am]

BILLING CODE 4410-05-M

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains the Bureau of Prisons final rule on its Adult Basic Education (ABE) Program. The final rule requires that an inmate in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level attend an adult basic education program for a minimum of 90 calendar days. This rule recognizes the importance for each individual to function at a minimum academic grade level of 6.0. The sixth grade level is considered a basic standard for measuring functional literacy in our society. Persons functioning below that level often encounter serious difficulties in obtaining employment and in carrying out their day-to-day responsibilities. Upon its effective date, this rule on Adult Basic Education (ABE) Program replaces the Bureau of Prisons existing rule on Optional Programming (Part 544, Subpart H).

EFFECTIVE DATE: June 21, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Adult Basic Education (ABE) Program. This subject was published in the *Federal Register* as a proposed rule January 26, 1982 (at 47 FR 3752 et seq.). This rule on Adult Basic Education (ABE) Program replaces the Bureau of Prisons existing rule on Optional Programming (Part 544, Subpart H).

Interested persons were invited to submit comments on the proposed rule.

Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no further response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. Sections 544.70-544.70 has been reworded. The final policy clarifies language in the proposed rule stating that an inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 grade level is required to attend an adult basic education (ABE) program for a minimum of 90 calendar days. The final rule substitutes the word "shall" for "may," as the Warden must now establish incentives to encourage an inmate to complete the ABE program.

2. Section 544.71—Proposed § 544.75, "Exceptions," becomes final § 544.71, "Applicability." The first paragraph of proposed § 544.75 is reworded and becomes final § 544.71(a). Exceptions identified in proposed § 544.75(a), (b), (c) and (e) are now contained in final § 544.71 (a)(1), (a)(3), (a)(4), and (a)(5). The example given in proposed § 544.75(e) is removed from the final rule since a physical or mental handicap does not always mean that an inmate cannot participate in the ABE program. Section 544.71(a)(2) is new and states that an inmate committed for purpose of study and observation under 18 U.S.C. 4205(c) is not required to participate in the ABE program. The second paragraph of proposed § 544.75(e) is reworded and becomes final § 544.71(b). Proposed § 544.75(d), now final § 544.71(c), is reworded to clearly state that ABE involvement is appropriate for the inmate who functions below the 6.0 academic grade level and for whom treatment is mandated by statute (for example, Youth Corrections Act).

A commenter to proposed § 544.75(c) believes a required academic grade level of 6.0 is insufficient and suggests raising it to 8.0. The commenter states that the lower grade level keeps a person working with his hands, instead of learning what he can do with his mind, and that the minimum 8.0

academic grade level better prepares the inmate for the "High School Equivalency Test". The 6.0 academic grade level was chosen because it clearly separates the Adult Basic Education (ABE) program from the General Education Development (GED—high school equivalency degree) program. The Bureau of Prisons encourages, and provides opportunity for an inmate to continue academic involvement beyond the ABE level.

3. Section 544.72—Proposed § 544.71 becomes final § 544.72. Section 544.72(a)-(b) is reworded but the basic intent is unchanged. Section 544.72(c) substitutes the phrase "90 calendar days" for "90 consecutive days in class" and the phrase "without disciplinary action occurring" for "without negative consequences." The term "without negative consequences" is deleted because some constraints (for example, pay) apply when the inmate does not achieve the 6.0 academic grade level.

A commenter suggested that the Bureau of Prisons award an inmate "good time" for academic achievement. However, statutory limitations (18 U.S.C. 4162) do not allow the Bureau to give good time for academic efforts. Each Warden will establish other types of incentives to encourage an inmate to complete the ABE program.

4. Section 544.73—Proposed § 544.72, now final § 544.73, is expanded. The final rule allows an inmate to work at the fourth grade of compensation in a UNICOR or Inmate Performance Pay (IPP) position, contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. The inmate who fails to show adequate progress in the ABE program may be removed from the UNICOR or IPP work assignment. Internal staff instructions suggest that an inmate in a UNICOR assignment has six months to achieve the 6.0 academic grade level. The six-month requirement is waived for an inmate who has a documented disability. The inmate with a documented disability may remain in the UNICOR or IPP work assignment and is eligible for a work position above the fourth grade of compensation.

5. Section 544.74 and § 544.75—Proposed §§ 544.73-74 become final §§ 544.74-75.

List of Subjects in 28 CFR Part 544

Prisoners, Education, Libraries, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C 552(a) and

delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below:

In Subchapter C, Part 544, Subpart H is revised.

Dated: May 11, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

In Part 544, revise Subpart H to read as follows:

PART 544—EDUCATION

Subpart H—Adult Basic Education (ABE) Program

Sec.

544.70 Purpose and scope.

544.71 Applicability.

544.72 Procedures.

544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

544.74 Incentives.

544.75 Disciplinary action.

Subpart H—Adult Basic Education (ABE) Program

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.70 Purpose and scope.

The Bureau of Prisons requires that an inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

§ 544.71 Applicability.

(a) The provisions of this subpart on the adult basic education program apply to all inmates in federal institutions except:

- (1) Pre-trial inmates;
 - (2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c);
 - (3) Sentenced aliens with a deportation detainer;
 - (4) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grades 1, 2, and 3 at the time of implementation of this rule who do not presently function at the 6.0 academic grade level;
 - (5) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule.
- (b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ABE program.
- (c) Inmates who function below the 6.0 academic grade level and for whom treatment is mandated by statute (for example, Youth Corrections Act) shall be required to participate in the adult basic education program, as educational involvement is considered within the general scope of treatment.

§ 544.72 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below a 6.0 academic grade level in reading, writing, and mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator shall interview each inmate involved in the ABE program at least once every 30 days to review and record the inmate's progress in this program. The ABE coordinator shall place documentation

of this interview in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other authorized absences from scheduled classes, the inmate's unit team shall meet with the inmate in respect to the inmate's continued involvement in the ABE program towards attainment of the 6.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, without disciplinary action occurring.

§ 544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) Assignments.

Inmates who wish to secure a UNICOR or IPP work assignment above the fourth grade of compensation must be able to demonstrate achievement of at least a 6.0 academic grade level. An inmate may be assigned to the fourth grade of compensation in the UNICOR or IPP WORK assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progress in the ABE program may be considered basis for removal of the inmate from the UNICOR or IPP assignment.

§ 544.74 Incentives.

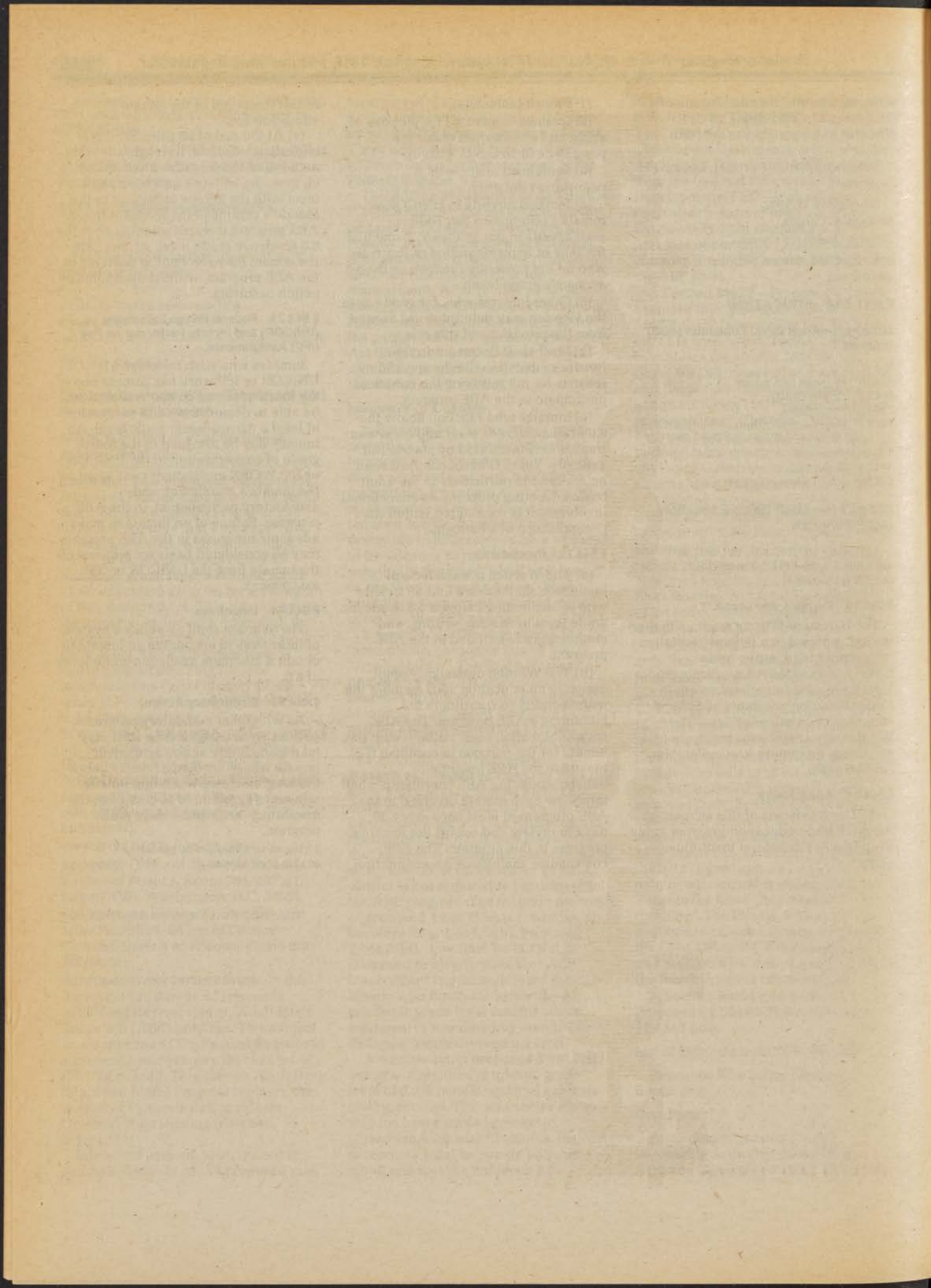
The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 6.0.

§ 544.75 Disciplinary Action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 6.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

[FR Doc. 82-13726 Filed 5-19-82; 8:45 am]

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Register Federal

Thursday
May 20, 1982

Part IV

Environmental Protection Agency

Real Property Acquisition and Relocation
Assistance; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 4

[OA-FRL-2054-1]

Real Property Acquisition and Relocation Assistance

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: This document proposes changes to EPA's regulation implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Relocation Act). The proposed regulation assists regulation users, primarily State and local governments, by making the regulation clearer and by eliminating unnecessarily burdensome requirements. The changes, including a complete reorganization of the regulation, are designed to simplify the implementation of the Uniform Relocation Act, as well as reduce the cost of administration.

DATE: Comments must be received on or before July 6, 1982.

ADDRESSES: Comments should be addressed to: Central Docket Section (A-130), Attention: Docket No. G-80-2, Environmental Protection Agency, Washington, D.C. 20460. The public may inspect the comments received on the proposed rules at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. between 8 a.m. and 4 p.m., business days.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Grants Administration Division (PM-216), Environmental Protection Agency, Washington, D.C. 20460 [202] 755-2830.

SUPPLEMENTARY INFORMATION: In keeping with the President's mandate to reduce the burden of government regulation and to promote more efficient governmental operations, EPA is proposing changes in its regulation implementing the Uniform Relocation Act. The proposed regulation reflects EPA's experience with the Uniform Relocation Act and includes provisions based on comments received from State and local governments who have conducted programs under the Act's requirements. Some of these comments were in response to an Advance Notice of Proposed Rulemaking which EPA published in the *Federal Register* on September 15, 1980; others were conveyed to EPA by various EPA program participants.

In March of 1974 EPA published regulations at 40 CFR Part 4 implementing the Uniform Relocation Act. Those regulations were based on government-wide guidelines for implementing the Act, which have been found either in OMB Circular A-103 or GSA's Federal Management Circular (FMC) 74-8. Currently, those government-wide requirements are located at 41 CFR 101-6.1. These revisions are the first changes EPA has made to Part 4 since its 1974 publication.

The proposed regulation conforms to the current government-wide guidelines with one exception. EPA's regulation does not allow the use of schedules of replacement housing prices in computing replacement housing payments (see §§ 4.710 and 4.720 in the proposed regulation), while the guidelines permit the use of schedules. EPA believes that such schedules should not be used in its programs because:

- The development of schedules of replacement housing is a lengthy process. Given rapidly changing housing prices, schedules tend to be outdated by the time they are completed or soon thereafter.

- Since most EPA-assisted displacement is a one-time occurrence for the affected community, a schedule will have limited applicability. It is easier and more economical for the displacing agency to establish replacement housing prices by making comparisons with comparable housing units as needed.

EPA is making these changes for several reasons. First, as indicated, Executive Order 12291 mandates reductions in the burden of government regulation and the promotion of more efficient government operations. The proposed regulation includes no reporting requirements, prescribes no special forms for regulation users, and eliminates a detailed appendix listing recordkeeping requirements. It is considerably shorter than its predecessor and is organized in a more logical fashion for EPA program participants. These improvements, as well as others (such as changes in the treatment of multiple occupancy situations) will result in cost savings for EPA and State and local governments while maintaining the Act's protections for real property owners and displaced persons.

Secondly, legal decisions since the regulation's 1974 publication need to be integrated into its provisions. For example, our treatment of easements (§ 4.300) and appraisals (§ 4.302) was affected by a May 23, 1979 decision of the Comptroller General of the United States (#B-192863). Similarly, various

court decisions had an impact on the proposed regulation's requirements concerning advance acquisition of land (§ 4.300) and the scope of the Act's coverage (§ 4.300).

Since the proposed regulation is much less detailed than the existing one, State and local agencies, rather than EPA, increasingly will determine procedures for implementing its requirements. EPA currently provides guidance for regulation users in Parts 12 and 15 of the Grants Administration Manual and will issue changes to the Manual appropriate to the proposed regulation following its final adoption. However, the provisions of the Manual are discretionary; other procedures which accomplish the same purposes are acceptable.

EPA believes that revision of its Uniform Act regulations is necessary to implement Executive Order 12291 and to incorporate legal decisions subsequent to the regulations' publication. However, EPA fully supports and intends to participate in the process now underway under OMB leadership of updating the Uniform Act itself and of creating implementing regulations which reduce the duplication inherent in separate Uniform Act regulations for each Federal agency.

Description of Major Changes

Reorganization

EPA has reorganized the regulation. The new structure is more keeping with the way EPA and its assistance recipients use the regulation. A new general administrative requirements section, located near the beginning of the regulation, consolidates all basic administrative requirements such as State agency assurances of compliance, recordkeeping, and cost sharing. In addition, the proposed regulation reverses the existing order of material concerning the subject areas of relocation and acquisition. Acquisition material now will precede relocation for two reasons. First, acquisition, or at least the imminent prospect of acquisition, almost always precedes relocation in the sequence of project activities. Second, in EPA or EPA-assisted projects, acquiring real property interests is a far more frequent and costly occurrence than relocating occupants and, thus, has a correspondingly greater impact on EPA activities.

We reorganized the relocation requirements to make them easier for EPA and State and local governments to use and to help persons displaced by projects better understand the benefits available to them and the requirements which accompany those benefits. To

accomplish these purposes, we established a basic relocation requirements section at the beginning of the relocation material in Subpart C and grouped requirements for moving expense payments according to the type of person displaced rather than by the method of computing payments.

Following is a table which cross-references the section numbers of the current regulation with those of the proposed 40 CFR Part 4.

Current section and title	Proposed section
4.100 Purpose and policy.	4.100
4.101 Applicability.	4.101
4.102 Definitions.	4.103
4.103 Displaced person; qualifications.	4.102, 4.300
4.104 Appeals.	4.470
4.105 Records.	4.203
4.106 Application for benefits.	4.440
4.107 Payment not to be considered income.	4.450
4.200 Moving and related expenses: general.	4.600
4.201 Payment of actual moving and related expenses.	4.611, 4.621 4.622, 4.623
4.205 Payment of fixed moving expense allowance.	4.612, 4.623
4.206 Computing average annual net income; businesses and farm operations.	Deleted
4.210 Application for payment.	4.440
4.301 Determinations or assurances required before displacement.	4.201
4.302 Replacement housing unavailable.	4.420
4.303 Decent, safe, and sanitary housing requirements.	4.740
4.310 Replacement housing payment for homeowners.	4.710
4.311 Computation of payment—180-day owners.	4.710
4.320 Replacement housing payments for tenants and certain others.	4.720
4.321 Computation of rental replacement housing payments.	4.720, 4.721
4.322 Computation of replacement housing down payment—tenants and 90-day owners.	4.722
4.330 Determination of cost of replacement dwelling.	4.710, 4.721
4.331 Rules for considering land values.	Deleted
4.332 Partial use of home for business or a farm operation.	Deleted
4.333 Multiple occupants of a single dwelling.	4.613, 4.730
4.334 Multifamily dwelling.	Deleted
4.335 Application and payment.	Deleted
4.336 Certificate of eligibility pending purchase of replacement dwelling.	Deleted
4.337 Inspection of replacement dwelling required.	4.700
4.400 Requirements for relocation assistance advisory programs.	4.500, 4.510, 4.520 4.500
4.401 Extension of service.	4.500
4.402 Displaced person declining to accept relocation services.	Deleted
4.403 Information for displaced persons.	4.410
4.404 Public information.	4.201
4.405 Coordination of relocation activities.	Deleted
4.406 Contracting for relocation services.	4.202
4.500 State agency assurances.	4.201
4.501 Monitoring.	4.204
4.502 EPA share of costs.	4.205
4.503 Use of EPA financial assistance.	4.206
4.600 Applicability.	4.300
4.601 Acquisition.	4.301
4.602 Statement of just compensation.	4.302
4.603 Equal interest in improvements to be acquired.	4.301
4.604 Notice to occupants.	4.510
4.605 Acquisition of improvements.	4.304
4.606 Transfer of title expenses.	4.305
4.607 Litigation expenses.	4.306
4.608 Real property provided by State agency for EPA project.	Deleted
Appendix A Records.	Deleted

Current section and title	Proposed section
Appendix B Directory: Regional and Area Offices, Department of Housing and Urban Development	Deleted

Simplification

EPA has simplified the regulation by eliminating unnecessary or duplicative provisions and by consolidating requirements which apply to more than one portion of the regulation. For example, EPA has eliminated Appendices A and B. Appendix A contained detailed recordkeeping requirements for State agencies. In the future, EPA will expect State and local governments implementing the Uniform Relocation Act to keep appropriate records based on the requirements of 40 CFR Part 30. Appendix B contained a list of addresses of Department of Housing and Urban Development offices. This list was necessary so that EPA and State agencies could contact those offices for information and coordination purposes. The proposed regulation eliminates the provisions which created the need for this list. Other provisions of the existing regulation which the Uniform Relocation Act does not mandate and which EPA has eliminated include recommendations for using central relocation agencies, a series of duplicative requirements concerning State or local agency third party contracts to carry out relocation responsibilities, and a list of nonallowable moving expenses and losses.

Provisions which EPA has consolidated include a long set of qualifications for displaced persons, detailed instructions for computing average annual net income for businesses and farms, and a number of scattered requirements relating to computing replacement housing payments.

Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing these changes to reduce the burden of regulation and to improve the efficiency of government operations. The changes will not have a substantial impact on the economy. Therefore, I have determined that this is not a major regulation and that it is not subject to the impact analysis requirements of Executive Order 12291. In addition, I have determined that:

- The publication of this regulation is not a major federal action significantly affecting the quality of the human environment; and

- The EPA programs to which the proposed regulation will apply and for which assistance recipients must comply with OMB Circular A-95 are those listed in 40 CFR Part 30, Appendix A.

EPA submitted this regulation to the Office of Management and Budget for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 4

Relocation assistance, Real property acquisition.

Dated: May 14, 1982.

John E. Daniel,

Acting Administrator.

We are proposing to revise 40 CFR Part 4 to read as follows:

PART 4—REGULATIONS FOR REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

Table of Sections

Subpart A—General

Sec.	
4.100	Purpose and policy.
4.101	Applicability.
4.102	Summary of this part.
4.103	Definitions.
4.200	General administrative requirements.
4.201	State agency assurances.
4.202	Contract services.
4.203	Records.
4.204	EPA review.
4.205	EPA share of costs.
4.206	Use of EPA financial assistance.

Subpart B—Acquisition

4.300	Applicability of acquisition requirements.
4.301	Basic acquisition policies.
4.302	Determination of just compensation.
4.303	Acquisition procedures.
4.304	Tenant interests.
4.305	Expenses incidental to acquisition.
4.306	Litigation expenses.

Subpart C—Relocation

4.400	Basic relocation requirements.
4.410	Availability of comparable replacement housing.
4.420	Housing of last resort.
4.430	Ninety days notice of move date.
4.440	Relocation payments.
4.450	Prohibition of deductions from relocation payments.
4.460	Relocation payments not considered income.
4.470	Relocation payment and replacement housing appeals.
4.500	Relocation assistance advisory services.
4.510	Informational program.
4.520	Assistance and services.
4.600	Payment for moving and related expenses.
4.610	Residential payments.

- 4.611 Actual cost method for residential payments.
- 4.612 Formula method for residential payments.
- 4.613 Multiple occupancy and moving expense payment.
- 4.620 Non-residential payments.
- 4.621 Actual cost method for non-residential payments.
- 4.622 Search costs.
- 4.623 Formal method for non-residential payments.
- 4.630 Self-moves.
- 4.700 Replacement housing.
- 4.710 Replacement housing payment for homeowners.
- 4.720 Replacement housing payment for tenants and 90-day homeowners.
- 4.721 Rental assistance payment.
- 4.722 Downpayment assistance.
- 4.730 Multiple occupancy and replacement housing payments.
- 4.740 Standards for comparable housing.

Authority: Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (84 Stat. 1894)

Subpart A—General

§ 4.100 Purpose and policy.

(a) This part implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Act). The Act provides for the uniform and fair treatment of persons displaced from their homes, businesses, or farms by federal and federally-assisted projects and establishes uniform and fair acquisition policies for federal and federally-assisted programs.

(b) In implementing the Act, the Environmental Protection Agency's (EPA) policy is to deal consistently and fairly with all persons whose property is taken or who are displaced from their homes, businesses, or farms by EPA or EPA-assisted projects.

§ 4.101 Applicability.

This part applies to EPA projects and to EPA-assisted projects which cause the acquisition of real property or the displacement of persons because of acquisition after January 1, 1971.

§ 4.102 Summary of this part.

The Act provides benefits and protections to persons affected by federal projects or federally-assisted projects carried out by State agencies; Part 4 implements the Act. Subpart A defines key terms and sets forth general administrative provisions. Subpart B contains requirements and procedures concerning the acquisition of real property. Subpart C contains requirements and procedures relating to displacement caused by acquisition. Subpart C describes eligibility requirements for relocation payments, how to compute those payments,

requirements for helping displaced persons to relocate, and standards for relocation housing.

§ 4.103 Definitions.

Key terms used in this part are defined as follows:

Ability to pay. The largest amount a displaced person can afford to pay for housing. This amount includes various housing costs such as rent, mortgage payment, utilities, insurance, property taxes, and other reasonable, recurring housing expenses. For the purposes of this Part, the upper limit is 25 percent of gross income.

Acquiring agency. The governmental agency causing acquisition, either EPA or a State agency receiving EPA financial assistance.

Acquisition. Acquisition by EPA or a State agency of any interest in real property for a project undertaken by EPA or with EPA financial assistance.

The Act. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (84 Stat. 1894) approved January 2, 1971.

Average annual net income. Average annual net earnings before taxes during the two years immediately before displacement, or, in the displacing agency's judgment, during a more representative period.

Business. A lawful activity, other than a farm operation, conducted solely or primarily:

(a) For the purchase, sale, lease, or rental of personal and real property, or the manufacture, processing or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) By the erection and maintenance of an outdoor advertising display or displays, except that these businesses may receive benefits only under § 4.621.

Displaced person. (a) A person in occupancy on or before the date of receipt of notice of intent to acquire, initiation of negotiations, or acquisition who moves from real property or moves his personal property from real property because of:

(1) The acquisition of this property; or

(2) The written order of the acquiring agency to vacate this property for a project undertaken by EPA or with EPA financial assistance; or

(3) The acquisition of other real property or the written order of the acquiring agency to vacate other real property on which such person conducts a business or farm operation, except that these persons may receive benefits only under §§ 4.500 and 4.621.

(b) A business which discontinues operations because of acquisition.

Displacing agency. The governmental agency causing displacement, either EPA or a State agency receiving EPA financial assistance.

Dwelling. Any residential unit that serves as a person's primary place of habitation. Dwellings include houses, apartments, condominiums, cooperatives, rooming units, mobile homes, and any other residential units.

Economic rent. The amount of rent, including utilities and other recurring housing costs, a displaced homeowner or tenant would have to pay for a comparable dwelling in an area similar to the neighborhood in which the acquired dwelling is located.

Effective moving date. The date of a displaced person's move or, for a displaced owner, the date on which he received the last payment of the acquisition price, if later than his move date.

Family. Two or more individuals living together as a household, either by mutual consent or related by blood, marriage, adoption, or legal guardianship.

Farm operation. Any activity conducted solely or primarily to produce agricultural products or commodities (including timber) for sale or home use, provided that this production customarily contributes significantly to the operator's support.

Gross income. The combined annual income from all sources of all members of a household. For families, the first \$1,000 of income earned by each family member (other than heads of households or their spouses) who is less than 19 years of age or who is less than 22 years of age and a full-time student, is not included in gross income.

Initiation of negotiations. The date on which the seller receives the acquiring agency's first written offer to purchase his property at a specified price.

Mortgage. A lien commonly given to secure an advance on, or the unpaid purchase price of, real property under the laws of the State in which real property is located, together with any credit instruments the lien secures.

Notice of intent to acquire. A written notice from the acquiring agency stating its intent to acquire specified real property for an EPA-assisted project.

Owner. Any person who holds any of the following interests in real property:

(a) Fee title, life estate or a 99-year lease;

(b) An interest in a housing cooperative which includes the right to occupy a dwelling unit;

(c) A contract to purchase any of the above interests or estates; or

(d) Any other interest which in the judgment of the State agency or EPA warrants consideration as ownership.

Person. Any individual, family, partnership, corporation, or association.

State agency. (a) Any department, agency or instrumentality of:

(1) A State or a political subdivision of a State; or

(2) Two or more States or two or more political subdivisions of a State or States.

(b) The National Capital Housing Authority and the District of Columbia Redevelopment Land Agency.

Tenant. A person who rents, leases, or otherwise temporarily possesses an interest in real property owned by another.

§ 4.200 General administrative requirements.

The requirements in §§ 4.201 through 4.206 apply to the administration of the Act by EPA and by State agencies or their agents.

§ 4.201 State agency assurances.

EPA may not execute any instrument providing federal financial assistance to a State agency without written assurances from the assistance recipient that:

(a) For projects resulting in the acquisition of real property:

(1) It will fully comply with the requirements of Subpart B of this Part; and

(2) It will adequately inform the public of the acquisition policies, requirements, and payments which will apply to the project.

(b) For projects resulting in the displacement of any person:

(1) It will adequately inform the public of the relocation payments and services which will be available as set forth in Subparts B and C of this Part;

(2) It will provide fair and reasonable relocation payments to displaced persons as required by Subpart C of this Part;

(3) It will provide a relocation assistance program for displaced persons offering services described in Subpart C of this Part; and

(4) It will assure that comparable replacement dwellings (as described in § 4.740) will be available to a displaced person for a reasonable period before that person is displaced.

§ 4.202 Contract services.

In order to provide more efficient and effective relocation services, a displacing agency may enter into a written contract for such services with

another public agency or with a private contractor. The contractor must have an established capability to provide relocation services as required by the Act. The displacing agency remains responsible for insuring that relocation activities meet the requirements of the Act and EPA regulations if it uses a contractor.

§ 4.203 Records.

Each displacing agency must maintain records which demonstrate that it conforms with the Act's requirements relating to real property acquisition, relocation assistance, and relocation payments.

§ 4.204 EPA review.

EPA will review performance under this Part in order to insure that the State agency conforms with the assurances it provided.

§ 4.205 EPA share of costs.

The percentage of allowable relocation and acquisition costs which EPA will pay for EPA-assisted projects is the same as the EPA share for the project as a whole. EPA may advance funds to State agencies for acquisition or relocation payments if the advance is necessary for expeditious completion of the project.

§ 4.206 Use of EPA financial assistance.

EPA financial assistance may not be used for a payment under this Part if the displaced persons receives a separate payment from any Federal, State or local agency with substantially the same purpose and effect.

Subpart B—Acquisition

§ 4.300 Applicability of acquisition requirements.

The requirements in §§ 4.301 through 4.303 apply to all acquisitions of real property by EPA or by State agencies for projects undertaken by EPA or with EPA financial assistance. These requirements apply to the acquisition of easements and to acquisition made in anticipation of EPA financial assistance. These requirements apply if the real property interest is acquired using EPA funds alone, State agency funds alone, or a combination of EPA and State agency funds.

§ 4.301 Basic acquisition policies.

In acquiring real property, the acquiring agency must:

(a) Make every reasonable effort to acquire real property promptly through negotiation;

(b) Avoid any actions to compel an owner to agree to a price for his property. Such actions include

advancing the time of condemnation or deferring negotiations, condemnation, or the deposit of funds with a court;

(c) Institute formal condemnation proceedings, if the power of eminent domain is to be used, and not intentionally make it necessary for an owner to institute legal action to prove that his property is being taken;

(d) Offer to acquire the entire property if acquiring only a portion would leave an uneconomic remnant (i.e., a property with little or no utility);

(e) Charge rent not to exceed that paid in the local market for comparable real property, if the displacing agency rents acquired real property to the former owner or tenant. In the case of a former residential tenant, rent may not exceed his ability to pay;

(f) Schedule project activities so that all persons required to move from real property because of the project will have at least 90 days written notice of the date by which they must move;

(g) Acquire at least an equal interest in all buildings, structures, or other improvements which are located on that property and which will be removed or adversely affected by the completed project; and

(h) Adequately inform the public of the acquisition policies, requirements, and payments which apply to the project.

§ 4.302 Determination of just compensation.

Before the initiation of negotiations to acquire any real property interest, EPA or the State agency must comply with paragraphs (a) and (b) of this section.

(a) EPA or the State agency must obtain at least one appraisal of the fair market value of the property interest to be acquired and provide the owner (or his representative) the opportunity to accompany the appraiser while he inspects the property. Appraisals must conform to the current Uniform Appraisal Standards for Federal Land Acquisition, published by the Interagency Land Acquisition Conference. When land is acquired with EPA funds, the appraisal of the land must be done by a certified appraiser.

No action may be taken to compel a seller to waive his right to an appraisal. However, for acquisitions whose market value appears to be less than \$1,000, based on an appraisal of similar property, the appraisal requirement shall be considered to be met if:

(1) Both of the following conditions exist:

(i) The seller is informed of his right to an appraisal and waives that right in writing; and

(ii) The acquisition is not carried out under eminent domain; or

(2) The acquisition is a donation, i.e., voluntarily given at no cost.

(b) The acquiring agency must establish an amount which it believes to be just compensation for the real property interest acquired, including damages, and make a prompt offer to acquire for that amount. The determination of just compensation must:

(1) Be based on the fair market value of the property;

(2) Not be less than the approved appraised value of the property;

(3) Disregard any decrease or increase in the fair market value of the property caused by the contemplated project; however, for acquisitions of other than fee simple interests, any benefit to the remainder of the property may be set off against the value of the acquisition price.

(4) In the case of separately held interests in the real property, include an apportionment of the total just compensation for each of those interests.

§ 4.303 Acquisition procedures.

In acquiring real property EPA or the State agency must follow the procedures in paragraphs (a) and (b) of this section.

(a) *Offer to acquire.* Promptly following the determination of just compensation, EPA or a State agency must make a written offer to acquire for the amount so determined. This offer must be accompanied by a written statement of the basis on which the agency determined just compensation. The statement must:

(1) Identify the property and the type of interest being acquired;

(2) Certify, where applicable, that any separately held interest in the real property is not being acquired in whole or in part;

(3) Identify buildings, structures, and other improvements (including fixtures, removable building equipment, and any trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made;

(4) Identify any real property improvements, including fixtures, not owned by the owner of the land;

(5) Identify the types and approximate quantity of personal property located on the premises; and

(6) Separate compensation paid for the property interest being acquired and that paid for damages to remaining real property interests, if applicable.

(b) *Requirements for taking possession.* Before requiring any owner to surrender possession of real property, EPA or the State agency must:

(1) Pay the agreed purchase price; or

(2) Deposit with the local court of jurisdiction, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property.

§ 4.304 Tenant interests.

(a) When a tenant owns a building, structure, or other improvement to real property acquired under this Part, the displacing agency, subject to paragraph (b) of this section, must pay the tenant the larger of:

(1) The fair market value of the improvement, if it were removed from real property; or

(2) The enhancement of the fair market value of the real property resulting from the improvement.

(b) A payment may not be made to a tenant under this Subpart unless:

(1) The tenant, in consideration for the payment, releases to the displacing agency all his rights in the improvement; and

(2) The payment is not duplicated by any other payment authorized by federal, State, or local law.

§ 4.305 Expenses incidental to acquisition.

As soon as possible after real property has been acquired, the displacing agency must reimburse the owner for:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;

(b) Penalty costs for prepaying any mortgage which encumbers the acquired property; and

(c) The pro-rata portion of any prepaid property taxes which are allocable to a period after title is vested in the agency or after the agency takes possession of the real property, whichever is earlier.

§ 4.306 Litigation expenses.

(a) In any condemnation proceeding brought by the State agency to acquire property, the State agency must reimburse the owner of any interest in the property for actual reasonable expenses of the proceeding (including attorney, appraisal, and engineering fees) incurred if:

(1) The final judgment is that the State agency cannot acquire the real property by condemnation; or

(2) The State agency abandons the proceeding.

(b) In any inverse condemnation (in which an owner must institute legal proceedings to bring about condemnation) where an owner receives an award of compensation by judgment or settlement, the State agency must reimburse the plaintiff for actual

reasonable expenses incurred because of the proceeding (including reasonable attorney, appraisal, and engineering fees).

Subpart C—Relocation

§ 4.400 Basic relocation requirements.

Sections 4.410 through 4.470 describe basic protections and benefits which the Act provides for displaced persons.

§ 4.410 Availability of comparable replacement housing.

No person shall be required to move from his dwelling because of the acquisition of real property for an EPA or EPA-assisted project unless comparable replacement housing, as described in § 4.740, and within his ability to pay, is available to that person.

§ 4.420 Housing of last resort.

If displacement due to acquisition for an EPA or EPA-assisted project cannot proceed due to the unavailability of comparable replacement housing, and the displacing agency determines that such housing cannot otherwise be made available, the displacing agency may take such appropriate action as is necessary to provide comparable replacement housing through the use of funds authorized for the project.

§ 4.430 Ninety days' notice of move date.

No person may be required to move from his dwelling, business or farm because of the acquisition of real property for an EPA or EPA-assisted project, unless, at least 90 days before the move is required, he received from the displacing agency written notice of the date by which such move is required.

§ 4.440 Relocation payments.

(a) *General.* Displaced persons are eligible for relocation payments for the reasonable cost of moving and related expenses (see § 4.600). In addition, certain displaced persons are eligible for payments to help with the cost of replacement housing (see § 4.700). In order to receive either payment, displaced persons must file a written application with the displacing agency no later than 18 months after their effective date of displacement. Applications must contain sufficient information, adequately documented, for computing payments in accordance with this part.

(b) *Advance relocation payments.* Displacing agencies may consider requests for relocation payments in advance of a displaced person's move. However, advance payments may be

made only if, in the displacing agency's judgement, a hardship otherwise would result. Advance payments should be limited to the amount necessary to avoid the hardship and should not exceed the amount the displacing agency estimates the applicant will receive in relocation payments.

§ 4.450 Prohibition of deductions from relocation payments.

The displacing agency may not deduct or withhold any amount from a relocation payment except as required by court order or IRS attachment.

§ 4.460 Relocation payments not considered income.

No relocation payment made under the Act may be considered income for federal, State, or local tax purposes, nor may such payments be used in determining basic eligibility or extent of eligibility under the Social Security Act or any other Federal law.

§ 4.470 Relocation payment and replacement housing appeals.

The displacing agency must provide an appeals process. This process must enable a displaced person to obtain a review by the head of the displacing agency (or his designee) of agency decisions concerning eligibility for or the amount or a relocation payment, or concerning comparability of replacement housing.

(a) *EPA-assisted projects.* For EPA-assisted projects this process must provide:

(1) *State agency review.* The displaced person must file a request for review with the State agency no later than 90 days after he receives written notice of the decision being appealed. Review by the State agency must include:

(i) The opportunity for the appellant to make oral and written presentations, including the right to have counsel present;

(ii) Prompt action on the request for review, including payment of any amount determined to be due the appellant; and

(iii) A written response to the appellant explaining the decision and the basis on which it was made.

(2) *EPA review.* If an appellant is dissatisfied with the decision of the State agency, he may request a review by EPA. This review is limited to an examination of the correctness of the State agency's decision. Requests for review must be filed with the award official no later than 30 days after the displaced person receives written notice of the decision being appealed. EPA must issue its decision promptly, in writing, with a copy provided the

displaced person. The decision must state the facts and law which form its basis. The decision on the matter reviewed shall be final within EPA and shall not be subject to the disputes provision of 40 CFR Part 30, Subpart J.

(b) *EPA projects.* For EPA projects, displaced persons may request a review by the Administrator or his/her designee. This review is limited to an examination of the correctness of the original decision. Requests for these reviews should be directed to the Assistant Administrator for Administration. These requests must be filed within 90 days of the date the displaced person receives written notice of the decision he is appealing. EPA must issue its decision promptly, in writing, and provide a copy to the displaced person. The decision must state the facts and law which form its basis. The decision shall be final within EPA.

§ 4.500 Relocation assistance advisory services.

Sections 4.510 and 4.520 describe minimum standards for relocation assistance and services. The displacing agency must offer basic assistance and services to all displaced persons. It may offer similar assistance and services to any person occupying property adjacent to the acquired property if it determines that the acquisition will cause him substantial economic injury.

§ 4.510 Informational program.

As soon as practicable after the Notice of Intent to Acquire, before the initiation of negotiations, the displacing agency must inform everyone to be displaced of the relocation assistance and services it will offer. Informational materials must be written so that displaced persons will understand them. Where appropriate, these materials must be available in languages other than English. This information must be delivered to each person to be displaced, either in person or by certified mail, return receipt requested, and must include:

(a) An explanation of the services and relocation payments available to the displaced person including eligibility requirements for the relocation payments.

(b) A statement of his right to appeal decisions on payments or replacement housing which he feels do not meet the requirements of this part.

§ 4.520 Assistance and services.

The displacing agency must make available staff and other resources to:

(a) Explain the nature of payments and services available;

(b) Determine displaced persons' replacement housing, business and related needs;

(c) Provide information on the availability of replacement housing and business locations;

(d) Provide information about relevant federal, State, and other housing or assistance programs (e.g., Small Business Administration, Veterans Administration or Department of Housing and Urban Development programs);

(e) Help complete claims for relocation payments or applications for other assistance programs;

(f) Provide help needed to arrange for the displaced person's relocation, such as transportation to examine replacement housing; and

(g) Provide other services needed to insure a successful move, such as financial counseling.

§ 4.600 Payment for moving and related expenses.

Section 4.610 through 4.630 describe the payments for moving and related expenses for which displaced persons are eligible. However, payments for businesses, farms, and non-profit organizations (non-residential payments) may include elements not available under payments for persons displaced from a dwelling (residential payments).

§ 4.610 Residential payments.

Payments for persons displaced from a dwelling may be computed either on the basis of actual costs, as described in § 4.611 or, at the displaced person's option, according to the formula described in § 4.612.

§ 4.611 Actual cost method for residential payments.

A person displaced from a dwelling may receive payment for the actual, reasonable cost of:

(a) Transportation of household members and personal property from the acquired site to the replacement site. When a move exceeds 50 miles, the displacing agency must approve the need for a move of such distance.

(b) Packing, unpacking, crating and uncrating of personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of personal property for a period generally not to exceed 12 months;

(e) Insurance premiums covering loss and damage of personal property while in transit or storage;

(f) Personal property lost, stolen, or damaged (except where this is the fault of the displaced person, his agent or his employees) in the process of moving, where insurance to cover the loss is unavailable; and

(g) Any other expenses that the displacing agency determines to be necessary and directly attributable to displacement.

§ 4.612 Formula method for residential payments.

A person displaced from a dwelling may receive payment based on the sum of:

(a) A dislocation allowance of \$200, and

(b) A fixed payment, not to exceed \$300, based on the most recent moving allowance schedule issued by the Federal Highway Administration.

§ 4.613 Multiple-occupancy and moving expense payments.

The occupants of an acquired dwelling may choose to move to separate replacement housing, or a combination of families and/or individuals may share an acquired dwelling. In these cases, payment for moving expenses may be based either on the actual cost of moving and related expenses or, if any or all of the displacees choose the formula method of computation, on the amount which would have been paid had the occupants moved together to replacement housing. In either case, payments must be prorated among the displaced persons according to the amount of space actually occupied at the acquired dwelling.

§ 4.620 Non-residential payments.

Payments for persons displaced from businesses, farms, or non-profit organizations may be computed either on the basis of actual costs as described in §§ 4.621 and 4.622 or, at the displaced person's option, according to the formula described in § 4.623.

§ 4.621 Actual cost method for non-residential payments.

(a) A person displaced from a business, farm, or non-profit organization may receive payment for the actual reasonable cost of expenses similar to those identified in § 4.611.

(b) It may be advantageous to a displaced business not to move certain items of tangible personal property. In those cases, for items not moved and compensated under paragraph (a) of this section, the displacing agency may make a payment under either paragraph (b)(1), (b)(2), or (b)(3) of this section. A displacing agency may not make this payment until the owner of a displaced

business has made a good faith effort to sell the property.

(1) *Direct loss of tangible personal property.* The displacing agency may make a payment for direct loss of tangible personal property. That payment must be for the lesser of:

(i) The difference between the fair market value of the property for continued use at the acquired site and the proceeds of the sale; or

(ii) The estimated cost of moving this property.

(2) *Substitute equipment.* The displacing agency may make a payment for substitute equipment. That payment must be for the lesser of:

(i) The cost of comparable equipment installed at the new location less the proceeds of the sale; or

(ii) The estimated cost of moving the equipment.

(3) *High bulk, low value.* Personal property such as stockpiles of sand or gravel or the contents of salvage yards may be costly to move in relation to its value. In such cases, moving expense costs should be based on the reasonable cost of replacing the item less its liquidation value.

§ 4.622 Search costs.

The displacing agency may pay actual, reasonable expenses which the displaced person incurs in searching for a replacement business location. Total compensation for search costs is limited to \$500.

§ 4.623 Formula method for non-residential payments.

In place of the amount computed under § 4.621(a), the displaced person may receive payment equal to average annual net income, but not less than \$2,500 nor more than \$10,000.

(a) *Requirements for using the formula method.* The displacing agency may use the formula method only if it determines that:

(1) The displaced entity cannot be relocated without a substantial loss of its existing patronage; and

(2) The displaced entity is not part of a commercial enterprise having another establishment which is engaged in the same or similar business but which is not being acquired for the project.

(b) *Formula method payments for non-profit organizations.* Displaced non-profit organizations received \$2,500 under the formula method.

§ 4.630 Self-moves.

A displaced person may move himself. If he chooses the actual cost method of computing his payment, the displacing agency must obtain at least three bids or estimates from commercial

movers for the cost of relocating the displaced person. Payment up to the amount of the low acceptable bid may be made without documentation. Payment exceeding the low acceptable bid must be documented and justified.

§ 4.700 Replacement housing.

Sections 4.710 through 4.722 describe replacement housing payments for displaced persons. In addition to a payment for moving and related expenses, certain persons displaced from a dwelling are eligible for a replacement housing payment. There are two kinds of replacement housing payments: payments for homeowners and payments for tenants and 90-day homeowners (i.e., an owner/occupant for at least 90 days but less than 180 days). Except in hardship situations, displacing agencies may not make a replacement housing payment unless and until the displaced person occupies relocation housing which the displacing agency has inspected and found to be comparable.

§ 4.710 Replacement housing payment for homeowners.

(a) *General.* A payment under this section may be made only to a homeowner displaced from a dwelling which he owned and occupied for at least 180 days prior to the initiation of negotiations for the property. An owner/occupant must purchase and occupy a comparable replacement dwelling (§ 4.740) within one year of his effective date of displacement to receive this payment.

(b) *Computation of replacement housing payment for homeowners.* The replacement housing payment for homeowners may not exceed a total of \$15,000. That total includes the following elements:

(1) *Price differential.* The difference between the acquisition price of the acquired dwelling and the lesser of the actual cost of the replacement dwelling which the displaced person purchased or the cost of a replacement dwelling which meets comparable housing standards (as described in § 4.740). The cost of comparable housing must be based on the cost of at least three comparable dwellings which are available for sale on the private market. Schedules of replacement housing costs (i.e., pre-established lists of unit sizes and prices) shall not be used.

(2) *Increased interest.* The amount of increased interest, reduced to present value, which the displaced person must pay for financing the lesser of the actual cost of the replacement dwelling or the cost of a comparable replacement

dwelling. All of the following requirements apply to the calculation of the increased interest element:

(i) Increased interest includes the interest to be paid on the replacement dwelling's mortgage plus other debt service costs, including points. The amount which may be paid is limited to the increase in interest costs payable on the balance of the acquired dwelling's mortgage (at acquisition) over the remaining term of the mortgage of either the acquired or the replacement dwelling, whichever is less.

(ii) Present value shall be based on the prevailing interest rate paid on passbook (or similar) savings deposits by commercial banks in the area in which the replacement dwelling is located.

(iii) For purposes of computing increased interest, the interest rate on the new mortgage may not exceed the prevailing rate charged by mortgage lending institutions in the area.

(iv) The acquired dwelling must have been encumbered by a mortgage for at least 180 days before initiation of negotiations.

(c) *Incidental expenses.* Actual reasonable costs which the displaced person incurs as a part of the purchase of the replacement dwelling. Prepaid expenses (such as insurance premiums and tax escrows) may not be reimbursed. Incidental expenses include:

- (1) Customary legal, closing and related costs;
- (2) Lender's, FHA or VA appraisal fees;
- (3) FHA or VA application fees;
- (4) Credit report, title policy, escrow fee; and
- (5) Revenue stamps or transfer taxes.

§ 4.720 Replacement housing payment for tenants and 90-day homeowners.

A payment under this section may be made to a renter or to a homeowner who was an owner/occupant for less than 180 days. The renter or homeowner must be displaced from a dwelling which he rented or owned, as appropriate, and which he occupied for at least 90 days prior to the initiation of negotiations to acquire the property. Displaced renters or 90-day homeowners (see § 4.700) are eligible to receive one of two types of payment, either a rental assistance payment (§ 4.721) or a payment for downpayment assistance (§ 4.722).

§ 4.721 Rental assistance payment.

(a) *General.* A homeowner or renter must rent and occupy a comparable replacement dwelling (see § 4.740) within one year of his effective date of displacement to receive this payment.

(b) *Computation of rental assistance payment.* A rental assistance payment is computed using the difference between the displaced person's base monthly housing costs (see paragraph (b)(1) of this section) and the lesser of similar costs for a comparable replacement dwelling or the actual replacement dwelling to which the displaced person moves. That difference multiplied by 48 equals the payment, up to a maximum of \$4,000. The following limitations apply to the calculation of this payment:

(1) Base monthly housing cost is the greater of the actual costs which the displaced person paid for the acquired unit or 25% of the displaced person's gross monthly income.

(2) If the actual housing cost for the acquired dwelling is less than the economic rent, or if the displaced person is a homeowner moving to rental housing, base monthly housing cost shall be computed as the economic rent.

(3) A displaced homeowner's payment may not exceed the amount he would receive if he were eligible for a replacement housing payment for homeowners.

(4) The cost of comparable rental housing must be based on the rental price of at least three comparable dwellings available on the private market. Schedules of replacement housing costs shall not be used.

§ 4.722 Down payment assistance.

(a) *General.* Only a tenant or a 90 day homeowner (as described in § 4.720) who occupied the dwelling from which he was displaced for at least 90 days prior to the initiation of negotiations for the acquired property and who purchases a comparable replacement dwelling within one year of his effective date of displacement may be eligible for this payment.

(b) *Computation of down payment assistance payment.* The down payment assistance payment may not exceed a total of \$4,000. The payment includes:

(1) The amount necessary to make a down payment on the lesser of the actual replacement dwelling or a comparable dwelling, not to exceed the amount which would be required on a

conventional loan at prevailing interest rates in the area; and

(2) Incidental expenses as described in § 4.710(c).

(c) *Limitations.* The following limitations apply to this payment:

(1) Any portion of this payment over \$2000 must be matched by the tenant.

(2) The full amount of this payment including the matching amount must be applied to the down payment (including incidental expenses).

§ 4.730 Multiple occupancy and replacement housing payments.

When the occupants of an acquired dwelling choose to move to separate replacement housing, or when a combination of families and/or individuals shares a dwelling, the displacing agency may prorate replacement housing payments for persons who did not constitute separate households before the move.

§ 4.740 Standards for comparable housing.

Replacement housing is comparable if it meets the standards for living space and for quality of living conditions in this section.

(a) *Living space.* Replacement housing must provide the greater of:

(1) Living space equivalent to that of the dwelling from which displacement occurred, or

(2) Living space equal to the need of the displaced person as required by local housing codes.

(b) *Living conditions.* Replacement housing must provide the greater of:

(1) State or local housing codes; or

(2) EPA minimum standards:

- (i) Sound, clean, and weathertight;
- (ii) Has an adequate and safe wiring system for lighting and other electrical services;

(iii) Provides heating or cooling as required by climatic conditions;

(iv) For dwelling (housekeeping) units, includes a sink, stove or connection for same, a complete bathroom, and hot and cold running water in the bath and kitchen; and

(v) For rooming (non-housekeeping) units, provides the use of a complete bathroom which has hot and cold running water and which affords privacy to a person within it.

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Register for Federal Projects

Thursday
May 20, 1982

Part V

Department of Education

College Housing Program; Final
Regulations and Application Notice for
New Projects for Fiscal Year 1982

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Housing Program

AGENCY: Education Department.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the College Housing Program with the exception of the part dealing with loan management, which will be issued separately. These regulations establish selection criteria for the award of low-interest loans to assist eligible institutions in (1) providing housing and other educational facilities for students and faculty members and (2) conserving energy and reducing related operating costs.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the *Federal Register*. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a future date, the Secretary will publish a notice in the *Federal Register* stating the effective date of these regulations.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles I. Griffith, (Room 3058, ROB-3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-9868.

SUPPLEMENTARY INFORMATION: Final regulations with comments invited were published in the *Federal Register* on July 29, 1981. Interested persons were given 45 days in which to submit written comments. Several comments were received suggesting changes. Those comments, the Secretary's responses to them, and other substantive changes are summarized below:

Summary of Changes

The original regulations with comments invited, published in July, 1981, are reissued to incorporate technical amendments and minor changes that—

- (1) Simplify and clarify regulations;
- (2) Eliminate duplication with the provisions of the Education Department General Administrative Regulations (EDGAR);
- (3) Reflect procedural modifications resulting from the new administration of this program by the Department of Education;
- (4) Incorporate amendments of a minor nature resulting from comments and suggestions received in response to the invitation for comment.

As a result of several deletions, §§ 614.36 through 614.62 have been renumbered.

*A. Summary of Technical Revisions**§ 614.3 Limitations of eligibility.*

In the interest of diligent credit management practices, the regulations are revised to exclude from eligibility for College Housing loans, institutions in default of loans made under the Higher Education Act as well as the Housing Act.

§ 614.5 What definitions apply to the College Housing Program?

The definition of "construction" is clarified in these regulations, to state that College Housing loans may be used for the purchase of existing facilities.

§ 614.32 Selection criterion for housing loans.

A fourth element is added to the criterion of housing deficiency to include students residing in facilities leased by colleges with terminating leases as an eligible factor in the calculation of housing deficiency.

§ 614.36 Determination of economical construction.

This section is eliminated because it is redundant with the provisions for construction in EDGAR (34 CFR 75.607).

§ 614.50 Prior determination of eligible costs.

This section is deleted because its provisions are inconsistent with the current administrative practices of the Department.

§ 614.52 Additional ineligible cost.

A provision is added to exclude from eligibility, costs for purchases of land incurred more than two years prior to application, and costs for acquisition of existing structures incurred more than one year prior to application. This provision is included to ensure valid allocation of Federal funds and to limit Federal support to costs directly attributable to current housing shortages. In view of limited Federal resources, the provision serves to contain eligible costs so that a greater number of projects may be supported.

§ 614.56 Investment of idle construction funds.

A provision is added to protect the Federal interest by requiring that any interest earned on Federal funds shall revert back to the Federal government through a credit to the Federal loan account.

§ 614.67 Procedures for loan disbursement.

Paragraphs (a), (c), and (d) are deleted, because the provisions are inconsistent with the current

administrative practices of the Department.

*B. Summary of Comments and Responses**General*

Comment. One commenter suggested that loan recipients be granted some recourse in the event of undue delays caused by the administering office.

Response. No change has been made. The recent transfer of the program to the Department of Education has served to reduce administrative delays in the operation of the program. As the new administering office, the Department is utilizing its every resource to expedite the processing of applications.

Comment. One commenter cited typographical errors in §§ 614.3, 614.27, and 614.35.

Response. Corrections have been made in §§ 614.3, 614.27, and 614.35.

§ 614.2 Who is eligible to apply for a loan?

Comment. One commenter suggested that the eligibility criteria discriminated against two-year institutions by stipulating that (a) the institution must offer at least a two year program acceptable for full credit toward a bachelor's degree and (b) the institution must be administered by an accredited college or university.

Response. No change has been made. The definition and criteria for an eligible institution are taken directly from Section 404(b) of the statute. These regulation requirements are therefore consistent with the statute. It should be noted that the stipulation under paragraph (a) requires only that at least a two year program creditable toward a bachelor's degree be offered. The provision under paragraph (b) regarding administration of institution by an accredited college or university is only one of the six possible conditions for eligibility.

§ 614.5 What definitions apply to the College Housing Program?

Comment. Two commenters felt that the current definition of "reasonable commuting distance" had an unfair impact on urban institutions. The recommendation was made that the definition be changed to the distance a student can travel in forty-five minutes from his or her residence to the applicable institution by automobile or public transportation, rather than the existing one-hour time frame.

Response. No change has been made. The Secretary feels that the one-hour time frame is a reasonable limit for commuting distances for both urban and

rural contexts. Urban institutions may have the advantage of public mass transit thereby counter-balancing any negative impact.

Comment. Two commenters indicated the need for a definition of "assignable square feet."

Response. A change has been made. The definition has been added.

§ 614.21 OMB Circular A-95 requirements.

Comment. One commenter recommended that State postsecondary education coordinating agencies be given the opportunity to review and comment on the applications for College Housing Loans, similar to the A-95 review process.

Response. The change has been made. The section on A-95 requirements has been expanded to include a provision for the submission of applications to the appropriate State agency for postsecondary education for review and comment. In his report on the College Housing Program, the Comptroller General recommended that State education officials be consulted on proposed college housing projects so that they may provide the administering office with relevant information to support the awarding of valid loans. The provision is added to provide these agencies the opportunity for comment on the College Housing applications. This provision does not require the approval of State postsecondary education agencies.

Comment. One commenter recommended that applicants be required to submit applications to areawide A-95 clearinghouses as well as State A-95 clearinghouses.

Response. A change has been made. Inclusion of areawide clearinghouses was inadvertently omitted in the original regulations. These regulations are amended to require submission of applications to areawide clearinghouses as well as State clearinghouses in order to comply with the purposes and requirements of OMB Circular A-95.

§ 614.32 Selection criteria for housing loan.

Comment. One commenter recommended including the number of students on waiting lists with paid deposits in the calculation of housing deficiency.

Response. No change has been made. The use of waiting lists and housing deposits is not a universal practice. The need for accountability would create an undue burden on institutions for verification of data.

Comment. One commenter recommended that a specific allowance

be made for institutions housing students in temporary, off-campus situations such as motels and hotels. The commenter suggested that older institutions with smaller rooms are disadvantaged in that they can not temporarily house students in excess of design capacity and thus cannot qualify under this criterion element.

Response. No change has been made. The Secretary feels that the existing criteria sufficiently account for housing deficiency on the bases of overcrowding and residence in substandard housing. The claim that older institutions are disadvantaged due to smaller dorm rooms is a broad and possibly unjustified generalization. Older institutions may in fact have an advantage under the criterion of substandard housing in that aging housing structures are more likely to fail building codes.

Comment. One commenter recommended that a scaling system be utilized in the awarding of loans in order to equitably distribute awards among large and small institutions.

Response. No change has been made. The criteria of "relative deficiency" and "relative impact" were designed specifically to account for institutional size differentials. An analysis of fiscal year 1981 loan recipients revealed an equitable distribution of awards among small, moderate, and large institutions.

Comment. One commenter recommended the modification of selection criteria to allow for planned expansion of services as a basis for funding. Another commenter objected to the criterion of previous residential history and use of existing dormitories as bases for funding.

Response. No change has been made. The Secretary feels that the intent of the program, as expressed by Congress in the appropriations report, is to remedy existing housing deficiencies and relieve severe, localized housing shortages as demonstrated on campuses, rather than to support first-time or expansion oriented housing construction. The Comptroller General supports this position in his report on the College Housing Program.

Comment. One commenter recommended that preferential consideration be given to institutions engaged in cooperative activities aimed at relieving operational costs in housing facilities.

Response. No change has been made. The Secretary does not wish to grant preference based on a specific means of maintenance. The only regulatory requirement with respect to maintenance is that a recipient agree to repair and maintain its project facilities.

§ 614.33 Apportionment of loan funds.

Comment. One commenter proposed that an allocation based on postsecondary enrollment would be more equitable than the existing 12½ percent limitation per State.

Response. No change has been made. The 12½ percent limitation per State is set by statute.

§ 614.42 Limitation on loan amounts.

Comment. One commenter questioned the minimum limit on loan amounts.

Response. No change has been made. The minimum limit was established in the interest of administrative cost-effectiveness.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major regulations because they do not meet the criteria for major regulations established in the order.

Invitation to comment

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burden found in these regulations, especially with regard to paperwork and compliance requirements.

List of Subjects in 34 CFR Part 614

Colleges and Universities, Education, Grant programs—housing and community development, Housing, Loan programs—housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: May 12, 1982.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.142—College Housing Program)

The Secretary revises Part 614 of the Code of Federal Regulations to read as follows:

PART 614—COLLEGE HOUSING PROGRAM

Subpart A—General

Sec.

614.1 College Housing Program.

614.2 Who is eligible to apply for a loan?

Sec.

- 614.3 Limitations on eligibility.
 614.4 What regulations apply to the College Housing Program?
 614.5 What definitions apply to the College Housing Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

- 614.10 Eligible projects.
 614.11 Conditions for eligibility of project.

Subpart C—How Does One Apply for a Loan?

- 614.20 Submission of application.
 614.21 OMB Circular A-95 requirements and other clearance procedures.
 614.22 Evidence and assurances.
 614.23 Demonstration of need for an energy conservation loan.
 614.24 Demonstration of need for a housing loan.
 614.25 Application by a nonprofit student housing cooperative.
 614.26 Application by a nonprofit corporation.
 614.27 Facilities located in jurisdiction without applicable building code.
 614.28 Opinion of bond or legal counsel.

Subpart D—How Does the Secretary Make a Loan?

- 614.30 How does the Secretary rank application for loans?
 614.31 Selection criteria for energy conservation loans.
 614.32 Selection criteria for housing loans.
 614.33 Apportionment of loan funds.
 614.34 Reservation of funds for applications from historically black colleges and universities.
 614.35 Determination of non-availability of equally as favorable terms and conditions.
 614.36 Loan agreements.
 614.37 Security for the loan.
 614.38 Evidence of approved debt instrument.
 614.39 Loan closing.
 614.40 Interim financing.
 614.41 Limitation on loan amounts.

Subpart E—What Conditions Must Be Met by a Borrower?

- 614.50 Eligible development costs.
 614.51 Ineligible development costs.
 614.52 Additional ineligible costs.
 614.53 Fee for government field expense.
 614.54 Construction account.
 614.55 Investment of idle construction funds.
 614.56 Procedure for loan disbursement.
 614.57 Disposal of balance remaining in the Construction Account.
 614.58 Determination of final approved development costs.
 614.59 Application of pledged revenues.
 614.60 Length and maturity of loan.
 614.61 Borrower's non-financial obligations.
 614.62 Deferrals.

Appendix A—Guides for Determining Minimum Energy Savings.

Authority: Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81-475; (12 U.S.C. 1749-1749d). Sec. 306 of the Department of Education Organization Act, Pub. L. 96-88; (20 U.S.C. 3446).

Subpart A—General**§ 614.1 College Housing Program.**

The College Housing Program provides low-interest loans to institutions of postsecondary education for the construction, rehabilitation, or purchase of housing or other educational facilities for students or faculty members.

(12 U.S.C. 1749-1749d)

§ 614.2 Who is eligible to apply for a loan?

The following are eligible to apply for a loan under the College Housing Program:

(a) Any public or nonprofit private educational institution that offers, or will offer within a reasonable time after completion of the proposed project, at least a two-year program acceptable for full credit toward a bachelor's degree.

(b) Any public educational institution that—

(1) Is administered by an accredited college or university;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students.

(c) Any public or nonprofit private hospital that operates—

(1) A school of nursing beyond the level of high school and approved by State authority; or

(2) An internship program approved by a recognized authority.

(d) Any public body, established for the purpose of providing or financing housing or other educational facilities for students and faculty members at any institution referred to in paragraphs (a) or (b) of this section.

(e) Any nonprofit student housing cooperative established for the purpose of providing housing for students at any institution referred to in paragraphs (a) or (b) of this section.

(f) Any nonprofit corporation established for the sole purpose of providing housing or other educational facilities for students or faculty of one or more institutions referred to in paragraphs (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the nonprofit corporation all title to any property built or purchased with proceeds of the loan will go to the institutions or for some other nonprofit educational purpose.

(12 U.S.C. 1749c; 1749(g))

§ 614.3 Limitations on eligibility.

(a) An institution may not apply for a reservation of funds for a housing loan

under the Act sooner than the fourth year in which Congress makes funds available for the program subsequent to the last reservation of funds for that institution. This does not apply to energy conservation loans. In calculating this interval, the Secretary includes only reservations of funds made after fiscal year 1981.

(b) An institution may not apply for a reservation of funds for any loan under the Act if it is in default on a loan previously made under the Act or the Higher Education Act—whether or not the Secretary has agreed to any deferment—until the default has been removed.

(12 U.S.C. 1749a (c) (1); 1749a (c) (8); 20 U.S.C. 3474 (b))

§ 614.4 What regulations apply to the College Housing Program?

The following regulations apply to the College Housing Program:

(a) The Education Department General Administrative Regulations (EDGAR) 34 CFR 75.170 through 75.173 (Clearinghouse Procedures) and 75.600 through 75.615 (Construction), 34 CFR 77.1 (Definitions), and 34 CFR Part 74 Subpart P.

(b) The regulations in this Part 614. (20 U.S.C. 3474)

§ 614.5 What definitions apply to the College Housing Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR	Public
Nonprofit	Secretary
Private	State

(20 U.S.C. 3474)

(b) *Definitions that apply to this part.* "Act" means Title IV of the Housing Act of 1950, as amended.

(12 U.S.C. 1749-1749d)

"Assignable square feet" means the square footage of floor-space in facilities designed and available for assignment to specific functional purposes, such as student sleeping rooms, apartments and related dining areas, and including purposes that are ineligible for assistance under Title IV, such as instruction, research, administration, and religious worship.

"Branch campus" means, within an educational institution, a unit that—

(1) Is separately organized;

(2) Is located apart from the parent institution; and

(3) Has its own Federal Interagency Committee on Education (FICE) identification number.

"Construction" means—

(1) Erection of new structures; or

(2) Rehabilitation, conversion, or improvement of existing structures.

(3) Purchase of existing facilities.

"Design capacity" of housing means the number of occupants a building was designed to house, or, if that information is not available, the maximum number of occupants residing in the facility in any of its first three years of use as student housing.

"Development cost"—

(1) This term means the costs of construction of the housing or other educational facilities and the land on which they are located, including necessary site improvements to permit the use of the land for housing or other educational facilities;

(2) However, in the case of the purchase of facilities, the term means the cost as approved by the Secretary.

"Full-time enrollment" means the number of full-time undergraduate and graduate, resident and non-resident students, as reported by the educational institution—for the fall semester of the year prior to that in which the application is filed—to the National Center for Educational Statistics (NCES) of the Department of Education for its annual survey entitled "Fall Enrollment in Institutions of Higher Education."

"Historically residential institution" means an educational institution that prior to 1976 provided on-campus housing for at least 10 percent of its full-time enrollment.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or faculty, including (i) single-room dormitories and (ii) apartments; and

(2) Dwelling facilities for student occupancy provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for—

(i) Use as cafeterias or dining halls, student centers or student unions, infirmaries, or other inpatient or outpatient health facilities; and

(ii) Other essential service facilities; and

(2) Structures—

(i) Suitable for the uses in paragraph (1) of this definition; and

(ii) Provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for those uses.

"Reasonable commuting distance" means the distance a student can travel in one hour from his or her residence toward the applicant educational institution by automobile or public transportation, whichever is more expeditious.

"Substandard housing" means student housing, either on campus or off campus, that—

(1) Is owned, leased, or subsidized by an eligible institution under § 614.2; and

(2) Fails substantially to meet applicable State or local building code requirements.

(12 U.S.C. 1749c, 1749a(c)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 614.10 Eligible projects.

The Secretary makes loans for two categories of projects:

(a) Projects to reduce fuel consumption or related operating costs of existing housing and other educational facilities as defined in § 614.5. These loans are referred to in these regulations as "energy conservation loans."

(b) Projects to alleviate severe student or faculty housing shortage. These loans are referred to in these regulations as "housing loans."

(12 U.S.C. 1749, 1749a(c)(1))

§ 614.11 Conditions for eligibility of project.

The Secretary considers a project eligible to receive assistance only if—

(a) After October 1, 1981 the applicant has not contracted for construction before filing its application, and has not begun construction prior to execution of loan agreement.

(b) The facility will not be used—

(1) For religious worship;

(2) In connection with a school or department of divinity; or

(3) For a school providing either training for religious purposes or principally sectarian instruction.

(12 U.S.C. 1749a(c)(1); *Tilton v Richardson*, 403 U.S. 672 (1971))

Subpart C—How Does One Apply for a Loan?

§ 614.20 Submission of application.

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information specified in the application notice.

(b)(1) An applicant may submit only one application for a reservation of

funds for each category of project described in § 614.10.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(12 U.S.C. 1749a(c)(1) and 1749c)

§ 614.21 OMB Circular A-95 requirements and other clearance procedures.

(a) An applicant shall submit a copy of its application to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A-95.

(b) When the applicant submits its application to the Secretary, the applicant shall forward to the Secretary all State and areawide clearinghouses comments.

(c) An applicant shall submit one copy of its application to the appropriate State agency for postsecondary education to give the agency the opportunity to make comments or recommendations on the application. The applicant shall forward any comments it may receive to the Secretary.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

§ 614.22 Evidence and assurances.

An applicant shall submit to the Secretary, as part of its application, the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the site, including the right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, rehabilitate, purchase or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The

security may be one or a combination of procedures listed in § 614.37.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan the facility constructed with the aid of the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.23 Demonstration of need for an energy conservation loan.

In order to be considered for an energy conservation loan, an applicant must demonstrate in its application that the proposed project will provide savings in fuel consumption and related costs above those achieved by implementation of the measures similar to those described in Appendix A of this part.

(12 U.S.C. 1749a(c)(1))

§ 614.24 Demonstration of need for a housing loan.

(a)(1) In order to be considered for a housing loan, an applicant must demonstrate in its application a housing shortage in excess of the greater of 50 students or five percent of full-time enrollment.

(2) The percentage of full-time enrollment affected by a housing shortage is determined by dividing the applicant's housing shortage computed in accordance with paragraph (b) of this section, by the applicant's full-time enrollment.

(b) Housing shortage is measured as the sum of—

(1) The number of students in on-campus facilities in excess of the design capacity of the facilities;

(2) The number of students living in substandard housing both on and off campus;

(3) The number of students commuting to the campus from beyond a reasonable commuting distance; and

(4) The number of students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the date of application.

(12 U.S.C. 1749a(c)(1))

§ 614.25 Application by a nonprofit student housing cooperative.

A nonprofit student housing cooperative—as described in § 614.2(e)—that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The educational institution the proposed project is intended to serve has agreed to cosign the loan; or

(b) If State law in effect on September 7, 1964, prevents the institution from

cosigning the loan, the institution has approved the cooperative and the proposed project.

(12 U.S.C. 1749c(b))

§ 614.26 Application by a nonprofit corporation.

(a) The provisions of paragraph (b) of this section apply to a nonprofit corporation—

(1) As described in § 614.2(f); and

(2) That has not been established by the institution or institutions for whose students or faculty the loan is intended to provide housing or other educational facilities.

(b) If a nonprofit corporation that meets the description of paragraph (a) of this section applies for a reservation of funds for a loan, it must assure the Secretary at the time of its application that—

(i) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan; or

(ii) If State law in effect on September 7, 1964, prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(12 U.S.C. 1749c(b))

§ 614.27 Facilities located in jurisdiction without applicable building code.

(a) The provision of paragraph (b) of this section applies to an application for a reservation of funds for a housing loan if—

(1) One of the factors supporting the claim of a housing shortage is the existence of substandard housing; and

(2) The facilities that the loan is intended to replace or rehabilitate do not meet the terms of paragraph (2) of the definition of "substandard housing" in § 614.5(b) because the State or local jurisdiction in which those facilities are located—

(i) Has no building code; or

(ii) Has no building code that applies to the facilities or to the applicant.

(b) An applicant affected by the condition described in paragraph (a)(2)(i) or (ii) of this section shall submit to the Secretary, together with its application, evidence that the facilities would not meet the building code of the geographically nearest jurisdiction with a building code pertinent to the deficiency noted in the application.

(12 U.S.C. 1749a(c)(1))

§ 614.28 Opinion of bond or legal counsel.

(a) An applicant shall submit—or arrange to have submitted—to the Secretary, either by bond counsel, as described in paragraph (b) of this

section, or legal counsel, as described in paragraph (c) of this section, legal opinions with respect to—

(1) The legality of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legality of the debt instrument and collateral on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction or rehabilitation of housing through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) As used in this section, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction or rehabilitation of housing; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(12 U.S.C. 1749a(c)(1))

Subpart D—How Does the Secretary Make a Loan?

§ 614.30 How does the Secretary rank applications for loans?

(a) The Secretary ranks applications for energy conservation loans according to the criteria in § 614.31.

(b) The Secretary ranks applications for housing loans according to the evaluation criteria in § 614.32.

(12 U.S.C. 1749a(c)(1))

§ 614.31 Selection criteria for energy conservation loans.

For projects designed to conserve energy, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Savings in annual operating costs.*

(1) The Secretary examines each application for information that shows the extent to which the proposed project will result in savings in fuel consumption and other energy costs on an annual basis.

(2) The estimated savings in annual operating costs are the difference between—

(i) Average annual routine expenses for heating and cooling and related

energy costs for the previous three years; and

(ii) Projected annual operating costs based on current prices of fuel and related services for the same purposes for the proposed project.

(3) The Secretary awards up to 50 points for this criterion.

(b) *Extent of savings compared with assistance.* (1) The Secretary examines each application for information that shows the extent to which the savings projected for the proposed project will recoup the assistance received under this program.

(2) The Secretary awards up to 50 points for this criterion, and assigns the highest score to projects requiring the least number of months.

(12 U.S.C. 1749a(c)(1))

§ 614.32 Selection criteria for housing loans.

For construction projects, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Previous residential history.* (1) The Secretary examines each application for information that shows whether the applicant qualifies as a historically residential institution.

(2) The Secretary awards 6 points for this criterion.

(b) *Use of existing dormitories.* (1) The Secretary examines each application for information that shows the extent to which the applicant makes effective use of dormitory space that it owns or leases.

(2) Use of dormitory space is measured by the number of assignable square feet per occupant.

(3) The Secretary awards up to 20 points for this criterion, and assigns the highest scores to applicants with the smallest amount of space per occupant.

(c) *Housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a housing deficiency.

(2) Housing deficiency is measured by the number of student accommodations required to—

(i) Eliminate overcrowding; that is, occupancy in excess of design capacity;

(ii) Provide accommodations for students living in substandard housing; and

(iii) Provide accommodations for students living beyond a reasonable commuting distance.

(iv) Provide accommodations for students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the application date.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the greatest housing deficiency.

(d) *Relative housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a relative housing deficiency.

(2) Relative housing deficiency is measured as a percentage obtained by dividing the total housing deficiency in § 614.32(c) by the institution's full-time enrollment.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the highest relative housing deficiency.

(e) *Impact of the proposed project.* (1) The Secretary examines each application for information that shows the impact of the proposed project.

(2) Impact is measured by the number of necessary student accommodations the applicant proposes to add.

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to the applicants proposing the largest number of necessary accommodations.

(f) *Relative impact of the proposed project.* (1) The Secretary examines each application for information that shows the relative impact of the proposed project.

(2) Relative impact is measured as a percentage obtained by dividing the number of necessary accommodations to be provided by the project by the total housing deficiency obtained under § 614.32(c).

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to applicants with the highest relative impact.

(12 U.S.C. 1749a(c)(1))

§ 614.33 Apportionment of loan funds.

(a) The Secretary indicates in the application notice published in the *Federal Register*, the amount of funds available in any fiscal year that will be awarded for projects in each category.

(12 U.S.C. 1749(a)(c)(1))

(b) The Secretary awards to educational institutions in any one State not more than 12.5 percent of the total funds available for loans under this program in any fiscal year.

(12 U.S.C. 1749b)

§ 614.34 Reservation of funds for applications from historically black colleges and universities.

(a) Subject to the restriction in § 614.33, the Secretary, as necessary, may deviate from the rank order of applications for energy conservation

loans and for housing loans to ensure that not less than 10 percent of total funds available and not less than 10 percent of the number of loans that the Secretary makes are reserved for applications from historically black colleges.

(b) The purpose of this reservation of funds is to assist historically black colleges in remedying the adverse effects of past or present discrimination on the adequacy of those colleges' housing facilities or other educational facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.35 Determination of non-availability of equally favorable terms and conditions.

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including—if bonds are to be issued—public advertising for bids.

(12 U.S.C. 1749a(1))

§ 614.36 Loan agreements.

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(12 U.S.C. 1749a)

§ 614.37 Security for the loan.

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, or project revenue, or any combination thereof.

(b) If the Secretary determines that additional security is needed to reasonably assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) Securities or other revenue sources.

(3) A mortgage on other facilities.

(4) A guarantee of the payment of principal and interest by a third party.
(12 U.S.C. 1749a(c)(1))

§ 614.38 Evidence of approved debt instrument.

(a) After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary a debt instrument in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(b) The approved debt instrument referred to in paragraph (a) of this section shall include as appropriate—

(1) A recorded copy of the executed trust indenture between the borrower and the trustee institution or other paying agent; and

(2) The bond, note, or other security approved by the Secretary.

(12 U.S.C. 1749(a); 1749a(c)(1))

§ 614.39 Loan closing.

Loan closing occurs at a time determined by the Secretary.

(12 U.S.C. 1749a(c)(1))

§ 614.40 Interim financing.

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) If the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(12 U.S.C. 1749a(c)(1))

§ 614.41 Limitation on loan amounts.

(a) The maximum loan that the Secretary makes to an eligible applicant is \$3,500,000.

(b) The minimum loan that the Secretary makes to an eligible applicant is \$100,000.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

Subpart E—What Conditions Must Be Met by a Borrower?

§ 614.50 Eligible development costs.

Eligible development costs under this program include architectural and engineering services, construction, legal and administrative services, interest during construction, built-in or installed kitchen equipment, such as ranges and refrigerators, and equipment for food service in central dining facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.51 Ineligible development costs.

Ineligible development costs are the cost of furnishings, other than kitchen and food service equipment, such as

beds, dressers, and tables, whether built-in or movable.

(12 U.S.C. 1749c(c); 1749a(c)(1))

§ 614.52 Additional ineligible costs.

(a) If, under the Act, an applicant files for assistance for a proposed project after the effective date of these regulations, the Secretary excludes from eligible development costs any cost for construction, or for otherwise eligible equipment, if the contract was entered into—

(1) Before the date the applicant filed the application; and

(2) Before the Secretary concurred in the award of the contract.

(b) The Secretary excludes from eligible development costs—

(1) Any costs for land incurred more than two years prior to application date; and

(2) Any costs for the acquisition of an existing structure incurred more than one year prior to the application date.

(12 U.S.C. 1749(c); 1749a(c)(1))

§ 614.53 Fee for government field expense.

(a) For each approved loan, a borrower shall pay a fixed fee that is sufficient to cover the cost to the Government for the site inspections and reviews.

(b) The fixed fee shall be an amount equal to one-eighth of one percent (.00125) of the loan amount, with a minimum charge of \$500 and maximum charge of \$1,500.

(c)(1) The borrower shall compute the fixed fee on the loan amount at the time of the original loan agreement.

(2) After the execution of the loan agreement, the borrower may not make an adjustment in the specified fixed fee.

(12 U.S.C. 1749d)

§ 614.54 Construction account.

(a) A borrower shall deposit in a separate bank account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loans; and

(3) All other money that the borrower will use in paying for the construction, of the approved project.

(b) If the borrower is expending funds of its own on the project, it shall deposit those funds in the Construction Account and expend those funds prior to obtaining any advances from the Secretary.

(c) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(d) Accounting for this account shall be in accordance with generally accepted accounting principles.

(12 U.S.C. 1749a(c)(1))

§ 614.55 Investment of idle construction funds.

(a) If the money on deposit in the Construction Account exceeds the estimated disbursements for the next 90 days, the Secretary encourages the borrower to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An investment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(d) Any interest earned on the investment of idle funds in the Construction Account during the construction period shall be deposited in the Construction Account. Any such interest shall be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess shall be used to reduce the outstanding principal amount of the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.56 Procedure for loan disbursement.

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(12 U.S.C. 1749a(c)(1))

§ 614.57 Disposal of balance remaining in the Construction Account.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(12 U.S.C. 1749a(c)(1))

§ 614.58 Determination of final approved development costs.

(a) For the purpose of determining the final approved development costs, the

Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development cost prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, organizational, and offside costs and other items of expense approved by the Secretary.

(12 U.S.C. 1749c(c); 1749a(c)(1))

§ 614.59 Application of pledged revenues.

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues into a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(12 U.S.C. 1749a(c)(1))

§ 614.60 Length and maturity of loan.

(a)(1) The maximum repayment period for a housing loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, renovated or purchased with the proceeds.

(b) The repayment period for an energy conservation loan shall normally be the time required for projected operating savings to equal the costs of the project, plus 2 years.

(c) Loans shall bear interest at a rate not to exceed three percent per annum.

(d) Unless the Secretary authorizes otherwise—

(1) The borrower shall repay the loan in not less than annual nor more than

semiannual equal installments of principal and interest.

(2) However, for a reasonable period of time—normally not exceeding two years following the date of the loan—a borrower may make payments of interest only.

(12 U.S.C. 1749(c))

§ 614.61 Borrower's non-financial obligations.

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities; and

(d) Repair and maintain the project facilities.

(12 U.S.C. 1749a(c)(1))

§ 614.62 Deferments.

(a) A borrower may request—and the Secretary may grant—deferment of any repayment due on a loan under this program if the borrower has—

(1) Complied with—

(i) The terms and conditions of the loan agreement; and

(ii) All nonfinancial obligations under § 614.61;

(2) Properly applied and accounted for all assets pledged as security under the loan agreement; and

(3) Submitted a financial plan that satisfies the Secretary that the borrower is remedying the conditions that caused the request for deferment.

(b) If the Secretary agrees to a deferment, that deferment normally does not exceed one year unless the borrower provides evidence, and the Secretary agrees, that a longer deferment is necessary.

(c) The Secretary does not grant a deferment if the borrower proposes to do any of the following:

(1) Use pledged revenues for any purpose or purposes other than that provided in the loan agreement.

(2) Create another lien on the facilities assisted under this program.

(3) Release obligors, co-obligors, or guarantors under the loan.

(4) Request a reduction of principal or interest.

(12 U.S.C. 1749a(c)(8))

Appendix A.—Guides for Determining Minimum Energy Savings

In connection with projects intended to conserve energy, the applicant indicates its compliance with minimum energy conservation measures through completion of the following checklist:

Code: 1 = No (no considerable involvement in this activity).

Code: 2 = Yes (considerable involvement in this activity).

Code: 3 = N.A. (not applicable).

Specific temperature ranges and thermostat settings:

☐ 65°–68° Winter

☐ 75°–80° Summer

☐ Reduction in illumination levels and lamp wattage

☐ Substantial night and weekend building shutdowns

☐ Consolidation of activities into fewer buildings, particularly during evenings and weekends

☐ Development of energy efficient space allocation practices

☐ Scheduling of institutional vacations during energy intensive periods

☐ Restrictive policy on appliance usage

☐ Restrictive policy on air conditioning installation

☐ Reduction of domestic hot water temperature

☐ Manual reduction of fresh air makeup

☐ Manual monitoring of buildings

☐ Work schedule adjustments to maximize daylight working hours

☐ Reduction of building heat leakage by using blinds and drapes

☐ Maintenance review of existing energy systems:

☐ Inspection and regularized maintenance of steam traps

☐ Inspection and correction of valve functions and air filtration systems where needed

☐ ORSAT analysis of flue gases

☐ Total involvement of institutional community:

☐ Faculty, staff, and student energy committee

☐ Appointment of building energy monitors

☐ Energy briefing sessions with building occupants

☐ Campus-wide energy awareness programs

If the answer to any of the above is "no," please attach a brief explanation.

[FR Doc. 82-13512 Filed 5-19-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Application Notice for New Projects Under the College Housing Program for Fiscal Year 1982

Applications are invited for new projects under the College Housing Program.

Authority for this program is contained under Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81-475; 12 U.S.C. 1749-1749d, and under Section 306 of the Department of Education Organization Act (Pub. L. 96-88).

Under this program, the Secretary is authorized to award low-interest loans to assist eligible institutions (1) in providing housing and other educational facilities for student and faculty members, and (2) in conserving energy, and reducing related operating costs.

Closing Date for Transmittal of Applications: Applications for awards must be mailed (post-marked) or hand-delivered by June 30, 1982.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Attention: 84.142, College Facilities Branch, 400 Maryland Avenue, SW., (ROB-3, Room 3717), 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.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, College Facilities Branch, Room 3717, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturday, Sunday, or Federal holidays. Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The College Housing Program provides low-interest 3 percent long-term loans to postsecondary educational institutions for the construction, rehabilitation or acquisition of student and faculty housing and related facilities and for conserving energy and reducing related operating costs.

Regulations for this program are published in the regulations section in this issue of the **Federal Register**. The regulations specify selection criteria for the two types of loans available under this program. All applications are ranked according to the criteria contained in §§ 614.31 and 614.32 of the program regulations.

Available Funds: There is authorized \$75,000,000, or the amount of income less expenses, whichever is less, to be made available for College Housing Loans. Funds available for commitment for new loans in fiscal year 1982 are estimated to be approximately \$10,000,000. However, the total amount available will not be known until the end of the fiscal year. Gross commitments for the principal amount of direct loans may not exceed \$75,000,000. If the amount of available funds is greater than \$30,000,000, twenty-five percent of the available funds will be apportioned for energy conservation loans and seventy-five percent of the available funds will be apportioned for housing loans. If the amount of available funds is \$30,000,000 or less, the total amount will be used for energy conservation loans.

Application Forms: Application forms and program information packages are available.

Application packages will not automatically be mailed to all institutions of higher education. Copies may be obtained by writing to the

College Facilities Branch, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the criteria, instructions, and forms included in the program information packages.

Applicable Regulations: The regulations applicable to this program are—

- (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.179-75.173; and
- (b) The final regulations governing the College Housing Program, 34 CFR Part 614, published in this issue of the **Federal Register**.

Special Procedures: On or before the deadline for submitting its application to the Secretary, the applicant shall submit a copy of its application, with a letter asking for comment, to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A-95. The applicant shall also submit a copy of its application to the appropriate State agency for postsecondary education. Comments, if any, are to be addressed to the College Facilities Branch, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202. Comments must be received within 20 days after the deadline date if they are to be considered. The applicant shall attach to its application to the Secretary a copy of its letter requesting the State and areawide clearinghouses to comment on the application.

FOR FURTHER INFORMATION CONTACT:

Charles I. Griffith, College Facilities Branch, Department of Education, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202. Telephone: (202) 245-3253.

(12 U.S.C. 1749-1749d)

Dated: May 12, 1982.

(Catalog of Federal Domestic Assistance No. 84.142, College Housing Program)

Thomas P. Melady,

Assistant Secretary for Postsecondary Education.

[FR Doc. 82-13511 Filed 5-19-82; 8:45 am]

BILLING CODE 4000-01-M

Department of the Interior

Thursday
May 20, 1982

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

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

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 901****Conditional Approval of the Permanent Regulatory Program Submission From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977**

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

ACTION: Final rule.

SUMMARY: On January 11, 1982, the State of Alabama resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) 30 U.S.C. 1201 *et seq.* This resubmission follows an initial disapproval which was published in the *Federal Register*, on October 16, 1980 (45 FR 68665-68673). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. Since the original submission was disapproved, the resubmission consists of the entire program which will be considered in its entirety on this decision. This rule grants conditional approval of the Alabama permanent program. A new Part 901 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective May 20, 1982. This conditional approval will terminate as specified in 30 CFR 901.11 unless the deficiencies below have been corrected in accordance with the dates specified in 30 CFR 901.11.

ADDRESSES: See "Supplementary Information" for addresses where copies of the Alabama Program and administrative record on the Alabama program are available.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Phone: 202/343-5351.

SUPPLEMENTARY INFORMATION:**Availability of Copies**

Copies of the Alabama program and the administrative record on the Alabama program are available for public inspection and copying during regular business hours at:

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, TN 37902.

Office of Surface Mining, Administrative Record Room, Room 5315, 1100 L Street, N.W., Washington, D.C. 20204.

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, AL 35501.

In addition, copies of the full text of the program are available for inspection during regular business hours at the following locations:

Office of Surface Mining, Administrative Record Room, Room 5315, 1100 L Street, N.W., Washington, D.C. 20204.

Alabama Surface Mining Commission, 100 Third Street, Fort Payne, AL 35967.

Background

The general background on the permanent program, the program approval process, and the Alabama program submission were discussed in the *Federal Register*, October 16, 1980 (45 FR 68665-68673). Subsequent to that *Federal Register* notice, amendments to the Federal regulations were published December 12, 1980 (45 FR 82084); July 17, 1981 (46 FR 37233); September 29, 1981 (46 FR 47720); October 8, 1981 (46 FR 50018); October 28, 1981 (46 FR 53376) and December 7, 1981 (46 FR 59934). An interpretive rule was published November 7, 1980 (45 FR 73945-73946). Additional regulations were suspended pending further rulemaking August 19, 1981 (46 FR 42063).

Also, in the October 16, 1980, *Federal Register* notice the Secretary announced his disapproval of the Alabama program and specified the reasons for disapproval.

Background on the Alabama Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), The State of Alabama originally had 60 days from the date of publication of the Secretary's disapproval decision on October 16, 1980, to resubmit a revised program for consideration. On November 12, 1980, the Circuit Court of Walker County, Alabama, enjoined the Alabama Surface Mining Reclamation Commission from submitting or resubmitting to the Office of Surface Mining (OSM) the Alabama Permanent State program. By order of the court dated January 8, 1982, the injunction was dissolved and the State was ordered to submit the State program on or before January 11, 1982. The State submitted its revised program for consideration on January 11, 1982. Announcement of Alabama's resubmission was made in newspapers

of general circulation within the State of Alabama and published in the *Federal Register* on January 15, 1982 (47 FR 2338-2340). That *Federal Register* notice also announced a public comment period extending to February 16, 1982, and a public hearing which was held on February 11, 1982, in Jasper, Alabama. Alabama submitted modifications to the resubmission on April 9, 1982, and a public comment period was opened on these modifications April 20 through April 30, 1982 (47 FR 16797, April 20, 1982).

Public disclosure of comments by Federal agencies was made on May 13, 1982 (47 FR 20631). On May 13, 1982, the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Alabama program.

The Regional Director completed his program review on May 6, 1982, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On May 11, 1982, the Director recommended to the Secretary that the Alabama program be conditionally approved.

The basis and purpose statement for the Secretary's decision to conditionally approve Alabama's consists of this notice. The Alabama program consists of the formal submission of January 11, 1982, (Administrative Record No. AL-326A), as clarified in a meeting with OSM on April 9, 1982. (See AL-347.)

Throughout the remainder of this notice, "Alabama program," "Alabama submission," or "Alabama resubmission" is used to mean the documents cited above. The term "original submission" is used to mean the submission of March 3, 1980, which was subsequently disapproved by the Secretary. The terms "Alabama Surface Mining Reclamation Commission" and "Alabama Surface Mining Commission" are synonymous, the word "Reclamation" having been dropped recently from the former term.

The Secretary's Findings below are organized to follow the order set forth in section 503 of SMCRA and 30 CFR 732.25, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program.

Secretary's Findings

Section 503(a) of SMCRA Findings: In accordance with section 503(a) of SMCRA, the Secretary finds that Alabama has the capability to carry out the provisions of SMCRA. Findings

made in accordance with section 503(a) of SMCRA are set forth in Findings 1 through 7 below.

Finding 1

The Secretary finds that the Alabama Surface Mining Control and Reclamation Act of 1981, Act No. 81-435 (Alabama SMCRA), and the regulations adopted thereunder provide, except as noted below, for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Alabama in accordance with SMCRA. This finding is based on the requirements of section 503(a)(1) of SMCRA (30 U.S.C. 1253(a)(1)). The issues underlying this finding are analyzed in finding 1.1 and 1.2 below.

1.1 In section 10(f), the Alabama SMCRA provides that appeals to circuit court from Commission decisions are to be tried *de novo*. Section 526(b) of SMCRA provides that when decisions of the Secretary are reviewed judicially in Federal Court, the review is "solely on the record made before the Secretary." Section 526(e) also states that "Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law * * *". The practice of *de novo* appeals is acceptable provided seven specific conditions or criteria are met.

In an executive session at OSM Headquarters in Washington, D.C. on April 9, 1982, duly authorized representatives of Alabama committed the State to the seven specific criteria as indicated under the following individual items (a) through (g). (Administrative Record No. AL-347).

(a) Insure preservation of the administrative record, including all exhibits and transcripts of all testimony taken at the proceeding. Alabama referenced section 10(f) of the Alabama SMCRA which assures compliance with the criterion.

(b) Guarantee that the party to a *de novo* review proceeding has the right to use any evidence contained in the administrative record whenever such evidence cannot otherwise be practicably obtained. Alabama explained that, under its case law, prior sworn testimony may be used if a witness is unavailable. Additionally, such testimony may be used at any time for impeachment.

(c) Insure that any money paid into escrow is held until there is a final binding resolution of the controversy. Alabama referenced section 26(c) of ASMCRA to satisfy the criterion.

(d) Demonstrate that the provisions for trial *de novo* will not result in undue

delay so as to undermine the effectiveness of the enforcement program. Alabama referenced section 10(f) of ASMCRA to satisfy the criterion.

(e) Make trial *de novo* review available to any party to the administrative proceeding, including the regulatory authority and any intervening parties. Alabama referenced section 10(f) of ASMCRA to satisfy the criterion.

(f) Insure that review by trial *de novo* is not available to a person who has failed to appear at or waived his right to an administrative hearing. Alabama referenced section 10(d)(2) of ASMCRA to satisfy the criterion.

(g) Provide for representation of the regulatory authority by a licensed attorney at law at every stage of the judicial review proceeding. Alabama referenced section 10(d)(1) of ASMCRA and assured that the regulatory authority will be represented at every stage of the judicial review proceeding by the Alabama Attorney General's Office.

In view of these commitments, the Secretary finds that Alabama's procedure for trial *de novo* under the prescribed conditions is no less effective than the Federal review procedure.

1.2 In section 27(f) the Alabama SMCRA fails to provide for "reasonable attorney and expert witness fees" as required by section 520(f) of SMCRA. Since the Federal Act imposes this requirement, the State program is not in accordance with that Act. Therefore, approval of the Alabama program is conditioned upon a statutory amendment to the Alabama SMCRA to provide for reasonable attorney and expert witness fees.

Finding 2

The Secretary finds that the Alabama SMCRA provides sanctions for violations of Alabama laws, regulations or conditions of permits, and these sanctions meet the minimum requirements of SMCRA. This finding is based on the requirements of section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)).

Finding 3

The Secretary finds that the Alabama Surface Mining Commission has sufficient administrative and technical personnel and sufficient funds to enable Alabama to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding is based on the requirements of section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)).

Finding 4

The Secretary finds that the Alabama SMCRA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA. This finding is based on the requirements of section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)).

Finding 5

The Secretary finds that Alabama has established an adequate process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 of SMCRA, 30 U.S.C. 1271. This finding is based on the requirements of section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)).

Finding 6

The Secretary finds that Alabama 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 is based on the requirements of section 503(a)(6) of SMCRA (30 U.S.C. 1253(a)(6)).

Finding 7

The Secretary finds that Alabama has fully enacted regulations which, except for minor deficiencies discussed in the Findings, are no less effective than 30 CFR Chapter VII. This finding is based on the requirements of section 503(a)(7) of SMCRA (30 U.S.C. 1253(a)(7)). The issues underlying this finding are analyzed in Findings 12 through 30, below.

Section 503(b) of SMCRA Findings

As required by section 503(b)(1)-(3) of SMCRA, 30 U.S.C. 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.

Finding 8

The Secretary has 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 Alabama program.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Alabama program which

relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175) and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

Finding 10

The Secretary held a public hearing in Jasper, Alabama on February 11, 1982, on the adequacy of the Alabama program submission.

Finding 11

The Secretary finds that the State of Alabama has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA. This finding is based on the requirements of section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Alabama program resubmission, public comments and testimony, written representations at the public hearings, and other relevant information in the administrative record. At a meeting on April 9, 1982, at OSM Headquarters, Washington D.C. (Administrative Record No. AL-347) Alabama agreed to certain regulation changes and interpretations, and to certain policies to be implemented by the State. In the following findings the term "the State has agreed" or similar terms refer to agreements reached at that meeting.

Finding 12

In accordance with § 732.15(a), the Secretary finds that, except as noted below, the program provides for Alabama to carry out the provisions and meet the purposes of SMCRA. The State legislative authority is discussed in Findings 1, 2 and 4. State regulations and narrative descriptions are discussed in Findings 12 through 30. Issues which are general in nature and do not apply to individual sections are analyzed as follows:

12.1 In the definition of "Extraction of Coal as an Incidental Part" at section 700.5, the State has omitted from its definition all except the first sentence of the Federal definition (30 CFR 700.5). The omitted part contains language stating that extraction of coal from areas outside the right of way or boundaries of the area affected by the construction of a government financed project shall be subject to regulation. The intent of SMCRA and the Federal regulations is to exempt only the area directly affected by construction of the project, not some

larger area being mined. Approval of the Alabama program is conditioned upon a change to the Alabama regulations to include provisions no less effective than the Federal definition. Alabama has agreed that until a regulation change is accomplished, the State will interpret the present wording to include regulation of all areas included by the Federal definition. The Secretary finds this solution to be no less effective than the Federal definition.

12.2 The State's definition of "Federal Lands" at section 700.5 states: "any land, including mineral * * *". The Federal definition at 30 CFR 700.5 states: "any land, including mineral interests * * *". This is a typographical error and the word "interests" should be included. Approval of the Alabama program is conditional upon a revision to the regulation to correct the typographical error by inserting "interests" after "mineral". The Secretary finds that the insertion will render the State definition no less effective than the Federal definition.

12.3 The State's definition of "Groundwater" at section 700.5 states: "Groundwater means subsurface water that fills available openings in rock or soil materials below the zone of saturation". The Federal definition at 30 CFR 701.5 states: "Groundwater means subsurface water that fills available openings in rock or soil material to the extent that they are considered water saturated." Further, Alabama's definition of water table is inconsistent with its own definition of groundwater. The Federal definition includes the water table (irregular), capillary water (if appropriate) and the zone of saturation (groundwater). The State's definition includes only that water below (the bottom of) the zone of saturation. Consequently, much water included in the Federal definition is omitted from the State definition. As a condition of approval, Alabama must revise its regulations to correct the deficiency by substituting "in" for "below". The Secretary finds that the substitution will render the definition no less effective than the Federal counterpart.

12.4 In its definition of "Surface Coal Mining Operations" at section 700.5, the State has omitted language stating that extraction of coal from refuse piles is covered. Remining coal refuse piles is an activity contemplated by SMCRA as requiring regulation. The Federal definition of "surface mining activities" at 30 CFR 701.5 makes it clear that such activity is covered. Alabama has agreed, as a matter of policy to interpret its regulations to include within the scope of the regulatory program remining of

coal refuse piles. Based on this assurance, the Secretary finds that this interpretation will render the definition no less effective than the Federal counterpart.

12.5 The Federal definition of "Historic Lands" at 30 CFR 762.5 includes important language relative to: (1) "Sites having religious or cultural significance * * *" and (2) "sites for which historic designation is pending." This language is omitted from the State definition at section 700.5. The Secretary finds that the omitted or comparable provisions should be included in the State's definition so as to define those sites which the regulatory authority must consider in the designation of lands unsuitable process. Therefore, as a condition of approval, Alabama must amend its unsuitability regulations to provide for lands having religious, cultural or historic significance. The Secretary believes the present language, while lacking desirable details, is sufficiently specific to enable the Regulatory Authority to offer the necessary protection to valuable sites until a regulation change can be accomplished.

Finding 13

The Secretary finds that the Alabama program submission demonstrates, except as noted below, that the Alabama Surface Mining Commission has authority under Alabama laws to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, and the Alabama program includes provisions adequate to do so. Special provisions comparable to 30 CFR Parts 820, 822 and 825 for anthracite mines and operations in alluvial valley floors are not applicable to or included in the Alabama law or regulations. This finding is made under the requirements of 30 CFR 732.15(b)(1). Alabama incorporates provisions corresponding to sections 515 and 516 of SMCRA in Title III, Alabama SMCRA sections 22 and 23 and in the Alabama Regulations Subchapter K.

Discussion of significant issues raised during the review of the Alabama environmental performance standards follows.

13.1 Section 815.15(a) of 30 CFR states that wildlife habitats "shall not be disturbed during coal exploration." Alabama's section 815.15(a) qualifies this prohibition by stating that such habitats "shall not be unnecessarily disturbed." Therefore, as a condition of approval, Alabama must amend its regulation to delete the word "unnecessarily". The Secretary has

agreed to Alabama's suggestion that "significantly" may be substituted for "unnecessarily". Alabama has further agreed that until a regulation change is accomplished, any significant disturbance will be considered to be unnecessary.

13.2 Alabama section 819.11(c) requires that auger holes be plugged and sealed "contemporaneous" with the mining. Section 819.11(c) of 30 CFR requires sealing within 72 hours in some instances. Although a review of the preamble of the Federal regulations failed to produce support for the specific time period listed (72 hours), support is found for requiring that auger holes be plugged quickly after they are drilled. The State uses the phrase "contemporaneous with the augering operation". It was unclear what amount of time the State contemplates in the use of the word "contemporaneous". Alabama has agreed that it will interpret "contemporaneous" to mean seventy-two (72) hours when an acid coal seam is encountered or other hazardous or potentially harmful conditions are present. Based on this interpretation, the Secretary finds Alabama section 819.11(c) to be no less effective than the Federal counterpart.

13.3 Part 823 of Alabama's regulations does not include a proper "Scope" section comparable to 30 CFR 823.1. Instead of a "Scope" section which sets out what the part regulates, Alabama has stated what is not regulated. Alabama has indicated that a large part of the Scope section was omitted through typographical error and has agreed to include an appropriate Scope section. As a condition of approval Alabama must revise its regulations to include an appropriate Scope section.

13.4 Section 823.12 of the State's prime farmland regulations allows the C horizon or a combination of horizons to be substituted for the A horizon. No provision is made for a like substitution in 30 CFR 823.12. Alabama's regulations state that when C horizon or a combination of horizons is substituted for the A horizon, the substitute shall "be equal or more favorable for plant growth than the A horizon". The State, however, fails to specify that any tests be made to provide that the substituted horizons are sufficient. Alabama has agreed that it will obtain a recommendation from the U.S. Soil Conservation Service (SCS) and that the Regulatory Authority will not approve the substitution unless said substitution is approved by SCS. Based on this policy, the Secretary finds that Alabama

section 823.12 is no less effective than the Federal counterpart.

13.5 The State language at section 823.15 is less effective than 30 CFR 823.15. State section 823.15 reads " * * * shall meet the following revegetation requirements of section 816.116(c) and * * *". By inclusion of the word "following" it is implied that only those parts of section 816.116(c) which appear thereafter need be adhered to. If interpreted in this way, a good part of section 816.116(c) would be voided. Therefore, as a condition of approval, Alabama must revise its regulations to omit the word "following" or place it after "and". The Secretary believes that the above change will render State section 823.15 no less effective than the Federal counterpart.

13.6 State section 824.11(a)(3) includes "forestry" as an approved postmining land use for mountain top removal areas. Section 824.11(a)(3) of 30 CFR omits "forestry" as an approved postmining land use for such areas. Section 515(c)(3) of SMCRA also does not allow "forestry" as a land use when the mountain top removal exception to the approximate original contour (AOC) is used. SMCRA allows only "industrial, commercial, agricultural, residential or public facility" uses. Alabama has agreed to limit its interpretation of forest land or forestry to encompass only land used for, or the process of tree farming or silviculture. The planting of trees as ground cover only or to establish woodlands is not included. Based on this interpretation, the Secretary finds Alabama section 824.11(a)(3) no less effective than the Federal counterpart.

13.7 Sections 816.42 (a) and (c) and 817.42 (a) and (c) of 30 CFR require that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. OSM has determined that sedimentation ponds represent the best technology currently available. The State regulations at 816.42(a) and 817.42(a) direct that such drainage be passed through sedimentation ponds "or a treatment facility".

Therefore, as a condition of approval Alabama must revise its regulations or otherwise amend its program to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds, and should Alabama wish to approve any other technology, the State will first submit the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Alabama has

agreed not to use its authority to approve treatment facilities other than sedimentation ponds or the approval will terminate immediately.

Additionally, the State regulations contain no counterpart to the Federal regulations at 30 CFR 816.42 (a) and (b) and 817.42 (a) and (b). These Federal regulations require that where drainage from the disturbed area and drainage from areas not currently disturbed are mixed in the same sedimentation pond or ponds, the specified effluent limitations must be met by the ponds' total discharge. The State has agreed that all discharges from ponds, whatever the source, will be required to meet the specified effluent limits. Based on this interpretation, the Secretary has determined that the above policy statement renders the State regulations regarding sediment ponds no less effective than 30 CFR 816.42 (a)-(c) and 817.42 (a)-(c).

13.8 Sections 816.49(b) and 817.49(b) of 30 CFR reference 30 CFR 816.46(e)-(u) and 817.46(e)-(u) respectively. State sections 816.49(b) and 817.49(b) reference only State sections 816.46(c)-(h) and 817.46(c)-(h), respectively because other sections have been omitted from the State sections 816.46 and 817.46. As a condition of approval, Alabama must revise its regulations to include criteria no less effective than those at 30 CFR 816.46(e)-(u) and 817.46(e)-(u) and to reference all appropriate sections in Alabama regulations 816.49(b) and 817.49(b). Alabama has agreed that until a regulation change is accomplished, it will not issue any permanent program permits that are inconsistent with Federal requirements of 30 CFR 816.46 (e)-(u) and 817.46(e)-(u). The Secretary believes that the above regulation change and policy statement render the State regulations no less effective than the Federal counterparts.

13.9 Alabama sections 816.49(c) and 817.49(c) specify a static safety factor of 1.5 and perimeter slopes that are stable. Sections 816.49(c) and 817.49(c) of 39 CFR specify slopes not steeper than 1v:2h and stable. The State leaves the design to the engineer. Some slopes would not be stable at grades flatter than 1v:2h. The issue is not a matter of 1.5 safety factor vs 2:1 slope. The Federal regulations require a minimum slope in addition to stability which provides an additional degree of safety. Therefore, as a condition of approval, Alabama must revise its regulations to include the 1v:2h slope limit requirement. Alabama has agreed that until a regulation change is accomplished, the State will not issue

any permanent program permits that permit a slope greater than 1v:2h. The Secretary finds that the agreed upon regulation change and policy statement render the above State sections no less effective than the Federal counterparts.

13.10 Sections 816.49(f) and 817.49(f) of 30 CFR provide that all dams and embankments meeting criteria for regulation under 30 CFR 77.216(a) shall be routinely inspected in accordance with 30 CFR 77.216-3. The State sections 816.49 and 817.49 contain no counterpart and should be amended. Additionally, the State sections 816.49(g) and 817.49(g) require that dams and embankments be certified by a qualified registered professional engineer only immediately after construction while sections 816.49(h) and 817.49(h) of 30 CFR also require annual certification. Therefore, as a condition of approval Alabama must revise its regulations to include provisions for routine inspections meeting the standards of 30 CFR 77.216-3 and requiring that all inspection reports thus generated be kept available for inspection at the mine site, and to provide that all appropriate dams and embankments shall be routinely inspected in accordance with 30 CFR 77.216-3 and that all resulting reports be kept on the minesite. In addition, all certifications, reports, and statements required by MSHA must be filed with the Regulatory Authority. Alabama agreed that until a regulation change was accomplished, it would implement the new language as a matter of policy. The Secretary finds that the agreed upon regulation change and policy statement render the above State sections no less effective than the Federal counterparts.

13.11 Alabama sections 816.311(c) and 817.313(c) enable interruption of operations due to events of "force majeure", including labor disputes not to be considered temporary cessations. Section 816.131 of 30 CFR does not contain a comparable provision. Labor "dispute" is too broad a term. Alabama has agreed to define "force majeure" as applying only to actual labor strikes. The Secretary agrees that this clarification of this provision renders the State regulations no less effective than the Federal regulations.

13.12 Alabama sections 816.71(o) and 817.71(o) allow disposal of coal processing waste in head-of-hollow and valley fills. This is contrary to 30 CFR 816.71(k) and 817.71(k) which specifically forbid such disposal. As a condition of approval, Alabama must revise its regulations to the effect that disposal of processing waste in head-of-hollow and valley fills is not allowed. Alabama has further agreed that until a

regulation change is accomplished it will, as a matter of policy, not allow disposal of coal processing waste in head-of-hollow and valley fills. The Secretary finds that the agreed upon regulation change and policy statement render Alabama sections 816.71(o) and 817.71(o) no less effective than the Federal counterparts.

13.13 Sections 816.71(f) and 817.71(f) of 30 CFR require the spoil to be placed in horizontal lifts. The corresponding State sections 816.71(c) and 817.71(c) omit this requirement. Horizontal lift placement is essential to ensure proper compaction. As a condition of approval, Alabama must revise its regulations to the effect that spoil will be placed in 4' horizontal lifts unless other placement is specifically agreed to by OSM. Alabama has agreed that, until a regulation change is accomplished, the State will issue no permits which are at variance with existing Federal regulations. The Secretary finds that the agreed upon regulation change and policy statement render Alabama sections 816.71(f) and 817.71(f) no less effective than the Federal counterparts.

13.14 Sections 816.71(i) and 817.71(i) of 30 CFR contain provisions for slopes greater than 36% and reference other sections for additional requirements (referenced are 30 CFR 780.35(c) and 784.19, respectively). The corresponding State sections are missing and no equivalent references are included. Consequently, Alabama regulations contain no special provisions for handling slopes greater than 36%. As a condition of approval, Alabama must revise its regulations to include counterparts to 30 CFR 816.71(i) and 817.71(i) with appropriate inclusion and references to counterparts of all sections referenced in 30 CFR 816.71(i) and 817.71(i). Alabama has further agreed that until a regulation change is accomplished the State would, as a matter of policy, require adherence to the provisions of 30 CFR 816.71(i) and 817.71(i). The Secretary finds that the agreed upon regulation change and policy statement render the above mentioned State sections no less effective than the Federal counterparts.

13.15 The State has omitted sections comparable to 30 CFR 816.72, 816.73, 817.72 and 817.73. The omission completely deletes specific requirements for head-of-hollow and valley fills from the State regulations. Specific criteria required by present Federal regulations include underdrain sizing criteria and lift thickness limitations. As a condition of approval, Alabama must revise its regulations to include the omitted sections regarding specific requirements

for head-of-hollow and valley fills. Alabama has agreed that until a regulation change is accomplished it will, as a matter of policy, require compliance with applicable provisions of 30 CFR 816.72, 816.73, 817.72 and 817.73. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

13.16 State sections 816.46 and 817.46 do not provide a minimum sediment storage volume. Certain criteria required for the design of sedimentation structures in 30 CFR 816.46 and 817.46 were suspended. (See 44 FR 77447 (Dec. 31, 1979).) However, the portions of 30 CFR 816.46(b) and 817.46(b) requiring some minimum sediment storage volume have not been remanded. In addition, both Federal and State sections 780.25(b) and 784.25(b) require that the design plan conform to 816.46 and 817.46, respectively. Therefore, the basic criteria for a minimum storage volume should be included in State sections 816.46 and 817.46 so that some minimum storage volume will have to be included in the design, even though the specific criteria of 816.46(b)(1) & (2) and 817.46(b)(1) & (2) are not required. Such minimum storage criteria can be determined by the regulatory authority on a blanket basis or a case by case basis or left to the engineer with the approval of the regulatory authority.

Therefore, as a condition of approval, Alabama must revise its regulations to include the basic criteria for minimum storage volume no less effective than the Federal requirements. Alabama has further agreed that until a regulation change is accomplished, the State will as a matter of policy adopt the new language. The Secretary finds that the agreed upon regulation revision and policy statement render the above State section no less effective than the Federal counterparts.

13.17 Sections 816.46(u) and 817.46(u) of 30 CFR require that after the pond is removed, revegetation be conducted in accordance with 816.100-816.106 and 817.101-817.106, respectively. Alabama regulations require compliance with 816.101-816.106 and 817.101-817.107 respectively. Sections 816.100 and 817.100 require reclamation as contemporaneously as practicable with mining operations. As a condition of approval, Alabama must correct the typographical errors to read "816.100 and 817.100" instead of "816.101 and 817.101". Alabama has agreed that until such corrections are made the State will require adherence to 30 CFR 816.100 and

817.100. The Secretary finds that the proposed corrections and policy statement render the State regulations no less effective than the Federal counterparts.

13.18 State sections 816.46 and 817.46 do not contain design criteria for sedimentation ponds found at 30 CFR 816.46 (e)-(u) and 817.46 (e)-(u). As a condition of approval, Alabama must revise its regulations to include in State sections 816.46 and 817.46 design criteria no less effective than those found in 30 CFR 816.46(e)-(u) and 817.46(e)-(u). Alabama has agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that are inconsistent with the Federal requirements of 30 CFR 816.46(e)-(u) and 817.46(e)-(u). The Secretary finds that the agreed upon regulation change and policy statement render the State regulation no less effective than the Federal counterparts.

13.19 State section 816.64(b)(2)(ii) does not contain the Federal requirement at 30 CFR 816.64(b)(2)(ii) that blasting periods shall not exceed an aggregate of four hours in any one day. Section 515(b)(15)(A) of SMCRA requires blasting according to a schedule. The State's regulations would allow time periods to be listed which would cover almost all hours of daylight and this could not be construed as a schedule. Therefore, Alabama's rule is not in accordance with SMCRA. Therefore, as a condition of approval, Alabama must revise its regulations to provide a requirement consistent with the four-hour aggregate provision of 30 CFR 816.64(b)(2)(ii). Alabama has agreed that until a regulation change is accomplished, it will not issue any permanent program permits that are inconsistent with 30 CFR 816.64(b)(2)(ii). The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterpart.

13.20 Sections 816.65(i) and (k) of 30 CFR require the maximum ground vibrations from an explosion detonation not to exceed 1.0 inch per second. The State counterpart allows the maximum peak particle velocity to be as high as 1.4 inches per second. Also, the formula and table in the State's 816.65(1) and (2) do not comply with the Federal counterpart. The U.S. District Court for the District of Columbia did not invalidate or remand 30 CFR 816.65(i) in its May 16, 1980, decision on the permanent program rules (*In re: Permanent Surface Mining Regulation Litigation*, (D. D.C. May 16, 1980) CA No. 79-1144 (Round 2)). Therefore, as a

condition of approval, Alabama must revise its regulations to reflect the 1.0 inch per second criterion and to adopt a scale distance of 60 in the formula in section 816.65(k)(1) with appropriate corrections to the table in section 816.65(k)(2). Alabama has agreed that until a regulation change is accomplished, it will not issue any permanent program permits which are inconsistent with 30 CFR 816.65(i), (k), and (1). The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulation no less effective than the Federal counterpart.

13.21 At section 817.101 the State has added to its regulations which require that surface areas which are disturbed incident to underground mining be backfilled and graded the approximate original contour, Subsection (c) which gives the Regulatory Authority discretion not to require operators to redistribute fills which have become settled, stabilized and revegetated. SMCRA requires that areas which have been disturbed by surface coal mining (including surface impacts incident to underground mines) shall be backfilled and graded to restore AOC. Section 516 of SMCRA does not exempt any part of an underground operation from this requirement. While the addition could be as effective as the Federal regulation and has merit in that it would prevent redistribution of partially recovered land, additional safeguards are necessary to prevent misuse of the provision.

Alabama has agreed to interpret existing regulations for the permit reclamation plan to not allow irregular or incongruent contours as a result of long-term spoil disposal. Based on this interpretation, the Secretary finds the State's addition, together with this policy statement, to be no less effective than the Federal counterpart.

Finding 14

The Secretary finds, except as noted below, that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and the Alabama program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G. This finding is made under the requirements of 30 CFR 732.15(b)(2). Alabama incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Title III, Alabama SMCRA Sections 13, 14, 15, 16, 17, 18 and 20 and in the Alabama regulations Subchapter G. Discussion of significant issues raised

during the review of the Alabama permitting provisions follows.

14.1 The map scale of 1"-1000' required by the State regulations at 780.14(b) for permit maps was originally considered inadequate for technical review and less effective than the scale required by 30 CFR 771.23(e)(1). Alabama has explained that Alabama Section 780.14 establishes a minimum scale of 1"-1000'. Alabama stated this latitude is necessary because of the three distinctly different types of coal deposits found in Alabama: the Appalachian Plateau, the Valley and Ridge, and the Gulf Coast lignite. Each of these coal deposits when covered under a multi-year permit could cover very large or highly elongated tracts of land. To be limited to a single scale of 1"-500' could create situations that would be less accurate than would be found on a map of a larger scale. Drainage patterns and area may not be adequately represented, and critical physical features could be omitted. It also gives the Regulatory Authority discretion to require a larger scale when needed to clearly show all critical natural and man-made features. The Secretary finds that with proper exercise of discretionary power by the Regulatory Authority, Alabama section 780.14, is no less effective than 30 CFR 771.23(e)(1).

14.2 State Regulations 780.14(a) and 784.14(a) omit the requirement to identify the current use of the buildings which is included in 30 CFR 780.14(a) and 784.14(a) and is needed to ensure public health and safety and to allow the Regulatory Authority to apply the requirement of section 522(e)(5) of SMCRA. This requirement is necessary to identify occupied dwellings or other occupied structures that are within 300 feet of the mining operation. The blasting section does not clearly require the operator to identify the use of buildings; consequently, the blasting sections (State sections 816.65(f)(3) and 816.65(i)) are inadequate to cover or substitute for the omitted material identified in this issue. As a condition of approval, Alabama must revise its regulations to correct the deficiency. Alabama has agreed to require that the "current use of buildings" be indicated on an appropriate map until a regulation change can be accomplished. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

14.3 The corresponding sections 780.14 and 784.14 of the Alabama program are less effective than 30 CFR

779.25(k) and 783.25(k). These Federal sections require "sufficient slope measurements to adequately represent the existing land surface configuration * * *" and give criteria for such measurements including (1) angle of inclination, (2) extent, and (3) natural variations. Such measurements are necessary in order to determine the adequacy of the mining plan and to confirm the validity of other data presented. The Secretary finds that the omitted or comparable provisions should be included in the Alabama program. As a condition of approval, Alabama must amend its regulations to include the following language: " * * * sufficient slope measurements to adequately represent the natural premining land surface of the proposed permit area expressed in degrees or percent of slope. Such measurements shall take into consideration natural variations in the land surface". Alabama has further agreed that it will interpret its regulations to include the above language until a regulation change is accomplished. The Secretary finds the above proposed regulation change and interpretation to be no less effective than the Federal counterpart.

14.4 It was originally thought that several essential requirements found in 30 CFR 780.14 and 784.23 had been omitted from the corresponding Alabama Part 780 and 784. The State has pointed out through explanation and presentation of new material at the April 9 meeting that these requirements or their equivalent can be found in other sections and paragraphs of State Parts 780 and 784. Sections 30 CFR 780.14(a) and 784.23(a), "Lands Affected", are covered by State sections 780.14(a)(3) and 784.14(a)(3). Sections 30 CFR 780.14(b)(1) and 784.23(b)(1), "Existing Facilities", are covered by State sections 780.25 and 784.25. Sections 30 CFR 780.14(b)(2) and 784.23(b)(2), "Sequence of Operations", are covered by 780.11(b) and 784.11(b). Sections 30 CFR 780.14(b)(4), 780.14(b)(8), 784.23(b)(4) and 784.23(b)(8), "Coal Storage, Cleaning and Loading Areas" and "Source of Waste", are covered by State sections 780.14(a)(15) and 784.14(a)(15). After considering the explanations and additional material presented by the State at the April 9 meeting, the Secretary finds the above State sections no less effective than the Federal counterparts.

14.5 Section 708.35(a) of the Federal regulations references sections 816.71-816.74. 30 CFR 816.71 covers general requirements for excess spoil disposal. Sections 816.72-74 cover excess spoil disposal in specialized cases (Valley

Fills, Head-of-Hollow Fills and Durable Rock Fills). the Alabama regulations contain only section 816.71, and consequently this is the only reference given in State section 780.35(a). 30 CFR 816.72 includes underdrain sizing criteria and lift thickness limitations which are not included under Alabama section 816.71. State sections 816.72 and .73 were improperly omitted (omission of section 816.74 is proper since it is an option). Therefore, as a condition of approval, Alabama must revise its regulations to include provisions comparable to 30 CFR 816.72-.73 and to reference these provisions at State section 780.35(a). Alabama has agreed that until such time that a regulation change is accomplished, the State will not issue permanent program permits at variance with the excess spoil disposal requirements of the Federal rules (See Finding 13.15 for sections 816.72-.73). The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

14.6 State sections 778.13(a) and 782.13(a) omit the requirement to include "equitable owners of record" as provided in 30 CFR 778.12(a)(2) and 782.13(a)(2). As a condition of approval, Alabama must revise its regulations to the effect that equitable owners of records found in a standard title search of the standard chain of title will be included. Alabama has agreed that until a regulation change is accomplished, the State will interpret its present regulations to mean that equitable owners of record found in a standard title search of the standard chain of title will be included. The Secretary finds that the agreed upon regulation change and policy statement render the above State regulations no less effective than the Federal counterparts.

14.7 In State section 778.13(d) the reference to "paragraph (b)(3) of this section" is incorrect since there is no (b)(3). The correct reference should be Regulation 13.14(d). Therefore, as a condition of approval, Alabama must correct this typographical error. The Secretary finds that this correction will render State section 778.13(d) no less effective than the Federal counterpart.

14.8 State section 786.11(d) provides an exclusion of permit information "pertaining to the coal seam itself" which is not found in 30 CFR 786.11(d). This exclusion could be interpreted broad enough to preclude public participation and identification of vital information relative to potential environmental harm. Therefore, as a condition of approval, Alabama must

revise its regulations to grant to the Regulatory Authority the mandatory authority to provide to the public information on acid and acid-forming materials in the coal seam. The Secretary finds the agreed upon regulation change will render the above State regulation no less effective than the Federal counterpart.

14.9 State sections 785.18(c)(7) and (d)(7) do not contain references to related State sections comparable to 30 CFR 816.72 thru 816.74 dealing with disposal of excess spoil in valley fills, head-of-hollow fills, and durable rock fills. The omission of section 816.74 is proper since this is an alternative. However, without proper reference to sections 816.72 and 816.73, which have been omitted from the State regulations, specific requirements outlined for head-of-hollow and valley fills regarding underdrain, filter and lift thickness requirements have been omitted. Therefore, as a condition of approval, Alabama must revise its regulations to reference the reincluded sections 816.72.73 in State section 785.18(c)(7). (See Finding 13.15 for reinclusion of section 816.72-.73.) Alabama has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that are inconsistent with the Federal requirements of 30 CFR 816.72.73. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations no less effective than the Federal counterparts.

14.10 State sections 786.21(a)(1) and (2) do not provide that the permit applicant demonstrate to the Regulatory Authority that the use of existing structures will not result in significant harm to the environment or public health or safety as do 30 CFR 786.21(a)(1)(ii) and (a)(2)(i). Under State section 701.11 the Regulatory Authority may grant an exemption from design standards of Subchapter K, providing performance standards are met, only if they make the findings required by section 786.21. Otherwise, the structure must be reconstructed or modified to meet standards pursuant to a compliance plan as part of the permit application. Consequently, the omission from section 786.21 leaves other section(s) deficient. Therefore, approval of the Alabama program is conditioned upon Alabama amending its regulations to include the equivalent of language in 30 CFR 786.21(a)(1)(ii) and (a)(2)(i)(B). Alabama has agreed that until a regulation change is accomplished, the State will require surface coal mine operators to demonstrate that the use of

existing structures will not result in harm to the environment or impair public health or safety in accordance with 30 CFR 786.21. The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterparts.

14.11 Sections 786.19(a) and (b) of 30 CFR require that permit applications to comply with all requirements of SMCRA and the regulatory program. Alabama's section 786.19(a) and (b) require that applications comply only with requirements of its Act. The permit requirements listed in Alabama SMCRA have been detailed by its regulations. Permit applications should obviously meet all of the requirements of the whole program, those set out in the Act and those more fully detailed in the regulations. Alabama has agreed to adhere to and enforce all applicable requirements found in both its Act and regulations. The Secretary finds that the agreed upon policy statement renders the above State regulations no less effective than the Federal counterparts.

14.12 Section 785.21 of 30 CFR and State section 785.21 concern the requirement that coal processing plants and other support facilities be permitted. Alabama's section 785.21 limits this requirement to those facilities located "at or near the mine site" while 30 CFR 785.21 covers all facilities not within the permit area of a specific mine. The U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation*, CA 79-1144 (May 16, 1980)) and the Sixth Circuit Court of Appeals (*Shawnee Coal Co. v. Andrus*, 661 F.2d 1083 (6th Cir. 1981)) have both construed SMCRA to cover processing facilities whether or not they are located at or near a mine site. As a condition of approval, Alabama must amend its regulations to eliminate the requirement that such facilities must be "at or near the mine site" before being required to be permitted. Alabama has agreed that until a regulation change is accomplished, the State will exert jurisdictional authority over all coal processing facilities including those not at or near the mine site. (Alabama stated that it reserves the right to litigate this issue). The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterpart.

14.13 Section 785.18(d)(9) of 30 CFR requires that before a variance to contemporaneous reclamation requirements may be granted, a permit contain three specified conditions.

These specific conditions deal with (i) delineation of the area authorized for variance (ii) identifying substitute requirements and (iii) providing a detailed schedule for compliance. Alabama section 785.18(d) only requires the permits to be granted a variance to have conditions "such as" the three listed conditions. Alabama's Section is less effective than the Federal provision because it does not absolutely require the three conditions specified but allows a permit to contain conditions "such as" the necessary conditions. Therefore, as a condition of approval, Alabama must revise its regulations to require that all three of the specific conditions of section 785.18(d)(9) be met prior to the granting of the variance. Alabama has agreed that until a regulation change is accomplished, it will as a matter of policy not issue any permanent program permits that are inconsistent with the 30 CFR 785.18(d)(9). The Secretary finds that the agreed upon regulation change and policy statement render the above State regulation no less effective than the Federal counterpart.

14.14 State section 786.19 does not include the provision that a determination be made by the Regulatory Authority that the activities proposed by the permit will not adversely affect endangered species. Section 30 CFR 786.19(o) includes such a provision and the Secretary has determined that, under primacy, the endangered species provision is the responsibility of the State. Alabama has stated that, as a matter of policy, it will consult with the appropriate State or Federal agencies to assure that activities would not affect the continued existence of endangered species or result in the destruction or adverse modification of their critical habitats. Based on this policy statement, the Secretary finds that the policy statement renders the above State regulation no less effective than the Federal counterpart.

Finding 15

The Secretary finds that, except as noted below, the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority to regulate or prohibit coal exploration consistent with 30 CFR Parts 776 and 815, and that the Alabama program includes provisions adequate to do so. This finding was made under the requirements of 30 CFR 732.15(b)(3). The Alabama program incorporates provisions corresponding to section 512 of SMCRA and 30 CFR Parts 776 and 815 in Title III, Alabama SMCRA section 19 and in the Alabama Regulations, Parts 776 and 815. Discussion of significant

issues raised during the review of the Alabama program follows.

15.1 Section 776.17(b) of 30 CFR prescribes specific conditions necessary for information relative to coal exploration to be considered and treated as confidential. These conditions include (b)(1) Regulatory Authority determination that the information is indeed confidential; (b)(2)—specific guidelines for this determination and; (b)(3)—provisions for both the person desiring confidentiality and the person desiring disclosure to be heard by the Regulatory Authority. State section 776.17 contains no conditions except that the operator submit the request for confidentiality in writing and clearly mark the material confidential. The Secretary finds that conditions comparable to 30 CFR 776.17 (b)(1) and (b)(2) are needed and, while not essential, (b)(3) should also be included in fairness to the operator. It would not be necessary for the Regulatory Authority to determine at the time of submittal whether or not the "marked" information was indeed confidential. It could be placed directly in the "confidential" file. Then, if such information was requested the Regulatory Authority would make the decision. If the Regulatory Authority determined that the information was confidential, it would not be disclosed. If the Regulatory Authority were to doubt its legitimate "confidential" status, a meeting would be held with the operator at which time the operator would have the opportunity to defend the claim of confidentiality. Should the operator refuse the opportunity to meet or otherwise defend the claim to confidentiality or should the operator otherwise fail to successfully convince the Regulatory Authority of the legitimate confidentiality of a given parcel of information, that parcel of information would no longer be considered confidential. The Secretary believes that such conditions as the above may be included in the regulation, but that the final discretionary power as to the legitimacy of a "confidential" claim must rest with the regulatory authority. It is also important that if release or divulgence is forthcoming it should be within a reasonable length of time after the request for the information. The matter of access to confidential information by OSM personnel is not discussed since the Secretary assumes that all authorized OSM personnel will have total access to all State permit exploration, inspection and enforcement related information, whether or not it is labeled confidential.

Therefore, as a condition of approval, Alabama must revise its regulations to include provisions no less effective than the Federal provisions.

Finding 16

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding was made under the requirements of 30 CFR 732.15(b)(4). The Alabama program incorporates provisions corresponding to section 528 of SMCRA and 30 CFR Part 707 in Title III, Alabama SMCRA section 31 and the Alabama Regulations Part 707.

Finding 17

The Secretary finds, that except as noted below, the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws to enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L and that the Alabama program includes provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(a)(5).

Provisions corresponding to section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring are found in Title III, Alabama SMCRA sections 24 and 25 and in the Alabama Regulations, Subchapter L. Discussion of significant issues raised during the review of the Alabama program follows.

17.1 Sections 843.11(a) of 30 CFR requires that when a cessation order has been issued because an authorized representative has discovered a situation where a condition creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources, but the ceasing of operations will not completely abate the danger or harm, the authorized representative shall impose affirmative obligations on the operator as a part of the cessation order requiring abatement of the condition in the most expeditious manner physically possible. Section 843.11(b) of 30 CFR requires that when an authorized representative issues a cessation order for an operator's failure to abate a violation within the time prescribed, the authorized representative shall require,

in the order, that the operator perform certain actions necessary to abate the violation in the most expeditious manner physically possible. These requirements are based on sections 521(a)(2) and (3) of SMCRA which require the aforementioned conditions be ceased or abated "immediately", that unabated violations be remedied "in the most expeditious manner possible", and that "affirmative obligations" be imposed upon an operator to take whatever steps necessary to abate the imminent danger or significant environmental harm.

State sections 843.11(a)(2) and 843.11(b)(2) require that when a cessation order has been issued for whatever reason, "the State Regulatory Authority" shall impose affirmative obligations on the operator. The State believes that an authorized representative may not be eminently qualified to determine in the field what affirmative steps should be imposed.

While the Secretary believes that the State's position has merit, SMCRA requires that a cessation order be issued immediately for imminent dangers or significant environmental harm and that unabated violations be remedied "in the most expeditious manner possible" upon issuance of the order. The State's plan could result in delays in imposing the necessary affirmative obligations. Since consultation with experts before imposing affirmative obligations is desirable, the State may institute internal policies regarding consultation when possible. However, if the supervisor is unavailable or the consultation cannot be otherwise arranged, the authorized representative must be authorized to, and shall impose the affirmative obligations at the time the cessation order is issued. Therefore, as a condition of approval, Alabama must change its regulations, to be consistent with 30 CFR 843.11(a)(2) and (b)(2). Alabama has agreed that until a regulation change is accomplished it will, as a matter of policy, give authorized representative the necessary authority to, and require that authorized representatives impose affirmative obligations and to require the necessary actions to abate violations or the effect of violations in the most expeditious manner possible. The Secretary finds that the agreed upon regulation changes and policy statement render the above State regulations consistent with the Federal counterparts.

Finding 18

The Secretary finds that, except as noted below, the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority

under Alabama laws and regulations and the Alabama program includes program provisions for implementation, administration and enforcement of a system of performance bonds and liability insurance; or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. This finding was made under the requirements of 30 CFR 732.15(b)(6). The performance bond and liability insurance provisions of sections 507(f), 509, 510, and 519 of SMCRA and Subchapter J of 30 CFR Chapter VII are incorporated in Title III, Alabama SMCRA sections 15, 17, and 21 and in the Subchapter J of the Alabama regulations. Discussion of significant issues raised during the review of the Alabama program follows.

18.1 30 CFR 805.11(a) requires that a factor should be included in the bond amount representing the cost of additional work to be performed by the Regulatory Authority to achieve compliance with revegetation standards in the event the permittee fails to implement the approved alternative postmining land use plan within two years. The State regulations section 807.12(d)(3) do not include this factor. Alabama has agreed to interpret State section 807.12(d)(3) to take into consideration and meet the two-year delay requirement. Based on this interpretation, the Secretary finds that with such an agreement the State program regarding the two-year delay, is no less effective than the Federal counterpart.

In addition the State section 805.11 contains a subsection (d) not found in the Federal § 805.11. This addition consists of a section concerning disposal of excess spoil generated by a current operation on areas which have been previously disturbed but not adequately reclaimed. The previously disturbed area must be included within the currently permitted area, but an additional bond amount is not required. In an attempt to ensure the reclamation of the entire area in the event an operator defaults on his obligations and abandons the job, the State regulation states that the condition of the entire area will be considered before full bond release is granted. Since Federal regulations require that all areas to be used for excess spoil disposal must be bonded, the Secretary is concerned that the State's plan might spread bond amounts too thin, resulting in less rather than more reclamation. However, since the plan has possibilities for increased reclamation activities, the Secretary proposes to allow its implementation on a controlled basis for an appropriate trial period. For a one year trial period,

the State will be allowed to put its plan into effect under the following conditions: (1) Prior to approval of any application involving the above described spoil disposal plan, the State Regulatory Authority must notify the OSM State Office and submit to that Office a report stating the relevant particulars concerning the request indicating that the State approves; (2) the OSM State Office will then review the matter and notify the State within 30 days of its approval or objection; (3) at the end of one year, the State shall submit to the OSM State Office a report on the project; (4) the OSM State office will then review the State report, add data or material as needed and transmit the material to OSM Headquarters; (5) a decision will then be made concerning the success or failure of the trial. It is recognized that a one year trial period may not be sufficient to adequately evaluate the initial results. Consequently the Office may extend this period as needed until sufficient data for appropriate evaluation is obtained. Alabama has agreed to the conditions specified above. Based on this understanding, the Secretary finds that Alabama's commitment to the above conditions renders the Alabama regulation no less effective than the Federal regulation.

Finding 19

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama law and provides regulations for civil and criminal sanctions for violations of Alabama law, regulations and conditions on permits and exploration approval in accordance with Sections 518 of SMCRA and consistent with 30 CFR VII, Part 845. This findings was made under the requirements of 30 CFR 732.15(b)(7).

The Alabama program incorporates provisions corresponding to section 518 of SMCRA and 30 CFR Part 845 in Title III, Alabama SMCRA section 26 and in Part 845 of the Alabama Regulations.

Finding 20

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws to issue, modify, terminate and enforce notices of violations, cessation orders and show cause orders in accordance with section 521 of SMCRA (30 U.S.C. 1271) and with 30 CFR Chapter VII, Subchapter L, and that the Alabama program includes provisions, adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(8).

The authority to issue, modify, terminate and enforce notices of violations, cessation orders and show cause orders in contained in Title III, Alabama SMCRA Section 25 and in the Alabama Regulations Subchapter L.

Finding 21

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with section 522 of SMCRA and 30 CFR Chapter VII, Subchapter F. This finding is made under the requirements of 30 CFR 732.15(b)(9).

Alabama incorporates provisions corresponding to section 522 of SMCRA and 30 CFR Chapter VII, Subchapter F in Title III, Alabama SMCRA section 28, and in the Alabama Regulations Subchapter F.

Finding 22

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and the Alabama program contains provisions for public participation in the development, revision and enforcement of the Alabama regulations and program. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Alabama provides authority for public participation in the development, revision and enforcement of the Alabama program throughout the Alabama SMCRA and Coal Surface Mining Regulations.

Finding 23

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and the Alabama program includes provisions to monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Alabama Surface Mining Commission consistent with 30 CFR Part 705. This finding is made under the requirements of 30 CFR 732.15(b)(11).

Alabama incorporates provisions which prohibit financial interests in coal mining operations in Title I, Alabama SMCRA section 7, in the Alabama Regulations Part 705, and in section 731.14(g)(12) of the Alabama Systems Section.

Finding 24

The Secretary finds that the Alabama program demonstrates that the Alabama

Surface Mining Commission has the authority under the Alabama SMCRA section 5 to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with section 719 of SMCRA until such time as the Federal rules on blaster certification are promulgated.

Finding 25

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under the Alabama law and regulations to provide for a Small Operator Assistance Program (SOAP) consistent with section 507 (c) of SMCRA and 30 CFR Part 795. This finding is made under the requirements of 30 CFR 732.15(b)(13).

The Alabama program incorporates provisions corresponding to section 507(c) of SMCRA and 30 CFR Part 795 in Title III, Alabama SMCRA section 15(c) and in the Alabama Regulations Part 795.

Finding 26

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws and regulations to provide for protection of its employees in accordance with the protection afforded Federal employees under section 704 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(14).

The Alabama program incorporates provisions corresponding to section 704 of SMCRA in Title III, Alabama SMCRA section 26(j).

Finding 27

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama law and the Alabama regulations provide for administrative and judicial review of State program actions in accordance with sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(15).

The Alabama program incorporates provisions corresponding to sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L in Title II, Alabama SMCRA section 10 and in Subchapter L of the Alabama Regulations.

Finding 28

The Secretary finds that the Alabama program demonstrates that the Alabama Surface Mining Commission has the authority under Alabama laws, and the Alabama 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. There is nothing in the Alabama Legislation or regulations which would prohibit dissemination of information to the Office, and the Secretary assumes that all authorized OSM personnel will have total access to all State permit exploration, inspection and enforcement related information, whether or not it is labeled confidential. This finding was made under the requirements of 30 CFR 732.15(b)(16).

Finding 29

The Secretary finds that neither Alabama SMCRA and regulations adopted thereunder nor other laws and regulations of Alabama contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

Finding 30

The Secretary finds that the Alabama Surface Mining Commission and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and funds to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(d) and other applicable State and Federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

Agency and Public Comments for First Comment Period

January 16, 1982–February 16, 1982

Comments have been accepted and considered on Alabama's program resubmission of January 11, 1982 (Administrative Record AL-326A) and information provided by Alabama in connection with a reopened public comment period. Comments from groups or agencies are identified by name but names of individuals have not been used. Comments are organized into seven groups as follows: (I) General, (II) Alabama Law, (III) Definitions, (IV) Designating Lands Unsuitable, (V) Permitting, (VI) Bonding and Insurance, (VII) Performance Standards, and (VIII) Inspection and Enforcement.

I. General

1. the Fish and Wildlife Service (FWS) furnished a Biological Opinion pursuant to section 7 of the Endangered Species Act which stated that the program would not likely jeopardize the continued existence of Endangered or Threatened species or result in the adverse modification of their critical habitat. However, the FWS recommended that the OSM work with Alabama to develop procedures for on-site inspections of the area with regard to endangered species since the Federal regulations requiring a fish and wildlife plan (30 CFR 779.2 and 780.16) were remanded. FWS also advised that its Biological Opinion extended only to the approval of the program and that another Biological Opinion was needed for OSM's oversight program.

OSM is presently developing regulations to replace the remanded 30 CFR 779.20 and 780.16 and full promulgation along with the subsequent amendment to Alabama's program may eliminate some of the FWS's concern. Pending this revision, the Secretary will request that OSM work with Alabama to ensure that the State is meeting its responsibilities for protection of Endangered and Threatened Species as set out in the Alabama Program. The FWS comments will also be considered in the development of an oversight plan.

2. The Minerals Management Service, United States Department of the Interior, commented that Alabama's general applicability provisions at Part 700.11 would include provisions for State regulation of coal exploration on Federal lands outside a permit area. This requirement, asserts the commenter, has no legal basis because Federal regulations at 30 CFR 730.1 only authorize States to develop a program for Non-Indian and Non-Federal lands. Further, the commenter points out that 30 CFR 700.11(g) clearly states that Chapter VII regulations do not apply to coal exploration on Federal lands outside permit areas.

The Secretary agrees that the scope (i.e., lands covered) of Alabama's regulations is not clearly defined. This lack of clarity may cause some confusion among persons intending to explore for coal on Federal lands. It is not, however, perceived as a major issue nor does the Secretary find that Alabama intended to attempt to contravene Federal regulations at 30 CFR Subchapter D. On the contrary, communications with State Officials indicate an awareness that, upon the Secretary's decision to grant primacy, the State will only have regulatory responsibility on State and private

lands, unless the State requests and consummates a State/Federal cooperative agreement under 30 CFR Part 745. Even under an agreement permitting the State to regulate operations on Federal lands, the State would not assume responsibility over certain functions reserved by the Secretary, such as the review and approval of exploration operations on Federal coal lands subject to leasing under the Mineral Leasing Act of 1920, as amended.

3. Drummond Coal Company expressed concern that the Alabama Surface Mining and Reclamation Commission did not consider various proposed changes to the Federal regulatory program. Overlooking these changes could place the Alabama coal industry in a competitively disadvantageous position.

The Secretary maintains that State regulations must be evaluated relative to current Federal regulations and not with proposed or draft regulations. As changes to the Federal requirements are approved, States having primacy will be notified of the changes and will be authorized or directed, as appropriate, to revise their own programs. This will ensure that uniform rules and regulations will exist nationwide providing, to the extent possible, a competitive balance in the coal mining industry.

4. Citizens for Responsible Resources Development (CRRD) commented that Alabama's permanent program submission at section 731.14(d)(1) identifies those agencies to receive notices and copies of new, revised, or renewed permit applications. Absent from this list is the Alabama Water Improvement Commission (AWIC). Because this agency has jurisdiction over NPDES permits needed by most surface mining operators, it seems essential that AWIC be included in the list of recipients.

As pointed out by CRRD, Alabama has omitted reference to the AWIC at the State's 731.14(g)(1). The Secretary finds, however, that Alabama's description at the State's 731.14(g)(9) specifically addresses the role of AWIC in the surface mining program. In particular, the Alabama Surface Mining Commission (ASMC) will be required to work closely with the AWIC to ensure that all water pollution control programs and plans meet the Federal and State water quality standards.

5. CRRD asserts that the State has failed to demonstrate, in State sections 731.14(j) and 732.15(d), that it has adequate legal staff to ensure that surface mining and reclamation will be

regulated in accordance with State and Federal laws and regulations.

The Secretary finds that the commenter has made some erroneous assumptions in presenting its contention that Alabama does not have sufficient legal staff. The commenter, for example, assumes that 139 operations per year will involve failure to reclaim. This would represent nearly 30 percent of the estimated number of annual violations, and involve over 55 percent of the permits issued annually. The Secretary believes that this is far too high for a permanent program which will have bonding requirements encouraging contemporaneous reclamation. Some estimates of the time required to handle some of the legal aspects of enforcement will undoubtedly be high, while others will be low. The State and the Secretary have considered the resulting need for flexibility in the reallocation of attorney time to those areas having time budget deficits.

6. The Sierra Club, Environmental Policy Institute (EPI) and Legal Environmental Assistance Foundation (LEAF) stated that Alabama's regulation 10.109 fails to incorporate the Federal standards for mandatory intervention in administrative review proceedings. Federal regulations at 43 CFR 4.1110 state that a petitioner shall be granted intervention if the petitioner demonstrates that he or she has a statutory right or an interest which is or may be adversely affected. Since a statutory right to initiate or intervene in an administrative action under SMCRA is based upon a person having an interest which is or may be adversely affected, these two tests are actually the same. Discretionary intervention may be granted if other criteria are met. The State's regulation, 10.109, states that a petitioner shall assert that he or she has a statutory right to intervene, or the hearing officer may consider other relevant circumstances (which match the Federal discretionary criteria) in deciding whether or not to grant intervention.

The Secretary assumes that State hearing officers and other State administrative personnel are bound by the State statute. Those petitioners who assert a statutory right of intervention shall be allowed to intervene in the action. Other petitioners may be granted intervention if the hearing officer finds it to be appropriate after considering the criteria listed.

7. The Sierra Club, RPI, and LEAF assert that the State requires interested parties to seek an appeal of a "decision" within thirty days of the date it is mailed, while parties to the "decision" are allowed forty days to seek an

appeal. The commenter states that this procedure is contrary to Federal regulations and is unfair.

The Secretary finds the commenter has misunderstood the regulations. While Federal regulations at 43 CFR 4.1162 do allow persons who have been cited for violations to appeal within thirty days of receipt of the enforcement documents and other persons not served with copies of such documents forty days, the Secretary finds that Alabama's plan of allowing everyone thirty days is no less effective than the Federal plan. The intent of the regulations is to allow interested persons and parties sufficient time in which to decide to appeal and draft the necessary documents. Since the documents required to perfect an administrative appeal are not lengthy or detailed in nature, thirty days is sufficient time. The State's regulations allow only thirty days for all persons to appeal enforcement action and to appeal the decision of a hearing officer to the Commission. Thus, the Secretary concludes that the commenter was mistaken concerning the forty days time period mentioned.

8. The Sierra Club, EPI, and LEAF stated that Alabama has not adopted standards for the award of costs and expenses, including attorney and expert witness fees, as required by SMCRA and Federal regulations at 43 CFR 4.1290 *et seq.*

The Secretary agrees with the comment and is requiring that the State amend its statute and regulatory program appropriately. See Finding Number 1.2.

9. The Sierra Club, EPI, and LEAF stated that the Alabama regulations are unclear concerning who administrative hearing officers will be and who they will be supervised by. The commenter believes that hearing officers should not be supervised by the Director of the State Regulatory Authority.

The State statute and regulations create a Division of Hearings and Appeals. This Division is supervised by the Director; however, a Chief Hearing Officer will be responsible for the direct supervision of the other hearing officers. The line of authority runs from the Commission to the Director, from the Director to the Chief Hearing Officer and from the Chief Hearing Officer to the individual Hearing Officers. The Division is thus a separate branch within the Regulatory Authority; its employees come under the State Merit System; and section 26(j) of the Alabama SMCRA makes it a criminal offense to willfully resist, prevent, impede, or interfere with any agent of the Regulatory Authority in the performance of the agent's duties. The

Secretary finds that Alabama's plan is no less effective than the Federal requirements in ensuring that Hearing Officers are fair and impartial.

10. The Sierra Club, EPI and LEAF commented that the State's program is unclear concerning whom the hearing officer will be in an adjudicatory administrative hearing and that the State program provides for a *de novo* review of agency decisions, which the commenter believes to be contrary to the type of review required by SMCRA.

Section 8 of the Alabama SMCRA creates a Division of Hearings and Appeals within the Alabama Surface Mining Commission. This Division is empowered to hear and determine appeals from regulatory, enforcement or other activities of the Commission. It is further provided that the Director of the Commission shall appoint one or more hearing officers to preside over such appeals. The State's program submittal shows at pages V-128, 131, 136 and 156 that it intends to implement these provisions of the Alabama SMCRA by organizing the Division directly under the Director with a Chief Hearing Officer and three Hearing Officers, all of whom will be attorneys licensed to practice in Alabama.

As to "*de novo*" review, the Alabama SMCRA does authorize a "*de novo*" review of agency actions while SMCRA requires a review on the record for appeals of OSM decisions. As the result of litigation concerning the permanent program regulations, the Secretary proposed and the court accepted a plan whereby "*de novo*" review might be structured so that it is in accordance with SMCRA. The Secretary developed seven criteria which a State must demonstrate that its procedures meet. At a meeting held between OSM and State officials on April 9, 1982, the State demonstrated that its "*de novo*" review procedures satisfy the seven criteria required by the Secretary; therefore, the Secretary finds that Alabama's "*de novo*" review procedures are in accordance with SMCRA. See Finding No. 1.1.

11. Citizens for Responsible Resource Development (CRRD) assert that the Alabama submission did not contain the required legal opinion from the Attorney General or the Chief Legal Officer of the State Regulatory Authority. Instead, the legal opinion provided was signed by an Assistant Attorney General. Further, the commenter pointed out that the required side-by-side comparison of State and Federal regulations was not mentioned in the legal opinion provided and it did not fully explain the legal effect of

differences between the State and Federal requirements.

The Secretary finds that the legal opinion provided by the State correctly reflects the opinion of the Attorney General's Office, even though not personally signed by the Attorney General. The Assistant Attorney General who signed the opinion is assigned to and in charge of the legal affairs of ASMC. Consequently, the Secretary regards him as the Chief Legal Officer of the Regulatory Authority. Further, the side-by-side comparison of State and Federal requirements together with other material available for review was sufficiently developed to permit an evaluation of all of the State requirements to determine if they satisfied Federal law and regulation.

II. Alabama Law

Citizens for Responsible Resources Development (CRRD) provided several comments on the Alabama SMCRA. Following is a synopsis of each of the comments along with the Secretary's response.

1. CRRD asserts that section 2 of the Alabama SMCRA contains language which tends to promote the development of coal resources. Such language, contends the commenter, is inconsistent with comparable wording at section 102 of SMCRA, which emphasizes protection of the environment from the adverse effects of surface mining and provides for a balance between protection of the environment and the nation's need for coal.

The Secretary finds that the commenter's concern results from a misinterpretation of the Alabama SMCRA. For example, the commenter suggests that the language "the extraction of coal by surface mining * * * is an essential and necessary activity which contributes to the economic and material well-being of the State" promotes coal development over protection of the environment. The Secretary does not agree with this view. On the contrary, in reading the full text of section 2 of the Alabama SMCRA it is clear, in his opinion, that the Alabama Legislature recognized and provided guidance for balancing the need for coal mining with protection of the environment.

2. CRRD indicates that section 21(c) of the Alabama SMCRA permits the State Regulatory Authority to approve an alternative bonding system. This, asserts the commenter, is inconsistent with section 509(c) of SMCRA which requires that an alternative system may be adopted only upon approval by the Secretary of the Interior.

The Secretary does not find that Alabama's provision under section 21(c) of the Alabama SMCRA for an alternative bond system is inconsistent with the section 509(c) of SMCRA. An alternative bonding system is authorized by section 509(c) of SMCRA. Before such system may be implemented, however, it must be approved by the Secretary of the Interior, as well as the Regulatory Authority. Since Federal law provides that the Secretary must approve alternative bonding systems, it is unnecessary for State law to repeal this requirement.

3. CRRD asserts that the language of section 21(k) of the Alabama SMCRA is inconsistent with section 519(f) of SMCRA. Specifically, the State language provides for public hearings at Jasper, Alabama (Office of the State Regulatory Authority), instead of the State Capitol, as required by SMCRA.

The Secretary agrees that the Alabama wording does not "track" the Federal language exactly. However, the State requirement is believed to be in accordance with SMCRA in providing for opportunity for public hearing and public participation. In fact, because Jasper is closer to the coal mining region, the State requirements may be more effective in providing the public with an opportunity to participate in bond release proceedings. The Alabama provision is in accordance with SMCRA.

4. CRRD points out that section 519(h) of SMCRA requires that a transcript be made available on the motion of any party or by order of the Regulatory Authority. Section 9 of ASMCRA, on the other hand, directs that a transcript be made only when an appeal is taken. The commenter asserts that this is inconsistent with the Federal requirement.

The Secretary does not find that the language differences pointed out by the commenter render Alabama's provision less effective than the Federal requirement. Although section 9 of the Alabama SMCRA specifies that transcripts will only be made available upon appeal, Alabama's implementing regulation at section 10.120 provides much greater flexibility. Here, the transcript must be made available upon appeal or at the direction of the State Regulatory Authority. This discretionary authority, which "tracks" the Federal requirements, provides for reasonable access to transcripts without appeal, while at the same time, protecting the State Regulatory Authority from having to unnecessarily bear the cost of transcribing some hearing records.

5. CRRD notes that section 515(b)(15)(A) of SMCRA requires daily notice to residents and occupiers living

within one-half mile of a blasting area prior to blasting. In contrast, comparable provisions of section 22(b)(15)(A) of the Alabama SMCRA allow for a daily notice or audible warnings. In order that the State requirements be equally effective, the commenter suggests that the audible warnings must be heard up to one-half mile distance and persons within range must understand the meaning of the warnings.

The Secretary points out that section 816.65(c) of Alabama's implementing regulations requires that warnings and all clear signals must have an audible range of at least one-half mile from the point of blast. Also this same section specifies that the permittee must notify affected persons of the meaning of the signals through appropriate instructions. The Secretary finds these regulatory procedures consistent with the Federal requirements.

6. CRRD asserts that section 22(b)(15)(E) of the Alabama SMCRA would allow the State Regulatory Authority to promulgate provisions for pre-blasting surveys different from those promulgated by the Secretary.

The Secretary believes that although the Alabama SMCRA at section 22(b)(15)(E) is somewhat more general than the Federal counterpart at section 515(b)(15)(E) of SMCRA, it does not relieve the State of the responsibility for publishing a program that will be no less effective than the Federal requirements. In this regard the State has drafted implementing regulations at Part 816.62 for "Pre-blasting Surveys" which fully recognize the Secretary's provisions mentioned at section 515(b)(15)(E) of SMCRA and published at 30 CFR 816.62. Because Alabama's program satisfies the intended purpose of SMCRA, the Secretary finds the language of the Alabama SMCRA in accordance with SMCRA.

7. CRRD notes that delayed reclamation is authorized by section 515(b)(16) of SMCRA. Such delay, however, is limited only to operations which combine surface and underground mining operations. Alabama SMCRA contains language which would extend delayed reclamation provisions to "other types of mining operations". This, contends the commenter, is inconsistent with SMCRA, because it would permit reclamation delays for operation which involve only surface mining activities.

The Secretary recognizes that the wording "where the applicant proposes to combine surface mining operations with such other operations" (Section 22(b)(16) of the Alabama SMCRA), is somewhat ambiguous. Reasonable interpretation of this wording, however,

would suggest that Alabama intended "other operations" to mean underground mining for the following reasons: First, the term "surface (coal) mining operations" is defined at section 3(t) of the Alabama SMCRA to include the various forms of surface operations. It would, therefore, be redundant to also include such activities, within the meaning of "other operations". Also, the Secretary finds that the terms "surface mining operations" and "other operations", as used in the same sentence, were intended to have opposite meanings, i.e., "surface mining operations" encompasses all stripping activities while "other operations" includes underground mining. For these reasons, the Secretary finds that the Alabama SMCRA is consistent with the Federal requirement.

8. CRRD suggests that the construction of the Alabama SMCRA at section 22(c)(5) is ambiguous as to whether or not the State Regulatory Authority (SRA) has authority to impose certain requirements beyond those specified in Alabama's regulations. If the SRA cannot do so, then the State law, according to the commenter, is less effective than SMCRA.

The Secretary believes the commenter has misinterpreted the provisions of section 515(c)(5) of SMCRA. The Secretary does not believe Congress intended that the SRA must have authority to unilaterally impose permit requirements which do not have basis in law or regulations and are without Secretarial approval. Rather, section 515(c)(5) of SMCRA intends that the State Regulatory Authority develop, have approved, and promulgate regulations which implement the minimum permit requirements of the section 515. In addition, the SRA may (at its discretion) develop, have approved, and promulgate other permitting regulations which it deems are necessary to effectively implement and administer a permitting program in the State. The Secretary believes that the State's discretionary authority to promulgate additional requirements is reflected in the State's language and, therefore, provides requirements in accordance with the Federal counterpart.

III. Definitions

1. Citizens for Responsible Resource Development (CRRD) asserts that Alabama's definition of the term "valid existing rights" (VER) is inconsistent with the Federal definition at 30 CFR 761.5. The commenter points out that the State has included language which would only require the permit applicant to demonstrate a "good faith effort" to

obtain all permits, instead of having obtained all permits prior to August 3, 1977, as required by the Federal definition. In addition, the State has extended the "good faith effort" test to the haul-roads portion of the VER definition. The commenter contends that these less stringent criteria for determining VER result in less effective protection for the Non-Federal and Non-Indian lands listed under Alabama regulation 761.4.

The Secretary points out that the U.S. District Court, District of Columbia, ruled in Civil Action No. 79-1144 that under the all permits test required under the Federal definition of VER an operator need only demonstrate a "good faith effort" to have obtained the necessary permits and ordered OSM to revise its definition accordingly. (*In Re: Permanent Surface Mining Regulation Litigation*, 14 ERC 1083 (D.D.C. Feb. 20, 1980) (Round 1).)

On Tuesday, November 27, 1979, following the Court's ruling, OSM published notice in the *Federal Register* (44 FR 67942) that the definition of VER had been remanded. Until a revised definition is published, OSM will rely on existing State law to interpret whether the document relied upon establishes valid existing rights and will interpret its definition as requiring a "good faith effort" to obtain all permits. Alabama has exercised this option in drafting its regulations. The Secretary finds that the State requirement is in accordance with the requirements intended by SMCRA in providing equal protection for all categories of land covered by Sections 761.4 of the State and Federal regulations.

2. CRRD stated that Alabama's definition of the term "historic lands" omits the Federal wording "eligible for listing on a State or National Register of Historic Places". Also, the definition does not contain the Federal language "sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending". These omissions, contends the commenter, do not provide protection comparable to the Federal requirements.

OSM suspended the language, "eligible for listing * * *," (*Federal Register*, November 27, 1979 (44 FR 67942-67943)) in accordance with its concession in *In Re: Permanent Surface Mining Regulation Litigation*, Round 1, supra. Regarding the omission of the language "sites having religious or cultural significance * * *," the Secretary has notified Alabama (on April 9—Administrative Record Number AL-347), that similar or equally effective

language must be included in the State program before full approval can be granted. See Finding 12.5.

3. Drummond Coal Company indicated that the definition of roads should be consistent with SMCRA. The commenter suggests using the "Interim definition".

It is unclear to the Secretary what the commenter means by "interim definition" of (public) roads. It should be pointed out, however, that the U.S. District Court for the District of Columbia, announced in Civil Action No. 79-1144 that the government conceded that the Federal definition of the term "public road" was inconsistent with SMCRA. (*See In Re: Permanent Surface Mining Regulation Litigation*, Round 2, May 16, 1980, pp. 32-36.) Specifically, the concession was that the Federal definition was found to be too broad, encompassing too many thoroughfares open to the passage of vehicles. A new definition is being drafted. Until promulgated, the Secretary will rely on section 522(e)(4) of SMCRA to interpret the definition of "public road". The Secretary finds that Alabama's proposed definition is consistent with both the Court's ruling and section 522(e)(4) of SMCRA.

IV. Designating Lands Unsuitable

1. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Fund commented that Alabama's submission does not show any evidence of the establishment of a data base and inventory system, as required by 30 CFR 760.4 and 764.2. According to the commenters, this process should commence prior to program approval. Alabama indicates at section 731.14(g)(11) that ASMC has in-house data banks covering biological, hydrological, historical, and geological information. ASMC also has access to other literature and registers maintained and/or cataloged by other State agencies. The Secretary, therefore, finds that the State has inventoried and established a data base for processing lands unsuitable petitions.

2. CRRD believes that State regulation 762.11(a) is less effective than the Federal counterpart at 30 CFR 762.11(a) because the State's determination of reclamation feasibility will be done only under the Alabama SMCRA, while the Federal requirement specifies that it must be done under SMCRA, Federal regulations, and the State program.

The Secretary finds that inclusion of the language "Federal regulations and the State program", although clarifying, would be somewhat redundant and, therefore, unnecessary. Further, the

Secretary believes that Alabama's reference to State law necessarily implies that it must also comply with the implementing State regulations. See Finding No. 14.11.

V. Permitting

1. Citizens for Responsible Resource Development (CRRD) stated that Alabama has omitted from the State program, Federal provisions at 30 CFR 776.11(b) and 30 CFR 776.12(a) which would require, among other data, the submission of certain information about the company representative who has on-site responsibility for conducting exploration operations. This, according to the commenter, will place the SRA at a disadvantage in monitoring exploration operations. The Secretary finds that Alabama's requirements concerning information on the exploration operation will be no less effective than the Federal requirement even though there is no provision for giving specific data concerning the company representative who has on-site responsibility for conducting the operation. Further, Alabama believes, and the Secretary finds, that such a requirement could be unnecessarily cumbersome and may be difficult to monitor because of frequent changes in company personnel responsibilities. The State does require the name and other specific data properly identifying the entity responsible for the exploration operation, and will thus know whom to contact if enforcement action is necessary.

2. CRRD points out that Alabama regulations 776.12(a)(3)(i) and 783.12(b) do not address the Federal requirement to include identification of "districts, sites, building, structures or other objects eligible for listing on the National Register of Historic Places". Also, the commenter indicates that the State's use of the language "known significant" may compromise the level of protection for some archeological resources, because it leaves it to the discretion of the operator to determine what is significant.

The Secretary contends that Alabama's regulation, as it concerns National Register sites, accurately reflects the ruling of the U.S. District Court, District of Columbia, of February 1980 (Civil Action No. 79-1144) in which the Federal language "eligible for listing" was suspended. With regard to the terminology "known significant", as used by Alabama, the Secretary does not believe this language gives the operator any discretionary authority to determine significance. Rather, it obligates the operator to include, in his application, sites which have been

judged significant by historians and archeologists. Viewed in this context, the Secretary finds that Alabama's regulation provides protection no less effective than to the Federal rule.

3. CRRD stated that Federal regulations require the SRA to disapprove a coal exploration application if the operation will adversely affect sites that are eligible for listing on the National Register of Historic Places. State regulations do not contain a comparable requirement.

The Secretary points out that, as previously indicated, the February 1980 Court ruling in Civil Action No. 79-1144 resulted in the suspension of the Federal wording "eligible for listing". Therefore, the Secretary finds that Alabama's requirement at section 776.13(b)(3) is no less effective than the Federal counterpart, as modified by the Court's decision.

4. According to the CRRD, ASMC 776.17(b) will be less effective than 30 CFR 776.17(b) in providing information to the public. The commenter stated that the Federal rule requires the SRA to determine that data marked confidential is deserving of the classification. State regulations do not require a similar determination.

The Secretary agrees with the commenter and is requiring the State to make program revisions which satisfy the Federal requirement. The Secretary has advised the State that it will not object to permitting the operator to mark information confidential. However, if such information is requested by the public and the SRA suspects that the data is in fact not of confidential nature, the SRA will have to contact the operator who must clearly demonstrate that the data should be withheld from the public. If the operator cannot so demonstrate, then the RA may release the information. See Finding 15.1.

5. CRRD argues that State requirements for permit applications to identify and describe cultural and historic features will not effectively protect these resources, and that Federal regulations are more stringent because they include sites eligible for listing and do not require the significance "test" imposed by the State program.

The Secretary points out that, in February 1980, OSM suspended the Federal language "eligible for listing". Therefore, the Secretary finds that Alabama's regulatory language is consistent with the Court's ruling. Further, Alabama's significance "test" for archeological features is not intended to permit the applicant to determine significance. Rather, the applicant will be required to report

those features which have been recognized by appropriate experts and authorities to be important sites.

6. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama in section 778.14 of its regulations limits the information required in permit applications on prior mining activities to five years, since the Federal rules require information on permits subsequent to 1970.

The State rule is identical to 30 CFR 778.14 which requires information on any permits suspended or revoked in the last five years. The Secretary finds, therefore, that the Alabama rule requiring information on permits held during the previous five years requires sufficient information to be no less effective than the Secretary's regulations in meeting section 507(b) of SMCRA.

7. CRRD indicates that Federal regulations at 30 CFR 779.13 and 783.13 require a broader area of environmental study and description than the comparable State regulations, 779.13 and 783.13. Specifically, the State requires study only "on the permit area and off-site areas which may be affected". Federal requirements, on the other hand, include "the permit area, adjacent area, and the general area prior to mining".

The Secretary finds that Alabama's language " * * * permit area and off-site areas that may be affected or impacted" will provide a level of protection no less effective than to the Federal requirement; the State wording "off-site areas that may be affected or impacted" is quite broad and, is no less effective than the Federal language "adjacent area, and the general area prior to mining".

8. CRRD asserts that unlike the Federal requirement at 30 CFR 779.14, State regulation 779.13(b) does not require a description of the physical properties of each stratum within the overburden. Additionally, the commenter points out that there is no State regulation comparable to 30 CFR 779.14(b)(2).

The Secretary points out that a comparison of State regulation 779.13(b) with 30 CFR 779.14 indicates near identical construction. Both require description of each stratum within the overburden, and the stratum immediately below the lowest coal seam to be mined. With regard to the omission of a State regulation comparable to 30 CFR 779.14(b)(2), it is noted that this requirement is permissive, i.e., the State is not required to adopt a comparable provision.

9. CRRD commented that State regulations 779.13(c)(1) and 783.14(c) do not require a permit applicant to describe the horizontal extent of the water table and aquifers for the proposed permit and adjacent area; Federal regulations at 30 CFR 779.15(a)(1) and 783.15 do.

The Secretary contends that the use of the terminology "horizontal extent of the water table and quifers" is ambiguous and redundant. Federal requirements 30 CFR 779.15(a) and (a)(1) and 30 CFR 783.15(a) and (a)(1) are intended mean that the applicant must describe the horizontal extent of water resources within the proposed permit area and adjacent area. Alabama's regulation satisfies this intent by requiring a description for "the permit area and off-site areas".

10. CRRD contends that the State does not require that a permit application contain a description of the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground waters as do Federal regulations 30 CFR 779.15(b) and 783.15(b).

The Secretary finds that State regulations at sections 779.3 (c), (d), and (e) and 783.13 (c), (d), and (e) will effectively satisfy the information needs concerning recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water. Sections 779.13(c)(5) and 783.13(c)(5), for example, require rather specific data on ground water quality. Similarly, sections 779.13(e) and 783.13(e) will make it necessary for the applicant to have data on recharge, storage, and discharge characteristics in order for him/her to reach a determination on hydrologic consequences.

11. CRRD pointed out that ASMC 779.13(d) and 783.13(d) require that a permit application describe only important impoundments within the proposed permit area and off-site areas. The commenter stated 30 CFR 779.16 and 783.16(a) have much broader coverage, requiring the description and location of all ponds within the proposed permit and adjacent areas.

The Secretary contends that Alabama's use of the term "important" clarifies ambiguities in the Federal requirement. That is, literal interpretation of 30 CFR 779.16 and 783.16(a) would mean that the applicant would have to describe every pond, regardless of size, located in the proposed permit and adjacent area. The Secretary intends only that those ponds or impoundments which have functional uses be identified and described. The Secretary finds that Alabama's requirement to specifying that only

"important impoundments" be included, is no less effective than the Federal provision.

12. CRRD asserts that Federal requirement at 30 CFR 779.16(b)(2)(vii) and 783.16(b)(2)(vii) allow the SRA to request "other relevant data from a permit applicant". The State does not include a comparable provision.

The Secretary does not agree with the comment and points out that Alabama has exercised its option to include additional requirements. Paragraph 779.13(d)(3)(vi) and 783.13(d)(3)(vi), which concern baseline acidity, are State requirements which have no direct Federal counterpart. Likewise, 779.13(d)(4) and 783.13(d)(4) of the Alabama regulations are additional requirements, authorized by 30 CFR 779.16(b)(2)(vii), and 783.16(d)(2)(vii), respectively.

13. CRRD stated that Federal regulations at 30 CFR 779.20 and 783.20 require that the permit contain information on fish and wildlife resources. Alabama's regulations do not. In a related comment, Drummond Coal Company stated that the fish and wildlife section should be modified to be more consistent with SMCRA. Drummond did not provide further detail.

The Secretary points out that the U.S. District Court, District of Columbia, in *In Re Permanent Surface Mining Regulation Litigation Round 1, Sup.* ruled that the permit and bonding sections of SMCRA did not authorize the Secretary to require applicants to submit the fish and wildlife information at 30 CFR 779.20, 780.16, 783.20, and 784.21. In that the Federal regulations have been suspended, it is not necessary for Alabama to include such provisions in the State Program.

14. CRRD, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation noted that Federal regulations at 30 CFR 779.21 and 783.21 require permit applicants to provide adequate soil survey data for the proposed permit area; State regulations do not contain this requirement.

The Secretary points out that Federal regulations 30 CFR 779.21 and 783.21 were remanded by the Court in *Re: Permanent Surface Mining Regulation Litigation, Round 1, supra.* extend they require soil survey information for lands not qualifying as prime farmland. For soil investigation and survey of prime farmland, see Alabama regulation 779.27.

15. CRRD commented that State regulations 780.11 (c) and 784.11 (c) do not include requirements that a permit application contain a narrative

explaining the construction, modification, use, maintenance, and removal of dams, embankments, and other impoundments; overburden and topsoil handling and storage areas and structures as do Federal regulations at 30 CFR 780.11 (b) and 784.11 (b).

The Secretary finds that the State has deleted the requirement regarding dams, embankments, and other impoundments, because it would be redundant with State regulations 780.25 and 784.25. The Secretary agrees with this deletion and believes the State's format is no less effective than the Federal counterpart. Also, the Secretary agrees with Alabama that "overburden and topsoil handling and storage areas and structures" are not "facilities", as implied by the Federal provision. They do not require design criteria and very little, if any, maintenance. Plans for their "removal" would be in accordance with section 816.24 and 817.24 of Alabama's regulations.

16. CRRD pointed out that 30 CFR 779.24(i) requires a map showing the boundaries of any cultural or historic resources eligible for listing in the National Register of Historic Places. The State program excludes this provision. CRRD further commented that a map showing the boundaries of all known archeological sites should be included in the permit application. State regulations only require the mapping of known significant archeological sites. Finally, the commenter notes that 30 CFR 779.24 (g) specifies that the location of water supply intakes must be mapped and included in the permit application. The State program has no comparable requirement.

The Secretary points out that the Federal wording "eligible for listing" was suspended by OSM. Therefore, Alabama's regulation at 780.14(7) is consistent with the Court's decision. Regarding the commenter's concern that Alabama omitted the requirement to show locations of water intakes, the Secretary points out that Alabama's regulation 780.14(a)(5) combines Federal requirements 30 CFR 779.24(e) and 779.24(g). Although Alabama's wording is different, the Secretary finds that it effectively covers the requirement for showing the location of water supply intakes.

17. CRRD commented that the State program does not contain requirements for maps and cross-section drawings of measures to be taken to ensure the protection of the hydrologic balance, as required by 30 CFR 780.21.

The Secretary points out that Alabama has recombined several parts and sections in an apparent effort to

consolidate and improve organization. The requirements of 30 CFR 780.21 are found in State section 779.13 with most of the requirements contained in 779.13 (g). The Secretary finds that although reorganization has occurred, all necessary requirements are included and that the applicable Alabama sections are no less effective than the Federal counterparts.

18. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama omitted certain mapping requirements for transportation facilities that are required by 30 CFR 780.37 and 784.37.

Alabama regulation 780.14 provides for an operation plan permit map(s). Item (a)(25) of this section specifically requires, among other things, the mapping of haul roads within the permit area. The Secretary finds that these mapping requirements are no less effective than the provisions of Federal regulations at 30 CFR 780.37 and 784.37.

19. CRRD noted that the State program completely omits the information required to be submitted by 30 CFR 783.14(a)(1) with an underground mining permit application.

The Secretary points out that Federal regulation 30 CFR 783.14(a)(1) was suspended December 31, 1979 (44 FR 77455) insofar as it requires a geologic description of the strata down to and including the strata immediately below any coal seam for areas to be affected only by "surface operations and facilities", where no removal of overburden down to the level of the coal seam will occur. Geologic descriptions will, however, continue to be required for areas where overburden is being removed to the level of the coal seam and for certain specified "surface operations and facilities" where required by other regulatory requirements. See 30 CFR 783.25, 784.16(e) and 784.24(b). Considering the above suspension, the Secretary finds that Alabama's requirements are no less effective than the Federal rules.

20. CRRD indicated that 30 CFR 784.14 requires a reclamation plan to contain a detailed description of the measures to be taken during and after underground mining to ensure protection of the hydrologic balance. State regulations do not require the reclamation plan to include such a description.

The Secretary points out that Alabama has recombined several parts and sections in order to consolidate and improve organization. The requirements of 30 CFR 784.14 are found in State section 783.13, with most of the requirements contained in 783.13(g). The Secretary finds that although

reorganization has occurred, all necessary requirements are included and that the applicable Alabama sections are no less effective than the Federal counterparts.

21. CRRD contended that Alabama's regulations at 784.23(c) allow an underground mining operator to first address the proposed postmining land use of an area in a permit revision while Federal regulations contain no similar provisions. The commenter states that Alabama's plan would preclude consideration of the economic and technical feasibility of alternative postmining land uses which, according to the commenter, must precede mining to ensure the viability of the project.

The comment is incorrect in several respects. This issue was litigated as a part of the exhaustive review of the Federal permanent program regulations conducted by the U.S. District Court, District of Columbia. The Court held that, under Federal regulations, an underground mining operator could, near the end of the coal extraction phase of the operation, apply for an alternative postmining land use via the permit revision procedure. The court, therefore, ruled, quoting from a brief filed by the Secretary, "Hence, for underground, as for surface mining, the operator may wait until a reasonable time prior to the end of the coal extraction before applying for the alternative postmining land use."

Alabama's regulations require that a reclamation plan be filed as a part of the permit application and that the plan contain, *inter alia* a detailed estimate of the cost of reclamation with supporting calculations and a description of measures to be used to maximize the use and conservation of the coal resource. Thus, during the permit review process, the SRA will be able, by reviewing the reclamation plan and the operations plan, to make determinations of the economic and technologic feasibility of the operation and ensure that the site will be reclaimed to the levels required by law. If during the life of the operation, which often is many years in the case of underground mining, an alternative postmining land use becomes available, the operator may apply for a permit revision. At that time, the SRA will determine the viability of the alternative postmining land use. The Secretary, therefore, finds that Alabama's plan is no less effective than Federal requirements.

22. CRRD commented that Alabama regulation 785.10 would authorize off-site placement of spoil in abandoned mine lands with no bond coverage being required. According to the commenter, this will encourage operators to spoil on

abandoned mine areas without providing for erosion control or other mitigating measures.

The Secretary finds that Alabama's provision would provide added incentive for operators to reclaim abandoned lands. Indiscriminate spoiling and lack of environmental protection, as suggested by the commenter, can be controlled through the permit terms and conditions and a diligent inspection and enforcement program. It is unlikely that an operator would jeopardize continued operations by knowingly and willfully violating permit provisions. This provision will also be implemented under a controlled plan with OSM oversight, further insuring that sound reclamation is enhanced rather than inhibited. See Finding 18.1.

23. CRRD commented that 30 CFR 785.13(h) requires the SRA to make several written findings before permitting an experimental practice. The State's regulations at 785.13(h) require only that the applicant make certain demonstrations; there is no requirement that the SRA make written findings. The Secretary agrees that the SRA is required to make the written findings. However, the Director of OSM must approve all experimental practices. The Director of OSM will not approve experimental practices prior to written findings by the SRA. Since the written finding by the SRA must be made prior to approval by OSM, the Secretary finds that the Alabama regulation is no less effective than the Federal counterpart.

24. CRRD noted that Federal regulation 30 CFR 785.16(c)(4)(iii) requires approval by the appropriate State Environmental Agency of an applicant's plan which demonstrates that a variance from approximate original contour will improve the watershed. State regulations do not require approval by an appropriate State Environmental Agency.

Although not specifically stated, the appropriate agency is the Alabama Surface Mining Commission; therefore, since the SRA must approve every variance the necessary approval is implicit.

25. CRRD commented that 30 CFR 785.18(d) requires the SRA to make specific written findings before issuing a permit which contains a variance from contemporaneous reclamation. The commenter further stated that the State regulations at 785.18(d) require only that the applicant make certain demonstrations; there is no requirement that the SRA make written findings.

The Secretary agrees that the SRA is required to make the above mentioned

written findings. However, written concurrence from MSHA is required before the variance can be approved. MSHA will not approve variances without written findings from the SRA. Since the written finding must be made by the SRA prior to the concurrence by MSHA, the Secretary finds that the Alabama regulations are no less effective than the Federal counterpart.

26. CRRD commented that 30 CFR 785.20(c) requires that the SRA to make a written finding that in addition to meeting all other applicable requirements, an augering operation will be conducted in compliance with Part 819. The State's regulations at 785.20(c) require only that no permit shall be issued unless the operation will be conducted in compliance with Part 819; there is no requirement that the SRA make a written finding.

The Secretary points out that the State regulations require compliance with Part 819 and all applicable requirements of Subchapter G prior to permit approval. This requirement is considered no less effective than the Federal counterpart. With regard to the written finding, the Secretary finds that the SRA's approval of the application constitutes a written finding that all provisions of Part 819 and Subchapter G have been or will be met; and that State regulation 785.20(c) is no less effective than 30 CFR 785.20(c).

27. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation suggested that Alabama's rules at 786.12 be changed to assure the public of a minimum thirty day comment period after the RA determines that a permit application is complete.

Based on the wording of Alabama regulation 786.11(a), newspaper notices will not be published until a complete permit application is filed with the SRA. Therefore, the Secretary interprets the State rules to mean that the public will have thirty days from the last newspaper notice to file comments on a complete application.

28. CRRD commented that 30 CFR 786.17(a)(2) requires the RA to determine the adequacy of the fish and wildlife plan submitted by the applicant in consultation with State and Federal fish and wildlife management agencies. The State program does not include a comparable requirement.

The Secretary points out that, because of the Courts decision in *In Re: Permanent Surface Mining Regulation Litigation*, Round 1, supra, a fish and wildlife plan is not required by Federal regulations. Therefore, Alabama is not obligated to require such plans from

permit applicants, unless otherwise required by State law.

29. CRRD contended that Federal regulation 786.19(o) specifies that no permit or revision application will be approved unless the RA finds in writing that endangered and threatened species will not be adversely affected. There is no similar provision in the State's program.

The Secretary points out that in developing an operating plan, the applicant will be obliged to comply with the performance standards for protection of fish and wildlife and related environmental values (State rule 816.97). The applicant's operating plan must also include maps locating any threatened or endangered species (State rule 780.14(11)). Information in the operating plan, which is part of the permit application, will be used by the SRA to determine if the mining operation will affect threatened and endangered species. Approval or denial of the permit will be based on whether "the applicant has demonstrated that * * * operations * * * can be feasibly accomplished under the * * *

operations plan contained in the application." (See State regulation 786.19(b)). The Secretary finds that the latter provision adequately includes the more specific Federal requirement at 30 CFR 786.19(o), and assumes that permits will not be issued which will adversely affect threatened or endangered species.

30. According to CRRD, Alabama's definition of self-bonding (State rule 700.5) is less comprehensive than the Federal definition at 30 CFR 800.5. State wording requires only the permittee to execute the indemnity agreement.

The Secretary finds that Alabama has adequately satisfied the Federal requirement through its definitions of the terms "permittee" and "person". See State regulation 700.5. Specifically, Alabama's definition of "permittee" is quite broad, effectively including (through the use of the term "person") individuals, partnerships, associations, etc. Thus, execution of the indemnity agreement by the "permittee", as used in Alabama's program, would have broader meaning and is no less effective than the Federal requirement.

31. CRRD asserts that State regulation 785.10, which permits off-site spoil placement on abandoned surface mine lands without additional bond coverage, will not promote reclamation and may result in spending bond money on lands outside the permit area.

As previously noted (*Permitting* Comment Number 22), the Secretary finds that Alabama's provision for placement of spoil on abandoned mine lands will encourage reclamation of

these areas, thus relieving the burden on abandoned mine land reclamation funds. Assurance that operators will reclaim such areas which are required to be included in their permits, will be provided through rigid inspection and enforcement of the permit terms and conditions. This provision will be implemented under a controlled plan, with OSM oversight, further insuring that sound reclamation is enhanced, rather than inhibited. See Finding 18.1.

32. According to the Sierra Club, Environmental Policy Institute, and Legal Environmental Foundation the Federal rules at 30 CFR 788.12(a)(1) require the State Regulatory Authority (SRA) to set parameters in the program for determining what constitutes a significant departure from the approved mining methods.

The Secretary finds that the State has established the required parameters in State sections 788.12(a)(3), (b)(2), and (d), and finds the regulations no less effective than the Federal provisions.

VI. Bonding and Insurance

1. CRRD stated that several of Alabama's bonding requirements, specifically those at State sections 806.12(e)(6)(iii); 806.12(f)(8)(vi)(c); 806.12(g); 806.12(g)(3); 807.11(c); 807.11(h); and 807.12(e) are less effective than their Federal counterparts.

With some exceptions, the Secretary finds that Alabama's program includes provisions for implementation, administration, and enforcement of a system of performance bonds and liability insurance no less effective than 30 CFR Chapter VII, Subchapter J. See Finding 18.1.

2. Drummond Coal Company suggested that bond forfeiture should be based on the failure of reclamation and not on all the performance standards.

The commenter's concern is not clear to the Secretary because they do not focus on specific sections of Alabama programs. In reviewing section 808.13(a) of Alabama's program, however, the Secretary finds that the "criteria for (bond) forfeiture" listed are nearly identical in wording to those required by the Federal regulations at 30 CFR 808.13. Those criteria listed would require forfeiture because the permittee has indicated an inability to comply with State and Federal surface mining laws.

3. CRRD asserts that Alabama's program would entitle the Alabama Water Improvement Commission (AWIC) to make comments on proposed bond releases. The requirements at State regulation 807.11(b) and (c) however, do not provide that the AWIC receive notice of such pending actions,

except for the newspaper notice which is inadequate to provide AWIC with an opportunity to comment.

The Secretary finds that the newspaper notice required under section 807.11 along with the RA's obligation to coordinate and consult with AWIC (See State section 731.14(g)(9)) will ensure that AWIC has opportunity to comment on bond release actions.

VII. Performance Standards

1. CRRD asserts that the State has no statutory authority to "strike a balance between the protection of the environment and agricultural productivity and the nation's need for coal", as stated at ASMC 810.2(j).

The Secretary finds that the State has rightfully recognized an obligation to enhance the economic well-being of the State by contributing to the nation's coal needs, and that sufficient statutory authority exists to support this regulation (See the Alabama SMCRA section (2)(a) and (b)). In Section 810.2(j), the State merely provides notice that its obligations to the people of Alabama to protect the State's environment and agricultural productivity will be balanced with economic interests and the development of its coal resources.

2. CRRD argued that the State restriction at sections 815.11 and 815.13 on disturbing more than one-half acre of land in exploration operations should be an alternative limitation, not an additional one. The commenter, therefore, suggests replacing the word "and" with the word "or".

The Secretary points out that the corresponding Federal wording at 30 CFR 815.11 and 815.13 uses "and" rather than "or". However, by adding the one half (1/2) acre condition, the State has made possible two cases which are not covered by either State section 815.11 or 815.13. These are cases in which: (1) Less than 1/2 acre is disturbed and more than 250 tons of coal are removed and (2) more than 1/2 acre is disturbed and less than 250 tons of coal are removed. The first of these two cases is not considered likely to occur. The thickness of coal seams in Alabama indicates that removal of more than 250 tons would involve disturbance of more than 1/2 acre. The second case is more substantive since it would be possible that more than 1/2 acre could be disturbed without removing 250 tons. The Secretary assumes that the two cases were not covered by Alabama due to an oversight. The Secretary further assumes that should either of the above cases occur the SRA will regulate the situation as coal exploration or as a surface coal mining operation, as

appropriate. Thus, the Alabama regulation is not less effective than its Federal counterpart.

3. CRRD pointed out that 30 CFR 815.15(a) requires that habitats of unique value for fish, wildlife, and other related environmental values shall not be disturbed. The commenter noted that State regulation 815.15(a) is more permissive, requiring that habitat not be "unnecessarily" disturbed.

The Secretary agrees with the comment that the word "unnecessarily" renders the section less effective than the Federal counterpart. The Secretary is conditioning approval of the program upon a revision to the State regulations to replace the word "unnecessarily" with the term "significantly". This change will eliminate the permissiveness suggested by the commenter. See Finding 13.1.

4. CRRD noted that 30 CFR 816.11(c)(1) requires the posting of signs at each point of access to a permit area from public roads. State regulation 816.11(c)(1), on the other hand, only requires the posting of signs at each "primary" point of access to the permit area.

The Secretary finds that Alabama's use of the term "primary" clarifies which access points need to be posted with signs. Literal interpretation of the Federal rule, for example, would require posting signs at all paths, trails, fire breaks, roads, etc. that provide access from public roads. The Secretary did not intend that access, not used by the public, should be so marked. Rather, the posting of signs is necessary only on roads, trails, paths, etc. which are commonly used by the public. Such access points are logically designated as "primary" access points by Alabama.

5. CRRD contends that Alabama regulation 816.22(e) would allow a permit applicant to determine acceptability of a soil substitute, rather than the SRA, as required by 30 CFR 816.22(e). The Secretary does not find the State has relieved itself of any responsibility for approving suitable soil substitutes. Although the State has placed the burden of proof on the applicant, it remains the sole responsibility of the SRA to review the material submitted by the applicant and to make a final determination to approve or disapprove the soil substitute proposal; the applicant cannot reach a unilateral determination nor can he proceed with the proposal without proper authorization from the SRA.

6. CRRD made several comments which suggested that State rules 816.41(d)(3); 816.42(a)(2); 816.42(a)(3)(ii); and 816.46(h) address only a limited number of pollutant parameters for

water quality. The commenter suggested that State and Federal effluent limitations are more comprehensive and should be required in the State's program. The Secretary believes that the commenter has interpreted the State's regulations too narrowly. The Secretary points out that the general requirements of Alabama regulation 816.41(c) expressly prohibit violation of any Federal and State water quality laws, regulations, standards, or effluent limitations. Although worded differently, the Secretary finds that Alabama's regulation will be no less effective than 30 CFR 816.41(d)(3); 816.42(a)(2); 816.42(a)(3)(B) and 816.46(u) in protecting water resources.

7. CRRD indicated that 30 CFR 816.42(a)(6) requires a permittee to meet specific effluent limitations, regardless of the origin of the drainage entering the permittee's sediment pond. There is no comparable State provision. The Secretary finds that Alabama regulation 816.42(a)(6) is no less effective than the Federal requirement. Alabama's rule states that "Discharges of water disturbed by mining activities shall be made in compliance with all applicable effluent limitations guidelines for coal mining". The State takes the position that all point source discharges, including "mixed source" discharges, must meet the applicable provisions of State and Federal laws and regulations.

8. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation commented that Alabama's reference to compliance with State and Federal effluent limits is unclear. The commenters asked that Alabama regulations 816.42(a)(6) and 817.42(a)(6) be clarified to ensure that the numerical limits established by 30 CFR 816.42(a)(7) be met.

The Secretary finds that Alabama's requirements will be no less effective than the Federal rules. State compliance with the minimum State and Federal effluent standards will be monitored in the Secretary's oversight program and defects will be corrected accordingly.

9. CRRD noted that 30 CFR 816.44(a)(1) requires that stream diversions be approved by the RA and the State regulations do not have a similar provision.

The Secretary points out that Alabama's regulation 816.44(a)(1) specifies that the diversion must meet the requirements of State regulation 816.57(a). This section, in turn, indicates that no land within 100 feet of a perennial stream or intermittent stream shall be disturbed by surface mining activities unless approved by the RA. The Secretary, therefore, finds that the

content of Alabama's regulations provides protection no less effective than the Federal requirement.

10. CRRD pointed out that Federal regulation 30 CFR 816.45(b)(2) includes the sediment control method, stabilization of backfill material, to promote a reduction in the "volume" of runoff. State regulations, in contrast, address "velocity" of runoff.

The Secretary finds that the intent of 30 CFR 816.45(b)(2) is to identify sediment control measures which can be employed to prevent additional contributions of sediment to streamflow or to runoff outside the permit area. The reduction in "velocity" of runoff will achieve this by: (1) Reducing the sediment carrying capacity of flow and (2) reducing the volume of water and total sediment passing over the permit area. For these reasons, the Secretary finds that Alabama's wording at section 816.45(b)(2) will be no less effective than the Federal requirements in achieving the goal of reducing the amount of sediment reaching water bodies off the permit area.

11. Several CRRD comments and a Sierra Club (et al.) comment pointed out that the State program omits Federal requirements for sedimentation pond sediment storage, minimum detention time, dewatering devices that meet certain criteria, and sediment removal. These commenters contend that the omissions result in a State program that is less effective than Federal regulations at 30 CFR 816.46(b); 816.46(c); 816.46(d); and 816.46(h).

The Secretary points out that, as a result of the Court's decision in *In Re: Permanent Surface Mining Regulations Litigation*, Round 2, supra, OSM published notice at 44 FR 77452, December 31, 1979, that portions of the Federal requirements noted above, concerning sediment pond design capacity and pond size, detention capacity, dewatering, and sediment removal, were temporarily suspended. Certain portions of the Federal pond design requirements, however, have not been suspended. To the extent that Federal requirements remain in effect, State programs must contain requirements that are no less effective than the Federal requirements. The Secretary agrees with the comment and is requiring the State program to contain the prerequisite pond design criteria. See Finding 13.16.

12. CRRD and the Tennessee Valley Authority (TVA) commented that Alabama's section 816.48(c) does not require a 30 day time limit for burying or treating all acid-forming or toxic-forming spoil. The commenters indicated that this will result in less effective

protection than that provided by 30 CFR 816.48(c).

The Secretary does not find that the 30 day limit for burying or treating acid-forming or toxic-forming spoil is paramount to achieving a high-level of environmental protection. More important is the physical isolation of these materials from the elements. Alabama's program adequately satisfies this latter requirement through its provisions at State section 816.48(c) that any problem spoils which are to be stored, must be placed on impermeable material and protected from erosion and contact with surface water.

13. CRRD asserted that permanent impoundments should not be allowed unless the discharge from the impoundment meets effluent limitations, not water quality standards, as provided by State rule 816.49(a)(1) and 30 CFR 816.49(a)(1).

The Secretary suggests that the commenter is interpreting the State and Federal requirements too narrowly, particularly the language "water quality standards". This wording has much broader connotation when considered in conjunction with other regulations at Part 816. Specifically, section 816.41(c) of the State and Federal rules state that "in no case shall Federal and State water quality statutes, regulations, standards or effluent limitations be violated."

14. CRRD pointed out that 30 CFR 816.49(h) requires a qualified, registered professional engineer to certify all dams and embankments annually. The State does not include a comparable requirement in its program. In a related comment, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama's program does not require that some dams and embankments be inspected by a qualified professional engineer.

The Secretary agrees with the comments. As a condition of approval, Alabama is required to amend its program to provide that all dams and embankments meeting the criteria for regulation under 30 CFR 77.216(a) shall be routinely inspected as provided in 30 CFR 77.216-3 and that all inspection reports be kept available for inspection at the mine site. Additionally, the State is to amend its program to require that dams and embankments be certified annually by a qualified registered professional engineer and that such reports and certifications be filed with the State Regulatory Authority. See Finding 13.10.

15. CRRD contends that State rule 816.52(b)(2) and 30 CFR 816.52(b)(2) should allow for coordinating the

approval to remove water quality or flow control systems with agencies other than the SRA.

The Secretary finds that the coordination suggested by the commenter is not precluded by the referenced requirements. On the contrary, these requirements merely identify an option to the SRA for removing certain systems. Before exercising such an option, however, the SRA will need to observe its responsibilities under its regulations to coordinate these activities with other affected agencies.

16. CRRD commented that discharges to ground water in underground mine workings require a permit from the Alabama Water Improvement Commission (AWIC) and must meet the permit limits of the AWIC. Alabama's regulation 816.55(b) should, therefore, provide that the SRA must coordinate with the AWIC when approving any discharges to underground mine workings.

The Secretary points out that State section 731.14(g)(9) requires that the AWIC be responsible for issuing NPDES permits. The ASMC will work closely with the AWIC to ensure that all water pollution control programs and plans meet the Federal and State quality standards.

17. CRRD commented that Federal regulation 30 CFR 816.64(b)(2)(ii) limits blasting to a maximum of four hours per day. State rule 816.64(b)(2)(ii) does not contain a similar limitation.

The Secretary agrees with the commenter. As a condition of approval, the State is required to amend its program so that blasting may be performed only for an aggregate of four (4) hours of any given day. See Finding 13.19.

18. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama has omitted the requirement contained in Federal rules that blasting not be conducted to within 500 feet of certain facilities.

The Secretary points out that on August 4, 1980, 30 CFR 816.65(f) and 817.65(f) were suspended insofar as they restrict blasting at distances greater than 300 feet from a dwelling or other structure, or from flammable facilities and water lines (See 45 FR 51549, August 4, 1980). Alabama's program submission "compensates" for the suspended language by requiring a blasting plan. The Secretary, therefore, finds that Alabama's requirements are no less effective than the Federal regulations.

19. CRRD, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation noted that 30 CFR 816.65(i) allows a 1.0 inch per second particle velocity. Comparable State rule 816.65(i) would permit a 1.4 inch per second velocity. Also, the weight of allowable explosives under ASMC 816.65(1) is greater than under 30 CFR 816.65(1). These less stringent requirements, argue the commenters, will increase the risk of blasting damage.

The Secretary agrees with the comment. As a condition of approval Alabama is required to revise its program to provide for a maximum peak particle velocity of 1 in/sec and to make appropriate adjustments in the scale distance formula and resulting table. Finding 13.20.

20. CRRD argues that ASMC 816.68(a) is less effective than 30 CFR 816.68 because the State requirement does not make blasting records available to the public.

The Secretary agrees that Alabama's regulations are silent with regard to the availability of blasting records. The Alabama SMCRA at section 22(b)(15)(B), however, provides that blasting logs will be maintained for at least three years and will be made available for public inspection upon request. The Secretary finds that since the State's statute specifically provides for the public availability of blasting records and the State regulations do not conflict, the statutory provision governs, and Alabama's program is in accordance with SMCRA.

21. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation assert that Alabama fails to adopt standards for the disposal of excess spoil consistent with 30 CFR 816.71. In particular, point out the commenters, Alabama allows disposal of coal processing wastes in head-of-hollow fills. Assuring compaction and stability of these materials may, therefore, be a serious problem.

The Secretary agrees with the comment. As a condition of approval, the State is required to revise its regulations to disallow disposal of processing wastes in head-of-hollow and valley fills. See Finding 13.12.

22. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama's rules fail to incorporate standards required by Federal regulations 30 CFR 816.72-74 for various types of fills.

The Secretary agrees with the comment that Alabama's regulations are less effective than the Federal

requirements, as they relate to spoil disposal. As a condition of approval, the State is required to make regulatory revisions which ensure compliance with SMCRA and the implementing regulations. See Finding 13.15, 14.5 and 14.9.

23. CRRD and TVA commented that State rule 816.97(d) omits the fencing and other requirements designed to protect wildlife from hazardous areas.

The Secretary points out that section 816.97(a) of Alabama's regulations require use of the best technology currently available to minimize disturbances and adverse impacts of coal mining activities on fish and wildlife and related environmental values. The Secretary finds that this general requirement will provide protection no less effective than the fencing and other provisions of 30 CFR 816.97(d)(2) and (d)(3), while providing the State with a more flexible program to meet conditions unique to Alabama wildlife and its related environment.

24. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation indicate that Alabama regulations 816.103 and 817.103 allows the covering of coal and acid and toxic-forming materials with less than four feet of non-toxic material if approved by the Regulatory Authority. The commenters assert that even in view of suspended Federal rules, Alabama's regulations will be less effective because the State fails to ensure that alternative treatment will provide the necessary protection.

The Secretary does not agree with the comment. Assurance that the alternative treatment will work will be determined at the time an operator submits the proposal. The SRA's determination that the alternative treatment will be effective will be based on a technical review of the applicant's engineering and design data. Where the proposal is defective or deficient, the SRA may require additional measures or it may require covering the problem materials with four feet of "clean" materials.

25. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama has omitted the word "and" between paragraphs 816.112(c) and (d). According to the commenter, this suggests that the requirements are not cumulative, as they are under 30 CFR 816.112.

The Secretary does not agree with the comment. The construction of Alabama's regulations allows use of commercial and introduced species only when all of the conditions of section 816.112 are satisfied.

26. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation point out that Alabama omitted the provisions at 30 CFR 816.115 that require land approved for grazing use after mining be used for grazing according to certain standards.

The Secretary points out that 30 CFR 816.115 and 817.115 were suspended to the extent they require that land must be used for livestock grazing when the approved postmining land use is range or pasture. See Federal Register, Monday, August 4, 1980 (45 FR 81549). The Secretary, therefore, finds that if actual grazing use cannot be required, it would not serve any useful purpose to establish grazing standards.

27. TVA, Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation pointed out that Alabama has elected to omit the "reference area" and/or "technical standards" requirements at section 816.116(b)(1). Instead, the State specifies that revegetation, with certain restrictions, must cover 80 percent of the affected soil surface area. According to the commenters, this will be less effective than the Federal reference area approach, which requires a productive capacity equivalent to 90 percent of the reference area.

The Secretary points out that the Federal rule provides alternatives for measuring revegetation success. One of these alternatives is the reference area approach. The other is the use of technical guidance procedures approved for use in the State's regulatory program. Alabama has opted for the latter and the Secretary finds the standards and guidelines published in Alabama's program will be as effective as the Federal requirement in measuring revegetation success.

28. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation stated that Alabama regulation 819.11 omits certain Federal performance standards for auger mining.

The commenters do not specifically identify that omitted performance standards. Therefore, the Secretary assumes that commenters are referring to the apparent omission of sealing or plugging auger holes within 72 hours, as required by Federal regulations in some instances. Assuming this is the omitted Federal requirement, the Secretary points out that Alabama requires "contemporaneous" plugging and sealing. The State interprets "Contemporaneous" to mean within 72 hours when an acid coal seam is encountered. The Secretary believes this interpretation is no less effective than

the Federal requirements. See Finding 13.2.

29. Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation commented that 30 CFR 826.12(a)(1)(i) contains a blanket prohibition on placing spoil on the down slope. Alabama's corresponding rules appear to allow for an exemption from this requirement.

The Secretary does not agree with the comment. Alabama's provisions at 826.12(a)(1)(i) would merely permit use of excess spoil in road embankments located on the down slope. Such use would have to meet engineering and design requirements for road embankments. The Secretary, therefore, finds that Alabama's requirements are no less effective than the Federal rules.

30. CRRD commented that Federal regulations at 30 CFR 828.11(e) require restoration of quality of affected ground water while the State program does not have a similar provision.

Since restoration of the quality of affected ground water is required, the Secretary assumes that Alabama will not issue any in situ processing permits without having first amended its regulations to include this provision.

31. According to Sierra Club, Environmental Policy Institute, and Legal Environmental Assistance Foundation, Alabama does not provide regulations for evaluating the growth of trees and shrubs in wildlife management areas.

The Secretary finds that Alabama's requirements for revegetation success for fish and wildlife management areas are no less effective than Federal rules at 30 CFR 816.116. Alabama has elected not to use the reference area approach for measuring revegetation success. Instead, the State will use "technical guidelines" which will be developed in consultation with appropriate State and Federal agencies and approved by the Secretary. Using technical guidelines to measure revegetation success will produce results similar to the reference area approach.

VIII. Inspection and Enforcement

1. Sierra Club, Environmental Policy Institute and Legal Environmental Assistance Foundation commented that Alabama's regulations allow for a partial inspection to be an on-site inspection. The commenter stated that Alabama's requirements also suggest that aerial inspections may be counted toward the partial inspection requirement.

The Secretary finds that both on-site and aerial inspection methods can be effectively used to assure permit compliance. Alabama section 842.11(a)

specifies that no aerial review may be counted as a partial inspection unless it is appropriately documented with observable factors noted. The Secretary finds that inspection results and follow-up action are more important to administering an efficient and effective program than the method of inspection.

Public Comments for Second Comment Period

April 22, 1982–April 30, 1982

1. Alabama By-Products Corporation expressed concern that its coke plant would be regulated by the State Regulatory Authority as a "processing facility". The Secretary has concluded that the commenter's concerns are unfounded. The provisions of SMCRA, the Federal rules at 30 CFR Chapter VII, and the Alabama program are applicable to the suppliers of coal, not coal consumers.

2. The Environmental Policy Institute (EPI) noted that the ten (10) days allowed for public comments on the forty-five (45) issues identified by a the April 20, 1982, Federal Register notice (47 FR 16797) did not afford an adequate opportunity for review. The commenter further asked OSM to explain how it justified the addition of new material into the record beyond the time the Secretary was statutorily obligated to reach a decision on the Alabama program. OSM established the ten (10) day public comment period because the materials were not lengthy and because they related to clarifying previously submitted information which was afforded a much longer comment period. The Secretary was also attempting to proceed with the review process without "undue delay" which is explicitly spelled out in the legislative history of the Act. With respect to the commenter's second concern, the Secretary finds that it would be inappropriate to discuss the matter of the administrative record relative to SMCRA Section 503 at this time because of pending litigation.

3. EPI objected to OSM's agreement to allow Alabama to permit smaller scale maps since such latitude in the commenter's opinion would ignore the public's right to the detail called for by 30 CFR 771.23(e)(1) and 780.14(b).

The Secretary very diligently considered the view of the commenter in reaching his decision. Alabama has assured the OSM that the flexibility it is afforded will only be used where greater detail is not essential to protect the public and afford implementation of the full intent of Federal regulations and SMCRA. The Secretary, therefore, finds that the public will be provided the

opportunity to review maps which depict adequate detail.

4. EPI commented that OSM's suggestion to the State regarding prohibiting "significant" disturbances to unique wildlife relative to coal exploration was less effective than the provisions of 30 CFR 815.15(a). The Secretary finds that the word "significant" is no less effective than the intent of the word "any" used in the Federal regulations. Taken literally, the word "any" could be interpreted to mean a sound wave or cutting of a single bush. The Secretary finds that such an overly restrictive interpretation is not intended and that the term "significant" will be interpreted properly to provide for a State regulation no less effective than the Federal regulation.

5. EPI noted that OSM's recommendation to the State that the State Regulatory Authority include "silviculture" in its definition of "agriculture" or "commercial" contravened OSM's preamble statement excluding silviculture as an appropriate post mining land use for mountaintop removal operations. The Secretary has considered carefully the commenter's concern. See Finding 13.16, for an explanation of the Secretary's disposition of this matter.

6. EPI cited that OSM's reference to sections 816.42(a)(b) and 817.42(a)(b) in the notes of the April 9, 1982 meeting (AL-345) relative to pound water quality discharges resulting from drainage from both disturbed and non-disturbed areas was unclear and requested clarification. OSM simply intended to state that if a sedimentation pond contained water from both a disturbed area i.e. an area off-site with poor water quality and a non-disturbed area, probably with good water quality; any effluent discharge would still have to be monitored according to state regulations no less effective than their Federal counterpart. The Secretary believes that the commenter's concern has been addressed adequately.

7. EPI commented that OSM should require Alabama to amend State regulations 786.19(a) and (b) requiring permit applications to comply with all requirements of the regulatory program as well as the State Act. Alabama informed OSM on April 9, 1982, in executive session that it would as a matter of policy, require compliance with all applicable requirements of both its Act and regulations. For further discussion of this matter, see Finding 14.11.

8. EPI noted that the State program should provide criteria no less effective than the provisions of 30 CFR 786.19(o)

denoting that proposals do not adversely affect endangered species. OSM was informed by the State Regulatory Authority on April 9, 1982, that it will consult with appropriate state agencies to assure that the proposed activities will not affect the continued existence of endangered species or result in the destruction or adverse modification of their critical habitat. See ALA 347. The State will not need a regulation amendment for implementation of this consultation. For further discussion on this issue, see Finding 14.14.

9. Drummond Coal Company (DCC) commented that the omission in the Alabama Statute (Act No. 81-435) of the provision for "reasonable attorney and expert witness fees" is in accordance and consistent with other laws of the State, even though the omission is not in accordance with 30 CFR 840.15. DCC further states that fees and court costs should be awarded by the courts on the basis of the outcome and merit of the suit, and asserts that inclusion of the Federal provision will perpetuate frivolous suits which will be burdensome to taxpayers and coal miners. The subject of this comment has been discussed previously. See Finding 1.2.

10. DCC expressed concern that the terms "having religious or cultural significance" and "sites for which historic designation is pending", which are contained in the definition of "Historic Lands", are not adequately defined. DCC believes this may lead to abuse of the process for designating lands unsuitable for mining by allowing areas to be called historic lands without criteria or evaluation in order to stop or delay mining for reasons other than those intended by SMCRA and the Federal regulations. DCC suggested that specific criteria be established for these two terms along with an evaluation of specific sites against those criteria by a qualified party. For a discussion of the commenter's concern, see Finding 12.5.

11. DCC recommends that if OSM requires the State to include a requirement in regulation 780.14(a)(4) to show the "current use of buildings", the regulation also be revised to reduce the distance requirement from 1000 feet to 300 feet as required by Federal regulations. The State has agreed to require the "current use of buildings" to be shown on an appropriate map, as required. (See Finding 14.2.) The distance requirement of 1000 feet is the same as that required by the Federal regulations at 30 CFR 780.14(a) thru reference to 30 CFR 779.24 and 779.25.

12. DCC states that it is not clear what is meant by the term "equitable

owner" since the term is not defined. DCC further contends that requiring the applicant for a permit to investigate in order to determine all the interest in the property to be permitted is nonsensical and places both the applicant and the regulatory authority in the position of inquiring and reviewing private contractual agreements. "Equitable owner" is a standard legal term for any person with an equity interest in a property. The Secretary finds that such owners may be affected by surface mining of their property as much as the "legal owner" who holds the title to the property. The State has agreed to require a showing of the equitable owners of record found in a standard title search of the standard chain of title. The investigation, which concerned the commenter, is limited to a title search and the identification of interests in the property is limited to "legal and equitable owners of record". Such information is a matter of public record through property transfer records. The Secretary does not find obtaining this information to require lengthy investigation or involve reviewing private contracts. See Finding 14.6.

13. DCC stated that it could see no practical or environmental benefit in sealing auger holes in some instances within the arbitrary time limit of 72 hours since all drainage from auger holes can only be discharged after meeting appropriate effluent limits. DCC contends that the Alabama regulations are "as effective as" the Federal regulation in this regard. The Secretary disagrees. The State regulations without the 72 hour time limit in some instances are less effective than the Federal regulations. The 72 hour time limit applies to plugging auger holes with discharges containing toxic-forming or acid-forming material as a practical means of stopping harmful discharges before damage is done and more elaborate discharge control and treatment measures are required. See Finding No. 13.2.

14. DCC contends that the only determination that sedimentation ponds are the best technology currently available has been made by OSM without substantiation, rather than by EPA as OSM claims. DCC asserts that Alabama's regulations are as effective as the current Federal regulations since drainage from a disturbed area must meet effluent limits. DCC claims that State regulations are more effective in preventing environmental problems than the Federal regulations by allowing "treatment facilities", which considers that sediment ponds may cause more environmental degradation than treatment facilities in some areas and

which provides for the use of improved technology in the future. DCC states that Alabama presently allows treatment facilities in small drainage areas which results in less environmental degradation. This subject has been discussed previously. See Finding 13.7.

15. DCC believes that sediment pond design should be left to the discretion of the design engineer to meet effluent limitations set forth in the regulations. DCC states that if design criteria are to be specified, they should be limited to the construction of the embankment only and not directed to hydrologic design. DCC further states that embankment slopes should not be specified, but a static safety factor of 1.5 used instead. The Secretary finds that certain basic design criteria must be specified to ensure a minimum safety standard while simultaneously giving flexibility to the engineer to design a structure for a specific situation. The Secretary finds this is accomplished in the current Federal regulations and therefore disagrees with the commenter. For further discussion of this point, see Finding 13.16.

16. DCC commented that OSM should not require Alabama regulations to be consistent with the current 30 CFR 816.72-73 and 817.72-73 dealing with spoil disposal since OSM has proposed new regulations to replace the current regulations. The Secretary can not agree with the comment that it is unwise policy to require the State to promulgate regulations consistent with a current Federal regulation when a less stringent regulation is being proposed. State regulations comparable to current 30 CFR 816.72-73 and 817.72-73 must meet the "no less effective than" criteria as applied to current Federal regulations. The Secretary further concludes that simply because a regulation is proposed to be changed it is not automatically as effective as a current regulation toward meeting the intent of the SMCRA. Public comments could indeed reflect that the proposed regulation did not satisfy the intent of SMCRA and could likewise necessitate a substantial change in such proposed regulation. For further discussion on spoil disposal, see Finding 13.15.

17. DCC noted that current Federal regulations 816.71 and 817.71 do not require spoil placement in four (4) foot lifts and therefore the proposed condition to the Alabama program should be removed. The OSM comment to which DCC has responded, item 8c of AL-347, related to sections 816.72 and 817.72, disposal of excess spoil for valley fills. 30 CFR 816.72(c) and 817.72(c) do reference a four (4) foot lift

maximum which is deemed essential to ensure stability. 30 CFR 816.71 and 817.71 incorporate the provisions of 816.72 and 817.72 making the recommended Alabama regulation no more stringent than Federal regulations. For further discussion, see Finding 13.13.

18. DCC further stated that the Secretary's proposed condition, 10a of AL-347, requiring Alabama's four (4) hour aggregate blasting regulation to be consistent with 30 CFR 816.64(b)(2)(ii) was incompatible with OSM's proposed rule of March 24, 1982. DCC also noted that the four (4) hour limitation also increased the risk of accident and public property damage due to holes left loaded overnight.

The Secretary disagrees with this comment for the reason previously stated under comment 16 of this section. All State revisions to the Federal programs must be analyzed relative to existing regulations, not proposed rules.

Relative to increasing the risk of accident and personal property damage the Secretary finds that this interpretation is not valid, since the loading operation is not initiated until the appropriate amount of time remains prior to scheduled detonation. The Secretary further concludes that existing regulations do provide latitude to the four (4) hour detonation period if in rare instances safety would be involved. For further discussion, see Finding 13.19.

19. DCC commented that the Secretary should not require Alabama to revise its regulation to require a blasting peak particle velocity of 1.0 inches per second and a scale distance of 60 feet because no technical justification for the criteria was identified. DCC went on to say that such a requirement appeared counterproductive since the regulation will probably change in the future.

The Secretary notes that the commenter pointed out the fact that the U.S. District Court for the District of Columbia in its May 16, 1980, decision did not invalidate the 1.0 inch per second criterion in the permanent program. For additional discussion, see Finding 13.20. Also, the Secretary must evaluate the State program in accordance with existing regulations and has no latitude for evaluation based on probable future changes for the reasons set forth under the discussion for comment 16 of this section.

20. DCC and Alabama By-Products Corporation disagreed that the Secretary should impose a condition on Alabama's program necessitating that the State exert jurisdictional authority over all coal processing facilities including those not near or at the mine site. DCC also stated that the objective of the condition was to clarify what the

courts had been unable to do—i.e. determine what the phrase "at or near the mine" actually modifies. DCC went on to note that OSM had been selective in its court citations relative to the issue and had ignored a similar case of the United States District Court for the Northern District of Alabama, Southern Division.

The Secretary finds that the ruling by the D.C. District Court very clearly concluded that the phrase "at or near the mine" modifies only the loading of coal. The Secretary also notes that the cited case by the District Court for the Northern District of Alabama, dealt specifically and entirely with OSM interim regulations promulgated under section 501(a) of SMCRA not the permanent program regulations promulgated under section 510(b) *et seq.* of SMCRA. Consequently the D.C. District Court and Sixth Circuit Court proceedings specifically addressed the Act and the permanent program regulations. For further discussion, see Finding 14.12.

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA 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 discuss informally how SMCRA 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.

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 program, 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 SMCRA's environmental protection standards.

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 ensure that communication between him and the states remained open and uninhibited at all times (44 FR 54444; September 19, 1979). This policy was critical to avoiding a period of enforced silence between OSM and a state after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to conditionally approve a state program. Under 30 CFR 732.13 of 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 SMCRA; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 301(c), 502(b), and 503(a)(7).

SMCRA expressly gives the Secretary only two options—to approve or disapprove 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 conditionally approve 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. It also avoids the costly and cumbersome problem of implementing Federal programs where the state submittal was deficient in only minor respects. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states 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, 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 states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by SMCRA and these regulations" (44 FR 14961; March 13, 1979). 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 granted.

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.

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 SMCRA that the deficiency would probably be major.

The granting of conditional approval is not and cannot be a substitute for the adoption of an adequate program. The Federal regulations 30 CFR 732.13(i), give 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 approval authority is to assist states in achieving compliance with SMCRA, not to excuse them from compliance.

The Secretary's Decision

As indicated above under "Secretary's Findings," there are minor deficiencies in the Alabama program which the Secretary requires be corrected. In all other respects, the Alabama program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why each deficiency is minor, as required by 30 CFR 732.13(i). In those cases where agreement by the State (to a regulation change, policy statement or other action) is indicated, such agreement was reached between OSM and State officials in an executive session at OSM Headquarters in Washington, D.C., on April 9, 1982 (Administrative Record Number AL-347).

1. As discussed in Finding 1.2, the Alabama SMCRA fails to specifically provide for reasonable attorney and expert witness fees as required by Section 520(f) of SMCRA. This deficiency is minor since few, if any, cases are expected where these fees would be a factor prior to the projected legislative change. Further, while the Alabama SMCRA does not specifically provide for such fees, neither does it preclude them.

2. There are two definitions in the Alabama regulations which require that approval be conditioned upon a regulation change. These definitions are discussed below under (a) and (b).

(a) As discussed in Finding 12.1, Alabama's definition of "Extraction of Coal as an Incidental Part" is deficient in that it could be construed to exempt areas intended to be covered by SMCRA. This deficiency is minor since Alabama has agreed to a regulation change to remove this exemption and has agreed that until a regulation change is accomplished it will, as a matter of policy, interpret the present wording to include as subject to regulation all areas included by the corresponding Federal definition.

(b) As discussed in Finding 12.5, Alabama's definition of "Historic Lands" is deficient since it does not specifically delineate sites of religious, cultural or historic significance. This deficiency is minor since Alabama has agreed to change its regulation to provide for lands having religious, cultural or historic significance. In addition, while the present language omits desirable details, it is believed to be sufficiently specific to enable the Regulatory Authority to offer the necessary protection to valuable sites until a regulation change can be accomplished.

3. As discussed in Finding 13.1, Alabama's regulations do not provide sufficient protection for wildlife habitats. This deficiency is minor since Alabama has agreed to a regulatory change to substitute "significantly disturbed" for "unnecessarily disturbed"; and Alabama has further agreed that the State will, as a matter of policy, consider any significant disturbance to be unnecessary until a regulation change is accomplished.

4. Alabama's regulations regarding sedimentation ponds and other impoundments and embankments are less effective than the Federal counterparts.

Individual deficiencies requiring correction are discussed below under (a) through (e).

(a) As discussed in Finding 13.7, Alabama's regulations do not provide sufficient protection to the environment from surface mine drainage since "treatment facilities" are permitted as an alternative to sedimentation ponds. This deficiency is minor since Alabama has agreed to a regulation change or otherwise amends its program to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds, and should Alabama wish to approve any other technology, the State will first submit the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Alabama has agreed not to use its authority to approve treatment facilities other than sedimentation ponds or the approval will terminate immediately.

(b) As discussed in Findings 13.8 and 13.18, Alabama's regulations fail to provide for sufficient sedimentation pond design criteria since portions of the counterpart to 30 CFR 816.46(e)-(u) and 817.46(e)-(u) have been omitted from the corresponding State sections, 816.46 and 817.46. Consequently, essential references have been omitted from State sections 816.49(b) and 817.49(b). This deficiency is minor since Alabama has agreed to a regulation change to include the missing criteria and to reference the appropriate section in 816.49(b) and 817.49(b). Alabama has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that are inconsistent with applicable Federal requirements 30 CFR 816.46(e)-(u) or 817.46(e)-(u).

(c) As discussed in Finding 13.9, Alabama's regulation regarding impoundments is deficient in that it does not prohibit slopes greater than 1v:2h.

This deficiency is minor since Alabama has agreed to a regulation change to include the 1v:2h slope limit requirement and has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits that allow a slope greater than 1v:2h.

(d) As discussed in Finding 13.10, Alabama's regulation regarding inspection of dams or embankments is deficient in that it does not clearly provide for adequate inspection procedures. This deficiency is minor since Alabama has agreed to a regulation change to provide that all appropriate dams and embankments be inspected in accordance with 30 CFR 77.216-3 and that all resulting reports be kept at the minesite. In addition, Alabama has agreed that all certifications, reports and statements required by MSHA must be filed with the Regulatory Authority. Alabama has further agreed that until a regulation change is accomplished it will implement the new language as a matter of policy.

(e) As discussed in Finding 13.16, Alabama's regulation do not provide for a minimum sediment storage volume. This deficiency is minor since the portion of the Federal regulations which provides for a specific minimum storage volume has been remanded and Alabama has agreed to a regulation change to cover that portion of the regulations which has not been remanded and which requires the basic criteria for a minimum sediment storage volume. Alabama has further agreed that until a regulation change is accomplished the State will, as a matter of policy, adopt the new language.

5. Alabama regulations regarding spoil and waste placement are not as effective as the Federal counterpart. Individual deficiencies requiring correction are discussed below under (a) through (d).

(a) As discussed in Finding 13.12, Alabama regulations do not prohibit disposal of coal processing waste in head-of-hollow and valley fills. This deficiency is minor since Alabama has agreed to a regulation change to the effect that disposal of processing waste in head-of-hollow and valley fills is not allowed; and Alabama has further agreed that until a regulation change is accomplished the State will, as a matter of policy, not allow such disposal.

(b) As discussed in Finding 13.13, Alabama regulations do not provide for horizontal lift placement of spoil. This deficiency is minor since Alabama has agreed to a regulation change to the effect that spoil will be required to be placed in 4' horizontal lifts unless other

placement is specifically authorized by the Regulatory Authority; and Alabama has further agreed that until a regulation change is accomplished, the State will issue no permits which are at variance with the corresponding existing Federal regulations.

(c) As discussed in Finding 13.14, Alabama regulations do not contain criteria for slopes greater than 36 percent in spoil disposal areas. This deficiency is minor since Alabama has agreed to revise its regulations to include criteria for such disposal area slopes which are no less effective than the Federal counterparts and to reference these sections as indicated in Finding 13.14. Alabama has further agreed that until a regulation change is accomplished, the State will, as a matter of policy, require adherence to the Federal regulations covering slopes greater than 36 percent.

(d) As discussed in Findings 13.15, 14.5 and 14.9, Alabama regulations do not contain adequate criteria with regard to specific requirements for head-of-hollow and valley fills, as do 30 CFR 816.72-.73 and 817.72-.73, and that the references at State sections 780.35(a) and 785.18(c)(7) and (d)(7) are consequently deficient. This deficiency is minor since Alabama has agreed to regulation changes to include the missing sections and to reference the included sections as appropriate. Alabama has further agreed that until such regulation changes are accomplished the State will, as a matter of policy, require compliance with applicable provisions of 30 CFR 816.72-.73 and 817.72-.73.

6. Alabama regulations relative to blasting are not as effective as the Federal counterparts. Individual deficiencies requiring correction are discussed below under (a) and (b).

(a) As discussed in Finding 13.19, Alabama's regulations do not limit blasting periods to an aggregate of four hours per day. This deficiency is minor since Alabama has agreed to revise its regulations to provide a requirement consistent with the four hour aggregate provision of 30 CFR 816.64(b)(2)(ii). Alabama has further agreed that until a regulation change is accomplished it will not issue any permanent program permits that are inconsistent with 30 CFR 816.64(b)(2)(ii).

(b) As discussed in Finding 13.20, Alabama's regulations allow a higher peak particle velocity than does the Federal counterpart, with corresponding adjustment to the scale distance formula and accompanying table. This deficiency is minor since Alabama has agreed to revise its regulations to reflect the 1.0 in/sec. peak particle velocity of

the Federal regulations and to correspondingly adopt a scale distance of 60 with appropriate adjustments to applicable tables. Alabama has further agreed that until a regulation change is accomplished, the State will not issue any permanent program permits which are inconsistent with 30 CFR 816.65 (i), (k), and (l).

7. Alabama's regulations relative to requirements for information on maps and plans in permit applications are not as effective as the Federal counterparts. Individual deficiencies requiring correction are discussed below under (a) through (c).

(a) As discussed in Finding 14.2, Alabama regulations omit the requirement to identify the current use of buildings. This deficiency is minor since Alabama has agreed to a regulation change to require identification of the current use of buildings; and Alabama has further agreed to require that the current use of buildings be indicated on an appropriate map until a regulation change can be accomplished.

(b) As discussed in Finding 14.3, Alabama's regulations do not require either sufficient slope measurements to adequately represent the existing land surface configurations or criteria for such measurements. This deficiency is minor since Alabama has agreed to a regulation change to provide for appropriate slope measurements. Alabama has further agreed that until a regulation change is accomplished, the State will interpret its existing regulations to provide for adequate slope measurements as indicated in Finding 14.3.

(c) As discussed in Finding 14.6, Alabama's regulations do not require that information concerning equitable owners of record be included in the permit application. This deficiency is minor since Alabama has agreed to a regulation change to the effect that equitable owners of record found in a standard title search of the standard chain of title will be included. Alabama has further agreed that until a regulation change can be accomplished the State will interpret its regulations to require inclusion of such equitable owners of record.

8. Alabama regulations are not as effective as the Federal counterparts since they contain provisions which could be used to prevent legitimate public access to certain information. Individual deficiencies requiring correction are discussed below under (a) and (b).

(a) As discussed in Finding 14.8, Alabama regulations improperly provide

that permit information pertaining to the coal seam may be excluded from public disclosure. This deficiency is minor since the information will be available to the Regulatory Authority so that inspection and enforcement activities will not be hampered. In addition, Alabama has agreed to a regulation change to grant to the Regulatory Authority the mandatory authority to provide to the public information on acid and acid-forming materials in the coal seam, and few public requests for "confidential" information are anticipated prior to the regulation change.

(b) As discussed in Finding 15.1, Alabama's regulations allow the operator rather than the Regulatory Authority to determine what exploratory information shall be regarded as confidential. The State regulations also omit specific guidelines for determining confidentiality. These conditions are minor since the necessary information will be available to the Regulatory Authority. In addition, Alabama has agreed to a regulation change to incorporate provisions consistent with 30 CFR 776.17(b)(1-3); and few public requests for "confidential" information are anticipated prior to the regulation change.

9. As discussed in Finding 14.10, Alabama's regulations do not provide that the applicant demonstrate that the use of existing structures will not result in significant harm to the environment or impair public health or safety. This deficiency is minor since Alabama has agreed to a regulation change to include such a provision. Alabama has further agreed that until a regulation change is accomplished the State will require such demonstration in accordance with 30 CFR 786.21.

10. As discussed in Finding 14.12, Alabama's regulations do not require permitting of coal processing plants and other support facilities unless they are located at or near the mine site. This deficiency is minor since Alabama has agreed to a regulation change which will include for permitting and regulation of these facilities whether or not they are located at or near the mine site. Alabama has further agreed that until a regulation change is accomplished, the State will exert jurisdictional authority over all coal processing facilities including those not at or near the mine site.

11. As discussed in Finding 14.13, Alabama's regulations do not clearly require the meeting of three specific conditions prior to the granting of a variance. This deficiency is minor since Alabama has agreed to a regulation change to require specific adherence to

all three distinct conditions, and until a regulation change is accomplished, to grant no variance without the three specific conditions having been met.

12. As discussed in Finding 17.1, Alabama's regulations fail to provide the authorized representatives with the necessary power in order that they shall impose affirmative obligations on the operator. This condition is minor since Alabama has agreed to change its regulations to be consistent with 30 CFR 843.11(a)(2) and (b)(2), and until a regulation change is accomplished will as a matter of policy, give authorized representatives the necessary authority in order that they shall impose affirmative obligations.

13. Alabama's regulations are not as effective as the Federal counterparts since there are several typographical or clerical errors and minor omissions which could lead to serious misinterpretation of the regulations. These deficiencies are minor since Alabama has agreed to regulation changes in accordance with the following corrections. Alabama has further agreed that until such regulation changes are accomplished, the State will interpret the regulations consistent with the following changes.

(a) As discussed in Finding 12.2, the word "interests" has been erroneously omitted from the definition of "Federal Lands". Alabama has agreed to a regulation change to insert the word "interests" after "mineral".

(b) As discussed in Finding 12.3, the word "below" has been erroneously substituted for the word "in" in the definition of "Groundwater". Alabama has agreed to a regulation change to replace the word "below" with the word "in".

(c) As discussed in Finding 13.3 Part 823, the Alabama regulations do not include an appropriate "Scope" section. Alabama has agreed to a regulation change to correct this oversight.

(d) As discussed in Finding 13.5, the word "following" has been erroneously inserted in State section 823.15. Alabama has agreed to remove the word "following".

(e) As discussed in Finding 13.17, important references have been omitted from State sections 816.46(u) and 817.46(u). Alabama has agreed to a regulation change which will include the missing references.

(f) As discussed in Finding 14.7, there is an erroneous reference in State section 778.13(d). Alabama has agreed to replace the erroneous reference with the correct one.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the

other provisions of the Alabama program, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Alabama program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be corrected in a timely manner, will not directly affect environmental performance at coal mines;

4. Alabama has initiated and it activity proceeding with steps to correct the deficiencies; and

5. Alabama has agreed, by Letter dated May 14, 1982, to correct the regulation deficiencies by December 1, 1982, and the statutory deficiencies by September 1, 1983.

Accordingly, the Secretary is conditionally approving the Alabama program. If regulations correcting the deficiencies are not enacted by December 1, 1982, or if State legislation correcting the statutory deficiencies is not enacted by September 1, 1983, the Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program. This conditional approval is effective on May 20, 1982. Beginning on that date, the Alabama Surface Mining Commission shall be deemed the regulatory authority in Alabama and all Alabama 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 Alabama shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Alabama, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with section 523(c) of SMCRA, Alabama 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.

The Secretary's approval of the Alabama 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 under SMCRA, the abandoned mine lands reclamation program.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant

economic effect on a substantial number of small entities.

Indexing Requirements

List of Subjects in 30 CFR Part 901

Coal mining, intergovernmental relations, surface mining, underground mining.

Therefore, 30 CFR Chapter VI is amended by adding a new Part 901 as set forth herein.

Dated: May 14, 1982

James G. Watt,

Secretary of the Interior.

PART 901—ALABAMA

Sec.

901. Scope.

901.10 State regulatory program approval.

901.11 Conditions of State regulatory program approval.

Authority: Public Law 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

§ 901.1 Scope.

This Part contains all rules applicable only within Alabama that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 901.10 State regulatory program approval.

The Alabama State program, as resubmitted on January 11, 1982, and clarified in a meeting with OSM on April 9, 1982, (See Administrative Record No. AL-347) and in a letter to the Director, OSM, of May 14, 1982, is conditionally approved, effective (date of publication). Beginning on that date, the Alabama Surface Mining Commission shall be deemed the regulatory authority in Alabama for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alabama permanent regulatory program. Copies of the approved program, together with copies of the letter of the Alabama Surface Mining Commission agreeing to the conditions of 30 CFR 901.11, are available for inspection at:

Alabama Surface Mining Reclamation Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, AL 35501

Alabama Surface Mining Reclamation Commission 100 Third Street, Fort Payne, AL 35967

Office of Surface Mining, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, TN 37902

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

§ 901.11 Conditions of State regulatory program approval.

The approval of the Alabama State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or by an Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary requires the change be made.

(a) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by September 1, 1983, copies of enacted legislation providing for attorney and expert witness fees in accordance with Section 520(f) of SMCRA.

(b) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations limiting the definition of "Extraction of Coal as an Incidental Part" to only those areas included in the Federal definition and;

(2) Copies of promulgated regulations redefining "Historic Lands" to include properly designated sites of religious, cultural and historic significance.

(c) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations changing the term "unnecessarily disturbed" to "significantly disturbed" in order to provide sufficient protection for wildlife habitats.

(d) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations or otherwise amends its program to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds, and should Alabama wish to approve any other technology, the State will first submit the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Alabama may not use its authority to approve treatment facilities other than sedimentation ponds or the approval will terminate immediately.

(2) Copies of promulgated regulations providing for sufficient sedimentation pond design criteria in accordance with 30 CFR 816.46(e)-(u) and 817.46(e)-(u) and referencing these criteria in appropriate sections.

(3) Copies of promulgated regulations which will limit impoundment slopes to not greater than 1v:2h;

(4) Copies of promulgated regulations providing for the inspection of all appropriate dams in accordance with 30 CFR 77.216-3, for all resulting reports to be kept at the mine site, and for all certifications, reports and statements required by MSHA to be filed with the Regulatory Authority and;

(5) Copies of promulgated regulations providing for minimum sediment storage volume for sedimentation ponds.

(e) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations which prohibit the disposal of coal processing waste in head-of-hollow and valley fills;

(2) Copies of promulgated regulations which provide for the placement of spoil in 4' horizontal lifts unless other placement is specifically authorized by the Regulatory Authority;

(3) Copies of promulgated regulations providing for slopes greater than 36% with proper reference to such provisions where applicable throughout the Alabama rules in accordance with the Federal counterparts and;

(4) Copies of promulgated regulations which contain adequate criteria with regard to specific requirements for head-of-hollow and valley fills as effective as 30 CFR 816.72 and 816.73 and which contain references to the added sections as appropriate.

(f) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations which limit blasting periods to an aggregate of four hours per day and;

(2) Copies of promulgated regulations limiting maximum peak particle velocity to 1 in/sec at the location of certain structures and adjusting the scaled distance factor and accompanying tables accordingly.

(g) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations requiring identification of the current use of buildings on maps and plans in permit applications;

(2) Copies of promulgated regulations requiring sufficient slope measurements to adequately represent the existing land surface configuration and;

(3) Copies of promulgated regulations requiring that equitable owners of record found in a standard title search of the standard chain of title be included in the permit application.

(h) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982.

(1) Copies of promulgated regulations granting to the Regulatory Authority the mandatory authority to provide to the public information on acid and acid-forming materials in the coal seam and;

(2) Copies of promulgated regulations granting to the Regulatory Authority, rather than the operator, the discretionary power to determine the confidentiality of information relative to exploratory activities, and containing specific criteria for such determination.

(i) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations which require the applicant to demonstrate that the use of existing structures will not result in significant harm to the environment or impair public health or safety.

(j) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations which

require the permitting of coal processing plants and other support facilities including those not at or near the mine site.

(k) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations which require the meeting of all three specific conditions contained in 30 CFR 785.18(d)(9) prior to the granting of a variance.

(l) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982, copies of promulgated regulations granting authorized representatives the power to and requiring that the authorized representatives shall impose affirmative obligations on the operator in situations of imminent danger or significant environmental harm or when an operator fails to abate the violation in the most expeditious manner physically possible.

(m) The approval found in § 901.10 will terminate unless Alabama submits to the Secretary by December 1, 1982:

(1) Copies of promulgated regulations in which the word "interest" has been inserted after mineral in the definition of "Federal Lands".

(2) Copies of promulgated regulations in which "in" has been substituted for "below" in the definition of "Groundwater".

(3) Copies of promulgated regulations in which an appropriate scope section has been included in Part 823.

(4) Copies of promulgated regulations in which the word "following" has been removed from section 823.15.

(5) Copies of promulgated regulations which include appropriate references in sections 816.46(u) and 817.46(u).

(6) Copies of promulgated regulations which include the correct reference at section 778.13(d).

[FR Doc. 82-13680 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-05-M

Forest Restoration Project

Thursday
May 20, 1982

Part VII

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

Approval of Abandoned Mine Land
Reclamation Plan for State of Alabama
Under Surface Mining Control and
Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

30 CFR Part 901

Approval of Abandoned Mine Land Reclamation Plan for State of Alabama Under Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On May 29, 1981, the State of Alabama submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Land Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932-49952, October 25, 1978). After opportunity for public comment and review of the Plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Alabama Abandoned Mine Reclamation Land Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Alabama Plan.

Final promulgation of this rule has been delayed because Alabama did not have an approved State regulatory program under Title V of SMCRA and was enjoined from submitting its program. Under section 405(c) of the SMCRA, the Department cannot approve a State abandoned mine land reclamation program unless that State has an approved State regulatory program pursuant to section 503 of the SMCRA. The State of Alabama received such approval on May 14, 1982.

EFFECTIVE DATE: This rule is effective May 20, 1982.

ADDRESSES: Copies of the full text of the Alabama Reclamation Plan are available for review during regular business hours at the following locations:

Alabama Department of Industrial Relations, Montgomery, Alabama 36101
Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Land Reclamation,

Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240, Telephone (202) 343-7951.

SUPPLEMENTARY INFORMATION:**General Background of the Abandoned Mine Land Reclamation Program**

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95-87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State reclamation plan demonstrating its capability for administering an abandoned mine land reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49947-49949, October 25, 1978). Under these regulations the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office, on an annual basis, a grant application for funds to be expended in that State on specific reclamation projects. These funds are necessary to implement the State reclamation plan as approved. The annual grant requests are reviewed and approved by OSM in

compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T to 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 950. Provisions relating to Alabama are found in 30 CFR Part 901.

Background on the Alabama Abandoned Mine Land Reclamation Plan Submission

On August 31, 1979, a cooperative agreement between the Alabama Department of Industrial Relations and OSM was approved. The purpose of this agreement was to assure that information required for the preparation of the Alabama Abandoned Mine Land Reclamation Plan would be assembled.

On May 29, 1981, the State of Alabama submitted its proposed Abandoned Mine Land Reclamation Plan to OSM.

On July 21, 1981, representatives of the Alabama Department of Industrial Relations met with OSM to discuss amendments and modifications to the proposed Plan.

On July 29 and 31, and August 4, 5 and 7, 1981, the Alabama Department of Industrial Relations held public meetings in Guntersville, Fort Payne, Tuscaloosa, Haleyville, and Birmingham, Alabama for comments on the proposed Plan.

On August 13, 1981, the Alabama Department of Industrial Relations submitted revised pages to the Alabama Plan. These revised pages contain several amendments and modifications to the original Plan resulting from public comments and the discussion between representatives of the Alabama Department of Industrial Relations and OSM. These amendments and modifications are specifically identified in a letter from Robert E. Weller, Administrator of State Programs, Department of Industrial Relations, to Ralph H. Cox, Assistant Regional Director for Abandoned Mine Land Reclamation, dated August 13, 1981. The necessary changes have been incorporated into the Alabama Plan. These revisions and amendments were considered in OSM's review process and are available as part of the administrative record.

Notice of receipt of the submission initiating the Plan review was published August 6, 1981 (45 FR 40049-40050). The announcement requested public comments. A public hearing was not held because the OSM Regional Director determined that the public was provided

adequate notice and opportunity to comment on the Plan and that the record did not reflect any major unresolved controversy.

On September 21, 1981, the OSM Regional Director and on December 22, 1981, the Assistant Director for Program Operations and Inspection recommended to the Director that the Assistant Secretary approve the Alabama Reclamation Plan.

The administrative record on the Alabama Plan is available for review at the Office of Surface Mining and the Alabama Department of Industrial Relations at the addresses listed above under "Addresses."

Assistant Secretary's Findings

1. In accordance with section 405 of SMCRA the Assistant Secretary finds that Alabama has submitted a Plan for reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14 that: (a) the Department of Industrial Relations has the legal authority, policies and administrative structure necessary to carry out the Plan;

(b) the Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) the State has an approved regulatory program; and

(d) the Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary finds that the Alabama Reclamation Program lacks the requisite legal authority to carry out certain noncoal related reclamation activities consistent with Section 409 of SMCRA and 30 CFR 882.13(a) because it lacks lien authority on noncoal projects. Accordingly, until the necessary authority is obtained, the Office will not approve grants for noncoal reclamation activities where liens would be placed.

4. The Assistant Secretary has solicited and considered the views of other Federal agencies having an interest in the Plan, as required by CFR 30 884.14(a)(2). These agencies include the U.S. Army Corps of Engineers (COE), the U.S. Forest Service (USFS) and the Soil Conservation Service (SCS).

Disposition of Comments

The following comments received on the Alabama Reclamation Plan during the public comment period were considered in the Assistant Secretary's evaluation of the Alabama Plan as indicated.

1. The SCS commented that the Secretary of Agriculture is responsible

for coordination of the Rural Abandoned Mine Program (RAMP) rather than the Alabama Department of Industrial Relations. OSM's response is that while the Secretary of Agriculture is responsible for coordinating the RAMP program with the State and OSM, the State, under 30 CFR 884.12(c)(3) has the responsibility to determine the procedures to be used by OSM and RAMP in carrying their respective responsibilities with the State. OSM finds that the provisions on page 43 of the Alabama Plan are within the authority of the State and no modification of the Plan is necessary.

2. The USFS commented that coordination is needed between the State and the USFS in relation to acquisition of private land and rights of entry for intermingled lands within the national forest boundary. OSM recognizes this need. However, such coordination is adequately provided for in the first paragraph of page 43 of Alabama's Plan which authorizes the development of policies with Federal agencies under the State's approved Plan. OSM, therefore, finds that no modification of the Plan is necessary to accommodate this comment.

3. The USFS commented that a discussion of the forest industry in Alabama should include reference to the importance of increasing productivity on private, non-industrial forest land. OSM does not agree that any one industry in the State of Alabama should be stressed, as far as importance is concerned, over any other. Forest land of all types are given equal consideration throughout the land use section of the Alabama Plan, and therefore, no modification of the Plan is required to accommodate this comment.

4. The USFS commented that the list of U.S. Department of Agriculture agencies does not include the Forest Supervisor, National Forests in Alabama, who is the designated coordinator for the USFS for the Abandoned Mine Land Program in the State. OSM agreed and notified the Department of Industrial Relations of the mailing address of the Forest Supervisor and advised the Department to make contacts with that office when national forest coordination is necessary.

5. The COE commented that the term "General Welfare" should be defined on pages iv and 18 of the Plan, and the term "Human Health" should be evaluated separately from "General Welfare." OSM does not agree since the terms in question are general concepts. The terms "General Welfare" and "Human Health" are used in the Plan as general descriptions and synonymously with the

term "Public Health and Safety." The term "Public Health and Safety" is a legal concept which is continuously defined as the State deals with matters concerning the health and safety of its citizens. Since the term has a flexible meaning, it is not appropriate to explicitly define it in the Plan.

6. The COE commented that the Plan is written in the future tense and therefore does not sufficiently recognize the severe impacts of the past. OSM disagrees that the Plan does not sufficiently recognize the impacts of past mining. The purpose of the Plan is to provide for reclamation of lands and water adversely effected by past mining and left or abandoned in an unreclaimed or inadequately reclaimed condition prior to August 3, 1977. The reason why most of the Plan is written in the future tense is that it describes reclamation work that will be done in the future to remedy the environmental impacts of past mining.

7. The COE commented that it should be noted on page 3, paragraphs B and C that hazards that are in close proximity to the public may be caused by abandoned mine lands located miles up stream. OSM's response is that the definition of eligible lands and water includes the downstream effects on lands or water affected by mining. This definition is included on page iv of the Plan. Therefore, the Plan does not need to be modified to include the definition on page 3.

8. The COE commented that "stream aggradation, including adverse affects to navigation," should be added as an additional item on page 3 of the Plan's examples of hazards associated with abandoned mine lands. The reason is that severe problems have occurred due to sediment deposition long before flooding is a possibility. OSM agrees that stream aggradation may be a problem and has therefore requested that the State contact the Mobile District, Corps of Engineers, for information regarding occurrences of navigational impediments resulting from the adverse effects of past mining. The State will incorporate any known occurrences of impediments into its program through the AML inventory and will note the presence of such hazards in the appropriate section of the Plan.

9. The COE commented that the total acreages shown in the Plan for various creeks do not agree with previously published figures. OSM recommended that the State contact the Mobile District, Corps of Engineers, and request this data to update the information in the Plan.

10. The COE commented that perhaps general permits for action undertaking clean-up type activities requiring "404" permits would be appropriate. OSM agreed and has recommended that the State contact the Corps of Engineers for more information concerning such general "404"-type permits and consider using these permits if appropriate.

11. The Tennessee Valley Authority, Division of Land and Forest Resources, commented that the list of fishes of the northern half of Alabama should be rearranged in phylogenetic order and errors in spelling and nomenclature should be corrected. OSM notes that the U.S. Fish and Wildlife Service and Alabama Wildlife Resources Agency store data on the fauna of Alabama, including fishes in alphabetical order by common name. The phylogenetic order recommended by TVA is scientifically preferred. However, because of the method of storage, the data is more readily retrievable in the form presented by the Plan. Errors in the taxonomic nomenclature have been forwarded to the State and have been corrected by errata to the Plan.

12. The Geological Survey of Alabama made numerous technical comments on the mineral and hydrologic data in the Plan. OSM forwarded these comments to the Alabama Department of Industrial Relations with a recommendation that they contact the Geological Survey of Alabama for assistance in revising the mineral and hydrological data of the Plan and for incorporating the data into the program data base. The State was also informed that cartographic assistance might be obtained through consultation with the Geological Survey of Alabama.

Additional Findings

The Office of Surface Mining has examined this rulemaking under section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative

data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. approval will not have an effect on the costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. approval will not have adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Alabama Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organization of the State's Abandoned Mine Plan. Therefore, under the Department of Interior Manual DM 516.2.3(A)(1), the Assistant Secretary's decision on the Alabama Plan is categorically excluded from the National Environmental Policy Act's requirements. As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also, an EA or an EIS will be prepared for the approval of grants for

abandoned mine land reclamation projects under 30 CFR Part 886.

The good cause for making this rule effective upon date of publication is: (1) the Office of Surface Mining wants to minimize the time between the approval of Title V regulatory programs and Title IV State reclamation programs; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

List of Subjects in 30 CFR Part 901

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

Dated: May 14, 1982.

J. Steven Griles,
Director, Office of Surface Mining.

Dated: May 14, 1982.

Daniel N. Miller, Jr.,
Assistant Secretary-Energy & Minerals.

PART 901—ALABAMA

Therefore, Part 901 is amended by adding § 901.20 to read as follows:

§ 901.20 Approval of the Alabama Abandoned Mine Land Reclamation Plan.

The Alabama Abandoned Mine Land Reclamation Plan as submitted on May 8, 1981, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region II, 503 Gay Street—Suite 500, Knoxville, Tennessee 37902

Alabama Department of Industrial Relations, Montgomery, Alabama 36101

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315 1100 "L" Street, NW., Washington, D.C. 20240

[FR Doc. 82-13681 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-05-M

Test Report

Thursday
May 20, 1982

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Lands Reclamation Program; Alabama; Availability of Findings of No Significant Impact

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****Abandoned Mine Lands Reclamation Program**

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

ACTION: Notice of availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EAs) for development of 56 abandoned mine land projects under the State of Alabama Reclamation Plan.

SUMMARY: OSM has prepared EAs on projects included in the Federal Grant Application submitted by the State of Alabama to the Office of Surface Mining.

A FONSI has been prepared for the 56 reclamation projects indicated below and included in the grant application developed under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231-1234.

ADDRESSES: Copies of the EAs and FONSI are available for inspection or may be obtained at the following locations between the hours of 8:00 a.m. and 4:00 p.m.:

Office of Surface Mining, 530 Gay Street, Suite 500, Knoxville, Tennessee and

State of Alabama, Department of Industrial Relations Building, Greenspring Highway, Birmingham, Alabama 35205.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Acting Regional Director, (615) 971-5213.

SUPPLEMENTARY INFORMATION: Reclamation Projects included in FONSI, location and description:

1. Eddings Town Reclamation Project, Bibb County, Alabama, Seal mine shafts.
2. Little Ugly Creek Reclamation Project, Bibb County, Alabama, Seal shafts and portals, extinguish refuse fire.
3. Red Eagle Reclamation Project, Bibb County, Alabama, Seal shafts and portals, eliminate hazardous impoundment and highwall.
4. West Blocton Reclamation Project, Bibb County, Alabama, Seal portals, eliminate highwall.
5. County Line, East, Reclamation Project, Blount County, Alabama, Eliminate highwall.
6. Nyota, East, Reclamation Project, Blount County, Alabama, Seal portals, remove refuse pile.
7. Philadelphia Church Reclamation Project, Blount County, Alabama, Eliminate highwalls and impoundment.

8. Chesterfield Reclamation Project, Cherokee County, Alabama, Seal portals, eliminate tippie, reclaim strip mine.

9. Leesburg, West, Reclamation Project, Cherokee County, Alabama, Reclaim surface mine.

10. Bailey Mountain, South, Reclamation Project, Cullman County, Alabama, Reclaim mine spoils.

11. Adamsburg Reclamation Project, DeKalb County, Alabama, Eliminate highwalls and revegetate mine spoils.

12. Hammond Gap Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils.

13. Mahan Crossroads Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils, repair silt pond.

14. Mentone Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils, repair silt ponds.

15. Sylvania, East, Reclamation Project, DeKalb County, Alabama, Reclaim mine spoils, eliminate highwall.

16. Stevenson Reclamation Project, Jackson County, Alabama, Seal portals and shafts.

17. Blossburg Reclamation Project, Jefferson County, Alabama, Eliminate Highwall.

18. Blue Creek Reclamation Project, Jefferson County, Alabama, Flood abatement.

19. Brookside, West, Reclamation Project, Jefferson County, Alabama, Seal portals and shafts.

20. Coalburg Reclamation Project, Jefferson County, Alabama, Seal shafts.

21. Crocker Junction, South Reclamation Project, Jefferson County, Alabama, Seal portals and airshaft.

22. Easterwood Mountain Reclamation Project, Jefferson County, Alabama, Seal shafts and portals, correct subsidence.

23. Kimberly Reclamation Project, Jefferson County, Alabama, Seal portals.

24. Lola City, East, Reclamation Project, Jefferson County, Alabama, Seal shafts and portals.

25. Maxine Reclamation Project, Jefferson County, Alabama, Seal shafts, eliminate hazardous structures.

26. Nichols Shoals, South, Reclamation Project, Jefferson County, Alabama, Seal portals.

27. Pinkney City Reclamation Project, Jefferson County, Alabama, Seal portals.

28. Royal Oaks Reclamation Project, Jefferson County, Alabama, Seal portals.

29. Seloca Reclamation Project, Jefferson County, Alabama, Seal portals and shafts.

30. Warrior, South, Reclamation Project, Jefferson County, Alabama, Seal portals and shafts.

31. Brookside Reclamation Project, Marion County, Alabama, Seal portals and shafts.

32. Rock City, East, Reclamation Project, Marion County, Alabama, Seal portals and shafts, reclaim refuse areas.

33. Dogwood Reclamation Project, Shelby County, Alabama, Seal shafts and portals.

34. Helena, Southwest, Reclamation Project, Shelby County, Alabama, Seal portals.

35. Inverness Reclamation Project, Shelby County, Alabama, Seal portals and shafts.

36. Riverchase Reclamation Project, Shelby County, Alabama, Seal portals.

37. Beulah Reclamation Project, St. Clair County, Alabama, Seal portals and shafts.

38. Copper Springs Reclamation Project, St. Clair County, Alabama, Seal airshaft.

39. Blair Mine Reclamation Project, Tuscaloosa County, Alabama, Seal portal, reclaim refuse area.

40. Cedar Cove Reclamation Project, Tuscaloosa County, Alabama, Seal portals.

41. Aldridge Reclamation Project, Walker County, Alabama, Seal portals and shafts.

42. Barney, West, Reclamation Project, Walker County, Alabama, Seal airshaft.

43. Copeland Ferry Reclamation Project, Walker County, Alabama, Eliminate highwall and embankment.

44. Cordova, South, Reclamation Project, Walker County, Alabama, Seal portals and shafts.

45. Cordova, West, Reclamation Project, Walker County, Alabama, Seal portals.

46. Dogtown Reclamation Project, Walker County, Alabama, Correct highway subsidence.

47. Goodsprings, South, Reclamation Project, Walker County, Alabama, Seal portals and shafts, eliminate hazardous structures.

48. Holly Grove Reclamation Project, Walker County, Alabama, Seal portals and shafts.

49. McCollum Reclamation Project, Walker County, Alabama, Seal portal, eliminate hazardous highwall, structure and impoundment.

50. Mount Hope Reclamation Project, Walker County, Alabama, Seal portals.

51. Mulberry Fork Reclamation Project, Walker County, Alabama, Eliminate hazardous structure.

52. Nauvoo, East, Reclamation Project, Walker County, Alabama, Seal portals and shafts, eliminate embankment.

53. Oakman Reclamation Project, Walker County, Alabama, Seal portals, eliminate hazardous structure.

54. Twilley Town Reclamation Project, Walker County, Alabama, Seal portals, eliminate highwall.

55. Kaiser Bottom Reclamation Project, Winston County, Alabama, Eliminate embankment, reclaim mine spoils.

56. Natural Bridge Reclamation Project, Winston County, Alabama, Seal shaft, reclaim surface mine.

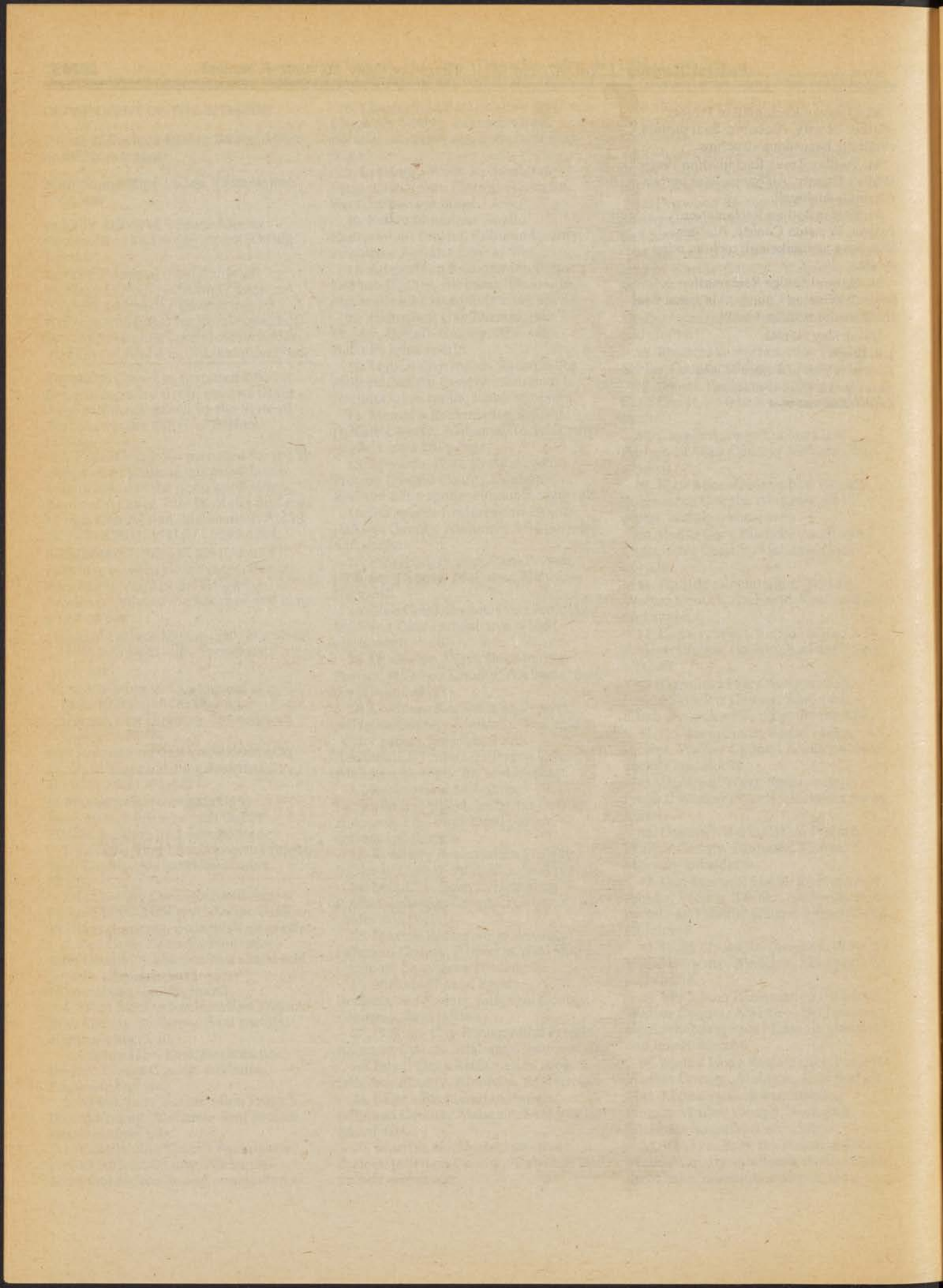
Dated: May 14, 1982.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 82-13682 Filed 5-19-82; 8:45 am]

BILLING CODE 4310-05-M



Registered Federal Report

Thursday
May 20, 1982

Part IX

Department of Transportation

Federal Aviation Administration

Environmental Protection Agency

Petitions for Rulemaking; Summary of
Petitions Received and Dispositions of
Petitions Denied or Withdrawn; Aerial of
Application of Pesticides; Denial of
Petition for Rulemaking and Policy
Changes

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-82-5]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the

inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Ann Boylan, Telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on May 10, 1982.

John H. Cassady,
Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Disposition of petition denied or withdrawn
19448	Friends of the Earth	The petitioner's proposed amendments essentially would: (1) impose certain additional restrictions on aerial application of pesticides; (2) require written permission to spray pesticides within 1,000 feet of a person or another person's property; (3) establish a much more stringent enforcement program, including the creation of a system of "penalty points" to be levied against a pilot's certificate for certain offenses involving pesticide spray drift onto persons or property; (4) make various other additions, deletions, and substitutions to Part 137. DENIED 4/27/82.

[FR Doc. 82-13422 Filed 5-19-82; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[PH-FRL-2127-8; OPP 30036A]

Aerial Application of Pesticides; Denial of Petition for Rulemaking and Policy Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule related notice.

SUMMARY: This notice announces that the Agency has denied a petition submitted May 30, 1979, by Erik Jansson, Research Associate of the Friends of Earth, requesting changes in EPA policies and procedures regarding labeling and enforcement activities with respect to aerial pesticide applications.

ADDRESSES: A supporting document giving the reasons for the Agency's denial is available for review at the Agency's Headquarters from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays, and Regional Offices at the following addresses:

Environmental Protection Agency
Headquarters, Office of Pesticides and

Toxic Substances, Rm. E-107, 401 M St. SW., Washington, D.C. 20460.
EPA—Region I, John F. Kennedy Building, Boston, MA 02203, (617-223-5126).
EPA—Region II, 26 Federal Plaza, New York, NY 10007, (212-264-8359).
EPA—Region III, Curtis Building, 6th and Walnut Sts., Philadelphia, PA 19106, (215-597-9869).
EPA—Region IV, 345 Courtland St., NE., Atlanta, GA 30308, (404-881-3621).
EPA—Region V, Federal Office Building, 230 Dearborn St., Chicago, IL 60604, (312-353-2192).
EPA—Region VI, First International Building, 1201 Elm St., Dallas, TX 75270, (214-767-2739).
EPA—Region VII, 324 East 11th St., Kansas City, MO 64106, (303-837-3926).
EPA—Region VIII, 1860 Lincoln St., Suite 900, Denver, CO 80295, (303-837-3926).
EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, (415-558-3352).
EPA—Region X, 1200 6th Ave., Seattle, WA 98101, (206-442-1090).

FOR FURTHER INFORMATION CONTACT: Robert Forrest, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1114, CM#2, 1921 Jefferson Davis

Highway, Arlington, VA 22202, (703-557-8292).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency and the Federal Aviation Administration (FAA) issued for comment two petitions submitted by the Friends of the Earth which were published in the *Federal Register* of January 17, 1980 (45 FR 3316). These petitions requested that each agency adopt procedures to alleviate certain problems associated with aerial application of pesticides. In the *Federal Register* of April 21, 1980 (45 FR 26722), EPA extended its comment period. The FAA also extended its comment period in the same issue of the *Federal Register*. After consideration of all comments submitted in response to the petition, EPA has denied the petition. The reasons for denial are set out in the supporting document available for review at the locations given above. Elsewhere in today's issue of the *Federal Register*, the FAA is denying the petition addressed to it.

Dated: May 6, 1982.

Edwin L. Johnson,
Director, Office of Pesticide Programs.

[FR Doc. 82-13900 Filed 5-19-82; 8:45 am]

BILLING CODE 6560-50-M

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Thursday, May 20, 1982

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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 41 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/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

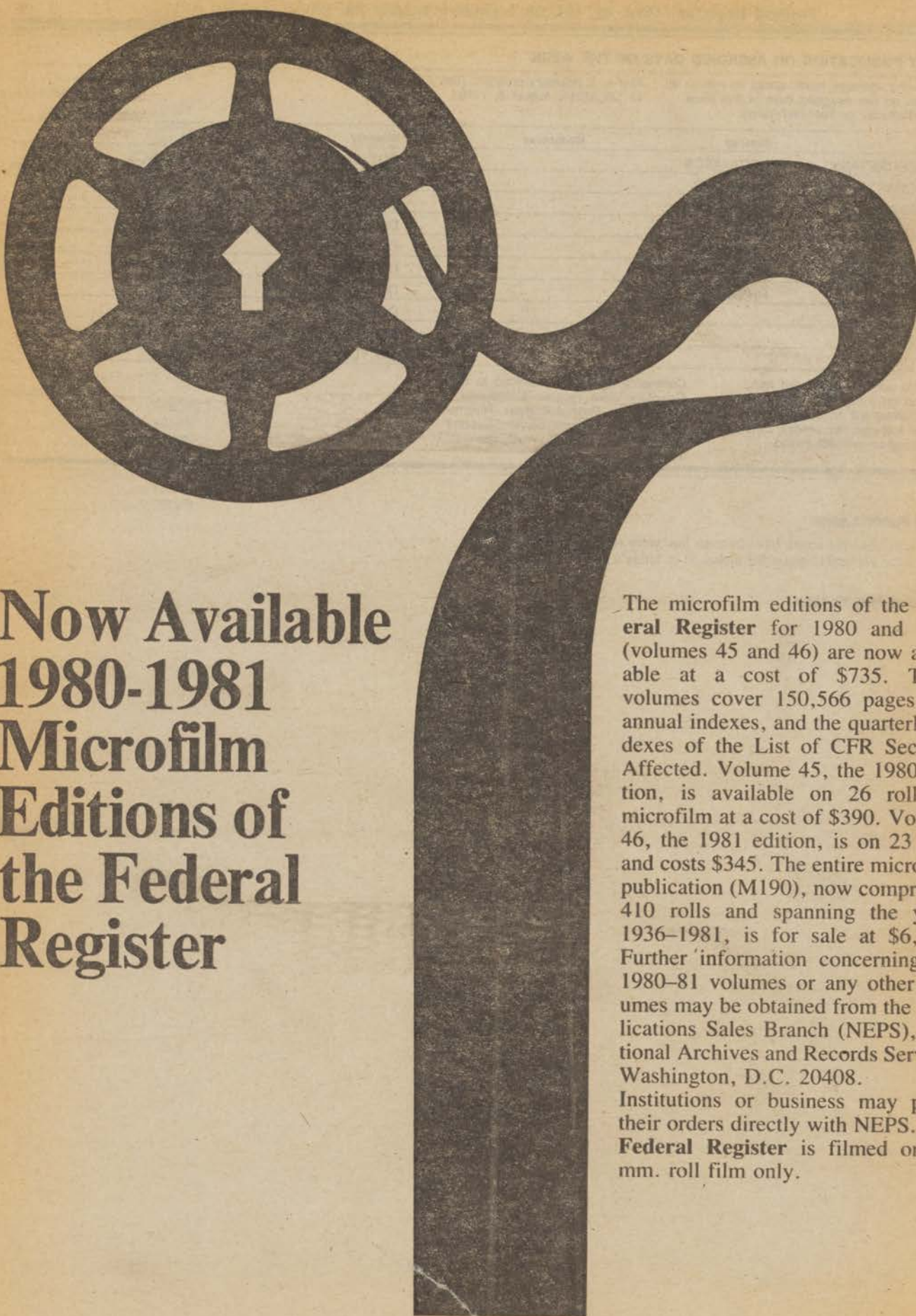
Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

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.

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.

Last Listing May 19, 1982



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