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Thursday
June 10, 1982

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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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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 694]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 11–June 17, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: June 11, 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 is 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). This action is based upon the recommendations 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 which was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on June 8, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencias deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is light.

It is 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 is 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. It is necessary to effectuate the declared policy of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision 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. Section 908.994 is added as follows:

§ 908.994 Valencia Orange Regulation 694.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 11, 1982, through June 17, 1982, are established as follows:

(a) District 1: 282,000 cartons;

(b) District 2: 318,000 cartons;

(c) District 3: Unlimited cartons.

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

Dated: June 9, 1982.

D. S. Kuryloski,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-15896 Filed 6-9-82; 11:27 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

[Milk Order No. 32]

Milk in the Southern Illinois Marketing Area Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends 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 suspension removes 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.

EFFECTIVE DATE: June 10, 1982.

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: Prior documents in this proceeding: Notice of Proposed Suspension: Issued May 14, 1982; published May 20, 1982 (47 FR 21846).

It has been determined that this action is not a major rule under the criteria set forth in Executive Order 12291.

It has also 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 issuance of the suspension on a timely enough basis since it is necessary that it be effective for the month of June 1982. In this instance, the initial request for this action was received on May 11, 1982. A notice of proposed suspension was issued on May 14, 1982, inviting interested parties to submit comments

on the proposed action on or before May 27, 1982.

It has also been determined that this action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Illinois marketing area. Notice of proposed rulemaking was published in the **Federal Register** (47 FR 21846) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the months of June through August 1982 the following provisions of the order do not tend to effectuate the declared policy of the Act:

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".

Statement of Consideration

This action removes 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 closing of a pool distributing plant on May 29 that was supplied by the cooperative association prompted the request. 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 beginning 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 unregulated 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. Without the suspension, some of the displaced milk would become pooled under the St. Louis-Ozarks order, thereby lowering returns to producers supplying that market, while other costly and inefficient movements of milk would be made to continue to pool the milk of dairy farmers under the Southern Illinois order. Suspension of the diversion limitations will permit the displaced milk to be moved to available outlets for surplus use in the most efficient manner and will assure its continued pooling in the market with which it has regularly been associated.

Interested parties were given an opportunity to submit written data, views, or arguments concerning the suspension. No views in opposition to the suspension were received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it will permit the most efficient movements of temporarily displaced milk to available outlets for surplus use and assure the continued pooling of such milk in the market with which it has been regularly associated;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective June 10, 1982.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of June through August 1982.

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

Effective date: June 10, 1982.

Signed at Washington, D.C., on June 7, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-15654 Filed 6-9-82; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-CEF-2-AD; Amdt. 39-4399]

Airworthiness Directives; Government Aircraft Factories (GAF) Nomad Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Government Aircraft Factories (GAF) Nomad Models N22B and N24A airplanes. This AD requires inspection and replacement (if required) of the rudder control lever shafts. This action is necessary because a separation of an arm from this shaft has occurred. A loss of airplane rudder control may result from this failure.

EFFECTIVE DATE: June 17, 1982.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: GAF Alert Service Bulletin ANMD 27–23, dated February 17, 1982, and Revision 1 dated February 19, 1982, applicable to this AD may be obtained from Government Aircraft Factories, 226 Lorimer Street, Port Melbourne, 3207 Victoria, Australia. This service bulletin

and revision may be examined at the Northwest Mountain Region, Honolulu Aircraft Certification Field Office, Room 7108, Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850. Copies of them are also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Gary K. Nakagawa, Chief, Aircraft Certification Field Office, ANM-170H, Federal Aviation Administration, P.O. Box 50246, Honolulu, Hawaii 96850; Telephone (808) 546-8650.

SUPPLEMENTARY INFORMATION: During ground operation, a rudder control level shaft failed on an Australian registered GAF Nomad N24A model airplane. Subsequent investigation attributed the failure to cracking in the area of the welded joint between the lever and the tubular shaft. The level shafts are part of the rudder control torque shaft assemblies located at the pilot and co-pilot stations. They coordinate pilot and co-pilot rudder pedal motion and transmit rudder pedal movements to the rudder control cables. Cracking and failure of the welds attaching the levers to the shafts could result in loss of rudder control and cause an accident. To ensure continued airworthiness, the manufacturer incorporated Modification No. 567 on production airplanes and issued Alert Service Bulletin ANMD 27-23 dated February 17, 1982, and Revision 1 dated February 19, 1982. They recommend therein inspection and, when necessary, replacement of rudder control lever shafts, Parts Nos. 1/N-45-1102, 1/N-45-1103 and 1/N-45-1104 (ref. items 6, 10 and 11 of Illustrated Parts Catalogue (IPC) 27-20-02, Figure 4) on certain inservice GAF Nomad N22B and N24A model airplanes. They also prescribed checks and instructions to assure that the installation of rod ends in these levers is done in a manner that does not impose excessive stress in the welded joint between the lever and tubular shaft. Accordingly, since the condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued which requires mandatory compliance with GAF Alert Service Bulletin ANMD 27-23 dated February 17, 1982, and Revision 1 dated February 19, 1982.

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

List of Subjects in 14 CFR 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Government Aircraft Factories (GAF): Applies to Nomad Models N22B and N24A (Serial Nos. N22B/N24A-5 through 111, 114, 115, 117, 119 and 120) airplanes, certificated in any category which do not incorporate GAF Modification No. 567.

Compliance: Required as indicated unless previously accomplished.

To preclude failure of the rudder control system, accomplish the following:

(A) Within the next 25 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service from the last inspection:

(1) Visually inspect, using at least a 5 power magnifier and supplemental lighting as necessary, all rudder control lever shafts, Part Nos. 1/N-45-1102, 1/N-45-1103, and 1/N-45-1104 (ref. items 6, 10, and 11, respectively GAF Illustrated Parts Catelogue (IPC) 27-20-02, Figure 4) for cracking in the area of the welded joints between the levers and the tubular shaft. Pay particular attention to the ends of the welds at the lever flanges. (To gain access to the rudder control lever shafts, remove rudder pedal and control column guards in the flight compartment.)

Caution: Do not operate flight controls with components disconnected or when personnel are working in the area concerned. Injury to personnel or damage to components and structure could occur.

(2) If cracks are found, before further flight, replace with new or serviceable rudder control shafts verified to be free from cracks and installed in accordance with paragraph (C) of this AD.

(B) Within the next 100 hours time-in-service after the effective date of this AD, check the axial fit of all rod end bearings in lever shafts Parts Nos. 1/N-45-1102, 1/N-45-1103 and 1/N-45-1104. The maximum allowable clearance between rod end bearing and lever before tightening bearing bolt is .010 inch (.25 mm). Add shims or washers and change bolt length in accordance with GAF Alert Service Bulletin ANMD 27-23 dated February 17, 1982, and Revision 1 dated February 19, 1982, to achieve this.

(C) Discontinue the inspection per paragraph A when lever shafts Part Nos. 1/N-45-1102, 1/N-45-1103 and 1/N-45-1104 are removed from aircraft and verified that they are free from cracks by magnetic particle inspection or dye penetrant methods. Serviceable removed or new parts should be installed in accordance with the instructions contained in Part B of GAF Alert Service Bulletin ANMD 27-23 dated February 17, 1982, and Revision 1 dated February 19, 1982.

(D) A special flight permit may be issued in accordance with FAR 21.197 to allow flight of the airplane to a location where this AD may be accomplished.

(E) The intervals between repetitive inspections required by this AD may be adjusted up to plus or minus 10 percent of the specified intervals to allow accomplishing these inspections during an established inspection.

(F) An alternate means of compliance with this AD may be used when approved by the Chief, Honolulu Aircraft Certification Field Office, Northwest Mountain Region, Federal Aviation Administration, 300 Ala Moana Boulevard, Honolulu, Hawaii.

This amendment becomes effective on June 17, 1982.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation involves an emergency regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and certifies that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it involves inspection and parts replacement on only a few aircraft owned by small entities. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket; otherwise, an evaluation is not required. A copy, when filed, may be obtained by contacting the Rules Docket at the location identified under the caption **"ADDRESSES."**

This is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Kansas City, Missouri, on June 2, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82-15638 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Airworthiness Docket No. 82-ASW-9; Amdt. 39-4397]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA330 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: A new airworthiness directive (AD) is adopted to require an inspection of the three tail rotor transmission attachment bolts for proper

installation, possible cracks, or surface damage on Aerospatiale Model SA330 series helicopters. The AD is needed to detect and correct any improper bolt and chamfered washer installation that may result in fatigue cracks and failure of the bolt. Loss of one bolt may cause loss of the tail rotor transmission and tail rotor.

DATES: Effective July 8, 1982. Compliance required within 100 hours' time in service after the effective date of this AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. A copy of the service information is also contained in the Rules Docket in Room 916, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, and in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, or James H. Major, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624–4911, extension 503.

SUPPLEMENTARY INFORMATION: A proposal was published in 47 FR 10591 to amend Part 39 of the Federal Aviation Regulations to include an AD that would require removal and inspection of the three tail rotor transmission attachment bolts on Aerospatiale Model SA330 series helicopters. By compliance with this AD, bolts found with dents under the head, or scoring or fretting corrosion on the stem or shank, or bolts with cracks would be removed before further flight. The proposal was prompted by several reports of improper installations of the tail rotor transmission attachment bolts on Aerospatiale SA330 series helicopters. The chamfered washers were not fitted properly under the heads of the bolts. The washers reportedly marked or dented the radius under the bolt heads. These marks may result in possible cracks and failure of the bolts. Failure of a bolt may cause loss of the transmission and tail rotor.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that 20 helicopters could be affected by the AD. It is anticipated that the total expense of complying with the AD could be $62,750.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, and Safety.

Adoption of the Amendment

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

Societe Nationale Industrielle Aerospatiale (SNIAS). Applies to all Model SA330 series helicopters certificated in all categories (Airworthiness Docket No. 82–ASW–9).

Compliance is required within 100 hours' time in service after the effective date of this AD unless already accomplished.

To detect damaged or cracked tail rotor transmission attachment bolts and to assure proper matching of the bolts and chamfered washers, accomplish the following:

a. Remove the tail rotor transmission assembly and remove the three transmission-to-pylon attachment bolts.

b. Inspect the bolts visually for dents under the heads, and for scores or fretting corrosion on the bolt stem or shank. Inspect the bolts for cracks using a magnetic particle or equivalent inspection method.

c. Remove from further service bolts having dents under the head or scoring or fretting on the stem or shank, or bolts having a crack.

d. Install bolts and washers and tail rotor transmission assembly in accordance with SA330 Puma Service Bulletin No. 01.34, dated October 19, 1981, subparagrah C(4)(b), or FAA approved equivalent.

e. Equivalent means of complying with this AD must be approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium. Compliance with Puma Service Bulletin No. 01.34, dated October 19, 1981, satisfies this AD.

This amendment becomes effective on July 8, 1982.

(Secs. 313(a), 601, and 603, Federal Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(d)), 14 CFR 11.89)

Note.—The FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and certifies that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since 20 helicopters will be affected by the rule for an anticipated total expense of $62,750. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "For Further Information Contact."

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on May 21, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82–15639 Filed 6–9–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 22530; Amendment No. 91–179]

One-Engine Inoperative Ferry Flight Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the regulations to allow certificate holders under Part 125 to conduct ferry flights with one engine inoperative without a special flight authorization. This change is necessary to preclude discontinuing this authorization for commercial operators, when Part 125 becomes applicable to them on January 1, 1983, since Part 125 does not contain such authorization. This amendment responds to requests from commercial operators who have become certificated under Part 125 and provides relief for these operators. This amendment is consistent with Executive Order 12291 and the Regulatory Flexibility Act.

EFFECTIVE DATE: July 12, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Schaffer, General Aviation and Commercial Branch (AWS–340), Aircraft Maintenance Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Ave. SW., Washington, D.C. 20591; Telephone: (202) 426–8205.

SUPPLEMENTARY INFORMATION: This amendment is based on Notice of Proposed Rulemaking No. 81–17 published in the **Federal Register** January 7, 1982 (47 FR 818). All interested persons were given an opportunity to participate in making the amendment and due consideration was given to all matters presented. The amendment and reasons for adoption are the same as contained in Notice No. 81–17.

Description of Notice

Notice 81–17 proposed to allow certificate holders under Part 125 to conduct ferry flights with one engine inoperative without a special flight authorization. This change was deemed

necessary to preclude discontinuing this authorization for commercial operators, when Part 125 becomes applicable to them on January 1, 1983, since Part 125 does not contain such an authority. The rule was proposed to be changed by amending § 91.45(a) by deleting the phrase "an air carrier or commercial operator of large aircraft" and substituting the phrase "the holder of an air carrier operating certificate, an operating certificate issued under Part 125, or until January 1, 1983, an operating certificate issued under Part 121." This would enable commercial operators, now operating under Part 121, who later operate under Part 125 to receive the same authorization for a one-engine inoperative ferry flight as they now receive under Part 121.

Background

Part 125 became effective February 3, 1981. Section 125.1(d) provides that an operator who, on the effective date of Part 125, holds a certificate as a commercial operator under Part 121 may continue under those rules until the expiration of that certificate, but no later than January 1, 1983. Thus, a commercial operator operating aircraft to which Part 125 applies must, by that date, hold an air carrier operating certificate, hold an operating certificate under Part 125, or cease to operate for compensation or hire. Some operators have elected to become certificated as air carriers under Part 121, but the majority have or will become operating certificate holders under Part 125.

Commercial operators under Part 121 are authorized, by § 91.45, to conduct ferry flights of four-engine airplanes or turbine-engine-powered airplanes equipped with three engines, with one engine inoperative. Section 91.45 does not make such a provision for operating certificate holders under Part 125.

Therefore, at the present time, certificate holders operating under Part 125 are required to make application for, and be issued, a special flight authorization (ferry permit) when they desire to conduct one-engine inoperative ferry flights. When the need for a ferry permit occurs in a remote area or during other than normal business hours, the application and issuance process can result in costly delays in returning the aircraft to productive service. Further, an unnecessary administrative burden is placed on the operator and the Federal Aviation Administration.

Section 125.1(d) imposes the same limitations on certificate holders under Part 123 since it also brings them under Part 125 on January 1, 1983. These persons and others who become certificated under Part 125 would be subject to the same application and issuance procedure and limitations imposed on the commercial operators. However, it should be noted that persons issued deviation authority under § 125.3 to operate under Subpart D of Part 91 are not authorized to use § 91.45 as amended since only those persons who receive an operating certificate issued under Part 125 will be so authorized.

Discussion of Comments

Four comments were received. Three of the four commenters support the proposal and suggest it be broadened beyond what was proposed. These suggestions are appreciated by the FAA but because they are beyond the scope of the proposals in the notice they cannot be acted upon without further notice and public consideration.

One commenter opposes the proposal on the basis that FAA has not made a study to determine the risk level of a second engine failure, and that Part 25 engine-out climb gradients were established to ensure not only the safety of crewmembers and passengers but also persons on the ground. This commenter also points out that Part 125 does not require a certificate holder to have a well developed maintenance organization as required by Part 121.

The FAA has considered the points raised by this commenter and concludes they are without merit. Section 91.45 limits occupancy of the airplane to required flight crewmembers, prohibits takeoff over thickly populated areas, requires flight tests to confirm one-engine inoperative operational data contained in the Airplane Flight Manual, and requires the airplane to be safely controllable with two engines inoperative in the event of a second engine failure while operating with one engine inoperative. These requirements provide adequate protection for required crewmembers and persons on the ground.

As far as the comment regarding maintenance organizations is concerned, the FAA finds that while Part 125 does not require specific maintenance and management organizations or position titles as does Part 121, it does, in § 125.25, require "enough management personnel, including at least a director of operations, to assure that its operations are conducted in accordance with the requirements of Part 125." Further, although Part 125 certificate holders are not authorized to perform maintenance, § 125.245 requires them to ensure that persons with whom arrangements are made for maintenance have an organization adequate to perform that maintenance. Therefore, the FAA concludes that an adequate level of safety is provided by § 91.45 for one-engine inoperative ferry flights of Part 125 airplanes.

Impact Assessment

This regulatory action is relieving in nature. No formal cost-benefit analysis was completed with respect to the change. However, through a preliminary assessment of costs and economic impact, the FAA has determined that there are no costs associated with this change, and that by eliminating the delays caused by operators having to secure a special flight authorization (ferry permit) when they desire to conduct one-engine inoperative ferry flights, there will be a positive economic impact.

Index

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Pilots.

Adoption of Amendment

Accordingly, Part 91 of the Federal Aviation Regulations (14 CFR Part 91) is amended as follows, effective July 12, 1982.

PART 91—GENERAL OPERATING AND FLIGHT RULES

Amend § 91.45 by revising the section heading, the introductory text to paragraph (a), and paragraphs (a) (5) and (6), to read as follows:

§ 91.45 Authorization for ferry flights with one engine inoperative.

(a) General. The holder of an air carrier operating certificate, an operating certificate issued under Part 125, or until January 1, 1983, an operating certificate issued under Part 121, may conduct a ferry flight of a four-engine airplane or a turbine-engine-powered airplane equipped with three engines, with one engine inoperative, to a base for the purpose of repairing that engine subject to the following:

* * * * *

(5) Persons other than required flight crewmembers shall not be carried during the flight.

(6) No person may use a flight crewmember for flight under this section unless that crewmember is thoroughly familiar with the operating procedures for one-engine inoperative ferry flight contained in the certificate holder's manual, and the limitations and performance information in the Airplane Flight Manual.

* * * * *

(Secs. 313, 314, and 601 through 610, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—This amendment will eliminate delays caused by operators having to secure a special flight authorization (ferry permit) when they desire to conduct one-engine inoperative ferry flights by eliminating the need for such authorizations. This will reduce costs and paperwork to affected Part 125 operators. The expected impact of this regulatory action is minimal, involves no costs, will have only positive economic impact by eliminating the need for special flight authorizations, and does not warrant preparation of a regulatory evaluation. Therefore, the FAA has determined that this action is not a major rule under Executive Order 12291 or a significant regulation under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Feburary 26, 1979). In addition, for the reasons discussed above I certify that, under the criteria of the Regulatory Flexibility Act, this regulatory action will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, D.C. on May 10, 1982.

J. Lynn Helms,

Administrator.

[FR Doc. 82-15406 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 376

Special Commodity Policies and Provisions; Correction

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: A document published in the Federal Register of December 29, 1981 (46 FR 62837) removed and reserved § 376.2 of the Export Administration Regulations. In the Federal Register for February 4, 1982 (47 FR 5209) it was announced that § 376.2 was to be amended. Since § 376.2 had previously been removed, this rule rescinds the notice on February 4, 1982, and § 376.2 remains removed and reserved.

DATE: This rule was effective December 29, 1981.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-4811).

Rulemaking Requirements:

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. app. 2401 et. seq.) ("the Act") this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a new reporting burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The changes announced in this rule amend the Export Administration Regulations to conform them with the rule change announced by the Federal Register of December 29, 1981 (46 FR 62837).

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 376

Export licenses, Exports, Reexports.

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

Accordingly, Part 376 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

In FR Doc. 82-2862, published at 47 FR 5206-5211, remove amendment number "10", (§ 376.2 amended), from page 5209.

Authority: (Sections 13 and 15, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980).)

Dated: June 2, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-15698 Filed 6-9-82; 8:45 am]

BILLING CODE 3510-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9064]

The American Medical Association, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The FTC, in accordance with a decision and judgment rendered by the Court of Appeals for the Second Circuit on October 7, 1980, has modified its Final Order In the Matter of The American Medical Association issued on October 12, 1979 (44 FR 64803, 94 F.T.C. 701). The modified order, effective May 19, 1982, narrows the scope of the order so as not to encroach upon the valid activities of the AMA.

DATES: Final order issued Oct. 12, 1979. Modifying order issued May 19, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, L. Barry Costilo, Washington, D.C. 20580. (202) 724-1213.

SUPPLEMENTARY INFORMATION: In the Matter of The American Medical Association, a corporation, The Connecticut State Medical Society, a corporation, and The New Haven County Medical Association, Inc. Codification appearing at 44 FR 64803 remains unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Doctors, Medical facilities.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Modified Order To Cease and Desist, including further order requiring report of compliance therewith, is as follows:

Modified Order To Cease and Desist

In the matter of The American Medical Association, a corporation, The Connecticut State Medical Society, a corporation, The New Haven County Medical Association, Inc.

Respondents having filed in the United States Court of Appeals for the Second Circuit a petition for review of the Commission's cease-and-desist order issued herein on October 12, 1979; and the Court having rendered its decision and judgment on October 7, 1980, affirming and enforcing the Commission's order with modification of Parts I and II; and the Supreme Court of the United States having affirmed by an equally divided court the judgment of the court of appeals on March 23, 1982,

and having denied a petition for rehearing on May 3, 1982:

Now, therefore, it is hereby ordered, that the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

Order

I.

It is ordered that respondent American Medical Association, and its delegates, trustees, councils, committees, officers, representatives, agents, employees, successors and assigns, directly or indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of physicians' services, or of information about physicians' services, facilities or equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, including but not limited to bidding practices, of patients, patronage, or contracts to supply physicians' services, by any physician or by any organization with which physicians are affiliated; and

C. Inducing, urging, encouraging, or assisting any physician, or any medical association, group of physicians, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this Part.

Nothing contained in this Part shall prohibit respondent from formulating, adopting, disseminating to its constituent and component medical organizations and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

II.

It is further ordered that respondent American Medical Association, and its delegates, trustees, councils, committees, officers, representatives, agents, employees, successors and assigns, directly or indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Restricting, regulating, impeding, advising on the ethical propriety of, or interfering with the consideration offered or provided to any physician in any contract with any entity that offers physicians' services to the public, in return for the sale, purchase or distribution of his or her professional services, except for professional peer review of fee practices of physicians;

B. Restricting, interfering with, or impeding the growth, development or operations of any entity that offers physicians' services to the public, by means of any statement or other representation concerning the ethical propriety of medical service arrangements that limit the patient's choice of a physician;

C. Restricting, interfering with, or impeding the growth, development or operations of any entity that offers physicians' services to the public, by means of any statement or other representation concerning the ethical propriety of participation by non-physicians in the ownership or management of said organization; and

D. Inducing, urging, encouraging, or assisting any physician, or any medical association, group of physicians, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this Part.

III.

It is further ordered that respondent American Medical Association cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

A. Reasonable written notice of the allegations against him or her;

B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and

C. The written findings or conclusions of respondent with respect to such allegations.

IV.

It is further ordered that respondent American Medical Association:

A. Send by first class mail a copy of a letter in the form shown in Appendix A to this Order to each of its present members and to each constituent and component organization of respondent, within sixty (60) days after this Order becomes final.

B. For a peroid of ten years, provide each new member of respondent and each constituent and component organization of respondent with a copy of this Order at the time the member is accepted into membership.

C. Within ninety (90) days after this Order becomes final, remove from respondent American Medical Association's *Principles of Medical Ethics* and the Judicial Council's *Opinions and Reports*, and from the constitution and bylaws and any other existing policy statement or guideline of respondent, any provision, interpretation or policy statement which is inconsistent with the provisions of Parts I and II of this Order and, within one hundred and twenty (120) days after this Order becomes final, publish in the *Journal of the American Medical Association* and in *American Medical News* the revised versions of such documents, statements, or guidelines.

D. Require as a condition of affiliation with respondent that any constituent or component organization agree by action taken by the constituent or component organization's governing body to adhere to the provisions of Parts I, II, and III of this Order.

E. Terminate for a period of one year their affiliation with any constituent or component organization within one hundred and twenty (120) days after learning or having reason to believe that said constituent or component organization has engaged, after the date this Order becomes final, in any act or practice that if committed by respondent would be prohibited by Part I, II, or III of this Order.

V.

It is further ordered that respondent American Medical Association:

A. Within sixty (60) days after the Order becomes final publish a copy of this Order with such prominence as feature articles are regularly published in the *Journal of the American Medical Association* and in *American Medical News* or in any successor publications.

B. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order.

C. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts I and II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising, solicitation, or contract practice involving any of its members.

D. Within one year after this Order becomes final, and annually thereafter, for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Parts I and II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising, solicitation or contract practice involving any of its members.

VI.

It is further ordered that respondent American Medical Association shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

By the Commission.

Appendix A

Dear Doctor: As you know, the Federal Trade Commission issued a complaint against the AMA on December 19, 1975, challenging the AMA's ethical restrictions on the advertising, solicitation, and contractual practices of its members. The complaint also nemed the Connecticut State Medical Society and the New Haven County Medical Association, Inc., as respondents.

In an opinion issued on [insert issue date], the FTC held that the AMA, the two Connecticut medical societies, and other state and local medical associations have unlawfully restricted the advertising, solicitation, and contractual practices of their members in violation of Section 5 of the Federal Trade Commission Act.

In conjunction with that opinion, the Commission issued an order which has now become final. This order is printed in the [insert issue date] issue of the *Journal of the American Medical Association*, the [insert issue date] issue of *American Medical News* and may be obtained from the AMA headquarters of from your state or local medical society.

Among other things, the order forbids any action by AMA that would:

—Restrict its menbers' solicitation of patients by advertising, submission of bids, or other means.

—Interfere with either the amount or the form of compensation provided a member in exchange for his or her professional services, in contracts with entities offering physician services to the public.

—Characterize as unethical the use of closed panel or other health care delivery plans that limit the patient's choice of a physician.

—Characterize as unethical the participation of non-pysicians in the ownership or management of health care organizations that provide physician services to the public.

However, the order does not prohibit the AMA from formulating and enforcing reasonable ethical guidelines governing deceptive advertising and solicitation (including unsubstantiated representations). The AMA may also issue guidelines concerning uninvited, in-person solicitation of patients who, because of their particular circumstances, are vulnerable to undue influence.

Finally, the order requires the AMA to amend the *Principles of Medical Ethics* and the Judicial Council's *Opinions and Reports* and to sever all ties for one year with any state or local medical society that engages in conduct of the type prohibited under the order.

Thank you for your cooperation.

Sincerely,

President.

Carol M. Thomas,

Secretary.

[FR Doc. 82-15679 Filed 6-9-82; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 231, and 249

[Release Nos. 33-6405 and 34-18787; File No. S7-908]

Publication of Revisions to the Division of Corporation Finance's Guide 5 and Amendment of Related Disclosure Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Revisions to Guide and Related Rulemaking.

SUMMARY: The Commission today approved the publication of revisions to Guide 5, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," of the Securities Act Industry Guides and the adoption of coordinating amendments to Regulation S-X and Form 8-K concerning disclosure by public real estate programs in registration statements and periodic reports. The revisions simplify and standardize disclosure concerning the prior performance of the general partner and affiliates and reduce the requirement for financial statements of significant properties acquired by a real estate program from three years to one year if certain conditions are met by the registrant. The revisions are the result of a cooperative effort with a subcommittee of the North American Securities Administrators Association.

EFFECTIVE DATE: The revisions to Guide 5 are effective for registration statements filed on or after September 1, 1982. However, registrants may elect to use revised Guide 5 after July 12, 1982. The amendments to Rule 3-14 of Regulation S-X (17 CFR 210.3-14) and Form 8-K (17 CFR 249.308) adopted herein are effective July 12, 1982.

FOR FURTHER INFORMATION CONTACT: William L. Larsen, (202) 272-2604, Office of Disclosure Policy, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today approved the publication of revisions to Guide 5, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," of the Securities Act Industry Guides[1] and the adoption of related amendments. The publication of the Guide revisions and related rulemaking culminates a major cooperative effort with the Subcommittee on Financial Statement and Track Record Disclosure of the North American Securities Administrators Association ("NASAA").[2] The changes in Guide 5 comprehensively revise current disclosure requirements concerning the prior performance ("track record") of the general partner and its affiliates ("sponsor"). Item 8 of Guide 5 has been revised to standardize and simplify the track record disclosure that now appears in registration statements of real estate limited partnerships. In conjunction with the revision of track

[1] Guide 5 was formerly Guide 60 of the Guides for the Preparation and Filing of Registration Statements and Reports under the Securities Act of 1933 ("Securities Act"). However, in Release No. 33-6384 (March 3, 1982) [47 FR 11476], the Commission authorized the Division of Corporation Finance to rescind all Guides except those setting forth disclosure guidelines applicable to specific industries. Guide 60 was retained, but was redesignated as Industry Guide 5.

[2] NASAA is a voluntary organization composed of the securities regulatory agencies of 49 states, the Commonwealth of Puerto Rico, Guam and 13 provinces and states of Canada and Mexico.

record disclosure standards, Rule 3–14 of Regulation S–X, "Special instructions for real estate operations to be acquired," has been amended to allow, under certain circumstances, presentation of one year of audited financial statements for individual properties acquired by the partnership, instead of three years, as was formerly required. To coordinate with the change in Rule 3–14 of Regulation S–X, Undertaking D in Item 21 of Guide 5 has been revised and a new Instruction 2(e) has been added to Item 7 of Form 8–K.

The Commission approved the publication of Guide 60 in March 1976.[3] The Guide was designed to reflect the experience of the Division of Corporation Finance in processing registration statements filed by real estate limited partnerships. It was published to minimize delay in the review of registration statements relating to real estate limited partnerships and to assist registrants, accountants, attorneys and others in the preparation of such filings. Securities issued by public real estate limited partnerships are registered pursuant to the Securities Act primarily on Form S–11 (17 CFR 239.18), which is specifically designed for such registrants.

The publication of revisions to Guide 5 and the amendment of related provisions is predicated on proposals published for comment in October 1981.[4] The Commission received twelve letters of comment on the Guide 60 release,[5] which generally were supportive of the proposed revisions. Accordingly, the Commission has determined to approve the publication of the Guide 5 revisions and to adopt the other rulemaking proposals substantially as proposed, except as described below. The Guide 60 Release contains extensive discussion of the issues involved in streamlining track record disclosure, as well as of the procedural mechanics of the new approach to track record disclosure under the revised Guide, which is not repeated herein. This release focuses on changes that have been made in the Guide 60 revisions as proposed. Attention is directed to the text of the Guide and rules for a more complete understanding.

[3] *See* Release Nos. 33–5465 (March 1, 1974) (30 FR 10278), 33–5692 (March 17, 1976) (41 FR 17374) and 33–5745 (September 27, 1976) (41 FR 43398). Guide 5 currently contains 21 Items, each addressing a separate aspect of disclosure for real estate offerings. These items include use of proceeds (Item 3 and Table 1), risk factors (Item 7) and Federal taxes (Item 12).

[4] Release No. 33–6354 (October 7, 1981) (46 FR 50553) (the "Guide 60 Release").

[5] The letters are available for public inspection and copying at the Commission's Public Reference Room. (*See* File No. S7–908.)

I. Time Periods Covered by the Prior Performance Tables [6]

The Guide 60 Release proposed to limit coverage of the prior performance tables to the most recent three years of a prior program with similar investment objectives sponsored by the general partner and affiliates rather than to the five years previously required. Several commentators urged the Commission to expand the amount of track record disclosure from the proposed three year standard in order to permit presentation of a more complete picture of prior program operating cycles. The commentators varied in their emphasis on the importance of specific tables and in their recommendations as to the number of years that the tables should cover. A number of commentators suggested that the success or failure of a program cannot be meaningfully measured in a three year period and suggested that Table III require disclosure for the most recently completed five year period. In addition, another commentator proposed that Table IV be expanded so that there generally would be at least several completed programs in Table IV for comparative purposes. Other commentators recommended that sponsors be permitted to include more prior program data in all of the tables—up to fifteen years in some cases—where necessary to present a complete description of prior program operating cycles.

In response to these comments, the proposed instructions to Table III (Operating Results of Prior Programs) have been changed to include programs closed [7] in the most recent five (rather than three) years. In addition, the proposed instructions to Table IV (Results of Completed Programs) have been changed to include programs completed [8] in the most recent five (rather than three) years. Retaining the five year coverage of these tables provides investors with a more complete picture of the financial operations of partnerships with the same sponsor over the existence of the programs. Moreover, it will permit sponsors to include information on a greater number of comparable prior programs without adding significant length to prospectuses. Tables I, II, V and VI retain the proposed three year coverage requirement.

[6] The Prior Performance Tables include: (I) Experience in Raising and Investing Funds; (II) Compensation to Sponsor; (III) Operating Results of Prior Programs; (IV) Results of Completed Programs; (V) Sales or Disposals of Properties; and (VI) Acquisitions of Properties by Programs. Tables I, II, V and VI have been adopted substantially as proposed.

[7] A program is "closed" after the partnership interests are sold to the public.

[8] Depending on the investment objective of the program, a program is "completed" when the partnership assets are liquidated and the partnership is wound down.

II. Changes in Guide 5 Items and Prior Performance Tables

A. Terms Used in Guide

The introduction to Guide 5 is being changed to note that, in the Guide, the term general partner and its affiliates is used interchangeably with the term sponsor. Both terms are intended to include references to the general partner(s), promoters of the partnership and all persons that, directly or indirectly, through one or more intermediaries, control or are controlled by, or are under common control with, such general partner(s) or promoters.

B. Table III

In response to comment, Table III is being changed to provide a more useful breakdown of "Taxable Income." That item is being supplemented by two subheadings—"from operations" and "from gain on sale."

III. Updating Requirements

The Commission recently adopted Rule 415 (17 CFR 230.415), which governs the delayed or continuous offering and sale of securities.[9] Since the offering of real estate limited partnership interests usually is done on a continuous basis, Rule 415 generally would apply to such offerings. Rule 415 requires registrants to undertake to follow the updating requirements of Item 512(a) of Regulation S–K (17 CFR 229.512(a)), which differ from those contained in Undertaking D of Item 21 of Guide 5.[10] Specifically, Item 512(a)(1)(ii) requires the filing of a post-effective amendment to the registration statement to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental

[9] *See* Release No. 33–6383 (March 3, 1982) (47 FR 11380, 11394).

[10] Understanding D of Item 21 of Guide 5 requires sponsors to file a prospectus supplement pursuant to Rule 424(c) (17 CFR 230.424(c)) during the distribution period describing each property that is acquired by the sponsor but that was not named in the prospectus. Sponsors must file a post-effective amendment consolidating the stickers at least once every three months. After the end of the distribution period, sposors are required to file a current report on Form 8–K (17 CFR 249.308) to reflect each commitment made to purchase property involving the use of ten percent or more (on a cumulative basis) of the net proceeds of the offering and to provide that information to limited partners at least once each quarter.

change in the information set forth in the registration statement. The Commission indicated in Release No. 33–6383 that "major changes in the issuer's operations, such as significant acquisitions or dispositions" could be construed as fundamental changes requiring the filing of a post-effective amendment.

The question of what facts or events constitute a fundamental change must, of course, remain a factual question, dependent on the circumstances of individual registrants. In the context of the typical real estate limited partnership, in which the ordinary course of business involves the acquisition of properties by the partnership, the Commission would not expect that an individual property acquisition in the ordinary course of business would be deemed a fundamental change necessitating the immediate filing of a post-effective amendment pursuant to Rule 415 if offers or sales are being made. On the other hand, the Commission believes that acquisition of one or more properties over time should be reflected on at least a quarterly basis in a post-effective amendment to the prospectus.[11] This interpretation is in accord with Undertaking D of Item 21 of Guide 5, which takes a similar approach to updating for property acquisitions. Therefore, by complying with Undertaking D, sponsors will satisfy the fundamental change post-effective amendment requirement of Item 512(a)(1)(ii).

Notwithstanding the above, sponsors are required to include all of the Item 512(a) undertakings in their registration statements, and must update their prospectuses in the event of other fundamental changes in accordance with Rule 415. As noted above, Undertaking D of Item 21 of Guide 5 contains additional updating requirements concerning property acquisitions with which registrants are expected to comply.

Statutory Authority. The Commission hereby authorizes the publication of the Guide 5 revisions and adopts the rulemaking actions set forth below pursuant to Sections 7, 10 and 19(a) of the Securities Act and Sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 ("Exchange Act").

As required by Section 23(a) of the Exchange Act, the commission has specifically considered the impact that the rulemaking actions revising 17 CFR Parts 210 and 249, taken pursuant to the various provisions of the Exchange Act, would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Availability of Final Regulatory Flexibility Analysis. In accordance with 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis of the revisions to Guide 5 and amendments to related disclosure provisions. The corresponding Initial Regulatory Flexibility Analysis was included in the Guide 60 Release at 46 FR 50562. Members of the public who wish to obtain copies of the Final Regulatory Flexibility Analysis of the Guide 5 revisions and related amendments should contact William L. Larsen, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202–272–2604).

List of Subjects in 17 CFR Parts 210, 231 and 249

Reporting requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising paragraph (a)(1) of § 210.3–14 to read as follows:

§ 210.3–14 Special instructions for real estate operations to be acquired.

(a) * * *

(1) Audited income statements (not including earnings per unit) for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes: *Provided, however,* That such audited statements need be presented for only the most recent fiscal year if (i) the property is not acquired from a related party; (ii) material factors considered by the registrant in assessing the property are described with specificity in the filing with regard to the property, including sources of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expense (including, but not limited to, utility rates, ad valorem tax rates, maintenance expenses, capital improvements anticipated); and (iii) the registrant indicates in the appropriate filing that, after reasonable inquiry, the registrant is not aware of any material factors relating to that specific property other than those discussed in response to paragraph (a)(1)(ii) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

Note.—The discussion of material factors considered should be combined with that required by Item 15 of Form S–11.

* * * * *

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. By revising Items 1, 3B, 8, 9, 13 and 21D; by redesignating Table I as Appendix I; and by removing Table II and adding Appendix II to Guide 5 of the Securities Act of 1933 Industry Guides to read as follows:

Guide 5—Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships.

References to the General Partner and its affiliates, also referred to as sponsors, are intended to include references to the General Partner(s), promoters of the partnership, and all persons that, directly or indirectly, through one or more intermediaries, control or are controlled by, or are under common control with, such General Partner(s) or promoters.

* * * * *

1. Cover Page

* * * * *

D. The cover page also should contain brief identification of the material risks involved in the purchase of the securities with cross-reference to further discussion in the prospectus. The most significant risk factors should be identified where applicable, for example:

* * * * *

3. Summary of the Partnership and Use of Proceeds

* * * * *

B. *Use of Proceeds.* The use of proceeds tabular summary will vary according to the partnership but should include, where appropriate, estimates of the public offering expenses (both organizational and sales), the amount available for investment, nonrecurring initial investment fees, prepaid items and financing fees, cash down payments, reserves, and acquisition fees including those paid by the seller. Estimated amounts to be paid to the General Partner and its affiliates should be identified. The

[11] *See* Release No. 33–6383, *supra*, at Note 79, wherein the Commission states that "numerous small changes to information in the registration statement can become cumulatively fundamental."

summary should include both dollar amounts and percentages of the maximum and minimum proceeds of the offering. Inclusion of percentages of the estimated maximum and minimum total assets is optional. An example of a summary of Use of Proceeds is attached as Appendix I, but the summary will vary according to the circumstances.

* * * * *

8. Prior Performance of the General Partner and Affiliates

A narrative summary of the "track record" or prior performance of programs sponsored by the General Partner and its affiliates containing the information set forth below should be included in the text of the prospectus. Tables following the format of those in Appendix II, relating to historical use of proceeds of prior programs, compensation to the sponsors, operations of prior programs, and acquisitions and sales of properties by prior programs, should be included at the back of the prospectus or in Part II of the registration statement as specified in paragraph B "Prior Performance Tables" hereunder.

Sponsors are urged not to include in the prospectus information about prior performance beyond that required by this Guide except for such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

Terms used in the Guide. "Public" programs include all offerings registered under the Securities Act of 1933, all programs required to report under Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), all programs with a class of equity securities registered pursuant to Section 12 of the Exchange Act, and all other programs with at least 300 security holders of record that initially raised at least $1 million.

Programs with "similar investment objectives" are those with similar objectives as set forth in the prospectus. Generally, the sponsor has the responsibility to determine which previous programs had "similar investment objectives," taking into consideration the materiality of information about the prior programs in analyzing the registrant's proposed activities.

A sponsor would be considered to have a "public track record" if it has sponsored at least three programs with investment objectives similar to those of the registrant that file reports under Section 13(a) or Section 15(d) of the Exchange Act and at least two public programs with investment objectives similar to those of the registrant that had three years of operations after investment of 90% of the amount available for investment. In addition, at least two of the public offerings for programs with investment objectives similar to those of the registrant must have closed in the previous three years.

A. *Narrative Summary.* 1. The narrative summary in the text of the prospectus should include a description of the sponsor's experience in the last ten years with all other programs, both public and nonpublic, that have invested primarily in real estate, regardless of the investment objectives of the programs. This summary should include at least (a) the number of programs sponsored, (b) the total amount of money raised from investors, (c) the total number of investors, (d) the number of properties purchased and location by region, (e) the aggregate dollar amount of property purchased, (f) the percentage (based on purchase prices rather than on number) of properties that are commercial (broken out by shopping centers, office buildings and others) and residential, (g) the percentage (based on purchase prices) of new, used or construction properties, and (h) the number of properties sold. Aggregate figures should be presented separately for public and nonpublic programs. In addition, the narrative should indicate the approximate percentage of the overall data that represents activities of programs with investment objectives similar to those of the registrant. The summary also should cross-reference the prior performance tables.

2. The narrative summary should include a discussion of those major adverse business developments or conditions experienced by any prior program, either public or nonpublic, that would be material to investors in this program. The narrative summary also should include a cross-reference to further information that may be found in Appendix II as part of Table III.

3. The narrative summary should include a list of all prior public programs sponsored by the General Partner and its affiliates and an undertaking to provide upon request, for no fee, the most recent Form 10–K Annual Report filed with the Commission by any prior public program that has reported to the Commission within the last twenty-four months and to provide, for a reasonable fee, the exhibits to each such Form 10–K.

4. The narrative summary should include a summary of acquisitions of properties by programs in the most recent three years as set forth in Table VI of Appendix II. The summary should include the number of properties purchased, the type, location and method of financing. Reference should be made to the more detailed description of these acquisitions in Part II of the registration statement, and the registrant should undertake to provide the more detailed description from Part II without fee upon request.

B. *Prior Performance Tables.* The information required by the tables set forth in Appendix II should be included in the format shown. Tables should appear at the back of the prospectus except for Table VI, which should appear only in Part II of the registration statement. The instructions to the tables specify the programs and time periods about which information is required.

9. Management

* * * * *

D. The amount of, and reason for, any contingent liabilities of the General Partner and its affiliates with regard to prior programs now in existence should be disclosed. If this information appears in the financial statements it may be incorporated hereunder by reference.

* * * * *

13. Glossary

If terms are used in the prospectus that are technical in nature or are susceptible to varying methods of computation, e.g., acquisition fees, book value, capital contribution, cash flow, cash available for distribution, construction fees, cost of property, development fee, net worth, organization and offering expenses, profit, partnership management fee and property management fee, definitions should be provided. For purposes of uniformity, it is suggested that these definitions conform to those that appear in the Statement of Policy Regarding Real Estate Programs of the North American Securities Administrators Association, or that any variations, and the economic effect thereof, be disclosed.

* * * * *

21. Undertakings

* * * * *

D. The following undertakings relating to investment of the proceeds of an offering in which a material portion of the maximum net proceeds (allowing for reasonable reserves) is not committed (i.e., subject to a binding purchase agreement) to specific properties should be included in the registration statement:

The registrant undertakes to file a sticker supplement pursuant to Rule 424(c) under the Act during the distribution period describing each property not identified in the prospectus at such time as there arises a reasonable probability that such property will be acquired and to consolidate all such stickers into a post-effective amendment filed at least once every three months, with the information contained in such amendment provided simultaneously to the existing Limited Partners. Each sticker supplement should disclose all compensation and fees received by the General Partner(s) and its affiliates in connection with any such acquisition. The post-effective amendment shall include audited financial statements meeting the requirements of Rule 3–14 of Regulation S–X only for properties acquired during the distribution period.

The registrant also undertakes to file, after the end of the distribution period, a current report on Form 8–K containing the financial statements and any additional information required by Rule 3–14 of Regulation S–X, to reflect each commitment (i.e., the signing of a binding purchase agreement) made after the end of the distribution period involving the use of 10 percent or more (on a cumulative basis) of the net proceeds of the offering and to provide the information contained in such report to the Limited Partners at least once each quarter after the distribution period of the offering has ended.

Note—Offers and sales of the interests may continue after the filing of a post-effective amendment containing information previously disclosed in sticker supplements to the prospectus, as long as the information disclosed in a current sticker supplement accompanying the prospectus is as complete as the information contained in the most recently filed post-effective amendment.

* * * * *

APPENDIX I—Example of Summary of the Use of Proceeds Section

* * * * *

APPENDIX II—Prior Performance Tables

Instructions to Appendix II

1. The prior performance tables should be preceded by a narrative introduction that cross-references the narrative summary in the text, explains the significance of the track record and the tables, explains where additional information (Part II of the registration statement or Form 10–K Annual Reports for prior programs) can be obtained on request and includes a glossary of terms used in the tables.

This introduction also should include a discussion of the factors the sponsor considered in determining which previous programs had "similar investment objectives" to those of the registrant.

2. Each of the tables should be introduced by a brief narrative explaining the objective of the table and what it covers so that the investor will be able to understand the significance of the information presented. There also should be set forth with or in each table any further material information that may be necessary to make the required tabular data, in light of the circumstances under which it is presented, not misleading.

Table I. Experience in Raising and Investing Funds (on a percentage basis)

Instructions: 1. Include information only for programs the offering of which closed in the most recent three years.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each prior program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objectives and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

	Program X	Program Y
Dollar amount offered		
Dollar amount raised (100%)		
Less offering expenses:		
Selling commissions and discounts		
Retained by affiliates		
Organizational expenses		
Other (explain)		
Reserves		
Percent available for investment		
Acquisition costs:		
Prepaid items and fees related to purchase of property		
Cash down payment		
Acquisition fees		
Other (explain)		
Total acquisition cost		
Percent leverage (mortgage financing divided by total acquisition costs)		
Date offering began		
Length of offering (in months)		
Months to invest 90% of amount available for investment (measured from beginning of offering)		

Table II. Compensation to Sponsor

Instructions: 1. Include in a separate column for each program aggregate payments made to the sponsor only by real estate programs the offering of which closed in the most recent three years. Include in another separate column aggregate payments to the sponsor in the most recent three years from all other programs and indicate the number of programs involved.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each prior program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objective and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

4. The table should include any real estate commissions and other fees paid to the sponsor in connection with the acquisition or disposition of any properties by the program by entities other than the program itself.

Type of compensation	Program X	Program X	Other programs
Date offering commenced			
Dollar amount raised			
Amount paid to sponsor from proceeds of offering:			
Underwriting fees			
Acquisition fees			
—real estate commissions			
—advisory fees			
—other (identify and quantify)			
Other			
Dollar amount of cash generated from operations before deducting payments to sponsor			
Amount paid to sponsor from operations:			
Property management fees			
Partnership management fees			
Reimbursements			
Leasing commissions			
Other (identify and quantify)			
Dollar amount of property sales and refinancing before deducting payments to sponsor:			
—cash			
—notes			
Amount paid to sponsor from property sales and refinancing:			
Real estate commissions			
Incentive fees[1]			
Other (identify and quantify)			

[1] Explain subordinated commissions in a note.

Table III. Operating Results of Prior Programs

Instructions: 1. Include information only for programs the offerings of which closed in the most recent five years. Financial data for each progrm should be presentd separately for each year.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, the information must be given for each prior program, public or nonpublic, even if the investment objectives for these programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objective and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

4. Information should be presented on the basis of generally accepted accounting principles ("GAAP") where indicated. However, where information about nonpublic programs is required to be included, such information may be presented on a tax basis if the program's books have not been kept on a GAAP basis. If there are any significant differences in operating results between accounting on a tax and GAAP basis, they should be explained. This explanation should provide the reader with any additional information about the particular programs presented that may be necessary to make the information contained in the Table not materially misleading in light of the

circumstances under which the information is given.

	Program X		
	Year 1	Year 2	Year 3
Gross Revenues			
Profit on sale of properties			
Less:			
Operating expenses			
Interest expenses			
Depreciation			
Net Income—GAAP Basis			
Taxable Income:			
—from operations			
—from gain on sale			
Cash generated from operations [1]			
Cash generated from sales			
Cash generated from refinancing			
Cash generated from operations, sales and refinancing			
Less: Cash distribution to investors:			
—from operating cash flow			
—from sales and refinancing			
—from other			
Cash generated (deficiency) after cash distributions			
Less: Special items (not including sales and refinancing) (identity and quantity)			
Cash generated (deficiency) after cash distributions and special items			
Tax and Distribution Data Per $1000 Invested			
Federal Income Tax Results:			
Ordinary income (loss)			
—from operators			
—from recapture			
Capital gain (loss)			
Cash Distributions to Investors:			
Source (on GAAP basis):			
—Investment income			
—Return of capital			
Source (on cash basis):			
—Sales			
—Refinancing			
—Operations			
—Other			
Amount (in percentage terms) remaining invested in program properties at the end of the last year reported in the Table (original total acquisition cost of properties retained divided by original total acquisition cost of all properties in program)			

[1] Indicate in a note what amount is from sources other than operations, such as guaranteed rents or interest.

Table IV. Results of Completed Programs

Instructions: 1. Include programs that have completed operations (no longer hold properties) in the most recent five years, even if they still hold notes.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each prior program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objective and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

Program Name
- Dollar Amount Raised
- Number of Properties Purchased
- Date of Closing of Offering
- Date of First Sale of Property
- Date of Final Sale of Property

Tax and Distribution Data Per $1000 Investment Through . . .
- Federal Income Tax Results:
  - Ordinary income (loss)
    - —from operations
    - —from recapture
  - Capital Gain (loss)[1]
  - Deferred Gain[2]
    - Capital
    - Ordinary

Cash Distributions to Investors
- Source (on GAAP basis)
  - —Investment income
  - —Return of capital
- Source (on cash basis)
  - —Sales
  - —Refinancing
  - —Operations
  - —Other

Receivable on Net Purchase Money Financing [3]

[1] Note 60 percent capital gain exclusion.
[2] Explain in a note deferred capital gain.
[3] Explain in a note the terms of notes taken back and annual payments, and the fact that the amounts presented are face amounts and do not represent discounted current value.

Table V. Sales or Disposals of Properties

Instructions: 1. Include all sales or disposals of property by programs with similar investment objectives within the most recent three years.

2. Sponsors with a "public track record" should only include information relating to public programs. If the sponsor does not have a "public track record," then information should be given about sales or disposals of properties by public and nonpublic programs. Where properties held by nonpublic programs are included, information should be on a GAAP basis where feasible without undue effort or expense.

Property	Date acquired	Date of sale [1]	Selling price, net of closing costs and GAAP adjustments					Cost of properties including closing and soft costs			Excess (deficiency) of property operating cash receipts over cash expenditures [6]
			Cash received net of closing costs	Mortgage balance at time of sale	Purchase money mortgage taken back by program [2]	Adjustments resulting from application of GAAP [3]	Total [4]	Original mortgage financing	Total acquisition cost, capital improvement, closing and soft costs [5]	Total	

[1] Note if sales of properties are to related parties.
[2] Indicate in a note that the amounts shown are face amounts and do not represent discounted current value. In addition, describe the terms of purchase money mortgages taken back by the partnership, including the interest rate, any balloon payment requirements and other special provisions. Also, describe those sales made with a leaseback or any other guarantees which require continued seller involvement.
[3] Include an explanation of any GAAP adjustments.
[4] Note the allocation of the taxable gain between ordinary and capital, and identify those sales that are being reported for tax purposes on the installment basis.
[5] Identify real estate commissions earned but not taken. Indicate that the amounts shown do not include pro rata share of original offering costs.
[6] Do not include amounts otherwise included under "Selling Price, Net of Closing Costs and GAAP Adjustments" or "Cost of Properties Including Closing and Soft Costs". Costs incurred in the administration of the partnership not related to the operation of properties need not be included if so indicated in a note to the Table.

Table VI. Acquisitions of Properties by Programs

Instructions: 1. Include the following table only in Part II of the registration statement.

2. Include all properties acquired by any prior programs with similar investment objectives in the most recent three years.

3. Sponsors with a "public track record" should only include information relating to public programs. If the sponsor does not have a "public track record," then information should be given about properties acquired by public and nonpublic programs.

Program X

Name, location, type of property
Gross leasable space (sq. ft.) or number of units and total square feet of units
Date of purchase
Mortgage financing at date of purchase
Cash down payment
Contract purchase price plus acquisition fee
Other cash expenditures expensed

Other cash expenditures capitalized
Total acquisition cost

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. By adding Instruction 2(e) to Item 7 of § 249.308 to read as follows:

§ 249.308 Form 8–K, for current reports.

* * * * *

Item 7. Financial Statements and Exhibits.

List below the financial statements and exhibits, if any, filed as part of this report.

(a) * * *

Instructions.

* * * * *

2. * * *

(e) With regard to the acquisition of one or more real estate properties, the financial statements and any additional information specified by Rule 3–14 of Regulation S–X shall be filed.

* * * * *

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 13, 15(d), 23(a), 48 Stat 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 570–574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202–204, 91 Stat. 1494, 1498–1500; 15 U.S.C. 77g, 77j, 77s(a), 78m, 78o(d), 78w(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

June 3, 1982.

[FR Doc. 82–15747 Filed 6–9–82; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 229 and 239

[Release No. 33–6406]

Revisions to the Optional Form for the Registration of Securities To Be Sold to the Public by the Issuer for an Aggregate Cash Price Not To Exceed $5,000,000

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to Form S–18, a simplified registration form under the Securities Act of 1933, which expand the Form's availability to non-corporate registrants and registrants engaged, or to be engaged, in oil and gas related operations; amend several disclosure items to conform with the adoption of the integrated disclosure system; and modify the financial statement requirements to reflect recent revisions to the financial information requirements in Commission filings.

EFFECTIVE DATE: July 8, 1982. Registrants are permitted to comply voluntarily with the revised Form S–18 requirements June 10, 1982.

FOR FURTHER INFORMATION CONTACT: Suzanne S. Brannan, (202) 272–2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On March 8, 1982, the Commission published for comment proposed amendments to Form S–18 (17 CFR 230.28), a simplified registration form under the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) (the "Securities Act"), to expand the availability of the Form to non-corporate registrants, and registrants engaged, or to be engaged, in oil or gas related operations.[1] In addition, in view of the adoption of the integrated disclosure system[2] which eliminates the Securities Act Registration Guides for the Preparation and Filing of Registration Statements and Reports ("Guides"), other than certain Industry Guides, and revises Regulation S–K (17 CFR 229.1) and Regulation C (17 CFR 230.400 *et seq.*), the Commission proposed numerous conforming amendments to the Form. Specifically, several disclosure items of the Form would be amended to reference items in Regulation S–K, the repository of uniform content requirements for filings under both the Securities Act, and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act").[3] Finally, the proposals would revise the financial statement requirements of Form S–18 to reflect recent modifications to the financial information requirements in Commission filings.

Pursuant to the Commission's request for comment, six letters were received.[4] All of the commentators favored expansion of the availability of the Form to additional types of registrants; however, five of the commentators offered suggestions as to changes in the proposed revisions. Based upon the comments received, and its own experience, the Commission has determined to adopt the proposals substantially as published for comment. A description of the changes from the proposed revisions follows.

[1] Release No. 33–6388 (March 8, 1982) (47 FR 11288).

[2] Release Nos. 33–6383 to 33–6385 (March 3, 1982) (47 FR 11380).

[3] Release No. 33–6388 contains a detailed chart reflecting where the disclosure requirements of Form S–18 are being relocated in Regulation S–K.

[4] The letters are available for public inspection and copying at the Commission's Public Reference Room. (*See* File No. S7–924).

I. General Instructions

A. Paragraph A. of General Instruction I has been revised to provide that payment methods involving installments, assessments and assumptions by partners of partnership debt, which are commonly utilized in limited partnership offerings, will be permitted under the Form.[5]

B. The Commission has deleted the language in General Instruction I.E. which provided that Form S–18 could be used for the registration of securities to be offered on a delayed or continuous basis only where the registration statement related to the specifically prescribed securities enumerated in the referenced paragraphs of Rule 415. The Commission will consider whether any limitation is necessary in light of experience with the revised Form S–18.[6]

C. The Commission has added language to General Instruction III., Application of General Rules and Regulations, directing the attention of registrants engaged in real estate operations to relevant disclosure items in Form S–11, the special form for registration of interests in certain real estate companies. Several of the items, such as Item 9 (Investment Policies of Entities Acquiring Specified or Unspecified Properties), Item 10 (Description of Real Estate Acquired by Entities Acquiring Specified Properties) and Item 11 (Operating Data of Entities Acquiring Specified Properties), provide for specific disclosures tailored to the real estate industry. To the extent that these items offer enhanced guidelines for disclosure concerning real estate enterprises, registrants may wish to

[5] Consistent with present staff policy, assessments are to be counted as part of the aggregate offering price, despite payment at a later time, in computing the $5 million offering ceiling limitation.

[6] Item 26 of revised Form S–18, as well as Rule 415(a)(2), reference Item 512 of Regulation S–K (17 CFR 229.512), paragraph (a)(1)(ii) of which requires the filing of a post-effective amendment to the registration statement to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. The Commission directs the attention of registrants engaged in real estate operations to the discussion of updating requirements contained in Release No. 33–6405, Publication of Revisions to the Division of Corporation Finance's Guide 5 and Amendments of Related Disclosure Provisions, adopted in conjunction with this release (June 3, 1982) (appearing in this issue of the Federal Register). The Commission has concluded that compliance with the specific provisions of Undertaking D of Guide 5 by sponsors of real estate limited partnership offerings will satisfy the fundamental change post-effective amendment requirements of Item 512(a)(1)(ii).

consider these items for use in a Form S–18 offering.

II. Part I—Narrative Information Required in Prospectus, Part II—Information Not Required in Prospectus, and Undertakings

A. In view of the adoption of Item 19 (Market Information) and Item 25 (Exhibits), both of which cross-reference corresponding items in Regulation S–K, Item 201(a)(2) (Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters) of Regulation S–K has been amended to reference Form S–18 registration statements, and a Form S–18 column has been added to the Item 601 (Exhibits) table of Regulation S–K to designate the exhibits required to be filed with the Form.

B. Item 20 (Remuneration of Directors and Officers) has been amended to clarify that the period of time for which the $50,000 remuneration figure in subparagraph (a) is to be measured is the registrant's most recent fiscal year.

III. Part I—Financial Information Required in Prospectus.

A. The Commission has adopted a change in Item 21(b)(1) permitting registrants which have been in existence for less than one fiscal year to file an audited balance sheet within 135 days, rather than 90 days, of filing its registration statement.

B. Items 21(b), (c) and (f) have been revised to add language indicating that interim financials may be presented in condensed form.

C. Items 21(d) and (e), as proposed, tracked proposed revisions to Rules 3–07 and 3–08 of Regulation S–X, with certain modifications.[7] Since these proposals have not yet been adopted, the Commission has decided to retain the language contained in Items 15(c) and (d) in new Items 21(d) and (e). If the revisions to Regulation S–X are adopted, the Commission will consider amendments to Form S–18 to conform it to the Regulation S–X language.

D. The Commission has clarified Item 21(h)(4) to indicate that the "net worth" of an individual general partner shall be based on the estimated fair market value of the assets and liabilities of such general partner.

IV. Statutory Authority and Findings

The Commission hereby adopts the rulemaking actions set forth below pursuant to the following statutory authority. The actions revising 17 CFR Parts 229 and 239 are adopted pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933.

(Secs. 6, 7, 8, 10 and 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a))

V. Availability of Final Regulatory Flexibility Analysis With Regard to Form S–18

In accordance with 5 U.S.C. 604, the Commission has prepared a final Regulatory Flexibility Analysis with regard to Form S–18. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing revisions to Form S–18 at 47 FR 11291. Members of the public who wish to obtain copies of the Final Regulatory Flexibility Analysis of the Form S–18 revisions should contact Suzanne S. Brannan, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 (202/272–2644).

List of Subjects in 17 CFR Parts 229 and 239

Reporting requirements, Securities.

Text of Forms and Regulations

In accordance with the foregiong, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[7] Release No. 6350 (September 24, 1981) [46 FR 46943].

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

Revision 1

Revise § 229.201(a)(2) to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

(a) * * *

(2) If the information called for by this paragraph (a) is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) or Form S–18 (§ 239.28 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act relating to a class of common equity for which at the time of filing there is no established United States public trading market, indicate the amount(s) of common equity (i) that is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant; (ii) that could be sold pursuant to Rule 144 under the Securities Act [§ 230.144 of this chapter] or that the registrant has agreed to register under the Securities Act for sale by security holders; or (iii) that is being, or has been publicly proposed to be, publicly offered by the registrant (unless such common equity is being offered pursuant to an employee benefit plan or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

* * * * *

Revision 2

Revise § 229.601(a) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities Act forms								Exchange Act forms			
	S–1	S–2	S–3	S–8	S–11	S–14	S–15	S–18	10	8–K	10–Q	10–K
(1) Underwriting agreement	X	X	X		X	X		X		X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession.	X	X	X		X	X	X		X	X	X	
(3) Articles of incorporation and by-laws	X				X	X		X	X			X
(4) Instruments defining the rights of security holders, including indentures.	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares	X	X			X	X		X	X			
(7) Opinion re liquidation preference	X	X			X	X		X	X			
(8) Opinion re tax matters	X	X	X		X	X	X	X				
(9) Voting trust agreement	X				X	X		X	X			X
(10) Material Contracts	X	X			X	X	X	X	X			X

EXHIBIT TABLE—Continued

	Securities Act forms								Exchange Act forms			
	S-1	S-2	S-3	S-8	S-11	S-14	S-15	S-18	10	8-K	10-Q	10-K
(11) Statement re computation of per share earnings	X	X			X	X			X		X	X
(12) Statements re computation of ratios	X	X	X		X	X	X		X			X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders [1]		X					X					X
(14) Material foreign patents	X					X		X	X			
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant										X		
(17) Letter re director resignation										X		
(18) Letter re change in accounting principles											X	X
(19) Previously unfiled documents											X	X
(20) Report furnished to security holders											X	
(21) Other documents or statements to security holders										X		
(22) Subsidiaries of the registrant	X				X				X			X
(23) Published report regarding matters submitted to vote of security holders.											X	X
(24) Consents of experts and counsel	X	X	X	X	X	X	X	X		X [2]	X [2]	X [2]
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X		X	X	X	X				
(27) Invitations for competitive bids	X	X	X					X				
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X

[1] Where incorporated by reference into the test of the prospectus as permitted by the registration statement.
[2] Where incorporated by reference into a previously filed Securities Act registration statement.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

By amending the registration statement on Form S–18 as set forth below:

§ 239.28 Form S–18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.

Revision 3

The Cover Page of, and General Instructions to, Form S–18 are revised to read as follows:

SECURITIES AND EXCHANGE COMMISSION

Form S–18

Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Address of principal place of business or intended principal place of business)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public———

CALCULATION OF REGISTRATION FEE

Title of each class securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.*

GENERAL INSTRUCTIONS

I. Rule as to Use of Form S–18

A. This form is to be used for the registration of securities not to exceed an aggregate offering price of $5 million which are to be sold for cash, installments for cash and/or cash assessments and assumptions by partners of partnership debt, by the registrant, or for the account of security holders in accordance with paragraph B, provided such registrant:

(1) Is organized under the laws of the United States or Canada or any State or Province thereof, and has or proposes to have its principal business operations in the United States, if a domestic issuer, or Canada or the United States if a Canadian issuer;

(2) Is not subject to the reporting provisions of the Securities Exchange Act of 1934 pursuant to Sections 12 or 15(d) of that Act;

(4) Is not an insurance company which is exempt from the provisions of Section 12 of the Securities Exchange Act of 1934 in reliance upon Section 12(g)(2)(G) thereof; and

(5) Is not a majority owned subsidiary of a registrant which does not meet the qualifications for use of the form, as specified herein.

B. This form may be used for the registration of securities to be sold for the account of any person other than the registrant, *Provided:* (i) The aggregate offering price of such securities does not exceed $1.5 million and (ii) the aggregate offering price of such securities together with the aggregate offering price of any securities to be sold by the registrant does not exceed $5 million.

C. For purposes of computing the $5 million ceiling specified above, there shall be included in the aggregate offering price of the securities registered herein, the aggregate offering price of all securities sold: (i) By the registrant within one year prior to the commencement of the proposed offering in violation of Section 5(a) of the Securities Act; (ii) by the registrant within one year prior to the commencement of the proposed offering pursuant to a registration statement filed on Form S–18; and (iii) which would be deemed integrated with the proposed offering. (*See;* Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].) In computing the $5 million ceiling, the aggregate price of all securities sold which fall in more than one of the above described categories need be counted only once.

D. Notwithstanding the provisions of paragraph (A)(2), a registrant which has had a prior offering on Form S–18 may, during the remainder of the fiscal year in which the prior registration statement was made effective, use the form to register additional securities until the offering limit as computed in paragraph C has been met.

II. Place of Filing

A. At the election of the registrant, all registration statements on Form S–18 and related papers filed with the Commission shall be filed either at its principal office in

*Inclusion of this paragraph is optional. See Rule 473. (Each page of this document, including exhibits and attachments, shall be numbered sequentially from this page, as page 1, through the last page of the document.)

Washington, D.C. or in the Regional Office for the region in which the registrant's principal business operations are conducted, or are proposed to be conducted. The registration statement of any registrant having or proposing to have its principal business operations in Canada may be filed with the Regional Office nearest the place where the registrant's principal business operations are conducted, or are proposed to be conducted; *Provided, however,* That if the offering is to be made through a principal underwriter located in the United States, the offering statement may be filed with the Regional Office for the region in which such underwriter has it principal office. Such material may be filed by delivery to Commission through the mails or otherwise. Questions concerning the appropriate place of filing may be directed to the Commission's Regional Offices.

B. The Commission will endeavor to process Form S–18 registration statements at the place of filing. However, due to workload or other special consideration, the Commission may refer processing to a different Commission office.

C. All post-effective amendments to the Form S–18 registration statement shall be filed in the office where the corresponding Form S–18 registration statement was declared effective.

III. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494), which contains general requirements regarding the preparation and filing of a registration statement.

B. Attention is directed to Rule 463 (17 CFR 230.463) and Form SR (17 CFR 239.61) which is required to be filed by first-time registrants under the Securities Act showing sales of registered securities and the use of proceeds therefrom. Form SR shall be filed at the same office where the registration statement was declared effective.

C. Attention is directed to Regulation S–K (17 CFR 229.001–229.800) for the requirements relating to registration statement content. Where this form specifically references an item within that Regulation, the information need only be furnished to the extent appropriate. Special attention also is directed to paragraphs (c) and (d) of § 229.001 of Regulation S–K which outline the Commission's policies on projections and securities ratings, respectively.

D. Attention is directed to disclosure provisions set forth in the Industry Guides which are listed in § 229.800 of Regulation S–K (17 CFR 229.800). These Industry Guides represent Division practices with respect to the disclosure to be provided by the affected industries in registration statements.

E. Attention is directed to Rule 15c2–8 [17 CFR 240.15c2–8] regarding prior delivery of preliminary prospectuses by registrants not subject to the reporting requirements of the Exchange Act.

F. Attention is directed to Form S–11, particularly Items 9, 10, and 11 contained therein, which require specific narratives tailored for the real estate industry. To the extent that these items offer enhanced guidelines for disclosure on real estate entities, registrants may wish to consider these items for use in a Form S–18 offering.

Revision 4

Part I of Form S–18 is amended by removing existing Item 1 (Distribution Spread), Item 2 (Plan of Distribution), Item 3 (Use of Proceeds to Registrant), Item 5 (Capital Structure), Item 8 (Legal Proceedings), Item 9 (Directors and Officers), Item 12 (Security Ownership of Certain Beneficial Owners and Management) and Item 14 (Securities Being Registered) and by replacing such items with the following disclosure requirements:

PART I.—INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Page of Prospectus. Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus. Set forth in the inside front cover page of this prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Summary Information and Risk Factors. Furnish the information required by Item 503(a), (b), and (c) of Regulation S–K (17 CFR 229.503(a), (b) and (c)).

Item 4. Use of Proceeds. Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Determination of Offering Price. Furnish the information required by Item 505 of Regulation S–K (17 CFR 229.505).

Item 6. Dilution. Furnish the information required by Item 506 of Regulation S–K (17 CFR 229.506).

Item 7. Selling Security Holders. Furnish the information required by Item 507 of Regulation S–K (17 CFR 229.507).

Item 8. Plan of Distribution. Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508), except the information specified in Item 508(c)(1), (3), and (d).

Item 9. Legal Proceedings. Furnish the information required by Item 103 of Regulation S–K (17 CFR 229.103).

Item 10. Directors and Executive Officers. Furnish the information required by Item 401 of Regulation S–K (17 CFR 229.401).

Item 11. Security Ownership of Certain Beneficial Owners and Management. Furnish the information required by Item 403 of Regulation S–K (17 CFR 229.403).

Item 12. Description of the Securities To Be Registered. Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.202).

Revision 5

Part I of Form S–18 is amended by adding new disclosure Items 13 and 14, as follows:

Item 13. Interest of Named Experts and Counsel. Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 14. Statement as to Indemnification. Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

Revision 6

Part I of Form S–18 is amended by redesignating existing Item 4 (Organization Within 5 Years), Item 6 (Description of Business), Item 7 (Description of Property), and Item 13 (Interest of Management and Others in Certain Transactions) as Items 15, 16, 17, and 18, respectively, with no textual changes.

Revision 7

Part I to Form S–18 is amended by redesignating existing Item 7A (Description of Property-Issuers Engaged or to be Engaged in Significant Mining Operations) as Item 17A and by modifying current Instruction (3) to Item 7A(b) to read as follows.

Item 17A (Description of Property-Registrants Engaged or To Be Engaged in Significant Mining Operations)

* * * * *

(b) * * *.

Instructions * * *.

(3) Estimates other than proved (measured) or probable (indicated) reserves, and any estimated values of such reserves shall not be disclosed unless such information is required to be disclosed by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with, the registrant or otherwise to acquire the registrant's securities, such estimates may be included.

Revision 8

Part I of Form S–18 is amended by deleting existing Item 11 (Options to Purchase Securities), and by adding the following disclosure item:

Item 19. Certain Market Information. Furnish the information required by Item 201(a)(2) of Regulation S–K (17 CFR 229.201(a)(2)).

Revision 9

Part I of Form S–18 is amended by redesignating existing Item 10 (Remuneration of Directors and Officers) as Item 20 and by redesignating the introductory paragraph as (a) and former paragraphs (a) and (b) as (i) and (ii) and by adding paragraph (b), as follows:

Item 20. Remuneration of Directors and Officers. (a) Furnish the information required in the table below in substantially the tabular form specified, concerning all remuneration paid or distributed through the latest practicable date to, or accrued through such

date for the account of, the following persons for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year.

(i) each of the five highest paid persons who are officers or directors of the registrant whose aggregate remuneration exceeded $50,000 naming each such person.

(ii) all directors and officers of the registrant as a group, without naming them.

* * * * *

(b) Furnish the following information as to options to purchase securities from the registrant or any of its subsidiaries which are outstanding as of a specified date not more than 30 days prior to the date of filing of the registration statement held by (1) each director and executive officer named in answer to paragraph (a), above, naming each such person, and (2) all directors and officers as a group without naming them:

(i) The title and amount of the securities called for by such options;

(ii) The purchase price of the securities called for and the expiration dates of such options; and

(iii) The market value of the securities called for by such options as of the latest practicable date.

Instructions. 1. The term "options" as used in this item includes all options, warrants and rights other than those issued to security holders on a pro rata basis.

2. The extension of options shall be deemed the granting of options within the meaning of this item.

3. Where the total market value of securities called for by all outstanding options as of the specified date referred to in this item does not exceed $10,000 for any director or executive officer named in answer to paragraph (a), above, or $50,000 for all officers and directors as a group this item need not be answered with respect to options held by such person or group.

4. In case a number of options are outstanding having different prices and expiration dates, the options may be grouped by prices and date. If this produces more than five separate groups, then there may be shown only the range of the expiration dates and the average purchase prices, i.e., the aggregate purchase price of all securities of the same class called for by all outstanding options to purchase securities of that class divided by the number of securities of such class so called for.

Revision 10

Part I of Form S–18 is amended by deleting existing Item 15 (Financial Statements and Instructions) and by replacing such item with the following disclosure requirements:

Item 21. Financial Statements.

(a) General.

(1) The financial statements of the registrant, or the registrant and its predecessors or any businesses to which the registrant is a successor, which are to be filed as part of the registration statement shall be prepared in accordance with generally accepted accounting principles (GAAP) in the United States or in the case of a Canadian registrant, a reconciliation to such U.S. GAAP shall be included in a note or schedule to the financial statements.

(2) Regulation S–X (17 CFR 210.1–210.12), Form and Content of and Requirements for Financial Statements, shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S–X, and registrants engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4–10 of Regulation S–X with respect to such activities.

(3) The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefore of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) Consolidated balance sheets.

(1) The registrant and its subsidiaries consolidated shall file an audited balance sheet as of the end of the most recent fiscal year, or as of a date within 135 days of the date of filing the registration statement if the registrant (including predecessors) existed for a period less than one fiscal year.

(2) When the filing date of the registration statement falls after 134 days subsequent to the end of the registrant's most recent fiscal year a balance sheet as of an interim date within 135 days of the filing date also shall be included in the registration statement. Such balance sheet need not be audited and may be in condensed form.

(c) Consolidated statements of income, changes in financial condition and stockholder's equity.

(1) There shall be filed for the registrant and its subsidiaries consolidated statements of income, changes in financial position and stockholders equity for each of the two fiscal years preceding the date of the most recent audited balance sheet being filed (or for such shorter period as the registrant has been in business), and for the interim period, if any, between the end of the most recent fiscal year and the date of the most recent balance sheet being filed. These statements should be audited to the date of the most recent audited balance sheet being filed. Any interim financial statements may be in condensed form.

(2) If an income statement is filed for an interim period there shall also be filed, except for registrants in the development stage as defined by GAAP, an income statement for a comparable period of the prior year.

(3) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(d) Past Successions to Other Businesses.

(1) If, during the period for which its income statements are required, the registrant has by purchase or by pooling of interests succeeded to one or more businesses which in the aggregate are significant, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any interim periods. In addition, furnish audited income statements, separate or combined as appropriate, for such business or businesses for such period prior to the purchase as may be necessary when added to the time, if any, for which income statements after the purchase are filed to cover the same period for which income statements of the registrant are required in Item (c) above. The test of significance shall be based on the tests used in the term "significant subsidiaries" in Rule 405 of Regulation C.

(2) This instruction shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

(e) Future Successions to Other Businesses.

(1) If, after the date of the most recent balance sheet filed pursuant to paragraph (b) above, the registrant by purchase or by pooling of interests succeeded or is about to succeed to one or more businesses or acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, which would be required if they were registering securities on Form S–18 under the Act. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (i) a balance sheet of the registrant, (ii) the balance sheet of the constituent businesses, (iii) the changes to be effected in the succession, and (iv) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed pro forma statements of income in columnar form for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(2) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control.

(3) No financial statements need be filed, however, for any business acquired or to be acquired, or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregrate, would not meet the test of a significant subsidiary as defined in Rule 405, of Regulation C.

(f) Age of financial statements at effective date of registration statement.

(1) If the financial statements are as of a date 135 days or more prior to the date the registration statement is expected to become effective the financial statements shall be updated with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet. There shall also be filed, except for registrants in the development stage, an income statement for a corresponding period of the preceding fiscal year. Such interim financial statements need not be audited and may be in condensed form.

(2) When the anticipated effective date of the registration statement falls within 45 days subsequent to the end of the fiscal year, the registration statement need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year. *Provided, however,* That if the audited financial statements for such fiscal year are available they must be included in the registration statement. If the anticipated effective date falls after 45 days subsequent to the end of the fiscal year the registration statement must include audited financial statements for the most recently completed fiscal year.

(3) When the filing date of the registration is near the end of a fiscal year and the audited financial statements for that fiscal year are not included in the registration statement, the registration statement shall be updated with such financial statements if they become available prior to anticipated effective date.

(g) Special instructions for real estate operations to be acquired.

If, during the period for which income statements are required, the registrant (a) has acquired one or more properties which in the aggregate are significant, or (b) since the date of the latest balance sheet required, has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties.

(1) Audited income statements (not including earnings per unit) for the two most recent fiscal years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes: *Provided, however,* That such audited statements need be presented for only the most recent fiscal year if (i) the property is not acquired from a related party; (ii) material factors considered by the registrant in assessing the property are described with specificity in the prospectus with regard to the property, including sources of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expense (including, but not limited to, utility rates, *ad valorem* tax rates, maintenance expenses, capital improvements anticipated); and (iii) the registrant indicates in the prospectus that, after reasonable inquiry, the registrant is not aware of any material factors relating to that specific property other than those discussed in response to paragraph (1)(ii) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

(2) If the property is to be operated by the registrant there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(h) Special instructions for limited partnerships.

(1) In addition to the financial reporting requirements in paragraphs (a) through (g), registrants which are limited partnerships are required also to file the balance sheets of the general partners as described in subparagraphs (2) through (4), below.

(2) Where a general partner of the limited partnership is a corporation there shall be filed an audited balance sheet of such corporation as of the end of its most recently completed fiscal year. Receivables from the parent or affiliate of the general partner (including notes receivable, but excluding trade receivables), should be presented as deductions from the shareholders' equity of the general partner. Where a parent or affiliate of the general partner has committed itself to increase or maintain the general partner's capital then there shall also be filed an audited balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year.

(3) Where a general partner of the limited partnership is a partnership there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(4) Where a general partner of the limited partnership is a natural person there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets and liabilities on such balance sheet should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), based on the estimated fair market value of their assets and liabilities, singly or in the aggregate, shall be disclosed in the text of the prospectus.

(i) Special instructions for registrants engaged in mining operations.

With respect to companies engaged or to be engaged in the mining business, attention is directed to the instruction to Item 17A concerning the appropriate classification of issuers engaged in the exploratory, development and production stage of mining.

Revision 11

Part II of Form S–18 is amended by deleting existing Item 16 (Marketing Arrangements), Item 17 (Other Expenses of Issuance and Distribution), Item 18 (Relationship with Registrant of Experts Named in Registration Statement), Item 19 (Recent Sales of Unregistered Securities) and Item 20 (Exhibits), and by adding the following disclosure requirements:

Part II.—Information Not Required in Prospectus

Item 22. Indemnification of Directors and Officers. Furnish the information called for by Item 702 of Regulation S–K (17 CFR 229.702).

Item 23. Other Expenses of Issuance and Distribution. Furnish the information called for by Item 511 of Regulation S–K (17 CFR 229.511).

Item 24. Recent Sales of Unregistered Securities. Furnish the information called for by Item 701 of Regulation S–K (17 CFR 229.701).

Item 25. Exhibits. Furnish the exhibits as required by Item 601 of Regulation S–K (17 CFR 229.601).

Revision 12

Part II of Form S–18 is amended by removing the existing undertaking requirements and replacing them with the following:

Item 26. Undertakings. Furnish the undertakings required by Items 512 of Regulations S–K (17 CFR 229.512).

Revision 13

The signature requirements of Form S–18 are amended to read as follows:

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies

that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–18 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19——.

(Registrant) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a Canadian person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to the exhibit requirements concerning signatures pursuant to powers of attorney.

Revision 14

Part II to Form S–18 is amended by removing existing Instructions as to Exhibits.

Revision 15

Part II to Form S–18 is amended by removing the existing Appendix to the Form.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 4, 1982.

[FR Doc. 82–15746 Filed 6–9–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–000 (Colorado—24); Order No. 236]

Colorado; High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This final order adopts the recommendation of the Colorado Oil and Gas Conservation Commission that the Mesaverde and Mancos Formations be designated as tight formations under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: June 4, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Mesaverde and Mancos Formations in Rio Blanco County, Colorado as designated tight formations eligible for incentive pricing under § 271.703. This amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR) issued March 4, 1982 (47 FR 10239, March 10, 1982)[1] based on a recommendation by the Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703(c) that the Mesaverde and Mancos Formations be designated as tight formations.

The Commission finds that the evidence submitted by Colorado supports the assertion that the Mesaverde and Mancos Formations meet the guidelines contained in § 271.703(c)(2). The Commission adopts the Colorado recommendation.

This amendment shall become effective immediately. The Commission finds that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

[1] Comments were invited on the proposed rule and none were received. No party requested a public hearing and no hearing was held.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding new subparagraphs (86) and (87) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(86) *Mesaverde Formation in Colorado.* RM79–76 (Colorado—24).

(i) *Delineation of formation.* The Mesaverde Formation is found in the southwestern portion of Rio Blanco County, Colorado, about 70 miles northwest of the town of Grand Junction. The Mesaverde Formation is located in Township 1 South, Ranges 98 and 99 West, 6th P.M., all; Township 1 South, Range 100 West, 6th P.M. Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 2 Range 98 West, 6th P.M., Sections 4 through 8; Township 2 South, Range 99 West, 6th P.M., Sections 1 through 12, 15 through 22, and 27 through 34; and Township 2 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36.

(ii) *Depth.* The Mesaverde Formation varies in thickness from 2,900 to 3,600 feet. The average depth to the top of the Mesaverde Formation is 6,693 feet.

(87) *Mancos Formation in Colorado.* RM79–76 (Colorado—24).

(i) *Delineation of formation.* The Mancos Formation is found in the southwestern portion of Rio Blanco County, Colorado, about 70 miles northwest of the town of Grand Junction. The Mesaverde Formation is located in Township 1 South, Ranges 98 and 99 West, 6th P.M., all; Township 1 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 2 Range 98 West, 6th P.M., Sections 4 through 8; Township 2 South, Range 99 West, 6th P.M., Sections 1 through 12, 15 through 22, and 27 through 34; and

Township 2 South, Range 100 West, 6th P.M., Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36.

(ii) *Depth.* The Mancos Formation is approximately 5,000 feet thick. The average depth to the top of the Mancos Formation is 9,495 feet.

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BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-000 (New Mexico—8); Order No. 235]

New Mexico; High-Cost Gas Produced From Tight Formations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of New Mexico Energy and Minerals Department, Oil Conservation Division that the Dakota Formation be designated as a tight formation under § 271.703.

EFFECTIVE DATE: This rule is effective June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511 or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

Issued: June 4, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Dakota Formation in San Juan and Rio Arriba Counties, New Mexico, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation (OPPR), issued February 23, 1982 (46 FR 8377, February 26, 1982),[1] based on a recommendation by the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) in accordance with § 271.703(c) that the Dakota Formation be designated as a tight formation.

The Commission received five comments in response to the Notice of Proposed Rulemaking in this docket. Three commenters, Husky Oil Company, Mitchell Energy Corporation, and Champlin Petroleum Company, supported New Mexico's recommendation. Two commenters, Pacific Gas and Electric Company (PG&E) and Southern California Gas Company and its affiliate, Pacific Lighting Gas Supply Company, (SoCal), filed comments opposing New Mexico's recommendation.

SoCal urges the Commission to exclude from tight formation designation portions of the recommended Dakota Formation on the ground that infill drilling of these portions has been authorized. PG&E requests that the Commission carefully consider the need to designate the formation as a tight formation in light of the existence of the prior infill drilling order. Section 271.703(c)(2)(i)(D) provides that:

> If the formation or any portion thereof was authorized to be developed by infill drilling prior to the date of recommendation and the jurisdictional agency has information which in its judgment indicates that such formation or portion subject to infill drilling can be developed absent the incentive price established in paragraph (a) of this section then the jurisdictional agency shall not include such formation or portion thereof in its recommendation.

Section 271.703(b)(6) defines infill drilling as any drilling in a substantially developed formation or portion thereof subject to well spacing or proration unit requirements which were amended by the jurisdictional agency after the formation or portion thereof was substantially developed, and which were adopted for the purpose of more effective and efficient drainage of the reservoirs in such formation.

New Mexico, in Order Nos. R-1670 and R-1670-C, established 320-acre proration units for gas production from the Basin-Dakota Gas Pool, which includes the recommended area. On May 22, 1979, New Mexico issued Order No. R-1670-V, which permitted the drilling of an additional well in each 320-acre unit in the Basin-Dakota Gas Pool. Under §§ 271.703(c)(2)(i)(D) and 271.703(b)(6), if the recommended portion of the Dakota Formation subject to the infill drilling order, Order No. R-1670-V, was substantially developed at the time the order was issued, then such areas should be excluded from the tight formation designation.[2]

Of the 846 drilling units available in the recommended area at the time the Infill Order No. R-1670-V was issued, 34 units were developed, that is, each of the 34 units had the allowable one well per unit. This represents 4.0% of the number of units in the entire field at that time. The Commission finds that this degree of development does not constitute substantial development at the time the infill order was issued. Accordingly, the Commission will not exclude any areas in New Mexico's recommendation from tight formation designation under § 271.703(c)(2)(i)(D).

PG&E argues that El Paso Natural Gas Company (El Paso), which produces natural gas from the recommended formation, prices its gas on a cost-of-service basis. The use of cost-of-service, PG&E argues, guarantees El Paso full recovery of its costs and expenses, plus a reasonable rate of return, and so El Paso has no need to receive the tight formation incentive price. The Commission has previously stated that the question of whether the incentive price is necessary to provide reasonable incentives for particular gas supplies is beyond the scope of these rulemakings. *See,* Order No. 226, Docket No. RM79-76 (Ohio—2), issued May 7, 1982.[3] The issue in this docket is whether the Dakota Formation meets the standards prescribed in § 271.703(c). Moreover, there are or can be gas producers in the recommended formation other than El Paso which do not receive cost-of-service pricing for gas produced therefrom. Finally, the tight formation incentive price is a *ceiling* price and as such there is no guarantee that a producer (including a pipeline) will be able to charge and collect that price. There must exist proper authorization, either contractual or otherwise, in order for the ceiling price to be collected. See, for example, §§ 271.702(a) (1) and (2) and 271.703(a).

SoCal also argued in its comments that the production data submitted by New Mexico showed that the average pre-stimulation production exceeds the production limits prescribed by § 271.703(c)(2)(i)(B). The figures cited by SoCal to support this assertion were post-stimulation production rates, and

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[1] No party requested a public hearing and no hearing was held.

[2] See Order No. 220, Docket No. RM79-76 (Colorado-18) issued April 2, 1982.

[3] The Commission will only look to the issue of whether the incentive price is necessary in the situation where, as noted, the recommended formation had been substantially developed prior to the issuance of an infill drilling order or under § 271.703(c)(2)(ii), where the formation does not meet the permeability guideline in § 271.703(c)(2)(i)(A).

not pre-stimulation initial potential rates. The pre-stimulation production rates from the Dakota Formation as recommended, based on production data from 22 wells in the formation, is expected to be 312 Mcf/day, which is less than the maximum allowable 336 Mcf/day permitted under § 271.703(c)(2)(i)(B).

Evidence submitted by New Mexico therefore supports the assertion that the Dakota Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the New Mexico recommendation.

This amendment shall become effective immediately. The Commission has found that public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding new subparagraph (88) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations*

* * * * *

(88) *Dakota Formation in New Mexico* RM79–76 (New Mexico—8).

(i) *Delineation of formation.* The Dakota Formation is found in Townships 30 and 31 North, Ranges 2 through 7, in San Juan and Rio Arriba Counties, New Mexico. The formation is within the Basin-Dakota Gas Pool, in the Rosa Area of the San Juan Basin.

(ii) *Depth.* The Dakota Formation is below the Graneros Shale Formation and above the Morrison Formation. The average depth to the top of the Dakota Formation is 7,950 feet. The formation is approximately 250 feet in thickness.

[FR Doc. 82-15758 Filed 6-9-82; 8:45 am]
BILLING CODE 6717-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Procedures for Initial Determination and Discretionary Review—Investigations of Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Final rules.

SUMMARY: These rules amend Part 210 of the Commission's *Rules of Practice and Procedure* governing investigations under section 337 of the Tariff Act of 1930 which covers investigations of unfair practices in import trade (19 U.S.C. 1337). The effect of the amended rules is to provide procedures in section 337 investigations for an initial determination by the presiding officer regarding violation of section 337 and discretionary review of the initial determination by the Commission. This alters existing Commission practice, which requires the presiding officer to file a recommended determination that is reviewed by the Commission before it issues a final determination. These final rules reflect public comment on proposed rules published on December 23, 1981 (46 FR 62292).

EFFECTIVE DATE: June 10, 1982. The procedures established by these final rules will be applicable only to section 337 investigations instituted subsequent to the effective date. The superseded rules provisions will continue in effect for all previously instituted investigations.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C., telephone 202–523–0189.

SUPPLEMENTARY INFORMATION: Authority for adoption of these rules is contained in 19 U.S.C. 1335, which authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties, including those exercised under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Authority is also derived from the Administrative Procedure Act (5 U.S.C. 551, et seq.), which authorizes the adoption of certain procedures in an adjudicative proceeding when an agency does not preside over the hearing at which the evidence is received. Under 5 U.S.C. 557, the agency may require the presiding officer to make an initial decision that becomes the decision of the agency without further proceedings unless the decision is appealed to, or reviewed by, the agency. Alternatively, the agency may require that the entire record be certified to it for decision with a recommended decision by the presiding officer.

The purpose of these amendments to the Commission's rules is to adopt an initial determination procedure, with discretionary Commission review, in section 337 investigations. Commission practice heretofore has called for the presiding officer to issue a recommended determination that is subject to full Commission review with regard to every issue arising in the investigation, regardless of its significance or potential impact upon Commission policies. The change in the rules will permit the Commission to make better use of its time and resources by allowing it to focus its attention on the most substantial issues coming before it in unfair import trade practice investigations and will also diminish the amount of time required for adjudication of less complex investigations.

In accordance with the Regulatory Flexibility Act, it is hereby certified that these final rules will not have a significant economic impact on a substantial number of small entities. Adoption of these rules is anticipated to make it less costly and time-consuming for all private parties, including small entities, to participate in Commission section 337 proceedings.

Analysis of Public Comments on Proposed Rules

Comments on the Commission's proposed rules, published on December 23, 1981 (46 FR 62292), were received from the United States Department of Justice and from three firms that represent parties before the Commission in investigations under section 337 of the Tariff Act of 1930. The following is a summary and analysis of the comments, with an explanation of why comments were accepted or rejected.

The Department of Justice noted that the proposed rules were in accord with the Administrative Procedure Act and supported the Commission's efforts to allocate its time and resources more efficiently. The Department was concerned, however, that the proposed procedures might be inconsistent with the Commission's obligation under 19 U.S.C. 1337(b)(2) and 19 CFR 210.14(a)(2)

to consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission considers appropriate. The Department suggested that the final amendments be clarified to provide a specific opportunity for the consulting federal agencies to comment on the presiding officer's initial determination before the Commission decides whether to review it.

The Commission agrees with the Department of Justice that, in order to make the consultative role of the other federal agencies fully effective, the rules should provide for notice to the other federal agencies of the issuance of an initial determination. Therefore, as suggested by the Department, a new paragraph (e) has been added to § 210.53 to provide that the appropriate agencies will be served with a copy of the initial determination and that the Commission will consider comments submitted by those agencies when deciding whether to review the initial determination. The subsection also establishes time limits for the submission of agency comments. Proposed paragraphs (e) through (h) of § 210.53 are redesignated as paragraphs (f) through (i). Additionally, §§ 210.54(b) and 210.55 have been revised to provide notice to the appropriate agencies that the Commission has granted review of an initial determination.

The recommendations of the Department of Justice have been rejected only insofar as they suggest that the commenting agencies be given the full period provided for the Commission's decision whether to review an initial determination in which to submit comments and that the Commission be allowed to extend the period if extra time is needed in order to consider their comments. The Commission has chosen instead a shorter period for the submission of comments (20 days when the initial determination concerns issues regarding permanent relief; 10 days when the initial determination involves an interlocutory motion or motion for temporary relief). Section 337 charts for the Commission a very strict timetable for its investigations. The Commission does not believe it is either feasible or advisable to allow any additional time for consideration of comments. Although the shorter timetable will require agencies to respond promptly, it is not anticipated that this will result in any undue difficulty.

The first firm that submitted comments suggested two changes to the proposed rules. First, it urged that the language of § 210.54(a) be amended so that a defaulting respondent is not accorded an unqualified right to petition the Commission for review of an unfavorable initial determination. As drafted, § 210.54(a) grants "(a)ny party to an investigation" standing to seek review. The Commission's explanatory comments, 46 FR 62293, noted that this provision "does not exclude parties who are in default or otherwise did not participate in the evidentiary hearing. This extensive grant of authority to request review may be limited in the rule concerning default * * *, in which default is deemed to constitute a waiver of a party's right to appear." The firm recommended that the section be altered to make its provisions available only to non-defaulting parties.

The Commission agrees that the broad wording of proposed § 210.54(a), coupled with the ambiguous explanatory comments, creates an uncertainty as to whether a defaulting party may petition for review of an initial determination. Moreover, it is believed that restricting the right to seek review to non-defaulting parties would be consistent with, and would further strengthen, the Commission's default rule, 19 CFR 210.21(d). Section 210.54(a) has accordingly been revised to limit review to parties who are not in default and similarly revised to limit the right to oppose a petition for review to parties who are not in default. As now drafted, this section also recognizes that a party may elect to be in default as to certain issues in an investigation while preserving its right to contest other issues, as was done in the recent case, *Certain Molded-In Sandwich Panel Inserts*, Inv. No. 337–TA–99, in which respondents chose to contest only the issues of res judicata and jurisdiction. In such a case the defaulting party will be prevented only from seeking or contesting review of matters as to which it is in default.

The same firm urged that the Commission amend § 210.14(b) to permit the presiding officer to take evidence and hear arguments relevant to the Commission's remedy, bonding and public interest determinations. That section specifically prohibits the presiding officer from taking evidence on these issues unless directed to do so by the Commission. This suggestion is outside the scope of the rules changes sought in the present amendments, and consideration of such a change must await future revisions of section 337.

A second firm made two recommendations for changes to the proposed rules. First, it suggested that a new subsection be added to § 210.56 to provide a 60-day time limit on Commission review of an initial determination concerning temporary relief. The Commission has adopted this suggested amendment. Because they are of an emergency nature, motions for temporary relief are ordinarily expedited. While the firm has pointed to no specific past difficulties in obtaining timely disposition of motions for temporary relief, the Commission nevertheless considers the revision advisable because it will insure the confidence of the parties and the public that these motions will be handled expeditiously. Moreover, the 60-day limit is short enough to guarantee timeliness but long enough to insure against overly hasty decisionmaking.

The firm's second recommendation related to the issues of relief, bonding, and the public interest, provided for in § 210.14. The firm expressed the belief that the amendments did not unambiguously provide a procedure for bringing those issues before the Commission and suggested that an additional subsection be added to § 210.56 explicitly providing for Commission consideration of these issues in any case reviewed by the Commission or in which an initial determination granting relief is not reviewed by the Commission.

The Commission does not believe it is necessary to further amend its rules to provide for explicit consideration of relief, bonding, and the public interest. These matters are already covered by § 210.14, which is unaffected by these amendments. That section provides that these issues will be considered by the Commission "(d)uring the course of each proceeding under" section 337, and that "(t)he Commission will consider motions for oral argument or, when necessary, for a hearing with respect to" relief, bonding, and the public interest. Thus, under the amended rules, as under the prior rules, the Commission will consider the issues set forth in § 210.14 in every section 337 case in which relief is or may be granted, even when the Commission elects not to review an initial determination granting relief. The procedures will be identical to those pertaining prior to promulgation of these final rules.

The third firm submitted a number of suggestions for changes to the proposed rules. Two of those suggestions, relating to relief, bonding, and public interest and ability of a defaulting party to petition for review, were also made by

other commenting firms and are discussed above.

The firm suggested that the initial determination procedures be made applicable to motions under § 211.57 for modification or dissolution of final Commission actions. While the Commission may wish to revise or broaden its procedures under § 211.57 after it gains further experience with motions for modification or dissolution of final actions, such changes would be premature at present and in any event are beyond the intended scope of the present amendments. For similar reasons, the Commission does not consider it appropriate at present to make a second revision recommended by the firm that the waiver provision of § 210.54(a)(2) be specifically applied to modification proceedings and that standards should be established for determining when such a waiver may be excused in a modification proceeding.

Another comment submitted by the firm questioned proposed § 210.53(c), which provides with respect to a motion for summary determination, termination, finding of default, or amendment to complaint or notice of investigation that the presiding officer shall grant the motion by filing an initial determination or shall deny the motion by issuing an order directing denial. The firm noted that this provision represents a change with regard to motions for amendment of complaint or notice of investigation, which, under existing § 210.22, are to be certified by the presiding officer to the Commission in every instance, and contended that the change is inappropriate because it will disadvantage complainants. It is recommended at the very least that the Commission explain its reason for providing review only of a presiding officer's determination to grant a motion for amendment of the complaint or notice of investigation.

The Commission included this revision in the proposed rules—and is retaining it in the final rules—for two reasons. First, it harmonizes procedures for review of motions for amendment of the complaint and notice of investigation with those for review of motions for summary determination, termination, and finding of default. Second, the Commission believes it appropriate under the revised rules to limit its review only to those situations in which the presiding officer's order results in a change of the scope of the investigation established by the Commission at the time of institution.

The firm further recommended that the Commission clarify the rules by deleting proposed §§ 210.53(g)(1)(i) and 210.53(g)(2)(i) and by moving the specification of filing deadlines for review petitions to § 210.54. The Commission agrees that the two subsections [now redesignated as §§ 210.53(h)(1)(i) and 210.53(h)(2)(i) because of adoption of a new § 210.53(c) on the suggestion of the Department of Justice] may be confusing, because, as drafted in the proposed rules, they could imply that the mere filing of a petition for review, rather than a Commission determination to undertake review, would be sufficient to prevent an initial determination from becoming the determination of the Commission. The Commission, therefore, has revised § 210.53 by deleting the subsections and has added to § 210.54 the deadlines for seeking review that were previously set out in the two deleted subsections.

The Commission does not find it necessary to make the additional change to § 210.53 suggested by the firm, namely that the rule specify that it may be appropriate in certain circumstances for the presiding officer to file an initial determination under § 210.53(c), dealing with certain interlocutory motions, before filing an initial determination under § 210.53(a), dealing with issues concerning permanent relief. The interlocutory motions covered by § 210.53(c) are ordinarily handled prior to a determination on permanent relief, and this sequence of events need not be spelled out in the rules.

The third firm's final suggestion is that, if proposed § 210.54(a)(2) is intended to establish standards for granting a petition for review, as stated in the Commission's explanatory comments to the proposed rules, this should be set forth explicitly in the rules. The Commission agrees with this suggestion, and sentences have been added to §§ 210.54(b) and 210.55 to make explicit the correspondence between the kinds of issues to be raised by a party seeking review and the standards to be used by the Commission in granting review. In addition, the standards set out in § 210.54(a)(2) have been redrafted in the interest of clarity.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Customs duties and inspection, Imports, Investigations.

19 CFR Part 210 is amended as set forth below.

PART 210—ADJUDICATIVE PROCEDURES

1. In § 210.21, paragraph (d) is revised to read as follows:

§ 210.21 The response.

* * * * *

(d) *Default.* Failure of a respondent to file a response within the time provided for in paragraph (a) of this section may be deemed to constitute a waiver of its right to appear and contest the allegations of the complaint and of the notice of investigation, and to authorize the presiding officer, without further notice to that respondent, to find the facts to be as alleged in the complaint and notice of investigation and to enter an initial determination (or a determination if the Commission is the presiding officer) containing such findings.

2. In § 210.22, paragraph (a) is revised to read as follows:

§ 210.22 Amendments to pleadings and notice of investigation.

(a) *By leave.* If and whenever disposition of the issues in an investigation on the merits will be facilitated, the presiding officer, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to an investigation, may allow appropriate amendments to pleadings: Provided, however, that a motion for amendment of a complaint after the institution of an investigation shall be made to the presiding officer, who shall grant the motion by filing with the Commission an initial determination, or shall deny the motion by issuing an order directing denial; the motion shall be decided according to the standards of § 210.20(d) of this part. A motion for amendment of a notice of investigation shall be dealt with as provided for with respect to motions for amendment of a complaint.

* * * * *

3. In § 210.36, paragraph (b)(5) is revised to read as follows:

§ 210.36 Failure to make discovery; sanctions.

* * * * *

(b) * * *

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule (by initial determination where the presiding officer is not the Commission) that a determination in the investigation be rendered against the party, or both. Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the presiding officer when the presiding officer is not the Commission. It shall be the duty of the parties to seek, and that of the presiding officer to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld

testimony, documents, or other evidence. If in the presiding officer's opinion such relief would not be sufficient, the presiding officer shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

4. In § 210.43, paragraph (c) is revised to read as follows:

§ 210.43 Record.

* * * * *

(c) *Certification of record.* The record shall be certified to the Commission by the presiding officer upon his filing of an initial determination or at such earlier time as the Commission may order.

5. In § 210.50, paragraph (f) is revised to read as follows:

§ 210.50 Summary determinations.

* * * * *

(f) *Order of summary determination.* An order of summary determination shall constitute a determination of the Commission under § 210.56(c) of this part when the Commission is the presiding officer. An order of summary determination shall constitute an initial determination of the presiding officer under § 210.53 when the presiding officer is not the Commission.

6. In § 210.51, paragraphs (c)(2), (d), and (e) are revised to read as follows:

§ 210.51 Termination of investigation.

* * * * *

(c) * * *

(2) The motion, licensing or other agreement and any agreements supplemental thereto, and affidavit shall be certified by the presiding officer to the Commission with a recommendation. The Commission shall promptly publish notice of such motion along with a nonconfidential summary of the licensing or other agreement in the **Federal Register** and, unless otherwise ordered, for a period of thirty (30) days thereafter receive and consider any comments that may be filed by interested persons concerning the agreement. An order of termination based upon such licensing or other agreement shall not constitute a determination of the Commission under § 210.56(c).

(d) *Consent order settlement.* An investigation before the Commission may be terminated as provided in paragraph (a) of this section on the basis of a consent order settlement under § 211.20(b). An order of termination based upon such a settlement shall not constitute a determination of the Commission under § 210.56(c).

(e) *Effect of termination.* Except as provided in paragraphs (c) and (d) of this section, an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.56(c), and an order of termination issued by the presiding officer (when not the Commission) shall constitute an initial determination of the presiding officer under § 210.53.

7. Sections 210.53, 210.54, and 210.55 are revised to read as follows:

§ 210.53 Initial determination.

(a) *On issues concerning permanent relief.* Following a hearing for the taking of evidence and hearing of arguments and within nine months, or within fourteen months in a more complicated case, of the date of publication in the **Federal Register** of the notice instituting the investigation, the presiding officer shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is a violation of section 337 of the Tariff Act of 1930.

(b) *On issues concerning temporary relief.* Following a hearing for the taking of evidence and hearing of arguments and within four months of the date of publication in the **Federal Register** of the notice instituting the investigation, the presiding officer shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is reason to believe there is a violation of section 337 of the Tariff Act of 1930.

(c) *On motions for summary determination, termination, finding of default, or amendment to complaint or notice.* Following the filing of a motion for summary determination pursuant to § 210.50, motion for termination pursuant to § 210.51, motion for a finding of default pursuant to §§ 210.21(d) and 210.51(b), or motion to amend the complaint or notice of investigation pursuant to § 210.22(a), the presiding officer shall grant such motions by filing with the Commission an initial determination, or shall deny such motions by issuing an order directing denial.

(d) *Contents.* The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law or discretion presented in the record; and a statement that pursuant to § 210.53(h) of these rules the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.54 of these rules, or the Commission pursuant to § 210.55 of these rules orders on its own motion a review of the initial determination or certain issues therein.

(e) *Notice to and advice from departments and agencies.* The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate shall be served with a copy of the initial determination. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies 20 days after the service of an initial determination filed pursuant to § 210.53(a) or 10 days after the service of an initial determination filed pursuant to § 210.53 (b) or (c) to submit their comments.

(f) *Initial determination made by the presiding officer.* The initial determination shall be made and filed by the presiding officer who presided over the investigation, except when that person is unavailable to the Commission.

(g) *Reopening of proceedings by the presiding officer.* At any time prior to the filing of the initial determination, the presiding officer may reopen the proceedings for the reception of additional evidence.

(h) *Effect.* (1) Unless otherwise ordered by the Commission, an initial determination filed pursuant to § 210.53(a) shall become the determination of the Commission thirty (30) days after the service thereof, except when the Commission, within thirty (30) days after the date of filing of the initial determination, shall have ordered review of the initial determination or certain issues therein pursuant to § 210.54(b) or § 210.55.

(2) Unless otherwise ordered by the Commission, an initial determination filed pursuant to § 210.53 (b) or (c) shall become the determination of the Commission fifteen (15) days after the service thereof, except when the Commission, within fifteen (15) days after the date of filing of the initial determination, shall have ordered review of the initial determination or certain issues therein pursuant to § 210.54(b) or § 210.55.

(i) *Notice of determination.* In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Secretary. The notice shall also state that the time for filing a petition for

review of the initial determination has expired and that the Commission has decided not to review the initial determination on its own motion.

§ 210.54 Petition for review.

(a) *The petition and responses.* (1) Any party to an investigation may request a review by the Commission of an initial determination by filing with the Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default. A petition for review of an initial determination filed pursuant to § 210.53(a) shall be filed within ten (10) days after the service of the initial determination. A petition for review of an initial determination filed pursuant to § 210.53 (b) or (c) shall be filed within five (5) days after the service of the initial determination. A petition for review shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review of the initial determination is sought—

(A) a finding or conclusion of material fact is clearly erroneous;

(B) a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(C) the determination is one affecting Commission policy.

(iii) Set forth a concise statement of the facts material to the consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review by the Commission is necessary or appropriate to resolve an important issue of fact, law or policy.

(2) Any issue not raised in the petition for review filed pursuant to this rule will be deemed to have been abandoned and may be disregarded by the Commission in reviewing an initial determination.

(3) Any party may file a response to the petition for review within five (5) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(h)(1) within thirty (30) days of the filing of the initial determination, or a petition for review filed pursuant to § 210.53(h)(2) within fifteen (15) days of the filing of the initial determination, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. The standards for granting review of an initial determination are set forth in section 210.54(a)(2).

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its order, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The order and notice that the Commission has granted the petition for review shall be served by the Secretary on all parties, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§ 210.55 Commission review on its own motion.

Within the time provided in § 210.53(h)(1) or § 210.53(h)(2), the Commission on its own initiative may order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. The standards for granting review of an initial determination are set forth in section 210.54(a)(2). In its order, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The order and notice that the Commission has directed review on its own initiative shall be served by the Secretary on all parties, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§§ 210.56, 210.57 and 210.58 Redesignated as §§ 210.57, 210.58 and 210.59.

8. Present §§ 210.56, 210.57, and 210.58 are redesignated §§ 210.57, 210.58, and 210.59, respectively.

9. A new § 210.56 is added to read as follows:

§ 210.56 Review by Commission.

(a) *Briefs and Oral Argument.* In the event the Commission orders review of an initial determination the parties may file review briefs concerning the issues on review at a time, and of a size and nature set forth in the order granting the petition for review. The parties within the time provided for filing the review briefs may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of the request.

(b) *Scope of review.* Only the issues set forth in the order granting review, and all subsidiary issues therein, will be considered by the Commission.

(c) *Determination on review.* On review the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge and make any findings or conclusions which in its judgment are proper based on the record in the proceeding.

(d) *Time limit for review of initial determinations concerning temporary relief.* In the event the Commission orders review of an initial determination concerning temporary relief filed pursuant to § 210.53(b), such review shall be completed within sixty (60) days from the date review is ordered, unless the Commission orders otherwise.

§ 210.57 [Amended]

10. In § 210.57, as redesignated, paragraph (a) is revised to read as follows:

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to § 210.56(c) or a termination on the basis of a licensing or other agreement or consent settlement pursuant to §§ 210.51 (c) and (d), respectively, shall be served upon each party to the investigation.

* * * * *

§ 210.60 [Amended]

11. The first sentence of § 210.60 is revised to read as follows:

§ 210.60 Interlocutory appeals.

Rulings by the presiding officer on motions may not be appealed to the Commission prior to the presiding officer's issuance of his initial determination except in the following circumstances:

* * * * *

By order of the Commission.

Issued: June 4, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-15640 Filed 6-9-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7820]

Income Tax; Taxable Years Beginning After December 31, 1953; Partnerships and Investment Credit for Used Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulation amendments relating to partnerships and investment credit for certain used property. The amendments are necessary to make the regulations consistent with recent court cases.

DATES: The amendments are effective June 10, 1982 for taxable years ending after December 31, 1961.

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

SUPPLEMENTARY INFORMATION: On November 28, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 48(c) of the Internal Revenue Code relating to investment credit for used section 38 property (45 FR 79094). The amendments concern the definition of used section 38 property as it relates to partners and partnerships and are designed to make the regulations consistent with recent court cases. No comments from the public were received.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Because the notice of proposed rulemaking for this regulation was filed with the **Federal Register** on November 26, 1980, no regulatory flexibility analysis is required.

Drafting Information

The principal author of these regulations is Carolyn Swift of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other Offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.01–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to the Income Tax Regulations (26 CFR Part 1) as published in the **Federal Register** on November 28, 1980 (45 FR 79094), are adopted without change, as set forth below. The regulations are adopted under the authority contained in sections 38(b) and 7805 of the Internal Revenue Code of 1954 (76 Stat. 962, U.S.C. 38(b); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 18, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

§ 1.48–3 [Amended]

In § 1.48–3, paragraph (a)(2)(ii) is amended by removing following language: "(*a*) property used by a partnership shall be considered as used by each partner, and (*b*)" and paragraph (a)(3) is amended by removing Example 5.

[FR Doc. 82–15649 Filed 6–9–82; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–82–13]

Bay City Outboard Association 1982 Regional Championship, Special Local Regulation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish a regulated area in the Saginaw River on 26 and 27 June 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict vessel navigation in the Saginaw River area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: This amendment will be effective only on 26 and 27 June 1982.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: Since there is insufficient time to publish a proposed rule before the date of the event this regulation is published as a final rule and will become effective in less than 30 days.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are MSTC Bruce Graham, Project Officer, Office of Search and Rescue, and LCDR Michael Gentile, Project Attorney, Legal Office, Ninth Coast Guard District.

Discussion of Comments

None was received due to the previously mentioned lack of time for a proposed rule.

Summary of Final Evaluation

The Bay City Outboard Association Regional Championship will be conducted on the Saginaw River on 26 and 27 June 1982. This event will have an estimated 100 Stock Outboards which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Saginaw, MI).

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated area can be opened periodically to allow for the passage of commercial vessels and that the duration of the regulated area is short. 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 the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

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 by adding the following section:

§ 100.35–0913 Saginaw River-Bay City, MI.

(a) The following area will be closed to navigation or anchorage for vessels less than 65 feet from 10:00 A.M. (local time) until 6:00 P.M. on 26 and 27 June 1982.

(1) That portion of the Saginaw River from the Bascule Bridge to the Veterans Memorial Bridge.

(b) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) This § 100.35–0913 will become effective at 10:00 A.M. (local time) on 26 June 1982 and will no longer be effective after 6:00 P.M. on 27 June 1982.

(Sec. 1, 35 Stat. 69 as amended, Sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 25, 1982.

J. R. Kirkland,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 82-15703 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-82-15]

Duluth Harbor Fireworks, Special Local Regulation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish a regulated area in Duluth Harbor, Lake Superior on 4 July 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict vessel navigation in the Duluth Harbor area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: This amendment will be effective only on July 4, 1982.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: On 29 April 1982, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (47 FR 18370). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The principal persons involved in drafting this rule are MSTC Bruce Graham, Project Officer, Office of Search and Rescue, and LCDR Michael Gentile, Project Attorney, Legal Office, Ninth Coast Guard District.

Discussion of Comments

None was received and no significant differences exist between the proposed and final rule.

Summary of Final Evaluation

The Duluth fireworks display will be conducted in Duluth Harbor on 4 July 1982. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Duluth, MN).

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. 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 the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

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 by adding the following section:

§ 100.35–0915 Lake Superior/Duluth Harbor Basin Northern Section.

(a) The following portions of Duluth Harbor, Lake Superior will be closed to commercial vessel navigation or anchorage from 7:30 p.m. (local time) until 11:00 p.m. on 4 July 1982.

(1) That portion of Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087 degrees true from the Cargill Pier through Duluth Basin Lighted Buoy 5 (LLNR 1813) to the opposite shore and on the north by the Duluth Aerial Bridge.

(b) The following portions of Duluth Harbor Basin Northern Section will be closed to all traffic from 7:30 p.m. until 11:00 p.m. on 4 July 1982.

(1) Within 300 yards of position 46 degrees 46 minutes 43 seconds North and 092 degrees 06 minutes 03 seconds West.

(c) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(d) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Partrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(e) This § 100.35–0915 will become effective at 7:30 p.m. (local time) on 4 July 1982 and will no longer be effective after 11:30 p.m. on 4 July 1982.

(Sec. 1, 35 Stat. 69 as amended, Sec. 6(b)(1), 80 Stat. 937; 46 USC 454; 49 USC 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: June 1, 1982.

J. R. Kirkland,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 82-15707 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-82-12]

Stroh Gold Cup Regatta, Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish a regulated area in the Detroit River on 23, 24, 25, and 27 June 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict recreational vessel navigation in the Detroit River area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: This amendment will be effective only on 23–25, and 27 June 1982.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: Since there is insufficient time to publish a proposed rule before the date of the event this regulation is published as a final rule and will become effective in less than 30 days.

Drafting Information

The principal persons involved in drafting this rule are MSTC Bruce Graham, Project Officer, Office of Search and Rescue, and LCDR Michael Gentile, Project Attorney, Legal Office, Ninth Coast Guard District.

Discussion of Comments

None was received due to the previously mentioned lack of time for a proposed rule.

Summary of Final Evaluation

The Stroh Gold Cup Regatta will be conducted on the Detroit River on the 23–25, and 27 June 1982. This event will have an estimated 25 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated area can be opened periodically to allow for the passage of commercial vessels and that the duration of the regulated area is short. 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 the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

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 by adding the following section:

§ 100.35-0912 Detroit River—Belle Isle.

(a) The following area will be closed to navigation or anchorage from 9:00 A.M. (local time) until 12:00 A.M. and from 1:00 P.M. until 5:00 P.M. on 23, 24, 25, and 27 June 1982.

(1) That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound by the Belle Isle Bridge and a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) In addition, two safety zones for race craft will be established. The first will be from the Waterworks Intake Crib Light (LL 1022) eastward to the Detroit Edison Lighted Buoy 1A (LL 1023) then north to the Edison Boat Club. The second safety zone will be within an area bound by a perpendicular line drawn from the center span of the Belle Isle Bridge to the stacks at the Uniroyal Plant, north to the U.S. shore.

(c) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(d) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(e) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(f) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(g) This § 100.35-0912 will become effective at 9:00 A.M. (local time) on 23 June 1982 and will no longer be effective after 5:00 P.M. on 27 June 1982.

(Sec. 1, 35 Stat. 69 as amended, Sec. 6(b)(1), 80 Stat. 937; 46 USC 454; 49 USC 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 25, 1982.

J. R. Kirkland,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 82-15701 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-82-11]

International Freedom Festival Air and Water Show, Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish a regulated area in the Detroit River on 25 and 26 June 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict vessel navigation in the Detroit River area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: This amendment will be effective only on 25 and 26 June 1982.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: Since there is insufficient time to publish a proposed rule before the date of the event this regulation is published as a final rule and will become effective in less than 30 days.

Drafting Information

The principal persons involved in drafting this rule are MSTC Bruce Graham, Project Officer, Office of Search and Rescue, and LCDR Michael Gentile, Project Attorney, Legal Office, Ninth Coast Guard District.

Discussion of Comments

None was received due to the previously mentioned lack of time for a proposed rule.

Summary of Final Evaluation

The International Freedom Festival Air and Water Show will be conducted on the Detroit River on 25 and 26 June 1982. This event will have a variety of water activities and air events which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated area can be opened periodically to allow for the passage of commercial vessels and that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplificiation, 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 the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

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 by adding the following section:

§ 100.35–0911 Detroit River—International Freedom Festival.

(a) The following area will be closed to navigation or anchorage by vessels less than 65 feet in length from 5:30 P.M. (local time) until 8:30 P.M. on 25 and 26 June 1982.

(1) That portion of the Detroit River which lies between 083 degrees 01.9 minutes West, and 083 degrees 03 minutes West, from the international boundary to the U.S. shoreline.

(b) No vessel shall anchor in or around the main shipping channel of the Detroit River within U.S. waters nor shall any spectator craft impair the free passage of any commercial vessel in the main fairways of the Detroit River.

(c) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(d) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(e) This section 100.35–0911 will become effective at 5:30 P.M. (local time) on 25 June 1982 and will no longer be effective after 8:30 P.M. on 26 June 1982.

(Sec. 1, 35 Stat. 69 as amended, Sec. 6(b)(1), 80 Stat. 937; 46 USC 454; 49 USC 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May, 26, 1982.

J. R. Kirkland,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 82–15704 Filed 6–9–82; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–82–16]

Wishing Well Classic, Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish a regulated area in Lake St. Clair on 12 June 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict vessel navigation in the area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: This amendment will be effective only on 12 June 1982.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: Since there is insufficient time to publish a proposed rule before the date of the event this regulation is published as a final rule and will become effective in less than 30 days after publishing.

Drafting Information

The principal persons involved in drafting this rule are MSTC Bruce Graham, Project Officer, Office of Search and Rescue, and LCDR Michael Gentile, Project Attorney, Legal Office, Ninth Coast Guard District.

Discussion of Comments

None was received due to the previously mentioned lack of time for a proposed rule.

Summary of Final Evaluation

The Wishing Well Classic Regatta will be conducted in Lake St. Clair on 12 June 1982. This event will have an estimated 30 ocean racers which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, St. Clair Shores, MI). These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated area can be opened periodically to allow for the passage of commercial vessels and that the duration of the regulated area is small. 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 the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial

number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

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 by adding the following section:

§ 100.35–0911 Lake St. Clair/Michigan.

(a) The following area will be closed to vessel navigation or anchorage from 1000 (local time) until 1330 on 12 June 1982.

(1) That portion of Lake St. Clair from the shore at 42 degrees 25 minutes North to 42 degrees 25 minutes North 082 degrees 50 minutes West to 42 degrees 31 minutes North 082 degrees 50 minutes West to shore at 42 degrees 31 minutes North.

(b) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U. S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) This § 100.35–0911 will become effective at 1000 (local time) on 12 June 1982 and will no longer be effective after 1330 on 12 June 1982.

(Sec. 1, 35 Stat. 69 as amended, Sec. 6(b)(1), 80 Stat. 937; 46 USC 454; 49 USC 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 24, 1982.

Henry H. Bell,

Rear Admiral, U. S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 82–15705 Filed 6–9–82; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-2116-1]

Approval and Promulgation of Implementation Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In order to satisfy the requirements of Part D of the Clean Air Act, as amended, the State of Missouri revised its State Implementation Plan (SIP) in 1980 to include additional control of volatile organic compounds (VOC) in the St. Louis ozone nonattainment area. On April 3, 1981, EPA conditionally approved one of Missouri's regulations pertaining to rotogravure and flexographic printing facilities. On April 15, 1982, the state submitted a revision to the regulation for the purpose of fulfilling this condition. The purpose of this notice is to advise the public that EPA is taking final action to approve the state's submission and remove the condition on the SIP.

EFFECTIVE DATE: This promulgation is effective July 12, 1982.

ADDRESSES: Copies of the state submission and EPA's technical evaluation are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Room 2922, Washington, D.C. 20460

Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102

A copy of the state's submission is also available at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at (816) 374–3791 (FTS) 758–3791.

SUPPLEMENTARY INFORMATION: On April 3, 1981, EPA conditionally approved certain elements of Missouri's SIP with regard to the requirements of section 172(b) (2) and (3) of the Clean Air Act, as amended (46 FR 20172). Section 172(b)(2) requires implementation of all reasonably available control measures as expeditiously as practicable as part of a control strategy to attain a National Ambient Air Quality Standard (NAAQS). Section 172(b)(3) requires reasonable further progress toward attainment of the NAAQS (in this case, the ozone standard) including such reduction in emissions from existing sources in nonattainment areas as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT). Missouri Rule 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing Facilities, applicable in the St. Louis area, contained minor deficiencies resulting in EPA's conditional approval on April 3, 1981. The condition required the state to amend the regulation to require compliance by 1982 for those sources relying on add-on control equipment and to specify an extended compliance schedule for using low solvent inks. The state agreed to correct these deficiencies and the changes were to be submitted by January 1, 1982. For a complete discussion of this issue, the reader should consult the April 3, 1981, rulemaking.

On December 1, 1981, the state published in the *Missouri Register* a proposed change to Rule 10 CSR 10–5.340 for the purpose of fulfilling this condition. On February 17, 1982, EPA published a notice of receipt of this proposed change and continued the conditional approval of the SIP (47 FR 6809). The final revisions adopted and submitted by the state are the same as the changes proposed last December. These revisions amend the final compliance date from 1985 to 1982 for add-on controls and specify a compliance schedule for low solvent ink programs.

Based on its review of the submitted revisions, EPA finds that the condition on its approval has been fully met. EPA finds that further notice and comment on this issue are unnecessary. The corrective action was clearly identified in EPA's promulgation and the state's submittal clearly addresses the specified criteria for approval. Therefore, EPA is incorporating the regulatory changes into the SIP and is removing the applicable condition.

EPA is also taking this opportunity to clarify language in 40 CFR Part 52 regarding the conditions which were previously promulgated in regard to Missouri's regulations. Sections 52.1320(c)(16) and (18) are being amended to show that the approved regulations are those which were amended in subsequent submittals from the state to satisfy conditions on EPA's approval.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

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 by August 9, 1982. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sections 110 and 172 of the Clean Air Act, as amended)

Dated: May 28, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by Reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart AA—Missouri

40 CFR Part 52 is amended as follows:

1. Section 52.1320 is amended as follows:

A. The last sentence of the introductory text of (c)(16) is revised.

B. The last sentence of (c)(18) is revised.

C. The last sentence of the introductory text of (c)(25) is revised.

D. Paragraph (c)(25)(vii) is revised.

E. Paragraph (c)(36) is added.

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

(16) * * * Included in the plan are the following approved regulations as amended, in part, in subsequent submittals: * * *

(18) * * * Included in the plan are Missouri regulations 10 CSR 10–6.020, Definitions, and 10 CFR 10–6.060, Permits Required, as amended, in part, in subsequent submittals, which are approved as meeting the requirements of sections 172(b)(6), 172(b)(11)(A) and 173. * * *

(25) * * * Included in the plan revision are the following approved regulations as amended, in part, in subsequent submittals: * * *

(vii) Rule 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing Facilities is approved as RACT. * * *

(36) Revisions to Rule 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing Facilities, submitted on April 15, 1982, are approved as RACT.

§ 52.1324 [Amended]

2. Section 52.1324 is amended by removing paragraph (c).

[FR Doc. 82–15334 Filed 6–9–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–2128–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces approval on revisions to the Ohio State Implementation Plan (SIP) for Chapter 3745–35 of the Ohio Administrative Code. These rules set forth requirements for air permits to operate and variances. EPA's action is based on its review of the State's revision request and supporting data. This action approves revisions to the Ohio regulations for application and approval of air permits to operate and variances.

EFFECTIVE DATE: This final rulemaking becomes effective on July 12, 1982.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Debra Marcantonio at (312) 886–6088 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: EPA is today approving the Ohio Environmental Protection Agency adopted Rules 3745–35–01 through 3745–35–04 of the Ohio Administrative Code (OAC). The adopted rules set forth requirements for air permits to operate and variances. These rules were adopted on September 28, 1979 and became effective in the State of Ohio on November 7, 1979. The State of Ohio submitted these rules to EPA on February 25, 1980.

Rule 3745–35–01 sets forth the definitions to be used in rules 3745–35–02 through 04. Rule 3745–35–02 establishes the procedures and requirements which all new and existing sources must comply with in order to obtain a permit to operate. Rule 3745–35–03 establishes the procedures and requirements which an existing source must comply with in order to obtain a variance. Rule 3745–35–04 states the general policy for reviewing permits to operate and variances for the Ohio EPA. Further dicussion of OAC Rules 3745–35–01 through 3745–35–04 is contained in the notice of proposed rulemaking which was published in the **Federal Register** on March 5, 1982 (47 FR 9478).

During the 30 day public comment period EPA received no comments. Therefore, EPA is today approving OAC Rules 3745–35–01 through 3745–35–04 as part of the Ohio SIP.

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

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 by August 9, 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 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1981.

(Sec. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: June 1, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations Chapter I, Part 52 is amended as follows:

Subpart KK—Ohio

Section 52.1870(c) is amended by adding paragraph (42) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(42) On February 25, 1980, the State of Ohio submitted the revised Ohio Administrative Code (OAC) Rules 3745–35–01 through 3745–35–04 which set forth requirements for air permits to operate and variances. These rules were adopted on September 28, 1979 and became effective in Ohio on November 7, 1979.

[FR Doc. 82–15699 Filed 6–9–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 763

[OPTS 61004 B; TSH–FRL 2064–3]

Asbestos; Friable Asbestos-Containing Materials in Schools; Identification and Notification

Correction

In FR Doc. 82–14477, at page 23360 in the issue of Thursday, May 27, 1982, under the preamble designation "DATES" correct "May 27, 1983" to read "June 28, 1983."

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6334]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management.

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 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.

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	Hazard area identified
California:				
Humboldt County	Fortuna, city of	060063	800103, emergency; 820503, regular	770719
Do	Rio Dell, city of	060064	750825, emergency; 820503, regular	740524
Georgia: Brooks County	Brooks County	130281	820503, emergency; 820503, regular	780203
Hawaii: Hawaii County	Hawaii County*	155166	700605, emergency; 820503, regular	740601
Iowa:				
Lee County	Fort Madison, city of	190184	740411, emergency; 820503, regular	740301
Polk County	Johnston, city of	190745	770603, emergency; 820503, regular	770401
Illinois:				
Sangamon County	Pawnee, village of	170602	750710, emergency; 820503, regular	740517
Do	Thayer, village of	170804	751125, emergency; 820503, regular	740322
Indiana:				
Boone County	Lebanon, city of	180013	750625, emergency; 820503, regular	740503
Madison County	Pendleton, town of	180156	741226, emergency; 820503, regular	731217
Louisiana:				
St. Martin Parish	Henderson, town of	220189	730430, emergency; 820503, regular	740607

State and county	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
St. Landry Parish	St. Landry Parish*	220165	730515, emergency; 820503, regular	771206
St. Martin Parish	St. Martin Parish*	220178	730426, emergency; 820503, regular	741227
Maine: Cumberland County	Bridgton, town of	230041	751120, emergency; 820503, regular	741122
Michigan: Calhoun County	Homer, village of	260331	751205, emergency; 820503, regular	780428
Minnesota:				
Faribault County	Blue Earth, city of	270116	750422, emergency; 820503, regular	740109
Freeborn County	Emmons, city of	270657	770325, emergency; 820503, regular	741227
Do	Freeborn County*	270134	740416, emergency; 820503, regular	780324
Do	Glenville, city of	270137	740502, emergency; 820503, regular	740308
Watonwan County	St. James, city of	270518	740702, emergency; 820503, regular	760730
Freeborn County	Twin Lakes, city of	270139	770922, emergency; 820503, regular	740802
New Hampshire:				
Cheshire County	Marlborough, town of	330024	750915, emergency; 820503, regular	740628
Grafton County	Plymouth, town of	330072	750827, emergency; 820503, regular	740503
New York:				
Onondaga County	Syracuse, city of	360595	740802, emergency; 820503, regular	740412
Broome County	Windsor, town of	360059	750724, emergency; 820503, regular	740628
Ohio: Ottawa County	Genoa, village of	390612	780321, emergency; 820503, regular	750718
Oregon: Jackson County	Phoenix, city of	410097	750611, emergency; 820503, regular	740621
Pennsylvania:				
Erie County	Le Boeuf, township of	422415	751015, emergency; 820503, regular	750110
Northampton County	Northampton, borough of	420726	740201, emergency; 820503, regular	740405
Delaware County	Norwood, borough of	420425	720618, emergency; 820503, regular	760730
Allegheny County	Scott, township of	421100	741009, emergency; 820503, regular	740913
Chester County	South Coatesville, borough of	420288	751210, emergency; 820503, regular	740531
Lawrence County	Wayne, township of	422469	750627, emergency; 820503, regular	750117
South Carolina: York County	York, city of	450197	750620, emergency; 820503, regular	740517
Vermont: Washington County	Middlesex, town of	500114	740513, emergency; 820503, regular	740628
Washington: Yakima County	Selah, town of	530226	740718, emergency; 820503, regular	740116
Wisconsin:				
Washington County	Germantown, village of	550472	750715, emergency; 820503, regular	740628
Monroe County	Monroe County*	550571	760218, emergency; 820503, regular	780707
Arkansas: Johnson County	Coal Hill, city of	050315	750806, emergency; 820504, regular	750110
Louisiana: Grant Parish	Montgomery, town of	220256	790306, emergency; 820504, regular	750919
Oklahoma: Creek County	Briston, city of	400051	800709, emergency; 820504, regular	740628
Texas:				
Johnson County	Alvarado, city of	480397	780126, emergency; 820504, regular	740809
Llano County	Llano, city of	480451	760826, emergency; 820504, regular	731228
Collin County	Prosper, town of	480141	801202, emergency; 820504, regular	740621
Carson County	Panhandle, town of	480727	790327, emergency; 820511, regular	760625
Denton County	Shady Shores, city of	481135	790416, emergency; 820511, regular	770318

*Unincorporated Areas.
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.

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: May 25, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–15545 Filed 6–9–82; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 64

[Docket No. FEMA 6336]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended effective the dates listed within this rule because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATE: The third date ("Susp.") listed in the fifth column.

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. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in 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. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to

which a year has elapsed since identification of the community as having flood prone areas, as shown on the Federal Emergency Management Agency's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

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 provision of 5 U.S.C. 605(b), the Associated Director of 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. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any ecomonic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

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.

§ 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	Date certain Federal assistance no longer available in special flood hazard area
Alaska: Wrangell-Petersburg Division.	Wrangell, city of	020098B	June 23, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 28, 1974, Feb. 4, 1977	June 15, 1982.
Connecticuit:					
New London	Colchester, town of	090095B	May 21, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Aug. 2, 1974, Jan. 30, 1976	Do
New London	Colchester, borough of	090192B	May 21, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 28, 1974, May 14, 1976	Do
Litchfield	Litchfield, town of	090047B	June 6, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 21, 1974, Dec. 17, 1976	Do
Florida: Pinellas	Pinellas Park, city of	120251C	Oct. 8, 1971, emergency; Aug. 15, 1977, regular; June 15, 1982, suspended.	June 7, 1974, Mar. 28, 1975, Aug. 15, 1977.	Do
Illinois:					
McHenry	Crystal Lake, city of	170476B	Oct. 21, 1974, regular, June 15, 1982, regular; June 15, 1982, suspended.	Mar. 22, 1974, July 9, 1976	Do
Sangamon	Rochester, village of	170840A	Mar. 2, 1976, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Mar. 21, 1975	Do
Kane	Sleepy Hollow, village of	170331B	Feb. 18, 1976, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Apr. 12, 1974, Apr. 9, 1976	Do
Massachusetts:					
Worcester	Barre, town of	250293B	Aug. 12, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	May 17, 1974, Dec. 27, 1977	Do
Berkshire	Egremont, town of	250022B	July 3, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 28, 1974, Oct. 29, 1976	Do
Do	Lanesborough, town of	250027B	Nov. 18, 1974, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Mar. 29, 1974, Dec.10, 1976	Do
Worcester	Lunenburg, town of	250315B	Sept. 4, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Sept. 6, 1974, Dec. 10, 1976	Do
Do	Sterling, town of	250336B	July 9, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	July 19, 1974, Dec. 17, 1976	Do
Do	Winchendon, town of	250348B	Aug. 6, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Aug. 3, 1974, Sept. 10, 1976	Do
Plymouth	West Bridgewater, town of	250284B	July 24, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Aug. 9, 1974, July 30, 1976	Do
Michigan:					
Calhoun	Albion, city of	260050B	July 1, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 28, 1974, July 11, 1975	Do
Washtenaw	Ann Arbor, city of	260213B	Apr. 19, 1973, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 28, 1974, Sept. 26, 1975	Do
Do	Manchester, village of	260316B	Aug. 26, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Feb. 22, 1974, Apr. 11, 1975	Do
Minnesota:					
Winona	Dakota, city of	270526C	Aug. 21, 1974, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Aug. 2, 1974, July 25, 1975, Feb. 25, 1979.	Do
Do	Goodview, city of	270528B	June 23, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Mar. 19, 1976, Mar. 16, 1979	Do
Missouri: St. Louis	Valley Park, city of	290391B	June 23, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Dec. 17, 1973, June 18, 1976	Do
New Hampshire: Coos.	Berlin, city of	330029B	May 8, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Aug. 27, 1976	Do
New Jersey:					
Passaic	Clifton, city of	340398B	Feb. 19, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	May 31, 1974, July 2, 1976	Do
Mercer	Hamilton, township of	340246B	Dec. 3, 1971, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Nov. 4, 1977, Feb. 24, 1978	Do
Cumberland	Millville, city of	340173B	May 2, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Jan 14, 1977	Do
New York: Tioga	Barton, town of	360832B	Sept. 2, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	June 21, 1974, Oct. 31, 1975	Do

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard area
North Carolina: Lenoir.	Kinston, city of	370145C	Nov. 7, 1974, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Mar. 15, 1974, Apr. 30, 1976, July 25, 1980.	Do
Oregon: Lane	Junction City, city of	410124B	May 2, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	May 10, 1974, Aug. 6, 1976	Do
Yamhill	Lafayette, city of	410254B	May 20, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Nov. 30, 1973, June 18, 1976	Do
Multnomah	Unincorporated areas	410179A	Feb. 4, 1972, emergency; June 15, 1982, regular; June 15, 1982, suspended.		Do
Benton	Philomath, city of	410011B	June 6, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Feb. 22, 1974, Feb. 7, 1975	Do
Utah: Weber	Harrisville, city of	490208A	Sept. 29, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Aug. 8, 1975	Do
West Virginia: Kanawha	St. Albans, city of	540083B	July 16, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Mar. 8, 1974, Oct. 3, 1975	Do
Do	South Charleston, city of	540223A	June 5, 1974, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Apr. 9, 1976	Do
Wisconsin: Waukesha	Pewaukee, village of	550489A	Mar. 24, 1975, emergency; June 15, 1982, regular; June 15, 1982, suspended.	Mar. 3, 1976	Do

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: May 27, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-15544 Filed 6-9-82; 8:45 am]

BILLING CODE 6718-03-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Income Levels for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; Revised Appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document revises specified income levels to reflect amendments to the Official Poverty Threshold as defined by the Office of Management and Budget and published by the Department of Health and Human Services.

EFFECTIVE DATE: July 12, 1982.

FOR FURTHER INFORMATION CONTACT: Linda Perle, Legal Services Corporation, 733 Fifteenth Street, NW., Suite 700, Washington, D.C. 20005, (202) 272–4010.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's Regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. Because responsibility for revision of the Official Poverty Threshold was shifted in 1982 from the Office of Management and Budget to the U.S. Department of Health and Human Services, the Corporation was not notified of the new figures until late May, 1982, thus delaying the publication of the Corporation's 1982 Poverty Guidelines. The revised figures equivalent to 125% of the Official Poverty Threshold are set forth below:

List of Subjects in 45 CFR Part 1611

Legal Services.

PART 1611—ELIGIBILITY

Appendix A of Part 1611 is revised to read as follows:

LEGAL SERVICES CORPORATION POVERTY GUIDELINES, APPENDIX A OF PART 1611

[For all States Except Alaska and Hawaii]

	Maximum income
Size of family Unit: [1]	
1	$5,850
2	7,775
3	9,700
4	11,625
5	13,550
6	15,475
For Alaska: [2]	
1	7,338
2	9,738
3	12,138
4	14,538
5	16,938
6	19,338

LEGAL SERVICES CORPORATION POVERTY GUIDELINES, APPENDIX A OF PART 1611—Continued

[For all States Except Alaska and Hawaii]

	Maximum income
For Hawaii: [3]	
1	6,738
2	8,950
3	11,163
4	13,375
5	15,588
6	17,800

[1] For family units with more than six members, add $1,925 for each additional member in a family.
[2] For family units with more than six members, add $2,400 for each additional member in a family.
[3] For family units with more than six members, add $2,213 for each additional member in a family.

Dated: June 2, 1982.

Mary Wieseman,

Acting General Counsel, Legal Services Corporation.

[FR Doc. 82-15650 Filed 6-9-82; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 42

[CGD 80-143]

Load Line Assignment and Surveys; Fees and Other Expenses

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations for load line survey fees

to allow the assigning authorities to keep pace with the rate of inflation. It has been reported that escalating expenses and inflation have almost doubled survey costs since they were last increased. The fees charged for services should reflect this if the same level of service is to be maintained. This action allows the American Bureau of Shipping (ABS), or any other Coast Guard approved load line assigning authority, to set its own fees to reflect the cost of the work performed. While the Coast Guard will no longer publish the survey fee schedule as part of the load line regulations, the fees charged by organizations desiring to perform load line surveys will be continued to be monitored.

EFFECTIVE DATE: This regulation is effective on July 12, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Willian A. Cleary, Ship Characteristics Branch (G-MMT-5/13), Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426-2187. Working hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on November 8, 1981 (46 FR 55278). Interested persons were invited to participate in this rulemaking by submitting written views, data, or arguments. Two letters were received in response to the notice.

Only two commenters expressed a preference for continued publication of a load line fee schedule so that they could use this information for estimating and budgeting purposes. Information regarding the fees is obtainable as readily from the American Bureau of Shipping as it is from the Code of Federal Regulations. In addition, the load line survey fee which has been published in the Code of Federal Regulations is today only a minor factor in the total cost of having a load line survey performed because the vessel owner or operator has to defray the cost of most of the expenses incurred by the qualified marine surveyor. The Coast Guard believes that continued publication of a fee schedule in the regulations is unnecessary. The ABS is a not-for-profit corporation and its directors are members of the shipping community who have an interest in ensuring that excessive fees are not charged.

Drafting Information

The principal persons involved in drafting this final rule are: Mr. Frank K. Thompson, Office of Merchant Marine Safety, Project Manager, and LCDR William B. Short, Office of the Chief Counsel, Project Counsel.

Regulatory Evaluation

The Coast Guard has evaluated this action under Executive Order 12291 and the Department of Transportation "Policies and Procedures for Simplification, Analysis and Review of Regulations" (DOT Order 2100.5 dated 22 May 1980) and, in view of the above, has determined that it is neither a major nor a significant rulemaking. This action eliminates the need for the publishing of load line survey fees and keeping those fees current through the regulatory process. The Coast Guard will continue to monitor the fees charged by the approved assigning authority.

Regulatory Flexibility Analysis

The Coast Guard has evaluated this final rule under the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1168) and certifies, for the following reasons, that it does not have a significant economic impact on a substantial number of small entities.

The load line assignment fees in removed 46 CFR Subpart 42.35, which was last updated in December, 1975, ranged from 35 dollars for classed vessels under 200 gross tons to 1020 dollars for classed vessels of 15,000 gross tons and above. As of January, 1981, the ABS had increased this fee range to 100 dollars to 2020 dollars, respectively. The ABS also charges additional fees proportional to the work involved if it is requested to perform plan review and strength or stability calculations. The minimum fee for performing strength or stability calculations had been 125 dollars in the removed subpart; it is now 250 dollars. These fee increases are not out of line with the current inflationary economic trend. In addition, the owner or operator of a surveyed vessel must defray the surveyor's traveling expenses which may range from automobile mileage and parking to airline fares and hotel accomodations. Relative to the multi-million dollar cost of a new vessel over 15,000 gross tons, these survey fee increases are not a significant economic factor.

The Load Line Certificate must be renewed annually. For reissuing the certificate the ABS now charges a flat fee of 30 dollars, up from 25 dollars in the removed subpart. The ABS also charges 150 dollars per visit for the required annual load line inspection, and 75 per cent of the initial load line assignment fee for each required 5-year survey. The increases in the ABS's annual charges represent less than one-tenth of one per cent of a vessel's annual operating and maintenance costs; again not a significant economic factor. An owner or operator of a classed vessel may even escape these charges if the inspection or survey is carried out in conjunction with certain other ABS surveys such as a survey for continuation of classification status with the classification society.

List of Subjects in 46 CFR Part 42

Vessels, Marine safety, Navigation (water).

In consideration for the foregoing, Part 42 of Title 46, Code of Federal Regulations is amended as follows:

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

1. The authority citation for Part 42 reads as follows:

Authority: Sec. 2, 87, Stat. 418, (46 U.S.C. 86); sec. 2, 49 Stat. 888 as amended, (Sec. 2, 76 Stat 415, 46 U.S.C. 88a); 49 CFR 1.46(b).

§ 42.07-35 [Amended]

2. Paragraph (i) of § 42.07-35 is removed.

§ 42.09-40 [Amended]

3. Paragraph (d) of § 42.09-40 is removed.

§§ 42.35-1, 42.35-5, 42.35-10, and 42.35-15 (Subpart 42.35) [Removed]

4. Subpart 42.35 is removed.

Dated: June 2, 1982.

Clyde T. Lusk, Jr.

Read Admiral, U.S. Coast Guard Chief, Office of Mercant Marine Safety.

[FR Doc. 82-15706 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-17; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Safety Standard No. 108 to delete the dimensional requirements for all headlamp retaining rings. It implements the grant of a petition for modification of Dimension "K", specified in SAE Standard J571d for retaining rings of headlamps. The primary purpose of this amendment is to remove a design restriction and associated

administrative and compliance burdens upon the automotive industry. The amendment was proposed on October 13, 1981 (46 FR 50394).

DATE: Effective date: June 10, 1982.

FOR FURTHER INFORMATION CONTACT: Marx Elliott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–1714).

SUPPLEMENTARY INFORMATION: Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment* (49 CFR 571.108), incorporates by reference SAE Standard J571d "Dimensional Specifications for Sealed Beam Headlamp Units," June 1976. Toyota Motor Sales, USA, Inc. informed NHTSA that it had developed a new retaining ring for a four lamp rectangular headlamp system which combined the function of the previously separate headlamp door (mounting ring) and the retaining ring. The new ring is lighter in weight by 0.2 kg than the old ring and its use makes it easier to replace a headlamp. But in order to allow it, Toyota argued that Dimension "K" as specified in Figure 8(A) of SAE J571d should not be limited to a maximum of 1.52 mm, and it petitioned the agency for rulemaking to eliminate Dimension K. Having been assured that the new design does not interfere with use of a mechanical aimer, NHTSA granted the petition.

Upon its review of Standard No. 108 the agency concluded that it should go beyond the scope of the petition and that deletion of all retaining ring design requirements would not compromise motor vehicle safety. This appeared to be one of those Federal regulations that can be rescinded, thereby relieving a burden, if only a small one, on vehicle manufacturers. The necessary compliance and associated administrative tasks will be removed and therefore implementation of the proposal should have a positive economic impact. Retaining ring dimensions specified in SAE Recommended Practice J1132, applicable to two-lamp rectangular headlamp systems, are also eliminated.

In response to the notice of proposed rulemaking published on October 13, 1981, the agency received six comments, five of which endorsed the agency's planned action. The sixth comment, from Hopkins Manufacturing Corporation, a producer of mechanical aiming devices for headlamps, expressed concern that without a limitation on Dimension "K", there could be interference between the retaining ring and the aiming head, thus preventing the use of a mechanical aimer. However, the agency has concluded, as did several of the commenters, that certain performance requirements specified in SAE J580b "Sealed Beam Headlamp Assembly," February 1974, adequately guarantee compatibility between the retaining ring and the headlamp. Specifically, paragraph S5.1 requires that "Headlamps shall be designed so that they may be inspected and aimed by mechanical aimers * * * without removal of any ornamental trim rings or other parts." This means simply that the headlamps, when installed on the motor vehicle, must be mechanically aimable.

The agency has considered this rulemaking action and determined that it is not a major regulation under Executive Order 12291 "Federal Regulation," or a significant regulation under the departmental regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. Amendment of the standard will impose no additional requirements but will allow manufacturers flexibility to adopt retaining ring designs with dimensional specifications that may now be precluded by strict adherence to the SAE requirements incorporated in Standard No. 108. The cost effects of utilizing the new retaining rings would be minimal.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. NHTSA certifies that amending Standard No. 108 to eliminate dimensional requirements for retaining rings will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Based on available information, the agency believes that few, if any, of the retaining ring manufacturers are small businesses as that term is defined for purposes of the Flexibility Act. Businesses which make or install the new retaining rings and small organizations and government jurisdictions which purchase fleets of motor vehicles will not be significantly affected. Retaining rings will continue to be required and provided, in most instances probably unchanged from current ones. The difference in cost of vehicles equipped with current retaining rings and those of a different design will be insubstantial at most.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the human environment.

Because this amendment relieves a restriction and creates no additional burden, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest. Accordingly the amendment is effective upon publication in the Federal Register.

The engineer and attorney primarily responsible for this proposal are Marx Elliott and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, is amended by adding new paragraph S4.1.1.25 to read as follows:

§ 571.108 Standard No. 108, Lamps, reflective devices, and associated equipment.

* * * * *

S4.1.1.25 The dimensional specifications for headlamp unit retaining rings of Figures 2(B), 5(B), and 8(B) of SAE Standard J571d "Dimensional Specifications for Sealed Beam Headlamp Units," June 1976, and of Figure 2(B), SAE Recommended Practice J1132 "142 mm x 200 mm Sealed Beam Headlamp Unit," January 1976, do not apply.

* * * * *

(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 June 4, 1982.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 82–15678 Filed 6–9–82; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use; National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule reissuing special regulations.

SUMMARY: It has been determined that opening the refuges in Alaska to public entry and use is compatible with the purposes for which these areas were established and will provide additional

recreational opportunity to the public. This document extends the duration of the regulations governing such access, which were promulgated on May 7, 1980, from May 31, 1982, until revised rules are issued so that orderly management of the refuges will not be compromised.

DATES: This rule is effective June 10, 1982.

FOR FURTHER INFORMATION CONTACT: The Refuge Operations Supervisor or the respective Refuge Manager at the address or telephone number listed below:

Don Fedfearn, Supervisor, Refuge Operations, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, Telephone: (907) 276–3800

Russell Robbins, Refuge Manager, Arctic National Wildlife Refuge, Federal Building and Courthouse, 101 12th Avenue, P.O. Box 20, Fairbanks, Alaska 99701, Telephone: (907) 456–0250

Bob Delaney, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669, Telephone: (907) 262–7021

Barry Reiswig, Acting Refuge Manager, Yukon Delta National Wildlife Refuge, Box 346, Bethel, Alaska 99559, Telephone (907) 543–3151

John Martin, Refuge Manager, Alaska Maritime National Wildlife Refuge, P.O. Box 3069, Homer, Alaska 99603, Telephone: (907) 235–6546

John Sarvis, Refuge Manager, Izembek National Wildlife Refuge, Pouch 2, Cold Bay, Alaska 99571, Telephone: (907) 532–2455

Charles Strickland, Refuge Manager, Kodiak National Wildlife Refuge, Box 825, Kodiak, Alaska 99615, Telephone: (907) 487–2600

SUPPLEMENTARY INFORMATION: The primary author of this rule is William Knauer, U.S. Fish and Wildlife Service, Regional Office, Anchorage, Alaska 99503, Telephone: (907) 276–3800.

General

On May 7, 1980, public entry and use regulations for National Wildlife Refuges in Alaska were published in the **Federal Register** (45 FR 30077). With the passage of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101 et. seq.) refuges in Alaska were enlarged, renamed, and additional refuges were established.

The Fish and Wildlife Service clarified its regulations by publishing as proposed and final rules (46 FR 5668, 46 FR 31818, and 46 FR 40192) Interim Management Regulations for the Alaska National Wildlife Refuges at 50 CFR Part 36. These modify or supplement existing regulations which remain in effect providing they are not in conflict with or superseded by ANILCA or the Interim Management Regulations. Therefore the regulations published on May 7, 1980, to the extent that they were not in conflict or superseded remained in effect until May 31, 1982. A continuation of these rules is necessary until new regulations can be drafted and subjected to public comment. This effort is currently underway and is expected to be completed by the Fall of 1982. In the interim, this rule would extend the effectiveness of the regulations until the publication of the new rules.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer refuge areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use continued by this extension will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, Final Environmental Statement-Proposed Alaska Coastal National Wildlife Refuge (October 1974), Final Environmental Statement-Proposed Arctic National Wildlife Refuge (October 1974), Final Environmental Statement-Proposed Yukon Delta National Wildlife Refuge (October 1974), the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976 and Final Environmental Statement-Alternative Administrative Actions Alaska National Interest Lands (1978). Funds are available for the administration of the recreational activities permitted by these regulations.

NEPA Consideration

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76–59) was filed with the Council on Environmental Quality on November 12, 1976, and notice of availability was published in the **Federal Register** on November 19, 1976, (41 FR 51131). In addition, an "Environmental Assessment of Proposed Interim Rules for Alaska National Wildlife Refuges" was approved on May 13, 1981. In accordance with Appendix 1 of Section 516 of the Departmental Manual, these special regulations which do not involve a significant change in the level of use previously permitted are categorically excluded from further compliance and documentation required by the Environmental Quality Improvement Act of 1970 as amended (42 U.S.C. 4371 et seq.).

Because of the fact that the current special regulations expired on May 31, 1982, and the rapid approach of the period of high public use, and in view of the fact that these regulations relieve restrictions which would otherwise be in effect, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(b) to dispense with public comment on the extension of these rules. However, the Service will provide for public participation in the development of the rules that will replace these rules. For the same reasons as stated above, the Department has also concluded that good cause exists within the meaning of 5 U.S.C. 553(d)(3) for making these rules effective immediately upon publication. Therefore the effective date is June 10, 1982.

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

PART 26—PUBLIC ENTRY AND USE

Accordingly, the special regulations for public entry and use published at 50 CFR 26.34 (May 7, 1980; 45 FR 30077) for the following National Wildlife Refuges remain in effect.

§ 26.34 Special regulations concerning public access, use, and recreation for individual national wildlife refuges.

Alaska

Alaska Maritime National Wildlife Refuge
Arctic National Wildlife Refuge
Izembek National Wildlife Refuge
Kenai National Wildlife Refuge
Kodiak National Wildlife Refuge
Yukon Delta National Wildlife Refuge

Information collection. The information collection requirements contained in § 26.34 of these regulations

have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018–0035. The information is being collected to solicit information necessary for the Refuge Manager to issue permits and other benefits. The information will be used to grant statutory benefits. The obligation to respond is required to obtain a benefit.

(16 U.S.C. 460k, 668dd; Alaska National Interest Lands Conservation Act, Pub. L. 96–487 (16 U.S.C. 3101 et seq.) (December 2, 1980))

Dated: June 2, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82–15759 Filed 6–9–82; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 47, No. 112
Thursday, June 10, 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 ENERGY

Economic Regulatory Administration

10 CFR Part 501

[Docket No. ERA-R-82-02]

Powerplant and Industrial Fuel Use Act of 1978; Proposed Revisions of Final Rules for Existing Facilities; Correction

AGENCY: Economic Regulatory Administration (DOE).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule applicable to existing facilities under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA) that appeared at page 47 FR 22365 in the **Federal Register** of Monday, May 24, 1982. This action is necessary to correct the omission of 10 CFR Part 501, Subpart F and certain sections thereof.

DATE: Written comments on the proposed rule must be received on or before July 26, 1982.

ADDRESS: All comments should be addressed to Office of Hearings Management of the Economic Regulatory Administration, Department of Energy, Room 7146, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Powerplant and Industrial Fuel Use Act Docket No. ERA-R-82-02.

FOR FURTHER INFORMATION CONTACT:
Constance L. Buckley, Fuels Conversion Division—Fuels Programs, Economic Regulatory Administration, Forrestal Building, 1000 Independence Avenue SW., Room GA-093, RG-62, Washington, D.C. 20585, (202) 252-1774
Henry K. Garson (Office of the General Counsel), Department of Energy, Room 6B-178, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2967

SUPPLEMENTARY INFORMATION:

On May 13, 1982, DOE issued a notice of proposed rulemaking (47 FR 22365, May 24, 1982) to revise its final rules implementing Title III of FUA to conform them to current DOE policy regarding the issuance of prohibition orders to existing major fuel burning installations (MFBIs) and to delete generally the regulations implementing the exemptions to prohibition orders for both MFBI's and certain existing electric powerplants. Inadvertently, it was proposed to reserve 10 CFR Part 501, Subpart F instead of revising Subpart F to eliminate all references to existing facilities while retaining all references to new facilities. This notice corrects this deficiency so as to revise Subpart F to conform to the intention of the amendments contained in the notice of proposed rulemaking.

List of Subjects in 10 CFR Part 501

Administrative practice and procedure, Business and industry, Electric powerplants, Energy conservation, Natural gas, Petroleum.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35; Executive Order No. 12009 (42 FR 46267 (September 15, 1977)))

Issued in Washington, D.C. on June 1, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

The following corrections are made in Docket No. ERA-R-82-02 in the issue of May 24, 1982, appearing on page 22365:

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

(1) On page 22366, paragraph 1 is corrected to read as follows:

1. By amending the table of content as follows:

* * * * *

Subpart E—Prohibition Rules and Orders

Sec.

* * * * *

501.51 Prohibitions by order—Existing Electing Powerplants.

* * * * *

Subpart F—Exemptions

(2) Beginning on page 22367, paragraph 4 is corrected to read as follows:

4. By revising Subpart F to read as follows:

Subpart F—Exemptions

§ 501.60 Purpose and scope.

(a)(1) If the petitioner plans to construct a new powerplant or new MFBI consisting of a boiler, or owns, operates, or controls such a new unit, and the unit is subject to one or more of the FUA prohibitions, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) If the petitioner plans to construct or owns, operates, or controls a new MFBI other than a boiler and such unit is subject to a prohibition by order or rule, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(3) If the petitioner owns, operates or controls a new powerplant or MFBI, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 of FUA.

(b) If the petition is for an extension of a temporary exemption, the petitioner must apply for this extension at least (90) day prior to the expiration of the temporary exemption.

§ 501.61 [Reserved]

§ 501.62 Petition contents.

(a) A petition for exemption should include the following information:

(1) The name of the petitioner;

(2) The name and location of the unit for which an exemption is being requested;

(3) The specific exemption(s) being requested; and

(4) The name, address, and telephone number of the person who can supply further information.

* * * * *

(b) Table of Contents. Include only those sections contained in the petition.

(c) Introduction. Include the following:

(1) Description of the facility under consideration;

(2) Description of the unit and fuel the petitioner proposes to burn in that unit, including the purpose of and need for the unit; and

(3) Description of the operational requirements for the unit, including size (capacity, input and output in millions of

Btu's per hour), output in terms of product or service to be supplied, fuel capability, and operating mode, including capacity factor, utilization factor, and fluctuations in the load.

(d) General requirements. The evidence required under Part 503 Subpart B for each exemption(s) for which the petitioner is applying:

(1) No alternate power supply (§ 503.8)

(2) Use of mixtures (§ 503.9);

(3) Alternative site (§ 503.11);

(4) Compliance Plan (§ 503.12);

(5) Environmental impact analysis (§ 503.13);

(6) Fuels search (§ 503.14).

(e) Specific evidence. Evidence required for each exemption, segregated by exemption (Part 503 Subparts C and D).

(f) References. (1) Specify the reports, documents, experts, and other sources consulted in compiling the petition. Cite these sources in accordance with acceptable documentation standards and indicate the part of the petition to which they apply. If the source is unusual or little known, briefly describe its contents.

(2) Identify at the end of each section of the petition any information or any statement based, in whole or in part, on information or principles which, to petitioner's knowledge, represent significant innovations to or departures from generally accepted facts or principles.

(g) Appendices. Include in the appendices material which the petitioner believes substantiates any analyses fundamental to the petition, materials prepared in connection with it, and any other documents, studies, or analyses which are believed to be relevant to the decision to be made. Also, include in the appendices copies of any forms submitted as part of the petition.

(h) List of preparers. List the names with the qualifications and professional credentials of the principal contributors to the preparation of the petition. Indicate the sections or subject matters for which each principal contributor was responsible.

(i) Incorporation by reference. Pertinent information may be incorporated into the petition by reference when this can be done without impeding agency and public review. Referenced materials must be specifically identified and their contents briefly described in the petition. To incorporate by reference, the material must be submitted with the petition, or if previously submitted, the office to which it was submitted must be identified in the petition. The petitioner cannot incorporate by reference material based on proprietary data not available to ERA for review.

§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a)(1) When a petition is accepted, ERA will publish in the **Federal Register** a Notice of Acceptance, or, in the case of a certification exemption, a Notice of Acceptance and Availability of Certification, signifying that an exemption proceeding has commenced. The notice will include a summary of the exemption petition, and publication will commence a public comment period of no less than forty-five (45) days during which interested parties may file written comments concerning the petition. In the case of a certification exemption, interested persons may request a public hearing during this period, pursuant to § 501.33.

(2) ERA also will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant, or any State agency with similar authority over an MFBI, that an exemption proceeding has commenced and will consult with these agencies to the maximum extent practicable. Copies of all accepted petitions will be forwarded to the Administrator of the EPA, and, if the unit involved is an MFBI, to the Federal Trade Commission.

(b) In processing an exemption petition, ERA shall comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, and the DOE guidelines implementing those regulations (45 FR 20694 (March 28, 1980)). Compliance with NEPA may involve the preparation of (1) an environmental impact statement (EIS) evaluating the grant or denial of an exemption petition, (2) an environmental assessment (EA), or (3) a memorandum to the file finding that the grant of the requested petition would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is required, ERA will publish in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS as soon as practicable after commencement of the proceeding. A public meeting may be held pursuant to 40 CFR 1501.7 to solicit comments or suggestions on the structure and content of the EIS.

§ 501.64 Publication of notice of availability of tentative staff analysis.

ERA will publish in the **Federal Register** a Notice of the Availability of Tentative Staff Analysis for the noncertification temporary public interest exemption, for noncertification environmental exemptions, and for a cogeneration exemption based on the public interest. ERA will provide a public comment period of at least fourteen (14) days from the date of publication during which interested persons may make written comments and request a public hearing.

§ 501.65 Publication of notice of availability of draft EIS.

Issuance of a draft EIS, EA, or preparation of a memorandum to the file will occur simultaneously with publication of a Notice of Availability of Tentative Staff Analysis. A Notice of Availability of any draft EIS will be published in the **Federal Register** and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

§ 501.66 ERA evaluation of the record, decision and order.

(a) The administrative record in a proceeding under this Part will consist of the proposed prohibition order and/or petition and related documents, all relevant evidence presented at the public hearing, all written comments, and any other information in the possession of ERA and made a part of the public record of the proceeding. ERA will base its determination to issue a rule or order on consideration of the whole record, or those parts thereof cited by a party and supported by reliable, probative, and substantial evidence.

(b) ERA may investigate and corroborate any statement in any petition, document, or public comments submitted to it. ERA also may use any relevant facts it possesses in its evaluation and may request submissions from third persons relevant to the petition or other documents. ERA also may request additional information, data or analyses following a public hearing, if any, if this information is necessary to resolve disputed issues in the record. Any relevant information received by ERA following the hearing that is not declared to be confidential under § 501.7(a)(11) shall be made part of the public record with opportunity provided for rebuttal.

(c) ERA will notify all participants if, after the close of any public hearing or comment period, it receives or obtains any relevant information or evidence. Participants may respond to such

information or evidence in writing within fourteen (14) days of such notification. If ERA finds that the additional information or evidence relates to material issues of disputed fact and may significantly influence the outcome of the proceeding, ERA shall reopen the hearing on the issue or issues to which the additional information or evidence relates.

§ 501.67 Petition redesignations.

ERA, with the petitioner's approval, will redesignate an exemption petition if the petitioner qualifies for an exemption other than the one originally requested, even though he may not qualify for the specific exemption originally requested, or be entitled to the full exemption period provided by the requested exemption. ERA shall give public notice of any redesignation of an exemption petition, and where a public hearing has been requested notice shall be given at least thirty (30) days prior to such hearing.

§ 501.68 Decision and order.

(a)(1) ERA shall issue an order either granting or denying the petition for an exemption or permit within six (6) months after the end of the period for public comment and hearing applicable to any petition.

(2) ERA may extend the six (6) month period for decision to a date certain by publishing notice in the **Federal Register** and stating the reasons for such extention.

(3) ERA will publish a final EIS at least thirty (30) days prior to the date of issuance of the final order in all cases where an EIS is required.

(b)(1) ERA shall serve a copy of the order granting or denying a petition for exemption to the petitioner and all persons on the service list in cases involving a public hearing.

(2) ERA shall publish any order granting or denying a petition under this subpart in the **Federal Register** together with a statement of the reasons for the grant or denial.

(c)(1) Any order granting or denying a petition for exemption shall be based upon consideration of the whole record or those parts thereof cited by a party and supported by, and in accordance with, reliable, probative and substantive evidence.

(2) The denial of a petition for exemption shall be without prejudice to the petitioner's right to submit an amended petition. ERA may, however, reject the amended petition if it is not materially different from the denied petition.

(d) ERA may design any terms and conditions included in any temporary exemption issued or extended under Section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant or installation covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of this provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

§ 501.69 Judical review.

Any person aggrieved by any order issued by ERA under this subpart, must file, within sixty (60) days of publication of the final order in the **Federal Register**, a petition for judicial review in the United States Court of Appeals for the Circuit wherein he resides, or has his principal place of business. Exhaustion of administrative remedies for purposes of judicial review does not require filing a petition pursuant to Subpart G for modification or rescission of the order to be reviewed.

[FR Doc. 82-15708 Filed 6-9-82; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 82-AWP-9]

Proposed Establishment of Transition Area, Columbia, Calif.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a 700 foot transition area at Columbia, California, in order to provide controlled airspace for aircraft executing a new instrument approach procedure to the Columbia Airport, Columbia, California, utilizing the Columbia, California, Nondirectional Radio Beacon (NDB).

DATES: Comments must be received on or before July 6, 1982.

ADDRESSES: Send comments on the proposal in triplicate to Director, Federal Aviation Administration, Attn: Chief, Airspace and Procedures Branch, AWP-530, 15000 Aviation Boulevard, Lawndale, California 90261. A public docket will be available for examination in the Office of the Regional Counsel, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone: (213) 536-6270.

FOR FURTHER INFORMATION CONTACT: Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; Telephone (213) 536-6182.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the Airspace Docket Number and be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. All communications received on or before July 6, 1982, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested parties.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Chief, Airspace and Procedures Branch, AWP-530, 15000 Aviation Boulevard, Lawndale, California 90261, or by calling (213) 536-6180. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a 700 foot transition area for Columbia, California. This action will provide controlled airspace for aircraft utilizing IFR procedures to and from Columbia Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Subpart G, § 71.181 of Part 71 of the Federal Aviation Administration (14 CFR Part 71) as republished in (46 FR 540) as follows:

Columbia, California

That airspace extending upward 700 feet above the surface within a 5-mile radius of the Columbia Airport (latitude 30°01'45" N., longitude 120°24'45" W.) and within three miles each side of the 211° T (195° M) bearings from the Columbia Nondirectional Radio Beacon (NDB) (latitude 38°01'52" N., longitude 120°24'46" W.) extending from the 5-mile radius area to 12 miles south of the NDB.

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

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Los Angeles, Calif., on May 24, 1982.

H. C. McClure,

Director, Western-Pacific Region.

[FR Doc. 82-15407 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-29]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Proposed Designation of Transition Area; Kirbyville, Tex.

AGENCY: Federal Aviation Agency (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes designation of a transition area at Kirbyville, TX. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Kirbyville Airport. This action is necessary since there is a proposed establishment of a standard instrument approach procedure (SIAP) to the Kirbyville Airport using a new non-Federal nondirectional radio beacon (NDB). Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before July 12, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G, § 71.181 as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Designation of the transition area at Kirbyville, TX, will necessitate an amendment to this subpart. This amendment will be required at Kirbyville, TX, since there is a proposed change in IFR procedures to the Kirbyville Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Kirbyville, TX, New

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the airport (latitude 30°36'50" N., longitude 93°54'54" W.) and within 3 miles each side of the 310° bearing of the NDB (latitude 30°39'44" N., longitude 93°56'05" W.), extending from the 5-mile radius area to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, Tex., on May 26, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

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BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9139]

Texas Dental Association; Proposed Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement accepted subject to final Commission approval, would require a Texas dental association, among other things, to cease inhibiting competition by inducing its members to withhold x-rays and other diagnostic information from third-party payers and independent dental consultants for use in reviewing claims and establishing cost containment programs. The association would be barred from coercing independent dental consultants and third-party payers into altering the terms and conditions of any dental health care plan, and from compelling third-party payers to select a particular independent dental consultant. Further, previous agreements entered into by the association and dental insurers which do not conform to the terms of the order would not be binding upon the signatories. The association would also be required to mail a copy of the order together with a letter explaining its provisions to all its members and to any person who joins the association within the next four years.

DATE: Comments must be received on or before August 9, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Gary D. Kennedy, Acting Director, 5R, Dallas Regional Office, Federal Trade Commission, 2001 Bryan St., Suite 2665, Dallas, TX 75201. (214) 767-0032.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rule of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Dental health, Dentists, Health care.

Agreement Containing Consent Order to Cease and Desist

In the matter of Texas Dental Association, a corporation.

The agreement herein, by and between the Texas Dental Association (TDA), a corporation, by its duly authorized officer and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. TDA is a Texas corporation with its principal office at 1946 South Interregional Highway, Austin, Texas 78704.

2. TDA has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act and has filed its answer to said complaint denying said charge.

3. Only for the purpose of this proceeding, and for compliance and enforcement proceedings under the order contemplated hereby, TDA admits all the jurisdictional allegations set forth in the complaint here attached.

4. TDA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

5. This agreement shall not become a part of the official record of this proceeding unless and until it is accepted by the Commission. The Commission may accept the agreement or take such other action as it may deem appropriate. If this agreement is accepted, the Commission will place said agreement on the public record, and at the same time will make available an explanation of the provisions of the order and the relief to be obtained thereby and any other information which it deems helpful in assisting interested persons to understand the terms of the order. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested persons. Thereafter, if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper or inadequate, the Commission may withdraw its acceptance of this agreement and so notify TDA, in which event the Commission will take such other action as it may consider appropriate in disposition of the proceedings.

6. This agreement is for settlement purposes only and does not constitute an admission by TDA that the law has been violated as alleged in the complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to TDA, issue its decision containing the following order to cease and desist in disposition of the proceeding, and make information public in respect thereto. When so issued, the order to cease and desist shall have the same force and effect as, and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The order shall become final upon service. Mailing of the decision containing the agreed-to order to TDA at the address stated in this agreement shall constitute service. TDA waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

8. TDA has read the proposed order contemplated hereby, and understands that once the order has been issued, TDA will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by then existing law

for each violation of the order after it becomes final.

9. Nothing in this agreement shall affect the complaint which the Commission has issued with respect to TDA, nor shall anything in this agreement affect the answer filed by TDA, if this agreement is not accepted by the Commission.

Order

I

It is ordered that for the purposes of this order the following definitions shall apply:

A. "TDA" means Texas Dental Association, its House of Delegates, councils, committees, officers, representatives, agents, employees, successors and assigns.

B. "Third-party payer" or "payer" means any person, corporation or other entity who or which administers or provides a risk-sharing reimbursement plan or a program or reimbursement, directly or indirectly, for all or part of any expense for dental health care services incurred by any person.

C. "Independent dental consultant" means a dentist who, acting either in an individual or corporate capacity, is employed by or contracts with a third-party payer to:

(1) Furnish evaluative services from a review of diagnostic information or dental claims forms; or

(2) Advise or deal with other dentists or third-party payers regarding courses of dental treatment, appropriate fee reimbursements, or benefit determinations under any dental reimbursement plan or program.

D. "Evaluative services" means the review or rendering of opinions or determinations from diagnostic information or reports of attending dentists or from other sources, regarding courses of treatment, appropriate manner of reimbursement, or extent of benefit coverage, under any dental reimbursement plan or program.

II

It is further ordered that TDA, directly or through any subsidiary, division or other devices, shall not engage in any act or practice which has the purpose or effect of:

A. Requiring, advocating, advising, requesting, or suggesting that any of its members: (1) submit or refuse to submit radiographs or other diagnostic information or other materials to any third-party payer or to any independent dental consultant designated by such third-party payers; or (2) refuse to deal with any third-party payer or independent dental consultant except on certain terms or under certain conditions;

B. Compelling, threatening, or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan;

C. Compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or

D. Compelling, threatening, or coercing any third-party payer to select a particular independent dental consultant.

Provided, however, that nothing contained herein shall be deemed to prohibit individual members of TDA, acting individually, from dealing with third-party payers in such manner as they determine is in the best interest of their patients.

III

It is further ordered that any "Memorandum of Understanding" or agreement between TDA or its members and any third-party payer providing for the circumstances under which radiographs or other diagnostic information is to be furnished to third-party payers or independent dental consultants or providing in any manner for the way in which determinations about dental insurance claims are to be made in non-binding on TDA, its members and third-party payers.

IV

It is further ordered that within thirty (30) days after this order becomes final, TDA shall mail to each of its members a copy of the Commission's complaint and order in this matter, as well as a letter in the form shown as "Attachment A" to this order. In addition to the foregoing, TDA shall mail a copy of the aforementioned complaint, order, and letter to every person who joins TDA within four (4) years of the date of service of this order. Such mailing shall occur within thirty (30) days after a person becomes a member of TDA.

V

It is further ordered that within sixty (60) days after service of this order and again one (1) year thereafter, TDA shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied and intends to comply with this order.

VI

It is further ordered that TDA shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment or sale resulting in the emergence of a successor association or corporation, or any other change in the association or corporation which may affect compliance obligations arising out of this order.

Attachment A

(Respondent's Letterhead)

Dear Doctor: As you may be aware, the Federal Trade Commission (FTC) has issued a complaint against the Texas Dental Association (TDA). TDA has denied the allegations of the complaint and continues to deny that it has engaged in any unlawful conduct. Nevertheless, TDA has voluntarily entered into an agreement with the FTC which has resulted in the entry of a consent order on which requires, in essence, that TDA not engage in certain activities that are concerned with dental health care benefits programs. This order also requires that you be sent a copy of the complaint and order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that TDA shall not engage in any act or practice which has the purpose or effect of: (1) Requiring, advocating, advising, requesting, or suggesting that any of its members submit or refuse to submit radiographic or other diagnostic information or other materials to any third-party payer or independent dental consultant or refuse to deal with any third-party payer or independent dental consultant except on certain terms or under certain conditions; (2) compelling, threatening, or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan; (3) compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or (4) compelling, threatening, or coercing any third-party payer to select a particular dental consultant.

Additionally, the order also provides that Memoranda of Understanding or other agreements between TDA or its members and any third-party payer providing for the circumstances under which radiographic or other diagnostic information is to be furnished to third-party payers or providing in any manner for the way in which determinations about dental insurance claims are to be made are non-binding on TDA, its members and third-party payers. The order does not prohibit the use of the guidelines contained in such Memoranda of Understanding for the resolution of a dispute concerning dental insurance claims if the

individual parties to a dispute in the future voluntarily wish to use them.

TDA adheres to the view that the primary goal of its members is to render to the public the best dental service of which they are capable. Nothing in this order changes or affects that goal. You remain free to deal individually with third-party payers and programs in such manner as you decide individually is best for your patients.

Copies of the FTC's complaint and order are enclosed. This letter has attempted to summarize the important parts of the order but you should read it carefully in its entirety.

Very truly yours,

Enclosures

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Texas Dental Association ("TDA").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint, which was issued on June 17, 1980, alleges that TDA, through its members, combined, conspired and engaged in acts and practices which eliminated, prevented or hindered competition among dentists and insurance companies with respect to: furnishing X-rays to third-party payers and independent dental consultants; participating in alternate course of treatment and pretreatment determination programs; and cooperating with third-party payers and independent dental consultants in claims review and cost containment programs.

It is further alleged that TDA encouraged and induced its members to refuse to submit X-rays and other diagnostic information to third-party payers and independent dental consultants; conducted meetings and pledge card campaigns and published statements of policies and practices regarding the terms and conditions upon which members were encouraged to deal with third-party payers and independent dental consultants; and insisted that third-party payers execute Memoranda of Understanding imposing particular procedures by which TDA members deal with third-party payers.

Paragraph I of the proposed order contains definitions of terms used throughout the agreement.

Paragraph II of the proposed order prohibits TDA, directly or indirectly, from engaging in any act or practice which has the purpose or effect of: (1) Requiring, advocating, advising, requesting or suggesting that any of its members submit or refuse to submit X-rays or other diagnostic information or other materials to any third-party payer or independent dental consultant except on certain terms or under certain conditions; (2) compelling, threatening or coercing any third-party payer or independent dental consultant to alter any provision of, or means of administering, any dental health care coverage plan; (3) compelling, threatening, or coercing any third-party payer or independent dental consultant to enter into agreements with TDA or others regarding the terms of any dental health care coverage plan or the methods by which any third-party payer or independent dental consultant makes determinations about dental insurance claims; or (4) compelling, threatening, or coercing any third-party payer to select a particular dental consultant. Provision is made to protect each dentist's right to deal individually with third-party payers in a manner which he or she determines is in the best interests of his or her patients.

Paragraph III of the proposed order provides that TDA, its members and third-party payers are not bound by the terms of any agreements already reached by TDA and dental insurers. This paragraph addresses those agreements which concern the terms of dental insurance coverage or the circumstances under which diagnostic information is to be disclosed or the manner in which determinations about dental insurance claims are to be made.

The proposed order also requires that TDA provide each of its members with a copy of the complaint and order and a letter explaining the settlement. In addition, any new members of TDA who join within four (4) years of the acceptance of this order shall also be required to be given such materials.

The proposed order provides that TDA report twice on how it has complied and intends to comply with the order. The first report shall be submitted within sixty (60) days after this order becomes final; the second, one year thereafter.

TDA shall be required to notify the Commission at least thirty (30) days prior to any proposed change in its structure or organization.

The order shall become effective on service of the order, and shall continue to be effective thereafter.

This order is part of a continuing effort by the Commission to promote the provision of health care services to the public at a fair and reasonable cost.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

Carol M. Thomas,

Secretary.

[FR Doc. 82-15680 Filed 6-9-82; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

Standard for the Flammability of Mattresses (and Mattress Pads); Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering amendment of the flammability standard for mattresses and implementing regulations to eliminate requirements for production testing, and to improve the clarity or precision of other provisions. This notice discusses the risk of injury addressed by the standard, the products which are subject to its requirements, and the changes to the standard which the Commission is considering. The Commission solicits comments on the risk of injury, the regulatory alternatives under consideration, other provisions of the standard and regulations, which might be subject to revision, and means other than amendment of the standard and regulations to reduce costs of compliance with the standard and to improve its clarity and precision.

DATE: Comments and submissions are due not later than August 9, 1982.

ADDRESS: Comments and submissions should be sent, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: James Sharman, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission (Commission) has authority under the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) to issue and amend flammability standards for articles of

interior furnishing to reduce or eliminate unreasonable risks of fire leading to death, personal injury, or significant property damage.

Background

In 1972, the Department of Commerce (which had authority to issue standards under the FFA at that time) issued the Standard for the Flammability of Mattresses (and Mattress Pads). That standard was published in the **Federal Register** of June 7, 1972 (37 FR 11362), and became effective on June 23, 1973. It is now codified at 16 CFR Part 1632. In 1973, the authority to issue and amend standards under the FFA was transferred to the Commission by section 30(b) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2079(b)).

The mattress standard was issued to protect the public against risks of fires which have resulted from ignition of mattresses by cigarettes. Such incidents have led to smoldering fires with the production of lethal concentrations of toxic fumes in the bedroom, and often throughout an entire apartment or house. (1, 2)[1]

To comply with the standard, manufacturers of mattresses must perform prototype tests on each type of mattress which they produce. A prototype test involves the testing of a mattress design prior to production. Such testing must be repeated if any of the materials which influence resistance to ignition are changed. This is basically a one-time test which is performed prior to production to demonstrate that the materials and method of construction will resist cigarette ignition.

After successful completion of requirements for prototype testing, the standard requires manufacturers to group the mattresses which they manufacture into "production units," and to sample and test mattresses from each production unit. The standard requires manufacturers to perform production testing at specified intervals as long as a particular mattress type is manufactured. (1, 4)

The standard prescribes procedures for both prototype and production testing. Both prototype and production tests involve placement of lighted cigarettes at specified locations on the surface of a mattress. The standard sets forth pass/fail criteria for both types of tests.

Regulations implementing the standard require manufacturers to maintain records demonstrating compliance with the requirements for testing imposed by the standard. These records include written test results of both prototype and production tests, plus photographic evidence of each test result. (1, 4)

Statutory Provisions

In 1978, Congress enacted legislation (Pub. L. 97–631, 92 Stat. 3742, 15 U.S.C. 2076(m)) requiring the Commission to review existing standards and rules with a view toward elimination or modification of requirements in appropriate cases. In 1979, the Commission voted to include the mattress standard among the first three rules to be reviewed. (3)

After the Commission staff completed its review of the mattress standard, the Commission voted in 1980 to direct the staff to prepare appropriate documents to amend the standard and implementing regulations to reduce or simplify the requirements of the standard for sampling and testing; to reduce the recordkeeping requirements; to simplify the language used in the standard; and to make technical changes needed to improve the clarity and precision of the standard. (1)

Thereafter, Congress enacted the Consumer Product Safety Amendments of 1981 (Pub. L. 97–35, 95 Stat. 703, 752). This legislation amends section 4 of the FFA to provide that any proceeding for the issuance or amendment of a flammability standard shall be initiated by the publication of an advance notice of proposed rulemaking which must include information about the product, the risk of injury, and regulatory alternatives under consideration. These requirements now appear at section 4(g) of the FFA (15 U.S.C. 1193(g)).

Depending upon comments and other submissions received in response to the advance notice of proposed rulemaking and the Commission's analysis of those materials, the Commission may decide to terminate this proceeding, or it may elect to continue it by publication of a subsequent notice in the **Federal Register** proposing amendment of the standard and soliciting written comments and oral presentations at a public hearing on the proposal.

If the Commission decides to issue final amendments to the standard after considering all written comments and oral presentations on the proposed amendments and other relevant information, publication of a third notice in the **Federal Register** is now required by section 4 of the FFA.

Proceeding To Amend Standard

By publication of this notice, the Commission is beginning a proceeding which may result in the amendment of the mattress flammability standard. The following information is furnished in accordance with the provisions of section 4(g) of the FFA.

1. *The products.* The products which are subject to the standard are mattresses and mattress pads. The term "mattress" is defined in the standard at § 1632.1(a) as "a ticking filled with resilient material used alone or in combination with other products and intended or promoted for sleeping upon." That section then lists examples of several articles which are and are not mattresses subject to the standard.

Provisions of section 1632(c) of the standard contains an exemption for some mattresses which are subject to Motor Vehicle Safety Standard No. 302, "Flammability of Interior Materials—Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses," issued by the National Highway Traffic Safety Administration (49 CFR 571.302).

Provisions of § 1632.2(d) of the standard and section 1632.31(i) of the implementing regulations exempt one of a kind mattresses which are manufactured in accordance with a physician's prescription for treatment or management of a specific person's illness or injury.

The term "mattress pad" is defined at § 1632.6(p) of the standard to mean "a thin, flat mat or cushion for use on top of a mattress."

Section 1632.1(a) states that the following types of pads are not subject to the standard: car bed pads, infant carrier and lounge pads, dressing table pads, stroller pads, crib bumpers, and play pen pads. Each of these excluded products is defined in § 1632.6 of the standard.

The Commission has information which indicates that there are over 800 companies that manufacture mattresses. These firms comprise about 960 establishments, of which about 60 percent are small, based on employment.

Information available to the Commission indicates that approximately 14,600,000 mattresses were manufactured during 1980 (8).

2. *The risk of injury.* As stated above, the risk of injury which the standard is intended to reduce or eliminate is that of ignition from a lighted cigarette, resulting in a smoldering fire and the generation of a toxic atmosphere. The standard does not address the hazard of

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., eighth floor, Washington, D.C. or by calling the Office of the Secretary at (301) 492–6800.

ignition of mattresses from openflame sources.

From data obtained from the United States Fire Administration and the National Fire Protection Association, the Commission estimates that 70,600 fires involving mattresses or bedding occurred in 1979, and that 1,000 deaths resulted. (1, 6) The Commission estimates further that the products involved in these incidents and the sources of ignition were as follows:

FIRE INCIDENTS

Ignition sources	Mattresses or pillows	Percent	Other bedding	Percent
Cigarettes	23,200	50	7,600	31
Open flame	14,800	32	8,100	34
Other	8,300	35	8,600	35
Totals	46,300	100	24,300	100

DEATHS

Ignition source	Mattresses or pillows	Percent	Other bedding	Percent
Cigarettes	300	73	380	63
Open flame	40	12	140	23
Other	60	15	80	14
Totals	400	100	600	100

When the mattress standard became effective in 1973, data were not available from which to make national estimates of the numbers of fire incidents involving mattresses, or the numbers of deaths and injuries resulting from such fires. For this reason, it is not possible to estimate the absolute effectiveness of the standard in reducing deaths and injuries resulting from ignition of mattresses by smoldering cigarettes.

Indirect evidence, however, does suggest that the standard has been effective in reducing deaths and injuries and that further reductions can be expected as more cigarette ignition resistant mattresses replace older more combustible mattresses.

While these data appear encouraging, the Commission emphasizes that any correlation of this experience with the mattress standard is tenuous, and that no direct conclusions can be made. (3)

3. *Regulatory alternatives.* Having completed its review of the mattress standard and implementing regulations, the Commission is now considering amendment of the standard and regulations to eliminate some requirements which may impose costs on mattress manufacturers but which may not be needed to protect the public from unreasonable risks of fire from ignition of mattresses by smoldering cigarettes. The Commission is also considering revision of other provisions to improve their clarity or precision. (1) The provisions which the Commission is now considering for elimination or revision include the following:

(a) Remove specific requirements for sampling and testing. In its present form the standard contains a "basic sampling plan" in § 1632.4(b). This basic sampling plan is intended for use by all mattress manufacturers. As noted above, it contains requirements for both prototype testing and production testing.

The Commission's review of the mattress standard indicates that while compliance with the requirements for sampling and testing contained in the basic sampling plan will provide a high degree of assurance that mattresses distributed in commerce will resist ignition from smoldering cigarettes, the standard in its present form may require some manufacturers to perform more testing than is needed to achieve that goal.

The Commission is considering the possibility that the standard could be amended to remove all specific requirements for sampling and testing from § 1632.4, and to substitute provisions to the effect that each manufacturer shall devise and implement a program of "reasonable and representative tests" to assure that mattresses distributed in commerce will resist ignition from smoldering cigarettes.

If the Commission took this approach, manufacturers would be expected to perform tests to ensure that new materials and construction techniques will yield passing results if tested in accordance with the procedure in the standard. Manufacturers would also be expected to perform enough testing to assure themselves that mattresses from current production will pass that test. However, the design and frequency of testing would be left to the individual manufacturer.

This approach is expected to result in some reduction of the testing burden now imposed on manufacturers by the standard. It would also afford mattress manufacturers more flexibility to tailor testing programs to their individual needs, as is the case with testing to support certificates of compliance with products subject to consumer product safety standards issued under the Consumer Product Safety Act.

However, the Commission notes that this approach would require each mattress manufacturer to design and implement its own program of reasonable and representative tests to be used in place of the schedule of testing now set forth in § 1632.4(b) of the standard. This could be difficult for some manufacturers, particularly smaller firms.

Another disadvantage of this approach is that it could be expected to provide less reduction in testing burden than the alternatives immediately following in paragraphs (b) and (c).

(b) Eliminate requirements for production testing. As noted above, the basic sampling plan in the standard requires both prototype and production testing. The review of the standard which led the Commission to conclude that the standard may require more testing than is necessary to assure that mattresses will resist ignition from smoldering cigarettes indicates that once a mattress design has been accepted by prototype testing, the likelihood is small that mattresses manufactured with the same materials and methods of construction will fail to meet the acceptance criteria of the standard during production testing. For this reason, the Commission is considering elimination of all requirements for production testing from the standard. (1)

Removing the requirements for production testing from the standard would not only eliminate costs associated with performing those tests, but would also reduce the number of records required to be maintained by § 1632.31(c) of the implementing regulations. The Commission estimates that the testing and recordkeeping burden which the standard imposes on manufacturers would be reduced approximately 80 percent.

Unlike the approach listed above in paragraph (a), elimination of requirements for production testing would not impose any new obligation on manufacturers to devise a substitute for the schedule for production testing in § 1632.4(b). As indicated above, elimination of all requirements for production testing could be expected to result in a greater reduction of burden on the industry than replacing existing requirements of the basic sampling plan in the standard with provisions that each manufacturer shall devise its own program of reasonable and representative tests.

(c) Eliminate alternate sampling plans. In addition to the basic sampling plan, described above, the standard also provides at § 1632.4(b)(1) that the Commission may approve "alternate sampling plans." To date the Commission has approved four alternate sampling plans which may be used in place of the schedule for sampling and testing mattresses from production contained in the basic sampling plan.

These alternate sampling plans were developed by the mattress industry to deal with particular problems not addressed by the basic sampling plan in the standard. These alternate sampling plans are designated Alternate Sampling Plan Nos. 1, 2, 5, and 6, and are published at 16 CFR 1632.11, 1632.12, 1632.14, and 1632.15.

As stated above, the Commission is considering elimination of all requirements for production testing from the basic sampling plan in the standard. Since these alternate sampling plans are concerned solely with selection of samples for production testing, the Commission is also considering elimination of their provisions. (1)

(d) Reduce the frequency of production testing. Another alternative under consideration is that of retaining requirements for both prototype and production testing, but reducing the amount of production testing from that now required by the basic sampling plan. Currently, § 1632.4(b) requires a manufacturer to perform a minimum of four production tests each year. Large volume manufacturers are required to perform more production testing, depending upon the number of mattresses produced.

If § 1632.4(b) were amended to require only one production test each year, the Commission estimates that the testing and recordkeeping burden which the standard imposes on manufacturers would be reduced approximately 60 percent. This approach would also eliminate any requirement for manufacturers to design their own reasonable testing programs.

Obviously, reduction of the amount of production testing would result in less reduction of burden to mattress manufacturers than elimination of all requirements for production testing, as outlined in paragraphs (b) and (c), above.

(e) Substitution of ticking materials. The standard requires that whenever a manufacturer changes the ticking (outermost layer of fabric) or any other material which influences ignition resistance of a mattress design, the manufacturer must perform new prototype qualification tests, unless the firm can demonstrate that the change will not reduce the ignition resistance of the mattress prototype. This provision of the standard has the effect of requiring a mattress manufacturer to perform new prototype tests every time the ticking fabric used for production of mattresses is changed.

To avoid the necessity of performing new prototype tests every time a manufacturer changes the ticking used for production of mattresses, Alternate Sampling Plan No. 4 (16 CFR 1632.13) was developed and approved. This alternate sampling plan was intended to provide a method of classifying ticking fabrics into categories which exhibit similar resistance to cigarette ignition. The purpose of this alternate sampling plan is to allow the substitution of ticking materials within the same category without the necessity for additional prototype testing.

Alternate Sampling Plan No. 4 defines a ticking category as "a group of ticking types similar in method of manufacture (wovens, vinyls, backcoated wovens, etc.) and if composed in whole or in part of non-fiber layers or coatings, identical in composition and nominal weight per unit of non-fiber components."

Two problems have been observed with the provision of this alternate sampling plan. The first is that ticking fabrics having the same "method of manufacture" does not necessarily have the same performance characteristics when subjected to the test in the standard. The second problem is that in order to determine whether two ticking fabrics belong to the same "ticking category," as that term is defined in the alternate sampling plan, the mattress manufacturer must have information about coating compositions and other characteristics of the ticking materials. Producers of ticking fabrics frequently consider this information to be a trade secret, and for that reason, will not make it available. Unless a mattress manufacturer can establish that two or more ticking materials belong to the same "ticking category," the materials cannot be used interchangeably in accordance with Alternate Sampling Plan No. 4.

The Commission is aware that the National Association of Bedding Manufacturers (NABM) has been concerned about the inadequacies of Alternate Sampling Plan No. 4, and has been working, with the assistance of the National Bureau of Standards and Commission staff, to develop a different procedure to allow one ticking material to be substituted for another without the necessity of additional prototype testing. (1)

The Commission solicits suggestions or proposals from NABM and all other interested parties for provisions to allow substitution of ticking materials without new prototype tests. The Commission will evaluate all suggestions or proposals received to determine if provisions of Alternate Sampling Plan No. 4 should be revised or replaced.

(f) Substitution of binding tape. Among the component materials which affect the ability of a mattress to resist cigarette ignition is the binding tape used at the edges of the mattress. Provisions of 16 CFR 1632.61 set forth a procedure to demonstrate that the substitution of one binding tape for another will not adversely influence ignition resistance. This procedure requires the construction of one prototype mattress using the substitute binding tape.

Provisions to allow substitution of one binding tape for another without additional prototype testing are a matter of concern to producers of binding tape who sell their products to mattress manufacturers. However, most producers of binding tape are not equipped to manufacture prototype mattresses needed for the testing prescribed by § 1632.61.

NABM, with the assistance of the National Bureau of Standards and Commission staff, has also been working to develop an alternate procedure to allow substitution of binding tapes without additional prototype testing. (1) The Commission solicits suggestions or proposals from NABM and all other interested parties for provisions to modify or replace those of § 1632.61 regarding substitution of binding tape. The Commission will evaluate all suggestions or proposals received to determine if a new procedure is feasible to specify the conditions under which one binding tape can be substituted for another without additional prototype testing.

(g) Mattress pad support. Section 1632.4(a)(1) of the standard provides that a support system, such as a platform or a bench, shall be used to hold the mattress in a horizontal position for testing. That section provides further that when testing thin, flexible mattresses and mattress pads, the top surface of the support system shall be nonmetallic. Testing experience indicates that the results obtained from testing thin, flexible mattresses and mattress pads can be significantly influenced by the particular type of nonmetallic surface used. (1,7)

The National Bureau of Standards investigated this problem, and recommends that the standard should prescribe the use of a specific surface: a glass fiberboard substrate with a specified thermal conductivity. (7) In view of this recommendation, the Commission is considering revision of § 1632.4(a)(1) to specify, with greater particularity, the type of nonmetallic surface to be used when testing thin, flexible mattresses and mattress pads.

(h) Decubitus and absorbent mattress pads. Decubitus pads are used for the prevention and healing of bed sores. Absorbent pads are designed for use by

people suffering from urinary incontinence.

In the Federal Register of July 27, 1979 (44 FR 44175), the Commission proposed to exempt decubitus and absorbent mattress pads from all requirements for testing under the mattress standard. That proposal observed that consumers could be exposed to some risk from untested pads, and for that reason, also specified a labeling requirement to warn the user that the pads may be ignited by cigarettes.

As stated above, the Commission is considering elimination of all requirements for production testing from the standard. Prototype testing of decubitus and absorbent mattress pads is not expected to be burdensome to manufacturers because the design of such pads is rarely changed. (1)

For these reasons, the Commission is considering withdrawal of the proposed exemption of decubitus and absorbent mattress pads. The Commission is also considering amendment of the definition of the products which are subject to the standard to specifically include decubitus and absorbent mattress pads.

(i) Mattress definition. The standard's existing definition of the term mattress in § 1632.1(a) contains language which excludes "liquid and gaseous filled tickings such as water beds" from the coverage of the standard. During the past few years, a new type of mattress combining the traditional mattress with a water bed has been marketed. The Commission staff believes that these mattresses are within the scope of the standard. (1, 7) For this reason, the Commission is considering revision of the definition of the term "mattress" to state expressly that this new type of mattress is subject to the standard.

(j) Mattresses subject to motor vehicle standard. Section 1632.2(c) of the standard states that mattresses which are subject to Motor Vehicle Safety Standard No. 302 are exempt from the requirements of the standard, unless they are also intended and promoted for uses included in § 1632.1(a), which defines the term "mattress." Standard No. 302 was issued by the National Highway Traffic Safety Administration (NHTSA) and is codified at 49 CFR 571.302. Paragraph S4.1 of that Standard No. 302 contains a list of the products subject to the standard, which includes "mattress covers," but not mattresses. After consulting with the staff of NHTSA, the Commission's staff has concluded that no "mattress," as that term is defined in the Commission's standard, is subject to the provisions of Motor Vehicle Safety Standard No. 302. For this reason, the Commission is considering elimination of the exemption in § 1632.2(c). (1, 7)

(k) One of a kind mattresses. In its present form, § 1632.2(d) states: "One of a kind mattresses, such as nonstandard sizes or shapes, may be excluded from testing under this standard pursuant to rules and regulations established by the Consumer Product Safety Commission."

Other provisions of the standard relating to prototype testing state that results of prototype testing are applicable to all mattresses made from the same materials and with the same methods of construction as the prototype tested, notwithstanding any differences of size that may exist among those mattresses. See §§ 1632.1(h) and 1632.4(b)(2)(A).

For this reason, the Commission believes that the language of § 1632.2(d) suggesting that a mattress of a nonstandard size or shape may be exempted from requirements for testing is inconsistent with the provisions of the standard related to prototype testing. (1, 7) The Commission is considering eliminating the phrase "such as nonstandard sizes or shapes" from § 1632.2(d).

(l) Char length measurement. Section 1632.3(b) of the standard states that "individual cigarette test locations pass the test if the char length *on the mattress surface* is not more than 5.1 cm (2 in.) in any direction from the nearest point of the cigarette." (Emphasis added.)

The Commission believes that the drafters of the standard intended that char length should be measured in any direction from the nearest point of the cigarette, including downward into the mattress in the case of burns which penetrate through the surface. (1, 7) To express this intent more clearly, the Commission is considering revision of § 1632.3(b) to delete the phrase "on the mattress surface."

(m) Testing conditions. Section 1632.4(d)(1) of the standard specifies that if a mattress is not tested in a conditioning room, testing of the mattress must be completed within one hour after removal of the mattress from the conditioning room. The Commission believes that this statement was included to allow testing outside of the conditioning room, but to require that in such cases, the test should start promptly after the mattress is removed from the conditioning room. (1, 7) Although the test may be initiated promptly after the mattress is removed from the conditioning room, in some cases the test cannot be completed in one hour. The Commission believes that the original intent could be expressed more clearly, and at the same time, resolve the problem that in some cases, the test cannot be completed in one hour. For these reasons, the Commission is considering revision of § 1632.4(d)(1) to state that testing must be initiated within 10 minutes after the mattress is removed from the conditioning room, and completed within a reasonable period of time, such as two hours.

(n) Retesting. Occasionally cigarettes will pop out of position during tests of mattresses with corded tufts. The Commission staff believes that in such an event, the test at that cigarette location is incomplete, and should be repeated with a freshly lit cigarette. (1, 7) In its present form, the standard makes no specific provision to address this problem. For this reason, the Commission is considering the addition of language to the test procedure in § 1632.4(d)(1) to provide for retesting at any location where a cigarette does not remain on the mattress until it has burned its entire length.

4. *Relevant standards.* The only standard known to the Commission to be relevant to this proceeding is the Standard for the Flammability of Mattresses (and Mattress Pads), 16 CFR Part 1632. The Commission believes that while this standard adequately addresses risks of fire which may result from cigarette ignition of mattresses, the possibility exists that the provisions requiring production testing could be eliminated without significantly reducing the level of protection afforded to the public. The Commission also believes that revision of the provisions of the standard to state more clearly the conditions under which ticking materials and binding tape could be substituted without the necessity for new prototype testing could further reduce the cost of compliance for mattress manufacturers with no detriment to the public safety. The Commission also believes that the other revisions under consideration, discussed above, might improve the clarity and precision of the standard.

5. *Voluntary standards.* As noted above, the Consumer Product Safety Amendments of 1981 added provisions of section 4(g) to the FFA. Those provisions state that a proceeding for the issuance or amendment of a flammability standard shall be initiated by publication of an advance notice of proposed rulemaking, and require that the advance notice of proposed rulemaking shall include, among other things:

(a) a summary of each of the regulatory alternatives under consideration by the Commission, including voluntary standards;

(b) an invitation to all interested parties to submit an existing standard, or portion of a standard, as a proposed regulation; and

(c) an invitation to all interested parties to submit a statement of intention to modify or develop a voluntary standard to address the risk or injury under consideration.

In order to comply fully with all requirements of section 4(g) of the FFA, the Commission is also considering the alternative of revoking the mattress standard and replacing it with a voluntary standard if it receives one or more voluntary standards, or portions of a voluntary standard, or statements of intention to modify or develop a voluntary standard, which would be adequate to reduce or eliminate the risks of injury addressed by the standard and to achieve the same objectives as the contemplated modifications of the standard described above.

6. *Solicitation of public input.* This advance notice of proposed rulemaking is the first stage in a three-stage rulemaking process which may result in amendment of the mattress standard. As discussed above, the Commission may decide to terminate the proceeding and pursue other alternatives for addressing the areas of concern about the provisions of the standard identified in paragraph 3, above. Before making any decision, the Commission wants to be as informed as possible about each alternative. Therefore, the Commission is specifically soliciting from all members of the public:

a. Comments on the risks of injury from fires resulting from cigarette ignition of mattresses.

b. Comments about those provisions of the standard which the Commission has identified as possible subjects for elimination or revision.

c. Comments on alternatives for addressing the risk of injuries from fires resulting from cigarette ignition of mattresses, including both voluntary and mandatory standards.

d. Suggestions about any other alternative not discussed in this notice that the Commission might consider to address risks of injuries from fires resulting from cigarette ignition of mattresses.

e. Submission of any existing standard or portion of a standard that addresses risks of injuries from fires resulting from cigarette ignition of mattresses.

f. Submission of any statements of intention to develop or modify a voluntary standard to address risks of injuries from fires resulting from cigarette ignition of mattresses, together with a plan to develop or modify such a standard. Any plan submitted with a statement of intention to develop or modify a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be incorporated into the project; a detailed discussion of how the project will proceed; a realistic estimate of the length of time that the project will take; a detailed schedule for various stages of the project; a list of the people expected to participate in the project, along with some description of their backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

g. Information relevant to the following areas of concern and inquiry:

(i) What reduction in the costs of testing and recordkeeping would result from (1) the elimination of requirements for production testing; (2) a reduction in the requirements for production testing; or (3) the substitution of provisions requiring each manufacturer to establish its own reasonable testing program?

Estimates of the anticipated reduction expressed in terms of frequency of testing, volume of records, and dollar and hourly expenditures for such testing and recordkeeping are requested.

(ii) What costs to mattress manufacturers might be expected to result from the use of a glass fiberboard substrate when testing thin, flexible mattresses and mattress pads?

(iii) Would any of the proposed revisions of the mattress standard discussed in this notice affect costs of mattress production other than those associated with testing and recordkeeping? If so, information about the nature and amount of those costs is requested.

(iv) What is the anticipated effect, if any, of the proposed revisions discussed in this notice on the price of mattresses and mattress pads? Information is requested about changes in the price of mattresses to wholesalers, retailers, and consumers which may result from the proposed revisions.

(v) Would any or all of the proposed revisions affect all mattress manufacturers alike; or would some firms be affected differently than others by reason of their size, the type of mattresses they manufacture, or for some other reason. Information about any unusual affect on any particular type of mattress manufacturer is requested.

All comments and submissions should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 and should be received not later than August 9, 1982.

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

Authority: 15 U.S.C. 1193(g).

Dated: June 4, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Briefing paper concerning amendments to the mattress flammability standard; 9 pages; February 25, 1982.

2. Rule Review Report, TAB 3—Mattress Flammability Standard, by J. F. Hoebel; 23 pages; February 14, 1980.

3. Report of Consumer Products Safety Commission to Congress concerning review of Commission rules; 44 pages; May 1980.

4. Memorandum from Liz Jones, CARM, to James F. Hoebel, OPM, concerning amendment of mattress standard; 9 pages; April 24, 1981.

5. Evaluation of the impact of the mattress and carpet and rug flammability standards upon industry, by Technology and Economics, Inc.; 107 pages; February 2, 1981.

6. Memorandum from Bea Harwood, HIEI, to Jim Hoebel, OPM, concerning injury findings to support amendment of mattress standard; 3 pages; September 8, 1981.

7. Memorandum from Patricia Fairall, ESMT, to Harleigh Ewell, OGC, concerning amendment of the mattress flammability standard, with attachments; 64 pages; April 24, 1981.

8. Current industrial Reports, Mattresses, Foundations, and Sleep Furniture, Summary for 1980, issued by the U.S. Department of Commerce; 6 pages; August 1981.

[FR Doc. 82-15669 Filed 6-9-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Abandoned Mine Land Reclamation Program

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

ACTION: Receipt of the Abandoned Mine Land Reclamation (AMLR) grant application from the State of Illinois.

SUMMARY: On February 10, 1982, the State of Illinois submitted to OSM its proposed Abandoned Mine Land Reclamation (CAMLR) grant application under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State grant application.

DATES: Written comments on the application must be received on or before 5:00 p.m., June 25, 1982.

ADDRESSES: Copies of the full text of the proposed Illinois grant application are available for review during regular business hours at the following locations:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Court House, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204
and
Illinois State Office, Number 4, Old State Capital Plaza North, Springfield, Illinois 62701

Written comments should be sent to: Edgar Imhoff, Regional Director, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Court House, 46 East Ohio Street, Room 524, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Rayford Cole, Chief, AML Program, (317) 269–2687.

SUPPLEMENTARY INFORMATION: 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 AMLR program for the purposes 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 whch there is no continuing reclamation responsibility under State and 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 grant application to implement the provisions of the approved State Reclamation Plan.

However, grants for mine reclamation may be issued only to States with an approved Title V Regulatory Program and an approved State Reclamation Plan.

A State Reclamation Plan for Illinois was submitted to the Secretary on July 22, 1980, approved on May 17, 1982 and will become effective on June 1, 1982. This Plan demonstrated the capability of the State to administer an AMLR program in accordance with Title IV of SMCRA. In approving the State Plan, the Secretary determined that the State had the necessary State legislation to implement the provisions of the Plan.

This notice describes the nature of the proposed projects and sets forth information concerning public participation in the Director's determination of whether or not the submitted application should be approved.

The receipt of the application will result in the implementation of approved projects for the reclamation of abandoned mine lands in Illinois.

All written comments must be mailed or hand carried to the Regional Director's Office above.

The comment period will close at 5:00 p.m. on June 25, 1982. Comments received after that time may not necessarily be considered. During the comment period representatives of the Regional Director's office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AMLR application.

Persons wishing to meet with representatives of the Regional Director's office during this time period may place such requests with Rayford Cole, Chief, AML Program, telephone (317) 269–2687 at the Regional Director's office above.

Meetings may be scheduled at the Regional Director's office between 9 a.m. and noon and 1 p.m. and 4 p.m. Monday through Friday excluding holidays.

OSM intend to continue to discuss the State's application with representatives of the State throughout the review process.

In order to comply with the requirements of the National Environmental Policy Act, OSM will assess the environmental effects of all State reclamation projects. The primary basis for this assessment will be the environmental information provided in the project grant application.

The Illinois AMLR grant application can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.
2. Views of other Federal agencies have been solicited and considered.
3. The application meets all the requirements of the OSM, AMLR program provisions and the required Federal circulars.
4. The State has an approved regulatory program and an approved State reclamation plan.

The following constitutes a summary of the contents of the submission:

1. Designation of authorized State Agency to administer the program,
2. Objectives and need for the assistance,
3. Project ranking and selection,
4. Coordination with other reclamation programs,
5. Results and benefits expected,
6. Plan of action pertaining to the scope,
7. Monthly or quarterly projections of accomplishments to be achieved,
8. Kinds of data to be collected and maintained,
9. Criteria used to evaluate the results and success of the projects,
10. Key individuals to be employed,
11. Precise location of the project and area to be served,
12. Budgetary calculations for each project,
13. Description of the public's participation in planning and preparation of the grant application,
14. A complete environmental assessment for each project.

Reclamation projects included in application, location and description:

1. Little John Mine #5—Phase II, Knox County, Exposed coal refuse producing toxic surface runoff,
2. Alden #6 Mine, Fulton County, Waterfilled air shaft, junk filled main shaft, and refuse,
3. E. B. Catton Mine, Stark County, Coal refuse and acid drainage,
4. Clyde Mine, Macoupin County, Waterfilled air shaft and 8 acres of mine refuse affected area,
5. Coal Valley Group, Rock Island and Henry Counties, Four abandoned mine openings,
6. Coulterville mine, Perry County, Settled air shaft with water at bottom, numerous concrete piers and footings,
7. Littleton Mine, Schuyler County, Refuse and an open waterfilled shaft,
8. Contract with Illinois State Geologist Survey to map known underground mines in Illinois,
9. Contract with Southwestern Illinois Metropolitan Regional Planning Commission and Illinois Department of Commerce and Community Affairs to prepare and inform Illinois units of government regarding subsidence,
10. Funds to contract for four (4) Feasibility/Environmental studies,
11. Funds to contract for four (4) Engineering/Design projects.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 4, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-15790 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 942

Public Disclosure of Comments Received From Federal Agencies on the Tennessee Proposed Program

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

ACTION: Disclosure of comments on the Tennessee proposed program from Federal agencies.

SUMMARY: Before the Director, OSM, may approve state regulatory programs 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, and is today announcing their public disclosure on the Tennessee Proposed Program.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining, Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 971–5104

Office of Surface Mining, Reclamation and Enforcement, Room 5315, 1100 L Street, NW, Washington, D.C. 20240, Telephone: (202) 343–7896

Tennessee Division of Surface Mining, 701 Broadway, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: John T. Davis, Assistant Regional Director, Regional II, Office of Surface Mining, Reclamation and Enforcement, 500 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902, Telephone: (615) 971–5103

SUPPLEMENTARY INFORMATION:

The Director, OSM, is evaluating the proposed regulatory program resubmitted by Tennessee for his review on February 3, 1982. See the February 10, 1982, Federal Register (47 FR 6031–6032). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), Tennessee's 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 Tennessee program:

Department of Agriculture:
- Soil Conservation Service
- Forest Service

Advisory Council on Historic Preservation

Department of Labor:
- Mine Safety and Health Administration

Environmental Protection Agency

Water Resources Council

Department of Energy

Department of the Interior:
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Fish and Wildlife Service
- Minerals Management Service
- National Park Service
- Geological Survey

U.S. Army Corps of Engineers

Tennessee Valley Authority

Appalachian Regional Commission

Of those agencies invited to comment, OSM received comments from the following offices:

Environmental Protection Agency

Department of the Interior:
- Fish and Wildlife Service
- Minerals Management Service
- Bureau of Mines

Advisory Council on Historic Preservation

Department of Labor:
- Mine Safety and Health Administration

Tennessee Valley Authority

U.S. Army Corps of Engineers

Department of Agriculture:
- Forest Service

These comments are available for review and copying during business hours, at the locations listed above under "Addresses."

Dated: June 3, 1982.

W. B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining, Reclamation and Enforcement.

[FR Doc. 82-15789 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 26, and 162

[CGD 74-284]

Fixed Fire Extinguishing Systems for Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period on proposed rules.

SUMMARY: In the Federal Register of April 19, 1982 (46 FR 16648) the Coast Guard proposed standards for fixed fire extinguishing systems on uninspected vessels. The closing date for receiving comments was June 3, 1982. This notice extends the comment period to August 2, 1982.

DATE: Comments are due on or before August 2, 1982.

ADDRESSES: (a) Comments should be mailed to Commandant (G–CMC/24, CGD 74–284) U.S. Coast Guard, Washington, D.C. 20593. The comments will be available for examination and copying between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G–CMC/24), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Klaus Wahle, Office of Merchant Marine Safety (G–MVI–3/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 (202–426–1444).

Discussion

The action is taken in response to requests for additional time to prepare detailed comments on the technical requirements of the proposal.

(46 U.S.C. 526p and 1454: 49 U.S.C. 1655(b); and 49 CFR 1.45)

Dated: June 2, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82-15767 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Parts 35, 58, 78, 97, 111, 112, and 196

[CGD 75-001]

Elevators and Dumbwaiters

AGENCY: Coast Guard, DOT.

ACTION: Termination of rulemaking.

SUMMARY: In the Federal Register of April 5, 1976, the Coast Guard proposed design and construction requirements for elevators and dumbwaiters on merchant vessels. A determination has been made not to finalize the proposed rules, and accordingly, the rulemaking is terminated. Voluntary industry standards have been developed and are being followed by elevator manufacturers in designing shipboard installations. These standards, coupled with periodic follow-up safety inspections by the Coast Guard alleviate the need for additional regulations.

ADDRESSES: *ANSI A17.1—Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks,* which is referenced below, can be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: LTJG William R. Cairns, Office of Merchant Marine Safety (G–MTH–2/12), U.S. Coast Guard Headquarters, 2100

Second Street, SW., Washington, D.C.20593 (202/426–2206).

SUPPLEMENTARY INFORMATION: ANSI A17.1 is a final standard and it is currently being revised to include provisions for rack and pinion elevators. The American Society for Testing and Materials (ASTM) is also preparing elevator standards but they are not yet available in final form. In addition to these standards, the Electrical Engineering Regulations in Subpart 111.91 and § 112.15–5(b) of Title 46 Code of Federal Regulations, contain requirements for elevator control and interlock circuits, control switches, and elevator power sources.

(46 U.S.C. 375, 391a, 416, and 481; 49 U.S.C. 1655(b); 49 CFR 1.46)

Dated: June 4, 1982.

Clyde T. Lusk, Jr.,

Real Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82–15700 Filed 6–9–82; 8:45 am]

BILLING CODE 4910–14–M

Research and Special Programs Administration

49 CFR Parts 173 and 178

[Docket No. HM–182, Advance Notice]

Specifications for and Use of Specification 17E Steel Drums

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This ANPRM provides information and the opportunity to comment on the merits of amending the specification requirements for the 17E steel drum to allow certain reductions in head and body thickness provided the drum is manufactured with triple-seamed chimes. Minimum thicknesses under consideration would be either head sheets of 18 gauge steel and body sheets of 20 gauge steel or both head sheets and body sheets of 20 gauge steel depending on the degree of hazard of the material to be transported in the drum.

DATE: Comments must be received on or before September 2, 1982.

ADDRESS COMMENTS TO: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590 (202)–426–3148. Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 8:30 a.m. to 5:00, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas J. Charlton, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2075).

SUPPLEMENTARY INFORMATION: On April 19, 1979, PPG Industries, Incorporated, filed an application for an exemption from 49 CFR 173.119(a)(3) to allow the shipment of certain flammable liquids having a flashpoint of 20°F or less in 55 gallon DOT 17E steel drums with a triple-seamed chime construction and having a body thickness of 20 gauge in place of the minimum body thickness of 18 gauge required by the regulations. PPG supported this request by citing test results which, the applicant held, proved that the drum could pass all current DOT test requirements for an all 18 gauge DOT 17E steel drum. The request was assigned application number 8187–N and published for comment in the **Federal Register** on May 21, 1979 (44 FR 29551).

After a thorough study of the application and the supporting information provided, as well as consideration of all public comments submitted relative to the application, the Associate Director for Hazardous Materials Regulation advised PPG Industries that the request was denied. An appeal of this denial was filed in accordance with 49 CFR 107.121 and was subsequently denied by the Director, Materials Transportation Bureau. The basis for denial of the appeal as well as the original request, was *inter alia*, that the subject raised in the application was of such general applicability and future effect that it could not appropriately be considered as an exemption and could only be adequately evaluated through a rulemaking proceeding (49 CFR 107.109(e)).

On January 1982, a petition for rulemaking was filed by Inland Steel Container Company (Inland) which requested amendment of the DOT Hazardous Materials Regulations to allow the use of a triple-seamed steel drum meeting all requirements of DOT Specification 17E except that the minimum thickness of body and head sheets would be reduced from that currently prescribed. The Inland petition is similar in many respects to the PPG petition; however, it is much broader in scope in that it applies to all hazardous materials for which a Specification 17E drum is currently authorized. The Inland petition is supported by a number of letters submitted by major shippers of hazardous materials.

Because of the increasing general interest on the part of shippers and steel drum manufacturers in the use of triple-seamed drums complying with DOT Specification 17E with the exception of reduced body and/or head thicknesses, MTB believes it is now appropriate to solicit views on this subject from all segments of the public, looking towards a possible amendment of the Hazardous Materials Regulations authorizing the use of such drums. In order to afford the public ample opportunity to consider the merits of such action, MTB is providing in this publication a reproduction of the salient points of the Inland petition. The Inland petition proposes specific amendments and provides supporting information as follows:

Substance of the Petition

It is proposed that existing regulations be revised to authorize the shipment of certain commodities in steel drums which conform in all respects except steel thickness to Specification 17E (§ 178.116), and which are manufactured with triple-seamed chimes. Specifically it is proposed that:

(1) Commodities that are presently authorized in Part 173 to be shipped in drums of 55 gallon capacity or less, constructed with head sheets of 18 gage steel and body sheets of 20 gage steel, be authorized in triple seamed drums constructed of 20 gage steel throughout, and

(2) Commodities that are presently authorized through § 173.119(a) to be shipped in drums of 55 gallon capacity or less constructed of 18 gage steel throughout, be authorized in triple-seamed drums constructed with head sheets of 18 gauge steel and body sheets of 20 gauge steel.

To accomplish this purpose, the following revisions are proposed:

§ 178.116–6

This paragraph to be modified by appending footnote 3 to the 18 gauge minimum shown in the "Head sheet" column of the table for 55 gallons maximum capacity drums. The footnote to read as follows: "20 gage authorized, provided heads are seamed to bodies by a process which results in chimes with seven overlapping layers formed from the parent and body steel."

§ 173.119(a)(3)

This paragraph to be modified by revising the third sentence to read as follows: "Drums with a marked capacity in excess of 30 gallons must be constructed of 18 gage body and head sheets, except that 20 gage is authorized for the body sheets if heads are seamed to bodies by a process which results in chimes with seven overlapping layers

formed from the parent head and body steel."

Background of the Proposal

The Specification 17E drum in the 55 gallon size, which is the subject of this petition is well-known as the most widely used packaging for hazardous liquid substances, where the degree of hazard falls within a range from relatively low to moderately severe. Because it has become highly standardized in dimension and construction, it is also the accepted packaging for non-hazardous liquids. It is, in fact, a world standard packaging for the transport of a vast variety of liquid substances in industrial and commercial trade.

U.S. production of new drums that conform to the requirements of this specification was approximately 22.5 million units in 1980. Of these, 9.0 million were 18 gage throughout and 11.5 million were made with 20 gage bodies and 18 gage heads (20/18). In addition, approximately 2.0 million drums of the same type of construction, but made of 20 gage steel throughout were produced.

Because of the considerable market for this type of packaging, the design of the drum and the processes for its manufacture have become highly developed. Drums are produced today on automated lines operating under controlled conditions at rates up to 900 drums per hour. Product uniformity and quality is not only a requirement for shipper satisfaction, it is essential to the efficient operation of these facilities.

From a product design standpoint, there have been two significant developments in recent years that have led to the improved drum performance. The first of these, the drop panel bottom, significantly reduced the incidence of vibration induced botton failures. The second, and the one which is the basis for this petition, is the triple seam.

Initial development of what has come to be known as triple seam chime construction, was done in Europe in the late 1960's in response to a perceived need to improve drum performance under the conditions which are simulated in a drop test. Several designs were produced and in fact still available, but all designs have tended to approach a standard in which a tight chime with seven overlapping layers is produced. This construction is attainable uniformly under well-controlled, high speed production conditions.

Triple seamed drums were introduced in the U.S. in 1978 by means of license agreements with European manufacturers. Since that time, the drum, in a wide variety of gage combinations, has become standard in Europe, and is being produced broadly in the U.S. by some 14 manufacturers.

In Europe, triple seam chime construction has resulted in a dramatic shift in the mix of drum types. Prior to 1970, the standard drum was 1.25mm, with some production of 1.0mm drums and .625mm chime reinforced Monostress. Since that time, the 1.0mm drum, along with a .9/1.0 version, has become the most common. Additionally, drums are being produced in greater quantity in .825mm and .75mm versions, and a triple seamed Monostress drum is being used in a combination .6/.825mm version.

In the U.S. triple seamed drums are being produced in 18, 20/18 and 20 gage versions in quantity, and in 16 gage on a more limited basis.

It should be noted that while steel is purchased in the U.S. to a given decimal with no negative tolerance, the practice in Europe is different. Steel is purchased there with both plus and minus tolerances. Therefore, steel stated as 1.0mm can be expected to vary both above and below that thickness by 2 to 4%; whereas, steel purchased in the U.S. to a .0324" minimum decimal (20 gage) can be expectd to average from 2 to 4% heavier. Appendix I illustrates the relationship between European metric steel thicknesses and U.S. gages.

In summary, triple seam chime construction is now a highly developed production technique; it is the accepted method for a very significant segment of word drum production; and it has enabled manufacturers to produce lighter, less costly drums. The reasons for this transition are presented in the following section on performance.

Performance Capability of Triple Seamed Drums

Triple seaming is a process by which a drum head is joined to drum body by mechanically rolling up circumferential flanges on the two pieces into seven layer chime. This construction contrasts with previous double seaming practice which results in a five layer chime. Appendix II pictorially compares the two types of chimes in cross-section.

A triple seamed chime as a result of the additional thickness and interlocking of the layers has superior performance characteristics when compared to a double seamed chime. It is more resistant to denting and other concentrated impact damage; it performs in vastly superior manner when subjected to the more dispersed crushing force of a fall from a height; it has better resistance to the unrolling force exerted by severe internal pressure; and its tight construction is inherently more leakproof.

As a result of this performance capability, drums manufactured with triple seamed chimes in a given steel gage meet and exceed the performance standards set for heavier gage drums. This is clearly demonstrated in the tests conducted for Inland by Gaynes Laboratories.

In the tests three drum styles were subjected to the series stipulated in the *United Nations Recommendations on the Transportation of Dangerous Goods* for packagings suitable for the carriage of Packing Group I substances with a specific gravity 1.2 or less. This level exceeds in severity that specified in DOT specification 17E and includes all of the tests required for that specification.

The three styles tested were 55 gallon 18 gage, 55 gallon 20/18 gage and 55 gallon gage. The drums were manufactured with triple seamed chimes, and except for the nonspecification gage of the 20 gage drums, were made in accordance with the construction requirements in DOT specification 17E.

The U.N. tests conducted were the 1.8 meter (6') diagonal and flat drop tests, 250 kpa (36.2 psi) internal hydrostatic pressure test, 8 meter (26') stacking test and 30 kpa (4.3 psi) air pressure leak test. Supplemental tests included the DOT specified 7 psi air pressure leak test, a 40 psi internal hydrostatic pressure test and a one hour, 285 rpm vibration test on a table having a 1" displacement. There were no failures in any of the tests conducted.

Copies of the test reports prepared by Gaynes Laboratories are included in Appendices III, IV and V.

Statement of Shipper Interest

Accompanying this petition are several letters from shippers, addressed to the Office of Hazardous Materials, which set forth an interest in the adoption of our proposed regulation change. The interest stated is based on the following reasons:

1. Shippers have had successful experience with the use of 20 gage and 20/18 gage triple seamed drums for several years and in numerous shipments. Some of this experience is described in the shippers' letters.

2. Triple seamed drums in test experience perform in superior fashion when compared with double seamed drums.

3. The ability to use lighter weight drums in transport offers an opportunity to reduce costs. The following weight* comparisons are noted:

55 gallon 18 gage—43.5#
55 gallon 20/18 page—36#
55 gallon 20 gage—33#

*Based on theoretical weight at DOT minimum decimal. Actual weights will be somewhat higher.

4. The use of triple seamed drums is an enhancement to transportation safety. This construction method offers the opportunity for steel thickness reduction without compromising safety in transport.

Conclusion

Inland Steel Container believes that for the reasons which have been discussed in the body of this petition, a regulatory change is warranted. Further, it is believed that this is consistent with the position that DOT has supported in international discussions promoting performance oriented specifications for packagings.

Approval of the change would provide benefits to U.S. business in cost reduction and in improved competitive position in world trade.

APPENDIX I.—COMPARISON OF U.S. AND EUROPEAN STEEL THICKNESSES FOR STEEL DRUMS

[DOT thicknesses]

U.S. gage	DOT nominal		DOT minimum	
	Inches	Millimeters	Inches	Millimeters
24	0.0239	0.607	0.0209	0.531
22	.0299	.759	.0269	.683
20	.0359	.912	.0324	.823
19	.0418	1.062	.0378	.960
18	.0478	1.214	.0428	1.087
16	.0598	1.519	.0533	1.354

[European Ordering Thicknesses]

Nominal		U.S. Manufacturers gage range
Inches	Millimeters	
0.0246	0.625	24
.0295	.75	22
.0354	.90	20
.0394	1.00	19
.0492	1.25	18
.0591	1.50	16

For the sake of brevity, Appendix II of the Inland petition, which presents a cross-sectional diagram of both a triple-seamed chime and a standard double-seamed chime, has not been reproduced in this ANPRM. In addition, since the tests and test results presented in Appendices III, IV and V of the Inland petition were summarized in the body of the petition, they have not been reproduced in this ANPRM. Copies of each of these appendices are available for review in the docket file.

The statement of shipper interest referred to in the Inland petition were filed by the following shippers of hazardous materials: Monsanto Company, PPG Industries, Inc., Economics Laboratory, Inc., Nalco Chemical Company.

Copies of these statments are available for review in the docket file.

In connection with this ANPRM and the Inland petition for rulemaking, it should be noted that applications for exemptions, again concerning the minimum thickness of DOT 17E drums, have been received for consideration under 49 CFR 107.103. These applications request authorizations to manufacture, mark and sell a steel drum with head sheets of a thickness below the minimum thickness prescribed but are otherwise in full compliance with Specification 17E. The following applications are being reviewed:

1. *Mauser-Werke G. m.b.H., West Germany.* Top and bottom heads will be made of 1mm (0.0366 inch minimum) steel in place of 18 gauge (0.0428 inch minimum) steel presently required. For materials authorized to be packaged in DOT-17E, 20/18 gauge drums.

2. *G. Schonung & Co., West Germany.* Top and bottom heads will be 1 mm (0.0366 inch minimum) steel in place of 18 gauge (0.0428 inch minimum) steel presently required. For materials authorized to be packaged in DOT-17E drums.

3. *Natico, Inc., USA.* Top and bottom heads would be 20 gauge (0.0324 inch minimum) steel in place of 18 gauge (0.0428 inch minimum) steel presently required. For materials authorized to be packaged in DOT-17E drums.

Comments are solicited on the amendments requested in the Inland petition and on the following questions:

1. What has been the transportation experience in the use of both all 20 gage triple-seamed drums and 20/18 gage triple-seamed drums for hazardous (when authorized) and nonhazardous materials;

2. What would be the safety implications, if any, particularly with respect to resistance to puncture, if the reduced body and head thicknesses were authorized under the conditions proposed by Inland; and,

3. What would be the economic benefits and consequences associated with adoption of the Inland petition with regard to the purchase of new and used drums.

List of Subjects in 49 CFR

Part 173

Hazardous materials transportation, Packaging and containers.

Part 178

Hazardous materials transportation, Packaging and containers.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined, on the basis of limited information currently available, that adoption of the petition presented in this advance notice would not result in a "major rule" under the terms of Executive Order 12291 and DOT procedure (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et seq.) I certify that the petition presented in this advance notice would not, if adopted, have a significant economic impact on a substantial number of small entities that purchase drums.

Issued in Washington, D.C., on June 2, 1982.

Joseph T. Horning,

Acting Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 82-15524 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82-12; Notice 1]

Federal Motor Vehicle Safety Standards; Standard No. 201, Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 201, *Occupant Protection in Interior Impact,* sets requirements for instrument panels, interior compartment doors, seat backs, sun visors, and arm rests to lessen injuries to persons thrown against them in crashes. As of September 1, 1981, the standard applies to trucks, buses and multipurpose passenger vehicles. Blue Bird Body Co. has requested the agency to exclude school buses from the standard arguing that school buses have to meet the requirements of Standard No. 222, *School Bus Passenger Seating and Occupant Protection.* The agency agrees that the seat back requirements of the two standards overlap and therefore this notice proposes to exempt school buses from the seat back requirements of Standard No. 201. The other requirements of Standard No. 201 do not overlap with Standard No. 222 and therefore Blue Bird's requests to exempt school buses from those requirements is denied.

DATE: Comments are due by July 26, 1982. The proposed amendment would be effective 30 days after publication of the final rule in the Federal Register.

ADDRESS: Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2242).

SUPPLEMENTARY INFORMATION: On November 29, 1979 (44 FR 68470), the agency amended Standard No. 201, *Occupant Protection in Interior Impact*, to make it applicable to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less. The amendment went into effect on September 1, 1981. The purpose of the standard is to reduce driver and passenger injuries by specifying requirements for instrument panels, seat backs, sun visors, interior compartment doors and arm rests to lessen the injuries incurred by people thrown against them in a crash.

Blue Bird Body Co., a manufacturer of school buses, has requested the agency to exempt school buses from Standard No. 201. Blue Bird said that school buses also have to comply with Standard No. 222, *School Bus Occupant Seating and Crash Protection*, whose requirements cover the same aspects of performance. Because Standard No. 222 was specifically developed for school buses, Blue Bird said that school buses should be exempt from the overlapping requirements of Standard No. 201.

As explained below, the agency agrees that the seat back requirements of Standard No. 201 and 222 overlap and therefore the agency proposes to grant school buses an exemption from Standard No. 201. The other requirements of Standard No. 201 do not overlap with Standard No. 222 and thus the agency denies Blue Bird's request to exempt school buses from those requirements.

Seat Backs

One of the purposes of Standard No. 201 is to prevent or reduce injuries to rear seat passengers thrown against the backs of front seats in a crash. The standard requires the portions of the seat back that are within a specified head impact area to be struck by a head form at a speed of 15 miles per hour. During that impact, the deceleration of the head form cannot exceed 80g continuously for more than 3 milliseconds.

Standard No. 222 also is designed to prevent or reduce injuries to passengers thrown against seat backs in a crash. The standard uses a 15 mile per hour impact test. The head form used in Standard No. 222, however, has an additional small hemisphere, not found on the Standard No. 201 head form.

The performance requirements of Standard No. 222 are substantially different from the performance requirements of Standard No. 201. Standard No. 222 specifies that during the impact test, the accleration measured by the head form cannot exceed a head injury criterion of 1,000. (The head injury criterion is a measure of potential injury to the head based on the magnitude and duration of the force of an impact.) The standard also sets energy absorption and force distribution requirements that are not specified in Standard No. 201.

Because the performance requirements of the two standards are different, it is not possible to make a direct comparison of the relative severity of the two sets of performance requirements. The requirements of Standard No. 222 are more comprehensive than Standard No. 201 since they include energy absorption and force distribution specifications. Because the seat back requirements of Standard No. 222 were developed specifically for school buses and are more comprehensive than the requirements of Standard No. 201, the agency has tentatively decided that it is appropriate to exempt school buses from the seat back requirements of Standard No. 201.

Additional Requirements

In addition to the requirements for seat backs, Standard No. 201 sets performance requirements for instrument panels, interior compartment doors, sun visors and arm rests to prevent or reduce injuries to persons thrown against them in crashes. Since Standard No. 222 does not contain any performance requirements for those specific items, it is not appropriate to grant Blue Bird's request that school buses complyintg with Standard No. 222 be exempted from those requirements of Standard No. 201.

The agency has considered the economic and other effects of this proposal and has determined that the proposed rule is not a major rule within the meaning of Executive Order No. 12291. The agency has further determined that the proposal is not significant within the meaning of the Department of Transportation's regulatory procedures. The basis for those determinations is that the proposed exemption does not impose any new restrictions; it merely eliminates redundant requirements for seat backs. The expected impacts are so minimal that the proposal does not warrant a full Regulatory Evaluation.

The agency has also considered the effect of this proposal in relation to the Regulatory Flexibility Act and certifies that the proposal would not have a significant economic impact on a substantial number of small entities. As explained previously, the effect of the proposal is to exempt school bus manufacturers from having to comply with the overlapping requirements. The exemption should reduce, although not by a substantial amount, the testing and design costs for school bus manufacturers.

The proposal will not have a significant effect on a substantial number of small government jurisdictions and small organizations. Those entities are affected because they are purchasers of school buses. The cost impact of the proposed exemption is minimal. Accordingly, no initial regulatory flexibility analysis has been prepared.

Finally, the agency has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant effect on the human environment.

The rule would become effective 30 days after publication in the Federal Register.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. 552(b)(4), and that disclosure of the

information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

For the reasons set out in the preamble, the following amendment is proposed in § 571.201, *Occupant Protection in Interior Impact,* of Title 49, Chapter V of the Code of Federal Regulations.

1. S3.2.1 would be amended by revising it to read as follows:

§ 571.201 [Amended]

* * * * *

S3.2.1 The requirements of S3.2 do not apply to school bus seats that comply with the requirements of Standard No. 222, *School Bus Passenger Seating and Occupant Protection* (49 CFR 571.222) or to rearmost, side-facing, back-to-back, folding auxiliary jump, and temporary seats.

* * * * *

(Secs. 103 and 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on June 4, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82–15773 Filed 6–9–82; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 47, No. 112
Thursday, June 10, 1982

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

New Mexico; Advisory Council on Historic Preservation Programmatic Agreement Regarding Ongoing Activities

AGENCY: Advisory Council on Historic Preservation, Land Management Bureau, Interior.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to Sec. 800.8 of the regulations for the "Protection of Historic and Cultural Properties" (36 CFR Part 800) with the U.S. Department of the Interior, Bureau of Land Management, and the New Mexico State Historic Preservation Officer. This Agreement will establish a standard process for consultation between the Bureau and the State Historic Preservation Officer to identify and avoid or mitigate adverse effects on historic properties that would otherwise result from the Bureau's ongoing activities in the State of New Mexico.

DATE: Comments due: July 12, 1982.

ADDRESS: Comments should be addressed to Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas F. King, Director, Office of Cultural Resource Preservation, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005 (202–254–3974).

SUPPLEMENTARY INFORMATION: This notice of the proposed agreement invites comments from interested parties.

Copies of the proposed agreement are available from the Council.

Dated: June 7, 1982.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 82–15694 Filed 6–9–82; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow National Forest Grazing Advisory Board Meeting

The Medicine Bow National Forest Grazing Advisory Board will meet July 8, 1982, at 9:00 a.m. at Lawrence Prager's Ranch on the Laramie Peak District. The Board, Forest Service personnel and interested public will then proceed to look at range improvements, range condition and allotment management on the Laramie Peak District.

The Board will make recommendations concerning the development of 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 Don Schmidtlein, Medicine Bow National Forest (307–745–8971) prior to the meeting date. Public members may participate in discussions during the tour at any time or may file a written statement following the meeting.

Dated: June 4, 1982.

Donald L. Rollens,

Forest Supervisor.

[FR Doc. 82–15771 Filed 6–9–82; 8:45 am]

BILLING CODE 3410–11–M

Modoc National Forest Grazing Advisory Board; Meeting

The Modoc Grazing Advisory Board will hold a meeting July 15, 1982.

The Board will field review the Owl Creek Cottonwood Allotment Plan.

Board members will provide their own horses and will assemble at Pepperdine Camp on the Warner Mountain Ranger District at 10:00 a.m. For further information, contact William E. Britton at 916–233–5811.

June 2, 1982.

Glenn Bradley,

Forest Supervisor.

[FR Doc. 82–15697 Filed 6–10–82; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Assistant Secretary for Economic Affairs

Memorandum of Understanding With the Federal Laboratory Consortium for Assistance in Technology Transfer to State and Local Governments

AGENCY: Office of the Assistant Secretary for Economic Affairs, Commerce.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Economic Affairs announces that it has entered into a Memorandum of Understanding with the Federal Laboratory Consortium for Technology Transfer (FLC) to provide major assistance to the Department of Commerce in carrying out the cordination functions called for by Sections 11(d) (3) and (4) of the Stevenson-Wydler Technology Innovation Act of 1980 (P.L. 96–480) in dealing with State and local governments. These functions involve the utilization of the expertise and services of the FLC in dealing with State and local governments and the referral of requests for technical assistance to the appropriate Federal laboratory or laboratories.

FOR FURTHER INFORMATION CONTACT:

Mr. Egils Milbergs, Director, Office of Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–1581

Dr. Eugene Stark, Chairman, Federal Laboratory Consortium, Los Alamos National Laboratory, Los Alamos, New Mexico 87545, (505) 667–1230

SUPPLEMENTARY INFORMATION: The Department of Commerce is authorized by Section 11(d)(4) of the Stevenson-Wydler Act to "receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories." Because the FLC represents most of the nation's largest Federally sponsored laboratories and

has an active program of coordination, the Department of Commerce and the FLC have agreed to cooperate in carrying out the above-cited responsibility. By this Memorandum of Understanding, the FLC agrees to process requests for technical assistance by identifying the Federal laboratory or laboratories which appear to have the particular expertise relevant to the request. Requests for assistance should be directed to the following Regional Coordinators of the FLC:

Far West Region, Lawrence Livermore National Laboratory, Mr. Gerald Richards, L–404, P.O. Box 808, Livermore, CA. 94550, 415–422–6416

Mid Continent Region, Los Alamos National Laboratory, Dr. Eugene Stark, MS 352, Los Alamos, N.M. 87545, 505–667–1230

Midwest Region, Air Force Wright Aeronautical, Laboratories, Mr. James G. Johnson, Wright Patterson AFB, OH. 45433, 513–255–5804

Northeast Region, Naval Air Engineering Center, Mr. Michael Palamar, Code 9011, Lakehurst, N.J. 08733, 215–323–2391

Mid Atlantic Region, Naval Air Development Center, Mr. Jerome Bortman, Warminster, PA. 18974, 215–441–3100

Southeast Region, Air Force Engineering and Service Center, Mr. Robert E. Brandon, Tyndall AFB, FL. 32403, 904–283–6309

The Memorandum states that the FLC will not knowingly provide a service to any requestor that is available privately at reasonable cost and timeliness. The FLC will report annually to the Department on the number and nature of requests processed by the FLC during the preceding fiscal year. The Department of Commerce will undertake to make the potential user community aware of the FLC role, and make available to the FLC the data base of Federal laboratory technical activities and contact points.

The Memorandum is reproduced verbatum below.

Dated: June 3, 1982.

Robert G. Dederick,

Assistant Secretary for Economic Affairs.

Memorandum of Understanding Between the Department of Commerce and the Federal Laboratory Consortium for Technology Transfer

I. Purpose

The purpose of this memorandum is to arrange for the Federal Laboratory Consortium for Technology Transfer (FLC) to provide major assistance to the Department of Commerce (DoC) in carrying out the brokerage functions mandated by sections 11(d) (3) and (4) of the Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96–480).

II. Areas of Technical Expertise of FLC Members

The members of the FLC represent the nation's largest Federal laboratories. These laboratories, both civilian and military, are generally multidisciplinary in composition, and contain many unique research and development activities ranging from the basic sciences to prototype development. Areas of expertise include, for example, civil engineering; computer design and application; chemistry; geology; energy production, conversion, transmission, use, and conservation; environmental pollution and control; forest products; industrial and mechanical engineering; materials sciences; mathematical sciences; medicine and biology; transportation; photography and recording devices; physics; marine sciences; information sciences; building industry technology; and administration and management; physics; and forestry sciences.

III. The Form of FLC Technology Transfer

Within the Federal Laboratory Consortium, technology transfer is accomplished in a variety of ways. In one approach, one of the Defense Department laboratories may perform civilian oriented R&D work with funding provided by such requesting institutions as federal, state, or local government agencies. These R&D projects are applied to civilian problems, but the solutions are based upon earlier research performed for mission-oriented purposes. Other members of the Consortium are specifically chartered and funded to work in the civilian area. Therefore, they are directing their technology transfer efforts toward the increased use of their research results by decision makers and operational agencies in the public and private sector. In addition to performing R&D activities and striving for greater use of their R&D products, the Consortium members transfer their technology in others ways. Consortium representatives assist state and local government agencies in a variety of nonrefundable ways, such as serving on scientific advisory boards, acting as technical advisors to specialized groups (e.g., law enforcement, pollution control agencies, or fire prevention committees), identifying sources of surplus government equipment, and arranging for personnel exchanges under the Intergovernmental Personnel Act.

One major service provided by the Consortium is in the area of brokerage. Because of the nature of their activities, Consortium representatives are frequently exposed to new technologies developed by private enterprise, by state or local governments, or by another federal laboratory. Therefore, these technology transfer coordinators can serve as "technology brokers" by bringing together the individual or agency that has a problem or need with agencies which have already solved it or who are working in the area.

IV. Terms by Which Technical Assistance is Provided

Under the mandate of the Technology Innovation Act of 1980, the laboratories provide technical assistance to state and local governments, where appropriate, utilizing existing laboratory resources without charge to the users to the extent possible. Internal laboratory and agency policies vary greatly with respect to reimbursement for services rendered. Determinations of the level of effort required, available facilities and personnel, relation of the proposed effort to laboratory missions, and unique statutory or policy requirements must be made on a case-by-case basis.

V. Responsibilities of the FLC

The FLC, which is sponsored in part by the National Science Foundation (NSF), will act as a non-exclusive broker between the various Federal laboratories and industry and State and local governments. Requests for technical assistance from industry and government may be made in writing to the FLC, and shall include the common-interest groups (e.g., trade associations, State and local government associations, etc.) to which the requestor belongs, state other sources to whom the request has been sent, and note the requestor's involvement in any Federal programs relevant to the request. The FLC agrees to forward these requests to appropriate Federal laboratories, but will not be responsible for the responsiveness of individual laboratories. The FLC will report annually to the DoC on the number and nature of requests processed by the FLC during the preceding fiscal year. The reports shall be received by the DoC no later than December 31 of each year.

VI. Responsibilities of the DoC

DoC will undertake to make industry and State and local government aware of the FLC brokerage role through press releases, **Federal Register** notices, and so on. In addition, DoC will make available to the FLC a data base of

Federal laboratory technical activities and contact points, which will be constructed from the "application assessments" submitted to DoC pursuant to section 11 of Pub. L. 96-480.

VII. Competition with the Private Sector

The FLC will not knowingly provide a service to any requestor that is available privately at reasonable cost and timeliness. Nor does this memorandum in any way restrict contacts between business and governments with Federal laboratories.

VIII. Termination

This agreement may be terminated by either party upon 90-day written notice to the other party.

IX. Authorized Signatures

This agreement is executed by the authorized parties whose signatures are affixed below.

Dated: May 27, 1982.

For the Federal Laboratory Consortium.

Dr. Eugene Stark, Jr.,

Chairman, Federal Laboratory Consortium for Technology Transfer.

Dated: May 27, 1982.

For the Department of Commerce.

Dr. Robert G. Dederick,

Assistant Secretary for Economic Affairs.

[FR Doc. 82-15762 Filed 6-9-82; 8:45 am]

BILLING CODE 3510-18-M

International Trade Administration

Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Discrete Semiconductor Device Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: June 29, 1982, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Conference Room A, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: June 4, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-15765 Filed 6-9-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Deformed Steel Bars for Concrete Reinforcement From South Africa

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in South Africa of deformed steel bars for concrete reinforcement receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determintion on or before August 11, 1982.

EFFECTIVE DATE: June 10, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202) 377-1774.

SUPPLEMENTARY INFORMATION:

Petition

On May 18, 1982, we received a petition from counsel for Industrial Siderurgica, Inc., on behalf of the U.S. industry producing deformed steel bars for concrete reinforcement ("rebars"). In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in South Africa of rebars receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act").

Section 303 of the Act applies to this investigation because South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the product covered by this investigation is a dutiable product. Therefore, the International Trade Commission is not required to make an injury determination.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on rebars, and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in South Africa of rebars as listed in the "Scope of the Investigation" section of this notice receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by August 11, 1982.

Scope of the Investigation

For the purpose of this investigation, the term *"deformed steel bars for concrete reinforcement"* covers hot-rolled steel bars, of solid cross section, having deformations of various patterns on their surfaces, as currently provided

for in items 606.79 and 606.81 of the *Tariff Schedules of the United States.*

The petitioner also filed against plain billet bars, but amended the petition on May 28, 1982, to remove this product from the investigation.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters of rebars in South Africa receive the following benefits that constitute bounties or grants: Reduced transportation rates; refunds of shipping costs; export credit insurance; preferential pre- and post-shipment financing for exports; preferential development loans, direct grants, and preferential loans given to a government-owned steel producer; tax deductions and investment allowances for certain export development expenses, employee training programs, doing business in certain development areas, and beneficiation of base minerals; the steel export incentive scheme; and other export incentives.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

June 7, 1982.

[FR Doc. 82-15763 Filed 6-9-82; 8:45 am]

BILLING CODE 3510-25-M

Microcircuit Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 6, 1981 pursuant to the charter of the Committee.

The Microcircuit Subcommittee was formed to study microcircuit and acoustic wave devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: June 29, 1982, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 6802, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202-377-2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to closed meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

Dated: June 4, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-15766 Filed 6-9-82; 8:45 am]

BILLING CODE 3510-25-M

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Telecommunications Equipment Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 18, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to telecommunications equipment or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: July 13, 1982, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3104, 14th Street and Constitution Avenue, NW, Washington, D.C. The committee will meet only in executive session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sushine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telephone: 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-2583.

Dated: June 4, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-15764 Filed 6-9-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Amendment of a System Notice

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amendment of a system notice.

SUMMARY: The Defense Logistics Agency (DLA) proposes to amend a notice for a system of records by

changing the system location and announcing automation of the system. The proposed amendments and the system notice as amended are set forth below.

DATE: This notice shall be amended as indicated on July 12, 1982 unless public comments are received which result in a contrary determination.

ADDRESS: Any comments, to Office of Installation Services and Environmental Protection, DLA–WH, HQ, DLA, Cameron Station, Alexandria, VA 22314, telephone 202/274–6027.

FOR FURTHER INFORMATION CONTACT: Mr. Preston B. Speed, DLA-XAM, HQ DLA, Cameron Station, Alexandria, VA 22314, telephone 202/274–6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency system of records subject to the Privacy Act of 1974, Title 5 U.S.C. 552a (Pub. L. 93–579, 44 Stat. 1896, *et seq.)*, were published at FR Doc. 82–674 (47 FR 2544) January 18, 1982.

An altered system report as required by 5 U.S.C. 552a(o) was submitted on May 19, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 4, 1982.

Amendment

S370.20 DLA–WH

System name:

S370.20 DLA–WH Individual Accident Case Files.

Changes:

System identification:

The system identification is changed from "S370.20 DLA–KH" to "S370.20 DLA–WH."

System location:

The primary location of the records is changed from "Safety and Health Division, Staff Director, Office of Personnel" to "Office of Installation Services and Environmental Protection, Headquarters, Defense Logistics Agency (HQ. DLA)."

Storage:

After the word "files" and "and automated record files."

System manager(s) and address:

Change the System Manager from "Staff Director, Office of Personnel, DLA;" to "Staff Director, Office of Installation Services and Environmental Protection DLA;".

S370.20 DLA–WH

SYSTEM NAME:

Individual Accident Case Files.

SYSTEM LOCATION:

Primary System—Case files on disabling work (lost time) injuries, property damage accidents (100 dollars or more), and motor vehicle accidents with a disabling work injury or property damage exceeding 100 dollars: Office of Installation Services and Environmental Protection, Headquarters, Defense Logistics Agency (HQ DLA). Decentralized segments—Above files plus all other injuries and accidents: HQ DLA principal staff elements, DLA Primary Level Field Activities (PLFAs), secondary and third level field activities, where incidents occurred.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel, contractor employees, and other personnel who are injured on the premises of DLA or performing assignment incident to DLA operations. Also may include individuals involved in accidental damage to vehicles, equipment, and property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports, statements of witnesses, photographs and related papers, including summarized information maintained for the purpose of identifying accident repeaters and safety award recipients, regarding accidents incident to DLA operations, pertaining to injuries to individuals or accidents involving motor vehicles and other equipment or structural property damage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 651, *et seq.* "The Occupational Safety and Health Act of 1970 (OSHA);" Executive Order 12196, "Occupational Safety and Helath Programs for Federal employees."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is maintained to identify cause of accidents, to formulate accident prevention programs, to identify individual involved in repeated accidents, to present safety awards to individuals and to prepare statistical reports as required.

Information is used by: Agency supervisors and managers—to determine actions required to correct the causes of the accidents.

Safety offices—to insure actions proposed by supervisors and managers are adequate to prevent future accidents, to identify accident repeaters and safety award recipients, to provide verification that accidents have occurred when processing workmen's compensation cases, to prepare statistical reports, accident summaries, and accident prevention information for inclusion in Agency internal publications.

Security personnel—to determine accident causes, and to formulate possible changes in activity rules of conduct.

Government and non-Government medical personnel—to make medical determinations about individuals involved in accidents.

Facilities engineers and maintenance personnel—top formulate future installation faciltiies and equipment plans and budgets and to change operating procedures.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders and card index files and automated record files.

RETRIEVABILITY:

Filed by organizational activity and/or alphabetically by last name of injured person of principal person involved in accident, when known.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA safety and health personnel.

RETENTION AND DISPOSAL:

Records are destroyed ten years after the case is closed. They are retained in active file until end of calendar year in which case is closed, held one to three additional years in inactive file and subsequently retired to Federal Records Center, held for the remaining years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Installation Services and Environmental Protection, DLA; Safety Officers, DLA Primary Level Field Activities.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the

System Manager. Individual must provide full name and name of DLA activity at which incident occurred; or if individual is or was a DLA employee, name of employing activity is also required.

RECORD ACCESS PROCEDURES:

Official mailing addresses of the System Manager are in the DoD Directory in the appendix to the DLA systems notice. Written requests for information should contain the full name, current address and telephone numbers of the individual and a signed statement asserting his or her identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to $5,000. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employment identification card, and give some verbal information that could be verified from the case folder.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Employee's supervisors, medical units, DLA protective service, civilian police, fire department, investigating officer, or witness to accident.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-15774 Filed 6-9-82; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Allied Materials and Excel Corp.; 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 Allied Materials and Excel Corporation as a final order of the Department.

EFFECTIVE DATE: June 10, 1982.

FOR FURTHER INFORMATION CONTACT: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, U.S. DEPARTMENT OF ENERGY, 440 South Houston, Room 306, Tulsa, Oklahoma 74127. Phone: (918) 581-7781.

SUPPLEMENTARY INFORMATION: On March 15, 1982, Vol. 47, FR 11057, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Allied Materials and Excel Corporation on January 25, 1982, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order requires the total payment of $1,500,000.00 for the period September 1, 1973 through January 27, 1981, of which $651,767.54 will be paid to identified customers and $848,232.46 will be paid to the DOE for ultimate disposition. The Consent Order resolves certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and other regulations involving transactions of covered products.

One comment was received on April 14, 1982. The Comment proposed a distribution scheme whereby refunds collected by this Consent Order and other Consent Orders should be distributed to the states on pro-rata basis to be spent by the states. The aforementioned refunds should, the comment suggests, be deposited in dedicated revenue funds established by state legislatures and spent on accepted projects or programs related to energy which would include highway and bridge maintenance, public transportation, grant programs for weatherization, and energy conservation and airport maintenance or improvements.

The proposed Consent Order is finalized without modification. The proposed Consent Order was not modified as suggested by the comment because the comment did not contest the validity of the Consent Order but addressed only the question of the ultimate disposition of those funds not paid to identifiable end-user customers. The ultimate disposition of these funds will depend on several factors, such as the type of alleged violations underlying the Consent Order and the ability of the ERA to identify any non-end-user customers who may be entitled to share in the disposition of the funds. The commenter's suggestion regarding distribution of refunds will be considered in determining the appropriate ultimate distribution.

The proposed Consent Order, therefore was made final and effective on June 10, 1982

Dated: May 25, 1982.

John W. Sturges,

Director, Tulsa Office Economic Regulatory Administration.

[FR Doc. 82-15652 Filed 6-9-82; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-04-LNG]

Phillips Petroleum Co. and Marathon Oil Co.; Application To Amend Authorization To Export Liquefied Natural Gas to Japan

AGENCY: Department of Energy Economic Regulatory Administration.

ACTION: Notice of Application to Amend Authorization to Export Liquefied Natural Gas (LNG) to Japan.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 10, 1982, of the joint application of Phillips Petroleum Company (Phillips) and Marathon Oil Company (Marathon) to amend their existing authorization to export liquefied natural gas (LNG) to Japan. Currently, Phillips and Marathon are authorized to export 50.57 trillion Btu of LNG per year to Japan. They seek and extension and amendment of this authority for five years beyond the scheduled expiration date of May 31, 1984. Also requested is authorization to export limited additional volumes to make up for underdeliveries of authorized volumes which either have or may occur.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m. July 12, 1982.

FOR FURTHER INFORMATION CONTACT:

R. T. Gehring (Natural Gas Branch, Oil and Gas Imports Division), Economic Regulatory Administration, 12th & Pennsylvania Avenue NW., Room 6144, RG-631, Washington, D.C. 20461, (202) 633-9296

Merrill F. Hathaway (Office of General Counsel, Natural Gas and Mineral Leasing), 1000 Independence Avenue SW., Forrestal Building, Room 6E-042, Washington, D.C. 20585, (202) 252-4467.

SUPPLEMENTARY INFORMATION: In a Federal Power Commission (FPC) order issued on April 19, 1967, in FPC Docket Nos. CI67-1226 and CI67-1227, 37 FPC

777 (1967), Phillips and Marathon were authorized to export LNG from Alaska to Japan for sale to Tokyo Electric Power Company, Inc., and Tokyo Gas Company Limited under a sales agreement dated March 6, 1967, as amended. The firms were authorized to sell a total of up to 35.295 trillion Btu of LNG from March 1, 1969, to May 31, 1970, and 50.57 trillion Btu of LNG annually from June 1, 1970, to May 31, 1984.

The initial term of the March 6, 1967, sales agreement expires on May 31, 1984, with an option to renew the arrangement by mutual agreement between June 1, 1981, and June 1, 1982.

Pursuant to this option, the parties have entered into an Amendatory Extension Agreement dated April 15, 1982, which would continue the export for five additional years, through May 31, 1989. The quantities of LNG to be exported during the extended term will remain the same, 50.57 trillion Btu annually. The parties seek approval of their export of LNG during this extended term. The parties also seek approval of certain make-up deliveries, so that any annual volumes of LNG not delivered under either the 1967 sales agreement or the Amendatory Extension Agreement in a given year due to unforeseen circumstances or to a reduction in the amount taken by buyers may be delivered as soon as possible thereafter in subsequent contract years or during a maximum seven-month period beginning June 1, 1989.

The currently effective price of the LNG exports is determined by a base price of 592.8 U.S. cents per MMBtu indexed in accordance with a formula based upon changes in the weighted average of the official Japanese Government Selling Prices of the top twenty crude oils imported by Japan. That formula produced a delivered price of approximately $5.76 per MMBtu for April 1982.

Phillips and Marathon state that the extension of this export project is not inconsistent with the public interest for the following reasons: (1) Given national and international developments, including the return in many cases to free market pricing for natural gas, there is no basis for a conclusion that there would be a national need for the LNG proposed to be shipped to Japan in the 1984–89 period; (2) there is no regional need for the gas because all of Alaska's natural gas needs are presently being supplied and any foreseeable future needs can easily be supplied from proven reserves in the Cook Inlet area; (3) it will continue to improve the economy of Alaska by providing jobs and royalty revenues; (4) it will continue to affect favorably the balance of payments position of the United States by providing annual revenues approaching $300 million per year for additional five years; and (5) it will continue to benefit U.S. relations with Japan by providing a reliable source of LNG for Japan for an additional five years.

No alterations or additions to existing transportation and storage facilities are anticipated during the period of the extension.

OTHER INFORMATION: Any person wishing to become a party to the proceeding, and thus to participate in any conference or hearing which might be convened, must file a petition to intervene. Any person may file a protest with respect to this application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements specified in 18 CFR 1.8 and 1.10. They should be filed with the Natural Gas Branch, Economic Regulatory Administration, Room 6144, RG–631, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461. All protests and petitions to intervene must be filed no later than 4:30 p.m., July 12, 1982.

A hearing will not be held unless a motion for a hearing is made by a party or person seeking intervention and granted by ERA, or if ERA on its own motion believes that a hearing is necessary or required. A person filing a motion for hearing must demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of Phillips' and Marathon's application is available for inspection and copying in the Natural Gas Branch Docket Room, located in Room 6144, 12th & Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on June 3, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82–15853 Filed 6–9–82; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Forms Submitted to the Office of Management and Budget for Review

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of DOE proposals sent to OMB for approval between May 20, 1982, and May 27, 1982.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the forms; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Friday, May 21, 1982 (47 FR 22143).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 7413 Federal Building, 12th & Pennsylvania Avenue NW., Washington, DC 20461, (202) 633–9464

Jefferson B. Hill, Department of Energy Desk Officer, Officer of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7340

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–3087.

SUPPLEMENTARY INFORMATION: Copies of proposed collection and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; comments should also be provided Mr. Gross. If you anticipate commenting on a form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C. May 23, 1982.

Yvonne M. Bishop,

Director Statistical Standards Energy Information Administration.

DOE Forms Under Review by OMB

Form No.	Form title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
FERC–73	Service life data	Extension—no change	On occasion	Mandatory	Oil pipeline companies within FERC jurisdiction.	21	4,620	Data are used to perform service life analyses for oil pipeline properties. These data are necessary to determine book depreciation rates.
FERC–537	Gas pipeline certificate construction and operation/transportation/exchange/storage and abandonment.	Extension—no change	On occasion	Mandatory	Natural gas pipelines	50	148,320	Information is required to obtain Comission certification of interstate pipelines engaged in the transportation and sale of natural gas and the construction and operation of facilities to be used in these activities, as well as authorization for abandonment of facilities and service.

[FR Doc. 82–15651 Filed 6–9–82; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP82-314-000]

Alabama-Tennessee Natural Gas Co.; Application

June 4, 1982.

Take notice that on May 8, 1982, Alabama-Tennessee Natural Gas Company (Applicant), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP82-314-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas by displacement necessary for the sale of natural gas to Public Service Electric and Gas Company (Public Service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell on an interruptible basis to Public Service up to 20,000 Mcf of natural gas per day. Applicant states that it has executed an agreement with Public Service and North Alabama Gas District (North Alabama) whereby Public Service desires to purchase, Applicant desires to sell, and North Alabama desires to transport such gas on a best-effort basis during the summer months of May through October 1982.

It is stated that Applicant purchases natural gas from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), pursuant to the terms of Tennessee's Rate Schedule CD-1 which contains a minimum bill provision requiring that Applicant pay an amount of 66⅔ percent of its contract demand irrespective of whether it takes such volume of gas each month. It is further stated that during the months of May through October Applicant may be unable to sell these minimum volumes of gas to its existing customers and that the amount of money that Applicant might be obligated to pay for gas which it cannot sell on system is estimated at $1,000,000 per month. Applicant maintains that the sales herein proposed would obviate the need for such payments and would therefore substantially benefit its customers.

It is stated that Texas Eastern Transmission Corporation (Texas Eastern) sells and delivers natural gas to North Alabama which sells and delivers such gas to USS Agri-Chemicals, Inc. (USS Ag), located in Colbert County, Alabama, and that Applicant also provides service to USS Ag. It is further stated that under the proposed sales agreement Applicant, when it has gas available during the months of May through October 1982, which is not required by its on-system customers, would sell up to 20,000 Mcf of gas per day to Public Service. It is asserted that this sale would be accomplished by deliveries of equivalent volumes by Applicant to USS Ag and that such deliveries would displace Texas Eastern's deliveries to North Alabama for USS Ag making that gas available for transportation and delivery to Public Service, less agreed upon volumes for fuel and shrinkage. Applicant states that the volumes thus made available to Public Service would constitute a direct sale of natural gas. It is stated that Public Service would use the natural gas to displace middle-distillate oil and low-sulphur residual oil in the generation of electricity.

Applicant maintains that these deliveries of gas by Texas Eastern on a displacement basis would be on an interruptible basis when Texas Eastern has capacity available.

It is asserted that Applicant would charge Public Service a commodity rate of $3.29 per Mcf which includes a transportation charge to North Alabama of 2.0 cents per Mcf, an incremental cost of gas from Applicant's Mississippi supplemental supply of 18.66 cents per Mcf and Applicant's transportation charge of 7.0 cents per Mcf. It is stated that Applicant proposes to credit Account 191 with the proportionate amount of the revenue derived from the incremental cost of the Mississippi gas that is applicable to Applicant's regulated business.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15726 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6163-000]

Allegheny County, Pennsylvania; Application for Preliminary Permit

June 8, 1982.

Take notice that Allegheny County, Pennsylvania (Applicant) filed on April 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 6163 to be known as the Monongahela Lock and Dam No. 2 Project located on the Monongahela River in Allegheny County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James W. Knox, Allegheny County Department of Planning, 429 Forbes Avenue, Room 1300, Pittsburgh, Pennsylvania 15219.

Project Description—The proposed project would utilize the existing Corps of Engineers' Monongahela River Lock and Dam No. 2 and would consist of: (1) A new powerhouse containing one or more generating units having a total rated capacity of 6.7 MW; (2) one-half-mile-long transmission line; and (3) appurtenant facilities. The Applicant

estimates that the average annual energy output would be 35.3 kWh. The most likely market for energy derived at the proposed project is the Duquesne Light Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

Competing Applications—This application was filed as a competing application to ENERGENICS SYSTEMS, INC.'s application for Project No. 6160 filed on April 2, 1982. Anyone desiring to file an additional competing application for preliminary permit must submit to the Commission, on or before July 8, 1982 the competing application itself [see: 18 CFR § 4.30 et. seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 8, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR § 4.30 et seq. or § 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15709 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-137-000]

American Energy Projects; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 7, 1982.

On May 5, 1982, American Energy Projects, 2800 South Court, Palo Alto, California 94306, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The small power production facility will be located in Alameda County, California. Fifty 100 kilowatt wind turbine generators will make up a total maximum electric power production capacity of 5 megawatts. The Applicant owns no other wind facilities that are located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before July 12, 1982 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15710 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2888-002]

City of Redding, California; Application for License (5 MW or Less)

June 7, 1982.

Take notice that the City of Redding (Applicant) filed on Feburary 19, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for construction and operation of a water power project to be known as the Wiskeytown Dam Power Plant Project No. 2888. The project would be located on Clear Creek in the Wiskeytown-Shasta-Trinity National Recreation Area in Shasta County near the City of Redding, California. Correspondence with the Applicant should be directed to: Mr. William Brickwood, City Manager, City of Redding, 760 Parkview, Redding, California 96001.

Project Description—The proposed project would consist of a powerhouse connected to the existing outlet structure for the Bureau of Reclamation's Whiskeytown Dam. The powerhouse would contain a single 3.24-MW generating unit and would have an average annual output of 8,200 MWh. A switchyard adjacent to the powerhouse would be connected to a nearby Pacific Gas and Electric Company 12.5-kV transmission line. Applicant estimates that construction of the project would cost $3,964,000 in 1984 dollars.

Purpose of Project—Project energy would be distributed in the City of Redding's municipal electric system.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provided comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic

Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before August 3, 1982, either the competing application itself [See 18 CFR § 4.33(a) and (d)] or a notice of intent [See 18 CFR § 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 (et seq. 1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15711 Filed 6–9–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4310–001]

Frank T. Clark; Surrender of Preliminary Permit

June 8, 1982.

Take notice that Frank T. Clark, Permittee for the proposed Kingsbury Branch Project No. 4310, has requested that his preliminary permit be terminated. The permit was issued on September 21, 1981, and would have expired on March 1, 1983. The project would have been located on the Winooski River in Washington County, Vermont. Mr. Clark states that the necessary capital cannot be raised and that the project will not support financing.

Mr. Clark filed his request on April 27, 1982, and the surrender of his permit for Project No. 4310 is deemed effective as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15730 Filed 6–9–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–331–000]

Columbia Gulf Transmission Co; Application

June 4, 1982.

Take notice that on May 17, 1982, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP82–331–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by purchase from Union Texas Petroleum Corporation (Union Texas) of an undivided fractional interest in the ownership of existing offshore compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to purchase from Union Texas an undivided fractional interest in the compression facilities on Eugene Island Block 384 "A" separation platform, offshore Louisiana, at a cost of $563,600 which would be financed with general corporate funds. The proposed acquisition being made pursuant to a purchase contract between Applicant and Union Texas dated March 8, 1979, is consideration given by Applicant for capacity entitlement in facilities required by Applicant to purchase and receive gas supplies committed to Columbia Gas Transmission Corporation in the Eugene Island Black 385 field, offshore Louisiana.

It is asserted that such compression is required in order that gas reserves delivered from the referenced area can be delivered into the gas pipeline against the operation pressure of such connecting lines. It is submitted that Applicant would acquire a 30.7 percent interest in two dual train 900 horsepower skid mounted compressor units which would be maintained and operated by Union Texas.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15728 Filed 6–9–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RA82-19-000]

Commonwealth Oil Refining Co., Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

June 4, 1982.

Take notice that Commonwealth Oil Refining Co., Inc. on April 20, 1982, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before June 18, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before June 18, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.W., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15729 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6268-000]

Energenics Systems Inc.; Application for Preliminary Permit

June 7, 1982.

Take notice that Energenics Systems Inc. (Applicant) filed on April 28, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6268 to be known as the Vega Dam Project located on Plateau Creek in Mesa County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Granville J. Smith, II, Energenics Systems Inc., 1717 K Street, NW., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing U.S. Bureau of Reclamation's Vega Dam and Reservoir, and would consist of: (1) a proposed 150-foot long, 56-inch diameter steel penstock; (2) a proposed powerhouse containing one Francis turbine-generator unit with a capacity of 1160-kW; (3) a proposed 75-foot long tailrace; (4) a proposed 10-mile long, 115-kV transmission line; and (5) appurtenant facilities. Applicant estimates that average annual energy output would be 2300 MWh and plans to sell the power to either the Public Service Company of Colorado or Colorado-Ute Electricity.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before September 13, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 13, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before September 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specificed in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15712 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-325-000]

Gas Company of New Mexico; Application

June 4, 1982.

Take notice that on May 1, 1982, Gas Company of New Mexico (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP82-325-000 an application pursuant to Part 284 of the Commission's Regulations and section 7(c) of the Natural Gas Act for authorization to transport gas for Northwest Pipeline Corporation (Northwest), all as more fully set forth in

the application which is on file with the Commission and open to the public inspection.

Applicant states that it is Hinshaw company and holds a blanket certificate under § 284.222 of the Commission's Regulations and section 7(c) of the Natural Gas Act to engage in transportation and sales transactions to the same extent and in the same manner as an intrastate pipeline under sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). Applicant proposes herein to transport up to 15 billion Btu of gas per day to effectuate the March 17, 1982, agreement between Southern Union Gathering Company (Gathering Company) and J. R. Simplot Company (Simplot). Applicant maintains that the gas to be delivered to Simplot would be used as feedback in the manufacture of fertilizer, an "essential agricultural use."

Applicant states that the gas would be made available to Simplot at the tailgate of Kutz Gasoline Plants in San Juan County, New Mexico. It is asserted that the gas would then be delivered by Gathering Company into Applicant's pipelilne system which under an agreement among Applicant, Simplot, and Northwest dated March 30, 1982, would receive said gas on behalf of Northwest and transport and redeliver said gas to Northwest at an interconnection between the facilities of Applicant and Northwest in San Juan County, New Mexico. Northwest, it is stated, would then transport the gas to a point of interconnection with Intermountain Gas Company (Intermountain) near Soda Springs, Idaho. Intermountain would then transport the gas to Simplot, it is explained.

Applicant states service would commence when authorization was obtained and would continue for six months or possibly for a longer period not to exceed two years.

Applicant elects to base its rates upon its Rate Schedule 61 on file with the New Mexico Public Service Commission.

Applicant further states that although the blanket certificate issued to it under § 284.222 of the regulations permits it to engage in section 311(a)(2)-type transportation arrangements under the NGPA on a self-executing basis the instant transportation may not qualify as a self-executing transaction by virtue of the fact that the gas to be transported by Applicant would not be for Northwest's system supply. Applicant requests that the subject service be specifically authorized by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15731 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3287-002]

Britt R. Gilbert, Thomas G. Scully, and John S. Scully III; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

June 8, 1982.

Take notice that on May 4, 1982, Britt R. Gilbert, Thomas G. Scully, and John S. Scully III (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§ 2705, and 2708 *as amended),* for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 3287) would be located on the North Fork, Shenandoah River in Shenandoah County, Virginia. Correspondence with the Applicant should be directed to: Thomas F. Nolan IV, 401 C Street, N.E., Washington, D.C. 20002.

Project Description—The proposed project would consist of: (1) the existing concrete Burnshire Dam, 280 feet long and 14 feet high; (2) an existing reservoir with a 200 acre-feet storage capacity and surface elevation of 670 feet m.s.l.; (3) an existing three-penstock powerhouse with an installed capacity of 232 kW fed by a 150-foot log forebay; (4) a new 200 kW unit to be placed on an existing power house foundation; and (5) other appurtenances. All existing facilities are owned by Thomas G. Scully and John S. Scully III. Applicant estimates an average annual generation of 1,400,000 kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemptiom from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Commission of Game and Inland Fisheries of Virginia are requested, for the purposes set forth in Section 408 of the Act, to submit 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before August 16, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows and interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications from preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR § 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. 825 North Capitol Street, NE., A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15713 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6320-000]

James W. Guercio; Application for Preliminary Permit

June 7, 1982.

Take notice that James W. Guercio (Applicant) filed on May 12, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6320 to be known as the Caribou Ranch Project located on North Boulder Creek in Boulder County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James W. Guercio, Caribou Ranch, P.O. Box 310, Nederland, Colorado 80466.

Project Description—The proposed project would consist of: (1) a proposed 25-foot long, 10-foot wide, and 6-foot high reinforced concrete intake structure; (2) a proposed impoundment with a surface area of 0.1 acre at an elevation of 9750 M.S.L.; (3) a proposed 19,000-foot long, 24-inch diameter penstock; (4) a proposed 600 square-foot powerhouse containing one turbine-generator unit with a 1.5 MW rating; (5) a proposed 50-foot long tailrace (6) a proposed 400-foot long transmission line; and (7) appurtenant facilities. The average annual energy generated is estimated to be 13,000 kWh and would be sold to and/or exchanged with Public Service Company of Colorado.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimatee the cost of the studies under the permit would be $60,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 13, 1982, the competing application itself, or a notice of intent to file such an application [see 18 CFR § 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 3, 1982, and should specify the type of application forthcoming. Any applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR § 4.30 et seq. or § 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 12, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15714 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3312-001]

City of Laconia, N.H.; Surrender of Preliminary Permit

June 8, 1982.

Take notice that the City of Laconia, New Hampshire, Permittee for the proposed Lakeport Dam Project No. 3312, requested by letter dated May 4, 1982, that its preliminary permit be terminated. The preliminary permit was issued on January 16, 1981, and would have expired on July 1, 1982. The project would have been located at the Lakeport Dam on the Winnipesaukee River in Belknap County, New Hampshire. The City of Laconia no longer considers development of the site to be feasible.

The surrender of the preliminary permit for Project No. 3312 is accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15727 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RI82-3-000]

Liberty Oil & Gas Corp.; Petition for Special Relief

June 7, 1982.

Take notice that on May 24, 1982, Liberty Oil and Gas Corporation, 234 Loyola Building, Suite 412, New Orleans, Louisiana 70112 (Liberty) filed a petition for special relief in Docket No. RI82-3-000 pursuant to Section 2.76 of the Commission's Statements of General Policy and Interpretations and Section 271.402(c)(5) of the regulations under the Natural Gas Policy Act of 1978.

Liberty seeks permission to charge a base rate of $2.99 per Mcf plus severance tax for natural gas produced from its Netherlands No. 1 Well, Sabine Production Lease, Bayou Couba Field, St. Charles Parish, Louisiana. The buyer is Transcontinental Gas Pipe Line Corporation. Liberty proposes to perform a workover operation on the well and estimates remaining reserves of 90,000 Mcf.

Any persons desiring to be heard or to protest this petition should file a petition to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 23, 1982. All protests filed with the Commission will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15715 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6171-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

June 7, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 6, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6171 to be known as the San Juan Creek Project located on San Juan Creek in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122 196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) multiple diversion structures on San Juan Creek; (2) a 7,000-foot-long, 18-inch-diameter diversion conduit; (3) a powerhouse with a total installed capacity of 2.24 MW; and (4) a 12-mile-long, 115-kV transmission line from the powerhouse to an existing 115-kV transmission line. The Applicant estimate that the average annual energy production would be 9.8 GWh. The project is located entirely on U.S. Forest lands owned by Snoqualmie—Mt. Baker National Forest.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 13, 1982, the competing application itself or a notice of intent to file such an application (see 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 13, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 12, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15716 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6170-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

June 7, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on April 6, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6170 to be known as the Lowe Creek Project located on Lowe Creek in King County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122—196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) multiple diversion structures on Lowe Creek; (2) a 6,000-foot-long, 18-inch-diameter diversion conduit; (3) a power house

with a total installed capacity of 1.72MW; and (4) a 1.0-mile-long, 115-kV transmission line from the powerhouse to an existing transmission line. The Applicant estimates that the average annual energy production would be 7.57 GWh. The proposed project is located entirely on U.S. Forest lands owned by Snoqualmie—Mt. Baker National Forest.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 13, 1982, the competing application itself, or a notice of intent to file such an application [see 18 CFR 4.30 et seq. (1981); and Docket No. Rm 81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 13, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 12, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION" "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15717 Filed 6–9–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP81–302–001]

Natural Gas Pipeline Co. of America; Petition to Amend

June 4, 1982.

Take notice that on May 28, 1982, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81–302–001 a petition to amend the order issued August 12, 1981, in Docket No. CP81–302–000, pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of the period of transportation for a direct sale of natural gas to Dow Chemical Company (Dow) and the delivery of up to 30,000,000 Mcf of natural gas to Dow for the term of the extension, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is submitted that by order issued April 12, 1981, in Docket No. CP81–302–000, Petitioner was authorized to deliver on a best efforts basis up to 15,000,000 Mcf of natural gas to Dow for a term expiring July 31, 1982. It is further submitted that on March 12, 1982, Petitioner and Dow executed Amendment No. 1 to their gas sales agreement so as to extend the term of the sale in order to sell an additional 30,000,000 Mcf of gas for the period of the extension, as well as add a transportation arrangement.

Pursuant to such amendment, Petitioner proposes to amend the order of August 12, 1981, so as to extend the period of transportation for a direct sale to Dow for an additional term of 363 days commencing upon the earlier in time of August 1, 1982, or the date upon which Petitioner has sold 15,000,000 Mcf to Dow for the period of extension.

Petitioner states that for the period of the extension, it would continue to deliver gas to Dow at the interconnection of the facilities of Dow and Dow Interstate Gas Company (DIG) at Dow's Plaquemine Plant near Plaquemine, Iberville Parish, Louisiana, as previously authorized.

Petitioner asserts that in order to deliver the gas to such authorized delivery point during the term of extension, it has made an additional transportation agreement to the one authorized in the order issued August 12, 1981. Petitioner states that as previously authorized, it would continue to deliver gas to Texas Gas Transmission Corporation (TGT) at the outlet of the Texaco Henry Plant, Vermillion Parish, Louisiana, for transportation by TGT and redelivery by DIG at the delivery point. Petitioner states that the transportation charge under this previously authorized arrangement currently consists of the sum of (1) for the gas transported by TGT, 6.92 cents per Mcf of gas or such other applicable rate specified in TGT's FERC Schedule T/SL, (2) for gas transported by DIG, 15.0 cents per Mcf of gas, and (3) the value of fuel gas consumed by TGT and DIG.

It is submitted that pursuant to the March 23, 1982, amendment to its transportation agreement with DIG, Petitioner has made an additional transportation arrangement to deliver the gas to Dow, Petitioner proposes to deliver gas to DIG at a proposed mutually agreeable point of interconnection between the pipeline facilities of Petitioner and DIG in or near section 45, T13S, R4E, Vermilion Parish, Louisiana, for redelivery to Dow at the aforementioned authorized delivery point. For such transportation service Petitioner states that it would pay DIG a rate of 15.0 cents per Mcf of gas plus the value of fuel gas consumed.

It is further submitted that under both transportation agreements, Dow would pay Petitioner a transportation charge to reflect all the current and future costs

that DIG and TGT charge Petitioner for their services.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 25, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15732 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6289-000]

Nevada Irrigation District; Application for Preliminary Permit

June 7, 1982.

Take notice that the Nevada Irrigation District (Applicant) filed on May 3, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for Project No. 6289 to be known as the D–S Wolf Creek Power Project located on the D–S Canal Extension near Wolf Creek in Nevada County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Fred Bandy, General Manager, Nevada Irrigation District, P.O. Box 1019, Grass Valley, California 95945.

Project Description—The proposed project would consist of: (1) a weir or check structure 7 feet high at elevation 2861 feet on the D–S Canal Extension; (2) a 36-inch-diameter penstock, 2,000 feet long, (3) a powerplant at elevation 2640 feet containing a turbine generator with 825 kW capacity and 2.9 GWh annual energy output and (4) a transmission line either 2,000 or 4,000 feet long, depending on the intertie location. The potential market for project output includes the Pacific Gas and Electric Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $30,000.

Competing Applications—Anyone desiring to file a competing applcation for preliminary permit must submit to the Commission, on or before August 13, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 13, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 12, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15718 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5970-000]

Northern Colorado Water Conservancy District; Application for Preliminary Permit

June 8, 1982.

Take notice that Northern Colorado Water Conservancy District (Applicant) filed on February 10, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5970 to be known as the Granby Dam Project located on the Colorado River in Grand County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Larry D. Simpson, Northern Colorado Water Conservancy District, P.O. Box 679, Loveland, Colorado 80539.

Project Description—The proposed project would utilize the existing Bureau of Reclamation's Granby Dam and would consist of (1) a new powerhouse containing two generating units with a total rated capacity of 1.47 MW; (2) a new transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4.7 GWh. The most likely markets for the energy derived at the proposed project are Tri-State Generation and Transmission Association and The Western Area Power Administration.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include

economic analysis, preparation of preliminary engineering plans, and a study of enviornmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000.

Competing Applications—This application was filed as a competing application to Energenics Systems, Inc.'s application for Project No. 5574 filed on October 28, 1981. Public notices of the filing of the initial application, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15719 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-320-000]

Northwest Pipeline Corp.; Application

June 4, 1982.

Take notice that on May 11, 1982, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP82-320-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Rocky Mountain Natural Gas Company (Rocky Mountain) for resale within the Town of Naturita, Colorado (Naturita) and for permission and approval to abandon the sale and delivery of natural gas service to Naturita and environs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the sale and delivery of natural gas to Naturita and transfer such sales to Rocky Mountain. In accordance with the purchase agreement between Naturita and Rocky Mountain dated February 8, 1982, Applicant asserts that the distribution properties of Naturita would be transferred to Rocky Mountain.

Applicant further states that it would cancel its Rate Schedule DS-1 service agreement with Naturita and revise its Rate Schedule DS-1 service agreement with Rocky Mountain to provide for the addition of the Towns of Naturita, Nucla and environs as an additional delivery point for Rocky Mountain. Applicant explains it would sell the 3,525 therms of gas presently sold to Naturita to Rocky Mountain for resale.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15733 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-92-000]

Northwest Pipeline Corp.; Tariff Change

June 3, 1982.

Take notice that on May 14, 1982, Northwest Pipeline Corporation ("Northwest") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 64
Original Sheet No. 64-A
First Revised Sheet No. 65
First Revised Sheet No. 66
Original Sheet No. 66-A

The tariff sheets will, when accepted: (1) Revise section 3(a) of Rate Schedule T-1 for the purpose of clarifying the conversion from Mcf's to therms for billing purposes under the facility charge, (2) revise Section 4 to expand

the Minimum Monthly Bill provision to include (a) a minimum annual commodity charge computed by multiplying the effective commodity rate at September 30 each year by the deficient volume of gas, and (b) an underrun payment equal to a quantity obtained as the amount by which the deficient volume for the year is greater than 10 percent of Shipper's minimum annual quantity multiplied by $.50 per therm. The deficient volume of gas is equal to the difference between (i) the minimum annual quantity (Daily Contract Demand times 365 times 60 percent) and (ii) the volume of gas tendered for transportation each year; and (3) revise Section / to provide for a new scheduling procedure that requires Shipper to notify Northwest three days prior to the beginning of each week (beginning on Monday) of the volumes of natural gas to be tendered for transportation each day during that week. The modification requires that the tendered volumes be not less than Shipper's minimum daily purchase obligation from Northwest Alaskan Pipeline Company. Partial waiver of this scheduling procedure will be allowed to the extent that insufficient capacity exists in connecting pipelines to Northwest's system.

Northwest is requesting waiver under § 154.51 of the Commission's regulations in order to permit an effective date of May 14, 1982.

A copy of this filing is being served on Pacific Interstate Transmission Company, all of Northwest's jurisdictional customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 16, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15734 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-141-000]

Vaylord Reick; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 4, 1982.

On May 10, 1982, Vaylord Reick, RR, Sumner, Iowa, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility is a wind electric system located in Sumner, Iowa. The electric power production capacity of the facility is 10 kilowatts. The Applicant owns no other small power production facilities located within one mile of the facility which use wind as the primary energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15735 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-135-000]

Jim Richter; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 4, 1982.

On May 3, 1982, Jim Richter, RR, Earlville, Iowa filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The wind electric system located is in Earlville, Iowa. The electric power production capacity of the facility is 10 kilowatts. No other small power production facilities are located at the same site which are owned by the Applicant and use wind as the primary energy source. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15736 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1389-001]

Southern California Edison Co.; Application for New License (Over 5 MW)

June 8, 1982.

Take notice that Southern California Edison Company (Applicant) filed on December 1, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for continued operation of a water power project known as the Rush Creek Project No. 1389. The project is located on Rush Creek in the Inyo National Forest in Inyo and Mono Counties near the Town of June Lake, California. Correspondence with that Applicant should be directed to: Mr. John R. Bury, General Counsel, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Project Description—The proposed project would consist of: (1) Rush Meadows Reservoir with a surface area of 185 acres and a usable storage capacity of 5,277 acre-feet at maximum reservoir elevation 9,416 feet formed by; (2) a 463-foot-long, 50-foot-high, concrete, arch dam on Rush Creek having an overflow side channel spillway; (3) Gem Lake Reservoir with a

surface area of 282 acres and a usable capacity of 17,228 acre-feet at maximum reservoir elevation 9,052 feet formed by; (4) a 688-foot-long, 80-foot-high, multiple arch, concrete dam on Rush Creek having an overflow spillway; (5) Agnew Lake Reservoir with a surface area of 40 acres and a usable storage capacity of 810 acre-feet at maximum reservoir elevation 8,496 feet formed by; (6) a 278-foot-long, 30-foot-high multiple arch, concrete dam on Rush Creek having an overflow spillway; (7) a 48-inch diameter, 4,584-foot-long steel pipe from Gem Dam to a valve house below Agnew Dam; (8) a 30-inch-diameter, 575-foot-long steel pipe from Agnew Dam to the valve house; (9) two 4,280-foot-long steel penstocks, varying in diameter from 30 inches to 28 inches from the value house to: (10) the Rush Creek Powerhouse, located at elevation 7,249 feet, containing two generating units with a total capacity of 8,400 kW; (11) a switchyard adjacent to the powerhouse; and (12) a 49.6-mile-long, 115-kV transmission line, supported on wood-pole, H-frame structures, extending to the Control Substation.

Purpose of Project—The project has an average annual energy output of approximately 49,000 MWh. Project energy is used to meet the demands of Applicant's customers in central and southern California.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before August 16, 1982, either the competing application itself (See 18 CFR 4.33 (a) and (d)) or a notice of intent (See 18 CFR 4.33 (b) and (c) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15720 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-351-000]

Southern Natural Gas Co.; Application

June 3, 1982.

Take notice that on May 27, 1982, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP82-351-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for emergency sale directly to an end user, Southern Energy Company (Southern Energy), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that Southern Energy is a wholly-owned subsidiary of Applicant engaged in the importation, storage, regasification, and sale and delivery of liquefied natural gas (LNG) in liquefied and regasified form to Applicant. It is further submitted that Southern Energy's natural gas requirements have previously been satisfied out of Southern Energy's LNG storage inventory, and that such inventory was recently depleted. It is asserted that without LNG, Southern Energy has a critical need for small quantities of natural gas in order to protect its LNG storage tanks, its LNG terminal and the health of its employees, at Elba Island, Georgia.

Applicant states that Southern Energy has requested to purchase natural gas from Applicant for use at its LNG terminal at Elba Island, Georgia. Applicant also states that it is in the process of finalizing an emergency gas sales agreement with Southern Energy, pursuant to which any day Southern Energy has an emergency need for natural gas at its LNG terminal, Applicant would make available to Southern Energy sufficient quantities of natural gas to meet its emergency requirements, estimated to be approximately 50 Mcf of gas per day. It is further stated that Applicant would deliver all gas purchased by Southern Energy through existing facilities at the interconnection of Applicant's and Southern Energy's facilities on Elba Island.

It is stated that Southern Energy would pay Applicant an initial price of $3.49 per Mcf of gas, the current rate for gas service under Applicant's Rate Schedule AO-3. Applicant asserts that this price would be adjusted to reflect any changes in said rate schedule.

Applicant asserts that the small quantity of natural gas to be sold to Southern Energy on any day would not effect the level of service to Applicant's customers even during periods of curtailment.

Applicant proposes to make the subject sale pursuant to Section 9.5 of the General Terms and Conditions of its FERC Gas Tariff, and accordingly, requests such waiver of its FERC Gas Tariff as may be necessary to effectuate such sale. However, if the Commission determines that the proposed sale is not exempt from the curtailment procedures set out in Section 9 of the General Terms and Conditions of Applicant's FERC Gas Tariff, Applicant requests, in the alternative, authorization to include Southern Energy's emergency requirements in Priority 2.2 of the Index of Requirements in Applicant's FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15737 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-25-001]

Stone Container Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 4, 1982.

On May 20, 1982, Stone Container Corp., 360 N. Michigan Avenue, Chicago, Illinois 60601, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules. The Commission granted certification of qualifying status as a cogeneration facility for this facility on February 11, 1982.

The facility is located in Coshocton, Illinois. The primary energy source of the facility is biomass in the form of wood waste. Natural gas or petroleum will provide approximately 20 percent of the fuel input to the facility on an average annual bases. The electric power production capacity of the facility will be 16.5 megawatts. Stone Container Corporation does not own or operate any other small power production facilities located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15738 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-491-002]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Petition To Amend

June 4, 1982.

Take notice that on May 14, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP78-491-002 pursuant to Section 7(c) of the Natural Gas Act requesting that the petition to amend filed on April 26, 1982, in the instant docket, be considered a request to amend the order issued November 20, 1978, so as to allow a reduction in the maximum daily volume of natural gas authorized therein for transportation by Applicant from 25,000 Mcf of gas per day to 13,000 Mcf of gas per day, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner submits that on August 21, 1978, it filed an application requesting authorization to transport volumes of natural gas for Alablama-Tennessee Natural Gas Company (Alabama-Tennessee). It is further submitted that by order issued November 20, 1978, Applicant was authorized to transport up to 25,000 Mcf of gas per day which Alabama-Tennessee agreed to purchase from Sunmark Exploration Company. Applicant states that the maximum daily volume was subsequently reduced from 25,000 Mcf of gas per day to 19,835 Mcf of gas per day, effective November 1, 1980, pursuant to the terms of that order and the transportation agreement between Applicant and Alabama-Tennessee.

Petitioner asserts that on April 26, 1982, it filed a petition to amend the order issued November 20, 1978, so as to reduce the maximum daily volume from 19,835 Mcf of gas per day to 13,000 Mcf of gas per day, effective January 1, 1981, pursuant to an amendment to the transportation agreement between Petitioner and Alabama-Tennessee.

Petitioner further asserts that the Commission reviewed such petition to amend and determined that Petitioner should more appropriately request a reduction in the maximum daily volume. Petitioner, therefore, now requests that the petition to amend filed April 26, 1982, in the instant docket, be considered a request by Petitioner to amend the order issued November 20, 1978, so as to allow a reduction in the maximum daily volume of natural gas authorized for transportation by Petitioner from 25,000 Mcf of gas per day to 13,000 Mcf of gas per day.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 25, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15739 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST80-176-002]

Tennessee Gas Pipeline Co.; Extension Reports

June 2, 1982.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue

for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before June 9, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and Transporter/seller		Recipient	Date filed	Part 284 subpart	Effective date
ST80-176-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	National Fuel Gas Distribution Corp	5/03/82	B	7/01/82
ST80-206-001	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301	Mid Louisiana Gas Co	5/06/82	C	5/15/82
ST80-262-001	Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944	Columbia Gas Transmission Corpr	5/10/82	G	6/20/82
ST80-281-001	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Northern Natural Gas Co	5/06/82	G	8/07/82
ST80-287-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Northern Natural Gas Co	5/05/82	G	8/07/82
ST80-299-001	Sugar Bowl Gas Corp., 1200 Milam, Houston, TX 77001	Cajun Natural Gas Co	5/14/82	C	8/18/82
ST80-340-001	Alero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Transwestern Pipeline Co	5/10/82	C	9/05/82
ST80-412-001	Pantera Energy Corp.,[1] 4501 Wadsworth Boulevard, Denver, CO 80033	Colorado Interstate Gas Co	5/12/82	D	8/15/82

[1] Formerly Industrial Gas Services, Inc.

[FR Doc. 82-15742 Filed 6-9-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP81-130-000]

Transwestern Pipeline Co.; Settlement Conference

June 4, 1982.

Take notice that on June 17, 1982, at 10:00 a.m., a settlement conference of all interested parties will be convened concerning the above-captioned matter. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend the conference, but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to appear fully prepared to discuss any procedural matters and explore or make commitments with respect to any or all of the issues discussed at the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15740 Filed 6-9-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA82-2-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 4, 1982.

Take notice that on June 1, 1982, United Gas Pipe Line Company (United) tendered for filing Fifty-Eighth Revised Sheet No. 4, Fifth Revised Sheet Nos. 4-A and 4-B, and Seventh Revised Sheet No. 4-C to its FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets and supporting information are being filed pursuant to the Purchased Gas Cost Adjustment provisions set out in Sections 19, 22, and 23 of United's Tariff.

United states that the Current Adjustment reflects rates payable to United's suppliers for the six (6) months commencing July 1, 1982.

Fifth Revised Sheet Nos. 4-A and 4-B are being filed to reflect the estimated incremental pricing surcharges as required by Commission Order No. 49 issued September 28, 1979.

Seventh Revised Sheet No. 4-C is being filed in compliance with the letter order issued by the Office of Pipeline and Producer Regulation dated January 27, 1982, and refects FERC approved changes to the transportation rate schedules.

Copies of the proposed tariff sheets and supporting data are being mailed to United's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 23, 1982. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15721 Filed 6-9-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5037-001]

Utah Power & Light Co.; Application for License (Over 5 MW)

June 7, 1982.

Take notice that Utah Power & Light Company (Applicant) filed on January 19, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as the Long Park Project No. 5037. The project would be located on Sheep Creek in Daggett County, Utah. Correspondence with the Applicant should be directed to: Ms. Jody Williams, 1407 West North Temple, P.O. Box 899, Salt Lake City, Utah 84110.

Project Description—The proposed project would include two connected developments, the Upper Long Park Development to consist of: (1) the existing Long Park Dam, 102.5 feet high and 1,860 feet long; (2) the existing reservoir covering 340 acres with a gross storage capacity of 13,700 acre-feet at elevation 8645.5 feet msl; (3) a new penstock, 10,670 feet long and 42 inches in diameter; (4) a new 37- by 46-foot powerhouse containing one new 7.0-MW turbine/generator unit operating under a head of 1125.5 feet; (5) a 69-kV transmission line three miles long; and (6) appurtenant facilities; and the Lower Long Park Development to consist of: (1) a new diversion dam, 5 feet high and 24 feet long; (2) a new intake structure 6 by 23 feet; (3) a new trapezoidal canal 6,000 feet long; (4) a new concrete forebay 16 by 25 feet; (5) a new 42-inch diameter penstock 1,340 feet long; (6) a new 32- by 43-foot powerhouse containing one 1.4-MW turbine/generator unit operating under a head of 145 feet; and (7) appurtenant facilities.

Purpose of Project—The average annual generation of 23.46 million kWh would be used by the Applicant in its utility system.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before August 13, 1982, either the competing application itself [see 18 CFR 4.33(a) and (d)] or a notice of intent [see 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions to Intervene—This application was filed as a competing application to the Utah Board of Water Resources' application for Project No. 4856 filed on June 11, 1981. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15722 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST82-241; Docket No. RM79-34]

Valero Transmission Co., et al., Transportation of Certificates for Natural Gas Displacement of Fuel Oil; Self-Implementing Transactions

June 4, 1982.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and § 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 284.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to § 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G (HT)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date [1]	Transportation rate (cents/MMBTU)
ST82-241 Valero Transmission Co	El Paso Natural Gas Co	4/01/82	C		
ST82-242 United Texas Transmission Co	El Paso Natural Gas Co	4/01/82	C		
ST82-243 Gas Co. of New Mexico Co	Northwest Pipeline Corp	4/02/82	G(HT)		
ST82-244 Delhi Gas Pipeline Corp	Transcontinental Gas Pipe Line Corp	4/05/82	C		
ST82-245 Northern Natural Gas Co	Coronado Transmission Co	4/05/82	B		
ST82-246 Gas Gathering Corp	Transcontinental Gas Pipe Line Corp	4/05/82	G		
ST82-247 Mountain Fuel Supply Co	Utah Gas Service Co	4/05/82	B		
ST82-248 Natural Gas Pipeline Co. of America	Channel Industries Gas Co	4/05/82	B		
ST82-249 Sugar Bowl Gas Corp	Columbia Gas Transmission Corp	4/05/82	C	9/02/82	15.50
ST82-250 United Gas Pipe Line Co	Northern Natural Gas Co	4/06/82	G		
ST82-251 Northwest Pipeline Corp	Colorado Interstate Gas Co	4/07/82	G		
ST82-252 Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	4/08/82	B		
ST82-253 Columbia Gulf Transmission Co	Southern Natural Gas Co	4/08/82	G		

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date [1]	Transportation rate (cents/MMBTU)
ST82-254 Southern Natural Gas Co	United Gas Pipe Line Co	4/09/82	G		
ST82-255 Dow Pipeline Co	Natural Gas Pipeline Co. of America	4/09/82	C		
ST82-256 Rael Gas Co	Transwestern Pipeline Co	4/12/82	C	9/09/82	25.00
ST82-257 Producer's Gas Co	Transcontinental Gas Pipe Line Corp	4/12/82	C	9/09/82	30.00
ST82-258 Northern Natural Gas Co	United Gas Pipe Line Co	4/12/82	G		
ST82-259 Northern Natural Gas Co	Columbia Gas Transmission Corp	4/12/82	G		
ST82-260 Northwest Pipeline Corp	Cities Service Gas Co	4/12/82	G		
ST82-261 Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	4/12/82	G		
ST82-262 Tennessee Gas Pipeline Co	Northern Natural Gas Co	4/14/82	G		
ST82-263 Trunkline Gas Co	Pahandle Eastern Pipe Line Co	4/15/82	G		
ST82-264 Texas Eastern Transmission Corp	United Gas Pipe Line Co	4/16/82	G		
ST82-265 Texas Gas Transmission Corp	Arkansas Louisiana Gas Co	4/16/82	G		
ST82-266 Louisiana Gas Intrastate, Inc	Texas Eastern Transmission Corp	4/16/82	D	9/13/82	25.75
ST82-267 Louisian Resources Co	Transcontinental Gas Pipe Line Corp	4/19/82	C	9/16/82	22.25
ST82-268 Florida Gas Transmission Co	Valero Transmission Co	4/19/82	B		
ST82-269 Delhi Gas Pipeline Corp	Arkansas Louisiana Gas Co	9/20/82	D	9/17/82	37.89
ST82-270 Mountain Fuel Supply Co	Northwest Pipeline Corp	4/20/82	G		
ST82-271 Mountain Fuel Supply Co	Northwest Pipeline Corp	4/20/82	G(HT)		
ST82-272 Tennessee Gas Pipeline Co	Consolidated Edison Co. of New York	4/21/82	F		
ST82-273 Consolidated Gas Supply Corp	Columbia Gas Transmission Corp	4/23/82	G		
ST82-274 Texas Eastern Transmission Corp	Monterey Pipeline Co	4/23/82	B		
ST82-275 Transcontinental Gas Pipe Line Corp	Richie Gas System, Inc	4/23/82	B		
ST82-276 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	4/23/82	B		
ST82-277 Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	4/23/82	C		
ST82-278 Delhi Gas Pipeline Corp	Utah Gas Service Co	4/23/82	C	9/20/82	37.89
ST82-279 United Gas Pipe Line Co	Tenngasco Gas Gathering Co	4/26/82	B		
ST82-280 Oklahoma Natural Gas Co	Transwestern Pipeline Co	4/26/82	C		
ST82-281 Natural Gas Pipeline Co. of America Co	El Paso Natural Gas Co	4/28/82	G		
ST82-282 Tennessee Gas Pipeline Co	Lousiana Intrastate Gas Corp	4/28/82	B		
ST82-283 Southern Natural Gas Co	Michigan Wisconsin Pipe Line Co	4/29/82	G		
ST82-284 Southern Natural Gas Co	Florida Gas Transmission Co	4/29/82	G		
ST82-285 Southern Natural Gas Co	Transcontinental Gas Pipe Line Corp	4/29/82	G		
ST82-286 Southern Natural Gas Co	Northern Natural Gas Co	4/29/82	G		
ST82-287 Mississippi Fuel Co	Tennessee Gas Pipeline Co	4/30/82	C		
ST82-288 Tennessee Gas Pipeline Co	Arkansas Louisiana Gas Co	4/30/82	C		
ST82-289 Transcontinental Gas Pipe Line Corp	Tennessee Gas Pipeline Co	4/30/82	G		

[1] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 82-15743 Filed 6-9-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6284-000]

Washington Electric Cooperative; Application for Preliminary Permit

June 7, 1982.

Take notice that the Washington Electric Cooperative (Applicant) filed on May 3, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6284 to be known as the Peak Shaver #1 Project located on the Winooski River near the Town of East Montpelier in Washington County, Vermont. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Gordon Booth, President, Washington Electric Cooperative, P.O. Box E, East Montpelier, Vermont 05651.

Project Description—The proposed project would consist of: (1) a new earth-fill and reinforced concrete dam, 9 feet high, topped by 3-foot flashboards, and 410 feet long including a 150-foot long concrete overflow section; (2) a new reservoir covering 80.6 acres with a storage of 320 acre-feet at an elevation of 662 feet NGVD; (3) a new powerhouse to be built on the south bank of the river and to contain one new 233-kW turbine-generator unit; (4) a new tailrace to be excavated from the powerhouse to a point 200 feet downstream from the dam centerline; (5) a new three-phase 12.47-kV transmission line 1000 feet long; and (6) appurtenant facilities.

The average annual generation of one million kWh would be sold to the Applicant's members.

Purposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimate the cost of studies under the permit would be $30,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 13, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981].

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 13, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 12, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. [A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15723 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3009-001]

Westerman Realty Co.; Surrender of Preliminary Permit

June 8, 1982.

Take notice that Westerman Realty Company, Permittee for the proposed Upper and Lower Crompton Project No. 3009, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 25, 1980, and would have expired on May 31, 1982. The project would have been located on the South Branch-Pawtuxet River in Kent County, Rhode Island. Westerman Realty Company states that based on current projections, the project is not economically feasible.

Westerman Realty Company filed its request on May 17, 1982, and the surrender of its permit for Project No. 3009 is deemed effective as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15741 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5338-001]

Western Power Inc.; Application for Exemption For Small Hydroelectric Power Project Under 5 MW Capacity

June 8, 1982.

Take notice that on April 15, 1982, Western Power Incorporated (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5338) would be located on West Cady Creek, near the City of Index, Snohomish County, Washington. Correspondence with the Applicant should be directed to: Mr. Thomas R. Childs, Western Power Inc., P.O. Box 5663, Bellingham, Washington 98227.

Project Description—The proposed project would consist of: (1) a proposed 6-foot high, 35-foot long timber crib diversion structure on West Cady Creek; (2) a proposed 5,200-foot long, 54-inch diameter steel penstock; (3) a proposed powerhouse with two generating units having an estimated total installed capacity of 5.0 MW and producing an average annual energy output of 18.87 GWh; (4) a proposed 10-foot deep, 20-foot wide, 40-foot long concrete tailrace; (5) a proposed switchyard containing a 4.16 kV to 69 kV 3 phase transformer; (6) a proposed 4,600-foot long 69 kV primary transmission line to interconnect to the proposed Storm Ridge project line; and, (7) appurtenant facilities. The project is proposed as a run-of-river operation on lands of the Mount Baker-Snoqualmie National Forest.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Washington State Department of Game, and the Washington State Department of fisheries, are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 23, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 23, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE

COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15724 Filed 6-9-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59087A; TSH-FRL 2137-2]

Cationic Substituted Acid Amide; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-15) under section 5 of the Toxic Substances Control Act (TSCA) on April 26, 1982. Notice of receipt of the application was published in the Federal Register of May 7, 1982 (47 FR 19781). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC, 20460, (202-382-3742).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(b)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On April 26, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-15. Celanese claimed the specific chemical identity, the specific use and production volume of the new substance as confidential business information. The generic name of the new substance is cationic substituted acid amide, and it will be used as an intermediate. The test marketing period is not to exceed 6 months. During manufacture 12 workers will be dermally exposed over a 24 hour period. A notice published in the Federal Register of May 7, 1982 (47 FR 19781) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency has not received any comments concerning the application.

EPA has established that the test marketing of the substance described in TM-82-15, under the conditions set out in the application will not present any unreasonable risk of injury to health or the environment. Although there are health and environmental concerns for the TME substance, exposure to workers during manufacture is expected to be minimal and releases to the environment are expected to be low.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

3. The production volume of the new substance may not exceed that described in the test marketing exemption application.

4. The test marketing activity approved in this notice is limited to a period of 6 months commencing on the date of signature of this notice by the Administrator.

5. The number of workers exposed to the new chemical should not exceed that specified in the application, and the duration of exposure should not exceed that specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: June 3, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-15665 Filed 6-9-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59087B; TSH-FRL 2137-3]

Cationic Substituted Acid Amide Polymer; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-16) under section 5 of the Toxic Substances Control Act (TSCA) on April 26, 1982. Notice of receipt of the application was published in the Federal Register of May 7, 1982 (47 FR 19781). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-382-3742).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the

United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On April 26, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-16. Celanese claimed the specific chemical identity, the specific use and production volume of the new substance as confidential business information. The generic name of the new substance is cationic substituted acid amide polymer, and it will be used as an additive. The test marketing period is not to exceed 1 year. During manufacture 12 workers will be dermally exposed over a 24 hour period. A notice published in the **Federal Register** of May 7, 1982 (47 FR 19781) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency has not received any comments concerning the application.

EPA has established that the test marketing of the substance described in TM-82-16, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. Some toxicity concerns exist for the TME substance if released into an aquatic environment. These concerns are mitigated, during manufacture, by proper waste treatment that will result in little or no release of the TME substance. During use the TME substance is expected to be contained, presenting minimal risk of injury to the aquatic environment.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

3. The production volume of the new substance may not exceed that described in the test marketing exemption application.

4. The test marketing activity approved in this notice is limited to a period of 1 year commencing on the date of signature of this notice by the Administrator.

5. The number of workers exposed to the new chemical should not exceed that specified in the application, and the duration of exposure should not exceed that specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: June 3, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-15666 Filed 6-9-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 81009; TSH-FRL-2131-8]

TSCA Chemical Substances Inventory; Proposed Actions on Synthetic Fuels and Related Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has completed a review of twenty synthetic fuels and related substances currently listed on the TSCA Chemical Substances Inventory. Two problems were identified. First, EPA believes that twelve substances had not left the research and development stage during the Inventory reporting period and were, therefore, ineligible for inclusion on the Inventory. EPA proposes to remove these ineligible substances from the Inventory. Second, four of the twenty substances, though eligible for the Inventory, were erroneously incorporated under the names of petroleum derived substances. EPA will establish a new Inventory entry for each of these four substances. The remaining four substances were found to be both properly reported and correctly identified on the Inventory; no action will be taken on these four substances. The Agency solicits public comments on its intent to remove the twelve ineligible substances.

DATE: Comments should be received by August 9, 1982.

ADDRESSES: Three copies of the written comments should be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St. SW., Washington, D.C. 20460.

Comments should bear the identifying notation OPTS 81009. The administrative record supporting this action is available for public inspection in the OPTS Reading Room E-107, at the above address, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-9056), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

EPA's Review of Synthetic Fuels on the TSCA Inventory

Twenty shale oil and solvent-refined coal (SRC) products were reported for and are now listed on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory. In response to industry inquiries about the applicability of TSCA to synthetic fuels (synfuels) and as part of an overall Agency review of existing regulations and authorities as they apply to synfuels, EPA has examined the appropriateness of the listing of these substances on the Inventory. In particular, the Agency was concerned that these substances were in research

and development (R&D) rather than non-R&D commercial production at the time the Inventory was compiled and therefore were ineligible for listing. Industry statements during the Inventory reporting period indicated that coal conversion and shale oil materials were in various stages of R&D and therefore were not likely to be eligible for the Inventory. In addition, industry representatives on several occasions have maintained that synfuel products of pilot and demonstration facilities are produced for R&D purposes and are therefore not subject to TSCA premanufacture notification (PMN) requirements. By the same logic, such products would not have been eligible for the Inventory.

As a result of these concerns, EPA requested the five manufacturers who reported the twenty substances in question to provide information documenting whether these substances had gone beyond the R&D phase of their commercialization during the Inventory reporting period. Based on the information provided by the submitters, EPA believes that twelve of the twenty substances were only in research and development when they were reported for the Inventory. These substances were, therefore, ineligible for inclusion on the Inventory. This conclusion was reached by applying the definitions of research and development discussed later in this notice. In addition, EPA found that four of the shale oil substances that were eligible for the Inventory (i.e., they had gone beyond the R&D stage when they were reported for the Inventory) were inadvertently incorporated under the names of similar petroleum derived products, rather than under a separate shale oil listing.

This notice discusses EPA's review of the twenty synfuels and related substances in question, and announces the Agency's proposed actions on how these two problems will be corrected. The proposed actions will not affect in any manner the continued listing of petroleum derived products on the Inventory.

B. Purpose of the Inventory

Section 8(b) of the Toxic Substances Control Act, Public Law 94–469, requires the Administrator of the EPA to identify, compile, and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR Part 710), which appeared in the **Federal Register** of December 23, 1977 (42 FR 64572). These Regulations provided the basis for the initial compilation of the TSCA Chemical Substances Inventory, which identifies the chemical substances in U.S. commerce since January 1, 1975.

The Inventory performs two functions under TSCA. First, it informs the public which chemical substances are being manufactured, imported or processed in the United States for commercial purposes. Second, it defines what is a "new" chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included on the Inventory, it is considered a "new" substance, and a premanufacture notification is required at least 90 days before the manufacture or import of such a substance.

C. Corrections of Erroneous Inventory Listings

In order to perform its statutory functions, the Inventory has to be accurately maintained and continuously updated. Since the publication of the Initial Inventory in June 1979, and the Revised Inventory in July 1980, the Agency has recognized the need for correcting erroneous Inventory reports. In using the Inventory, industry sometimes discovered that certain previously reported substances were incorrect, and requested that these misreports be corrected. Similarly, in reviewing the Inventory, EPA has found that some substances were erroneously listed. EPA announced, on July 29, 1980, in the **Federal Register** (45 FR 50544) that it would accept certain types of corrections related to substances listed on the Inventory.

The Agency subsequently developed procedures for removal from the Inventory of substances which were incorrectly listed, and published the procedures in the **Federal Register** (46 FR 11356) when it announced its intent to remove from the Inventory the chemical substance known as 2-naphthalenamine, Chemical Abstracts Service (CAS) Registry Number 91–59–8. To date, 2–napthalenamine, which was found to be erroneously listed, is the only substance removed from the Inventory (46 FR 30563). The Agency has recently issued a separate notice in **Federal Register** (47 FR 23205) announcing its intent to remove from the Inventory 27 substances which were identified by their submitters as erroneously listed.

Generally speaking, there are two types of errors related to the listing of chemical substances on the Inventory. First, a substance which clearly belongs on the Inventory is incorrectly identified. Second, a substance is ineligible for inclusion on the Inventory although it is correctly identified. This notice discusses both types of errors and appropriate actions for correcting them with respect to the twenty synfuels and related substances.

D. Renaming Incorrectly Listed Synfuel Products

The first problem is related to incorrect classification of some of the synfuel substances on the Inventory. Nine synfuel substances derived from shale oil were inadvertently incorporated into the listings of similar petroleum derived substances, and are currently listed on the Inventory under the CAS Registry Numbers assigned to the petroleum derived substances. Most of the synfuel and petroleum derived substances do not have specific molecular formula representations and are therefore classified on the Inventory under the so-called UVCB category, i.e., *U*nkown or *V*ariable composition, *C*omplex reaction products, and *B*iological materials. Definitions were generally developed for UVCB substances, based on source material, composition, and process description information provided by the submitter.

In developing nomenclature systems for listing substances on the Inventory, EPA distinguished between synfuel substances and petroleum derived substances because the source material differed. With the assistance of the American Petroleum Institute (API), the Agency developed an addendum to the *Toxic Substances Control Act Candidate List of Chemical Substances* which provided guidance for the reporting of petroleum derived products for the Inventory. The Agency, however, did not develop a comparable list for coal or shale oil based synthetic fuels because industry statements indicated that most synfuel substances were still at research and development stages and were not expected to be in non-R&D commercial production in time for Inventory reporting. EPA decided that in the event any synfuel substances should enter into non-R&D commercial production before Inventory reporting closed, such substances could be reported. Subsequently, when the shale oil derived substances were reported, they were mistakenly listed under similar petroleum derived UVCB categories. After the publication of the Initial Inventory in June 1979, the submitter of these substances notified EPA of this error. Early in 1980, the Agency indicated that it would examine the matter and take appropriate corrective measures. With this notice, EPA announces that it will take the corrective measures by renaming the shale oil products that were eligible for

the Inventory and listing them separately under these names.

E. Removing Improperly Reported Synfuels From the Inventory

The Inventory Reporting Regulations govern reporting of certain substances for inclusion on the Inventory. Each substance reported for the Inventory must satisfy the following three criteria:

1. It must be a "chemical substance" as defined by § 3(2) of TSCA and § 710.2(h) of the Regulations;

2. It must have been manufactured, imported, or processed for commercial purposes in the United States since January 1, 1975; and

3. It must not be excluded from the Inventory by any provision of § 710.4 of the Regulations.

A "reportable chemical substance" is therefore one which satifies *all* of the above criteria; a substance which fails to meet these criteria was not eligible for the Inventory.

Substances which are manufactured in small quantities solely for research and development purposes are not eligible for the Inventory. Section 8(b) of TSCA specifically excluded from the Inventory "any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product." The Inventory Reporting Regulations implemented this requirement by specifying, under § 710.4(c)(3), that "any chemical substance which is manufactured, imported, or processed solely in small quantities for research and development as defined in § 710.2(y) . . ." would not be reportable for the Inventory.

The EPA review of whether or not a synfuel substance should have been reported for the Inventory addressed the primary question: Was that substance produced for purposes other than R&D, as defined in the Inventory Reporting Regulations. The Agency believes that the inclusion of the synfuels on the Inventory must be consistent with the intent of the Act and the general principles for defining research and development.

The specific elements of R&D within the context of synfuel production are discussed below.

1. *Small quantities.* As defined in § 710.2(y) of the Inventory Reporting Regulations, "small quantities for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product . . . (hereinafter sometimes shortened to "small quantities for research and development") means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed that (1) are no greater than reasonably necessary for such purposes . . .". The Agency had considered establishing upper limits for small quantities for purposes of defining R&D substances for the TSCA Inventory, but found that different values would have to be assigned to various groups of substances depending upon their physical/chemical characteristics and intended uses.

It might appear that the synfuel products reported for the Inventory were produced in greater than small quantities. (For example, in one project approximately 88,000 barrels of crude shale oil were refined to produce diesel and jet fuel). However, the Inventory Reporting Regulations specify that "small quantities" for R&D is a relative concept, depending on the kind of use for which a substance is being developed. In the case of fuels, "small quantities" for research and development may be very large, compared to what is common for most industrial and consumer chemicals. The critical question the synfuel substances reported for the Inventory is not whether a large quantity was produced for each substance, but rather whether the manufacturer or refiner produced only what was reasonably necessary to carry out the R&D purpose of evaluating the substance's physical, chemical, production, or performance characteristics. In the case of the products in question, EPA believes that no more material was made than was reasonably necessary for purposes of R&D.

2. *Conditions of use.* The most important factor in determining whether a substance is produced for R&D purposes is the way in which it is used. In developing the Inventory Reporting Regulations, EPA made it clear that R&D activities include the evaluation of the physical, chemical, production, and performance characteristics of a substance. Substances produced solely for use in these types of tests are considered R&D and were, therefore, not eligible for reporting for the Inventory.

Accordingly, if a manufacturer or industrial customer burned fuels under carefully monitored conditions to determine performance and emission levels in existing facilities, he would most likely be engaged in an R&D activity. However, if a manufacturer sold a synfuel to consumers for unmonitored use as a fuel or if he mixed a synfuel in significant amounts into petroleum refinery streams, he would probably have gone beyond R&D.

3. *Sale for commercial purposes.* Sale of an R&D substance for commercial purposes does not, by itself, mean that such a substance is no longer R&D. Support documents including the preamble to the Inventory Reporting Regulations specified that the sale of R&D substances to industrial users and other customers for R&D purposes (a commercial purpose under TSCA) does not necessarily signal the end of the development period. The important question is how the purchaser uses the substance. If the purchaser is solely evaluating the physical, chemical, production, and performance characteristics of the substances, his activities are still classified as R&D.

4. *Test marketing.* Substances produced for test marketing purposes are not considered to be R&D and therefore were eligible for the Inventory. As defined in § 710.2(bb) of the Inventory Reporting Regulations, test marketing is mainly concerned with exploring the market capability of a substance in a competitive situation. Therefore, R&D focuses on performance (among other characteristics), while test marketing focuses on customer acceptance or market demand in a competitive situation.

By applying the R&D principles listed above, EPA believes that twelve of the twenty substances in question were at various stages of research and development when they were reported, and therefore were not eligible for the Inventory. EPA proposes that these substances be removed from the Inventory.

The proposed EPA actions are summarized as follows:

1. One shale oil and three SRC substances were properly reported and correctly identified. These substances will remain on the Inventory.

2. Four shale oil substances were found to have been properly reported but incorrectly identified on the Inventory. Each of the four shale oil substances was erroneously incorporated into the Inventory listings of similar petroleum derived substances. EPA will retain the four shale oil substances on the Inventory by creating a new, separate entry for each substance. Accordingly, each of these shale oil substances will be assigned a new CAS Registry Number, a new CA Preferred Name, and a new UVCB definition. The petroleum derived substances will remain on the Inventory.

but will no longer include the shale oil substances.

3. One shale oil and six SRC substances were improperly reported because they were R&D, but they were correctly identified on the Inventory. EPA proposes to remove from the Inventory the CAS Registry Number, CA Preferred Name, UVCB definition, and any other chemical identity data, including synonyms, of each of these substances. Effective with the official removal date to be announced in the final notice of disposition, these substances will be removed from the Inventory—the continued presence of their CAS Registry Numbers and other data in previously published versions of the Inventory notwithstanding.

4. Five shale oil substances were found to have been improperly reported and incorrectly identified. These substances were R&D at the time when they were reported, and were erroneously incorporated into the Inventory listings of similar petroleum derived substances on the Inventory. EPA proposes to "remove" these five shale oil substances from the Inventory. Accordingly, EPA will not create a new entry for each of these five substances. Effective with the publication of the final notice of disposition, EPA will no longer consider that these five shale oil substances are included in the similar petroleum derived substance entries. EPA will not assign a new CAS Registry Number or develop a new UVCB definition for any of these five shale oil substances until such time as a PMN is submitted. The petroleum derived substance entries will be retained on the Inventory and will represent only the petroleum products.

An overview of the twenty synfuels and related substances and the proposed EPA actions on each of these substances are presented in Table I. The Table consists of three columns. In the first column, the substances are grouped into the shale oil and the SRC categories. For each of the substances, the manufacturer-supplied substance name is given. For the shale oil substances which were erroneously listed under similar petroleum derived substance entries, the synfuel manufacturer-supplied definition is listed. (These definitions, because of the erroneous listing, have not been published on the Inventory). The second column of Table I lists the CAS Registry Numbers and CA Preferred Names as appeared on the Inventory. (Note that some of the CA Preferred Names refer to petroleum derived substances). The definitions corresponding to these Inventory entries can be found in Appendix A of the Inventory. In column three, the proposed EPA action for each substance is summarized.

TABLE I.—OVERVIEW OF CURRENTLY LISTED SYNTHETIC FUELS AND RELATED SUBSTANCES AND EPA'S PROPOSED ACTIONS

Synfuel synonym and definition	CAS registry No. and CA preferred name on inventory	Proposed EPA action
Shale oil and Shale oil Chemicals		
Shale oils	68308-34-9, Shale oils	Leave on Inventory.
Light hydrocracked naphtha (shale oil). A complex combination of hydrocarbons from distillation of the product from a hydrocracking process for which the feed is shale oil. It consists predominantly of saturated hydrocarbons having carbon numbers in the range of C_5 through C_{10}, and boiling in the range of approximately 25°C to 160°C (77° to 320°F).	64741-69-1, Naphtha (petroleum), light hydrocracked.	Leave on Inventory (EPA will create a separate entry with new CAS Registry Number and a new definition).
Hydrocracked residuum (shale oil). A complex combination of hydrocarbons produced as the residual fraction from distillation of the products of a hydrocracking process for which the feed is shale oil. It consists of hydrocarbons having carbon numbers predominantly greater than C_{20}, and boiling above 350°C (660°F).	64741-75-9, Residues (petroleum), hydrocracked.	Do.
Light hydrocracked distillate (shale oil). A complex combination of hydrocarbons from distillation of the product from a hydrocracking process for which the feed is shale oil. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C_{12} through C_{19}, and boiling in the range of approximately 200°C to 315°C (390° to 600°F).	64741-77-1, Distillates (petroleum), light hydrocracked.	Do.
Acid sludge (shale oil). A complex combination of sulfuric and sulfonic acids, water, esters, and high molecular weight organic compounds formed during the treating of shale oil fractions with sulfuric acid. The hydrocarbon portion of the sludge may be predominantly aromatic, with an H/C atom ratio in the order of 1.8 and an H/C atom ratio in the order of 0.1, together with heteroatom compounds containing oxygen and sulfur.	64742-24-1, Sludges (petroleum), acid	Do.
Heavy hydrocracked distillate (shale oil). A complex combination of hydrocarbons from distillation of the product from a hydrocracking process for which the feed is shale oil. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C_{14} through C_{20}, and boiling in the range of 290°C to 400°C (550° to 750°F).	64741-76-0, Distillates (petroleum), heavy hydrocracked.	Remove from Inventory (EPA will not create any CAS Registry Number or definition for the removed shale oil substances & will discontinue to associate these substances under the petroleum derived substances.)
Acid-treated light hydrocracked distillate (shale oil). A complex combination of hydrocarbons obtained as the raffinate from a sulfuric acid treating process for which the feed is a light hydrocracked distillate derived from shale oil. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C_{12} through C_{19}, and boiling in the range of approximately 200°C to 315°C (390° to 600°F).	64742-13-8, Distillates (petroleum), acid-treated middle.	Do.
Acid-treated heavy hydrocracked naphtha (shale oil). A complex combination of hydrocarbons obtained as the raffinate from a sulfuric acid treating process for which the feed is a heavy hydrocracked naphtha derived from shale oil. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C_5 through C_{11}, and boiling in the range of approximately 150°C to 260°C (300° to 500°F).	64742-14-9, Distillates (petroleum), acid-treated light.	Do.
Clay-treated heavy hydrocracked naphtha (shale oil). A complex combination of hydrocarbons resulting from treatment of a heavy hydrocracked naphtha derived from shale oil with natural or modified clay, usually in a percolation process, to remove trace amounts of polar compounds and impurities present. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C_5 through C_{11}, and boiling in the range of approximately 150°C to 260°C (300° to 500°F).	64742-38-7, Distillates (petroleum), clay-treated.	Do.
Clay-treated light hydrocracked distillate (shale oil). A complex combination of hydrocarbons resulting from treatment of a light hydrocracked distillate derived from shale oil with natural or modified clay, usually in a percolation process, to remove trace amounts of polar compounds and impurities present. It consists predominantly of saturated hydrocarbons having carbon numbers predominantly in the range of C_{12} through C_{19}, and boiling in the range of approximately 200°C to 315°C (390° to 600°F).	64742-38-7, Distillates (petroleum), clay-treated.	Do.

TABLE I.—OVERVIEW OF CURRENTLY LISTED SYNTHETIC FUELS AND RELATED SUBSTANCES AND EPA'S PROPOSED ACTIONS—Continued

Synfuel synonym and definition	CAS registry No. and CA preferred name on inventory	Proposed EPA action
Heavy hydrocracked naptha (shale oil)	71060-56-5, Naphtha (shale oil), heavy hydrocracked.	Do.
Solvent Refined Coal Liquids		
SRC wash solvent	68410-09-3, Distillates (coal), solvent-refining (SRC), wash.	Leave on Inventory.
SRC mineral residue	68410-72-0, Residues (coal), solvent-refining (SRC), filtration.	Do.
SRC naphtha	68476-79-9, Naphtha (coal), solvent refining.	Do.
SRC solvent refined coal	68409-94-9, Residues (coal), solvent-refining (SRC), vacuum distn.	Remove from Inventory.
SRC II heavy distillate	68410-07-1, Distillates (coal), solvent-refining (SRC), heavy.	Do.
SRC recycle solvent	68410-08-2, Distillates (coal), solvent-refining (SRC), recycle.	Do.
SRC gas	68476-35-7, Gases (coal), solvent-refining (SRC).	Do.
SRC II vacuum bottoms	68910-58-7, Residues (coal), solvent-refining vacuum.	Do.
SRC II middle distillate	68911-57-9, Distillates (coal), solvent-refining (SRC), middle.	Do.

The paragraphs immediately following Table I discuss in detail EPA's review of the twenty substances in question and the proposed actions for these substances. For purposes of this discussion, the substances are divided into two major categories, i.e., those that will be retained on the Inventory and those that will be removed. Within each major category, substances are identified by the CAS Registry Number as it appeared on the Inventory, and the synfuel manufacturer-supplied substance name. EPA's conclusion and proposed action immediately follow the CAS Registry Number and substance name.

Products Proposed To Be Retained on Inventory:

68308-34-9 *Shale oils*

Three companies reported crude shale oils for the Inventory; these products were listed under *one* Inventory entry. One of these crude shale oils was refined into significant quantities of non-R&D products (see below). For this reason, EPA determined that crude shal oils were properly reported for the Inventory.

64741-69-1 *Light hydrocracked naphtha (shale oil)*
64741-75-9 *Hydrocracked residuum (shale oil)*
64742-24-1 *Acid sludge (shale oil)*
64741-77-1 *Light hydrocracked distillate (shale oil)*

These products were admixed in significant amounts into commercial refinery streams, and were therefore eligible for the Inventory.

68410-09-3 *SRC wash solvent*
68410-72-0 *SRC residue mineral*
68476-79-9 *SRC naphtha*

These products were sold for processing into commercial products (they were used in creosote, as paving material, for phenol extraction and boiler fuel), and were, therefore, considered commercial and were properly listed on the Inventory.

Products Proposed to Be Removed From Inventory

64741-76-0 *Heavy hydrocracked distillate (shale oil)*
64742-14-9 *Acid treated heavy hydrocracked naphtha (shale oil)*
64742-38-7 *Clay treated light hydrocracked distillate (shale oil)*
64742-38-7 *Clay treated heavy hydrocracked naphtha (shale oil)*
64742-13-8 *Acid treated light hydrocracked distillate (shale oil)*
71060-56-5 *Heavy hydrocracked naphtha (shale oil)*

These substances, which were produced during 1978 and 1979, were blended to produce jet fuel, diesel fuel, and heavy fuel, and were shipped to various locations for testing. The fuels underwent extensive engine testing and evaluation by the Navy, the Air Force, General Motors, and EPA. Health effects studies were also conducted by Department of Defense and Department of Energy. EPA believes that this type of testing does constitute R&D rather than test marketing evaluation, as claimed by the manufacturer, since the testing was apparently confined to such activities as analytical assessment of basic fuel properties, fuel system simulation, component testing, and full-scale engine testing.

68409-94-9 *SRC solvent refined coal*

This substance was shipped to various locations for testing, e.g., coking studies, commercial scale combustion tests of fuel efficiency, emissions, and similar characteristics. These types of tests fall within the general category of production and performance tests, which are R&D activities.

68911-57-9 *SRC II middle distillate*
68410-07-1 *SRC II heavy distillate*

These products were mixed to form SRC II fuel oil, which was used for tests of combustion and emission characteristics, and for test burns, which involved side-by-side comparison of SRC fuel oil and petroleum residual fuel. These tests appear to have been carefully monitored tests of production and performance characteristics, rather than non-R&D commercial activities. Therefore, these two products appear to fall into the R&D category.

68410-08-2 *SRC recycle solvent*

This substance appears to have been a process stream in the production of the SRC solid product, which was used in R&D activities. Therefore, the process solvent also falls into the R&D category.

68476-35-7 *SRC gas*
68910-58-7 *SRC II vacuum bottoms*

These chemicals were apparently flared of disposed of. This would not be a non-R&D commercial use.

F. Impacts on PMN Requirements

Under Section 5(h)(3) of TSCA, R&D substances are exempt from PMN requirements. If R&D were defined more narrowly for Inventory purposes, this would narrow the scope of the R&D exemption for current and future synfuel producers. Because of the size and nature of R&D in synfuel technology, this could have the effect of limiting the flexibility of such activities by imposing a PMN requirement before these processes were truly commercial and at a time when only limited data would be available. However, when the general principles for R&D as described in this notice are applied to future synfuel products, industry will have greater flexibility in conducting research an development activities for synfuels, under the supervision of technically

qualified persons, without any unnecessary PMN reporting burden when such reporting is not required.

G. Requests For Comment

EPA solicits public comments on the proposed removal of the twelve synfuels and related substances from the Inventory.

With respect to the proposed removal action, EPA is specifically interested in knowing whether any of the twelve chemical substances listed in Table I proposed for removal from the Inventory have been manufactured, imported or processed for non-R7D commercial purposes by anyone during the period Janaury 1, 1975 through the publication date of this notice. The Agency will take particular cognizance of any such claims, if adequately supported by appropriate documentation. The Agency is interested to know whether any person can show that any of the twelve chemical substances listed in Table I could have been properly reported for either the Initial or the Revised Inventory. EPA solicits comments from anyone who believes that any of the chemical substances listed in Table I and proposed for deletion from the Inventory should not be removed by the Agency for any reason. All such comments must be submitted to EPA in writing within the 60-day comment period, as discussed elsewhere in this notice.

EPA will review all comments received, make a final determination regarding the eventual status of each of the twelve chemical substances proposed for removal, and announce its decision in a final notice of disposition in the **Federal Register**. If the Agency determined that any of the twelve substances listed should not be removed from the Inventory, that substance would remain on the Inventory. (However, some of the Inventory entries may be changed). On the other hand, if the Agency concludes that a substance is not eligible for the Inventory, effective with the publication of the final notice of disposition, the substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture notification requirements of section 5(a) of TSCA would apply to any non-R&D commercial manufacture or importation of the substance from the date of removal on.

With the publication of this notice, any on-going manufacture, importation, or processing of any of the twelve substances begun prior to the publication date of this notice may continue until publication of the final notice of disposition. EPA will not, however, consider any request to retain on the Inventory any of the twelve substances proposed for removal based solely on manufacture, importation, or processing of that substance which begins after the first publication date of this notice.

Dated: May 12, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-15779 Filed 6-9-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have 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 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 Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fremont Bancshares, Inc.*, Lincoln, Nebraska; to acquire 100 percent of the Class B nonvoting shares of Citizens State Banco, Lincoln, Nebraska. Comments on this application must be received not later than July 3, 1982.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cullen/Frost Bankers, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Union National Bank of Laredo, Laredo, Texas. Comments on this application must be received not later than July 3, 1982.

Board of Governors of the Federal Reserve System, June 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15647 Filed 6-9-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 3, 1982.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania, (real estate appraisal activities; Pennsylvania and New Jersey): To engage through a subsidiary known as Latimer & Buck, Inc., in performing appraisals of real estate. These activities will be conducted at offices in Philadelphia, Pennsylvania,

serving the States of Pennyslvania and New Jersey.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Security Pacific Corporation,* Los Angeles, California (industrial loan, financing and credit-related insurance activities; California): To engage in financing and industrial loan corporation activities through its subsidiary Security Pacific Finance Money Center, Inc., including making, acquiring and servicing loans and other extensions of credit; selling and issuing investment certificates; and acting as agent for the sale of credit-related life, credit-related accident and health and credit-related property insurance, all as authorized by California law. These activities would be conducted from offices of Security Pacific Finance Money Center Inc. in the cities of San Jose, Simi Valley and West Covina, California, serving the State of California.

Board of Governors of the Federal Reserve System, June 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15644 Filed 6-9-82; 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 office 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 Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Vermont Financial Corporation,* Brattleboro, Vermont; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Vermont Bank and Trust Company, Brattleboro, Vermont. Comments on this application must be received not later than July 3, 1982.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *St. Joseph Bancshares, Inc.,* St. Joseph, Minnesota; to become a bank holding company by acquiring at least 93 percent of the voting shares of the First State Bank of St. Joseph, St. Joseph, Minnesota. Comments on this application must be received not later than July 3, 1982.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Commerce Corporation,* Ardmore, Oklahoma; to become a bank holding company by acquiring 96.6 percent of the voting shares of Citizens National Bank of Ardmore, Ardmore, Oklahoma. Comments on this application must be received not later than July 3, 1982.

Board of Governors of the Federal Reserve System, June 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15645 Filed 6-9-82; 8:45 am]

BILLING CODE 6210-01-M

Old Colony Co-Operative Bank; Proposed Retention of Existing Branch Office Located at 1675 Diamond Hill Road, Woonsocket, Rhode Island

Old Colony Co-Operative Bank, Providence, Rhode Island, 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 retain an existing branch office at 1675 Diamond Hill Road, Woonsocket, Rhode Island.

Applicant states that the existing subsidiary would continue to engage in the activities of a mutual building-loan association. These activities would be performed from offices of Applicant's subsidiary in Woonsocket, Rhode Island, and the geographic areas to be served are East Woonsocket-Cumberland area. Because such activities have not been added to the list of permissible activities specified by the Board in section 225.4(a) of Regulation Y for bank holding companies, applications to engage in the proposed activity must be reviewed by the Board on a case-by-case basis.

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 Boston.

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 July 3, 1982.

Board of Governors of the Federal Reserve System, June 3, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15648 Filed 6-9-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

[E-82-17]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Alabama Public Service Commission involving intrastate electric service rates, Docket No. 18416.

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 Alabama Public Service Commission involving the application of the Alabama Power Company for an increase in its intrastate electric service rates, Docket No. 18416.

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 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 28, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-15670 Filed 6-9-82; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Notice of Hearing; Reconsideration of Disapproval of Wisconsin State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 3, 1982 in Chicago, Illinois to reconsider our decision to disapprove portions of Wisconsin State plan amendment 81-0088.

CLOSING DATE: Request to participate in the hearing as a party must be received by June 25, 1982.

FOR FURTHER INFORMATION CONTACT: Sharyn Smith, Docket Clerk, Bureau of Program Policy, G-20 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to deny portions of a Wisconsin State plan amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a denial of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer on or before June 25, 1982, in accordance with additional requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with additional requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter relates to the imposition of a copayment on certain services furnished to Medicaid recipients but would exclude from the copayment requirement recipients who are institutionalized, those who are dually eligible for both Medicaid and Medicare, and recipients who are enrolled in Health Maintenance Organizations. Also, the amendment proposed a $.50 copayment on medical day treatment provided as an outpatient hospital service. The Health Care Financing Administration contends that these provisions of the proposed amendment would violate existing statutory and regulatory requirements under the Medicaid program.

The notice to Wisconsin announcing an adminstrative hearing to reconsider our denial of its State plan amendment reads as follows:

June 7, 1982.

Mr. Kenneth Rentmeester, Administrator, Department of Health and Social Services, Division of Health, 1 West Wilson Street, P.O. Box 309, Madison, Wisconsin 53701.

Dear Mr. Rentmeester: This is to advise you that your request for reconsideration of the decision to disapprove portions of Wisconsin State Plan Amendment 81-0088 was received on May 11, 1982. The provisions of this amendment which were disapproved are those which exclude from cost-sharing charges institutionalized recipients, recipients dually eligible for both Medicare and Medicaid and recipients enrolled in Health Maintenance Organizations and the provision which would impose a $.50 copayment charge on medical day treatment services offered as an outpatient hospital service. You have requested a reconsideration of whether these provisions of the subject plan amendment conform to the Social Security Act and pertinent regulations.

I am scheduling a hearing on your request to be held on August 3, 1982, at 10:00 a.m. in the 8th floor Conference Room, 175 West Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact Mrs. Sharyn Smith, Docket Clerk, Mrs. Smith can be reached on (301) 594-8261.

Sincerely yours,

Carolyne K. Davis,

Ph. D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: June 7, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-15776 Filed 6-9-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 17094 WR, A 17095 WR, A 17096 WR, and A 13392 WR]

Arizona; Proposed Continuation of Withdrawals and Opportunity for Public Hearing

The Bureau of Land Management, Department of the Interior, proposes to continue the existing withdrawals of the following public lands for a 30-year period pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714:

1. Public Water Reserve No. 8, Interpretation No. 50 (A 17094) designated by Secretary's Order of January 9, 1928:

Antelope Springs

T. 41 N., R. 9 W., GSR Mer., Arizona,
Sec. 23, SW¼NW¼.

The area described contains 40 acres in Mohave County.

2. Public Water Reserve No. 8, Interpretation designated by Secretary's Order of June 13, 1921 (A 17095):

Point of Rock Lake

T. 40 N., R. 6 W., GSR Mer., Arizona,
Sec. 5, SW¼SW¼;
Sec. 6, SE¼SE¼.

The area described contains 80 acres in Mohave County.

3. Public Water Reserve Nos. 8 and 24, Interpretation No. 195, designated by Secretary's Order of December 20, 1933 (A 17096):

Bull Rush Springs

T. 39 N., R. 4 W., GSR Mer., Arizona,
Sec. 14, W½NW¼.

The area described contains 80 acres in Mohave County.

4. Public Water Reserve No. 107, Interpretation No. 208 (A 13392) designated by Secretary's Order of August 22, 1934:

T. 13 N., R. 1 E., GSR Mer., Arizona,
Sec. 29, lot 1, SW¼NE¼.

The area described contains 59.01 acres in Yavapai County.

These withdrawals presently segregate the lands from settlement, non-metalliferous mineral location, sale, or entry. The modification of these withdrawals will remove the segregative effect against non-metalliferous mineral location, but will retain the segregative effect against settlement, sale, location, and entry under the surface land laws only. The term of these withdrawals will be 30 years.

On or before September 8, 1982, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for public hearing is afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposed continuations must submit a written request for a hearing to the undersigned officer. If the State Director, in his discretion, determines that a public hearing is justified, a notice will be published in the **Federal Register** giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual 2351.16B.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. He will review the withdrawals rejustifications to insure that continuation would be consistent with the statutory objectives of the programs for which the lands are being dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

All communications in connection with the withdrawals continuations should be addressed to the undersigned, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: June 2, 1982.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-15671 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[F-14929-A]

Alaska Native Claims Selection

On November 20, 1974, Askinuk Corporation, for the Native village of Scammon Bay, filed slection application F-14929-A under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976) (ANCSA), as amended, for the surface estate of certain lands in the vicinity of Scammon Bay, including lands within the Clarence Rhode National Wildlife Range (Public Land Order 4584) (34 FR 1143).

On December 2, 1980, Sec. 303(7) of Pub. L. 96-487, Alaska National Interest Lands Conservation Act, established the Yukon Delta National Wildlife Refuge consisting of the Clarence Rhode National Wildlife Range (PLO 4584) and additions thereto.

As to the lands described below, selection application F-14929-A is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 82,824 acres, is considered proper for acquisition by Askinuk Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

Lands Outside Public Land Order 4584 (Clarence Rhode National Wildlife Range) Now Known as the Yukon Delta National Wildlife Refuge

Seward Meridian, Alaska (Unsurveyed)

T. 20 N., R. 88 W.,
Secs. 5 and 6;
Secs. 7 and 8, excluding Native allotment F-19234;
Sec. 18, excluding Native allotment F-19228 Parcel A;
Secs. 19, 20, 26, and 27;
Secs. 28 and 29, excluding Native allotment F-15947;
Secs. 30 and 35.

Containing approximately 6,825 acres.

T. 21 N., R. 88 W.
Secs. 9 to 16, inclusive;
Secs. 21 to 31, inclusive;
Sec. 32, excluding Native allotment F-19043 Parcel B;
Sec. 33, excluding Native alltoment F-19229 Parcel A;
Sec. 34, excluding Native allotment F-18977 Parcel B;
Secs. 35 and 36.
Containing approximately 14,771 acres.

T. 20 N., R. 89 W.
Secs. 1 to 6 inclusive;
Secs. 7 and 8, excluding Native allotment F-19233;
Sec. 9;
Sec. 10, excluding Native allotment F-19045;
Secs. 11 to 16, inclusive;
Secs. 17 and 18, excluding Native allotment F-19233;
Sec. 19;
Sec. 20, excluding Native allotment F-19231 Parcel B;
Sec. 21;
Sec. 22, excluding Native allotment F-19043 Parcel A;
Sec. 23, excluding Native allotment F-19241;
Secs. 24 to 28, inclusive;
Sec. 29, excluding Native allotment F-19231 Parcel B;
Secs. 30, 31, and 32.

Containing approximately 17,450 acres.

T. 21 N., R. 89 W.,
Secs. 5 to 10, inclusive;
Secs. 15 to 18, inclusive;
Sec. 19 (fractional);
Secs. 20 to 23, inclusive;
Secs. 25 to 28, inclusive;
Secs. 29 and 30 (fractional);
Secs. 32 and 33 (fractional);
Secs. 34, 35, and 36.

Containing approximately 15,266 acres.

T. 20 N., R. 90 W.,
Secs. 1 and 2;
Sec. 3, excluding townsite petition application F-391;
Sec. 4 (fractional), excluding townsite petition application F-391;
Secs. 7 and 8 (fractional);
Sec. 9 (fractional), excluding townsite petition application F-391;
Secs. 12 to 30, inclusive;
Sec. 31 excluding Native allotment F-14759 Parcel C;
Secs. 32 to 36, inclusive.

Containing approximately 18,897 acres.

T. 20 N., R. 91 W.,
Sec. 11 (fractional), excluding Native allotment F-19041;
Sec. 12 (fractional);
Sec. 13;

Sec. 14, excluding Native allotment F–19223 Parcel B;
Sec. 15 (fractional);
Sec. 16 (fractional), excluding Native allotment F–19039 Parcel B;
Secs. 17 and 18 (fractional);
Secs. 19 and 20;
Sec. 21 (fractional), excluding Native allotment F–15023 Parcel A and F–19224;
Sec. 22 (fractional), excluding Native allotment F–19224.

Containing approximately 4,573 acres.

T. 20 N., R. 92 W.,
Sec. 13 (fractional), excluding Native allotments F–19033 Parcel A and F–19044 Parcel B;
Sec. 14 (fractional), excluding Native allotments F–19039 Parcel A, F–19056 Parcel A, and F–19221 Parcel B;
Secs. 23 and 24.

Containing approximately 1,390 acres.

Aggregating approximately 79,172 acres outside PLO 4584.

Lands Within Public Land Order 4584 (Clarence Rhode National Wildlife Range) now Known as the Yukon Delta National Wildlife Refuge

Seward Meridian, Alaska (Unsurveyed)

T. 19 N., R. 89 W.,
Sec. 5;
Sec. 6, excluding Native allotments F–14756 Parcel C and F–14965 Parcel B;
Secs. 7, 8, and 18.

Containing approximately 3,032 acres.

T. 19 N., R. 90 W.,
Sec. 13, excluding Native allotments F–14673 Parcel C, F–14706 Parcel C, F–14755 Parcel D, F–14756 Parcel B, F–14758 Parcel C, F–14965 Parcel A, F–15021 Parcel D, F–16566 Parcel A, and F–19120 Parcel B;
Sec. 14, excluding Native allotments F–14559 Parcel B, F–14681 Parcel D, F–14698 Parcel A, F–14707 Parcel B, F–14759 Parcel B, F–14965 Parcel A, and F–19112 Parcel C.

Containing approximately 620 acres.

Aggregating approximately 3,652 acres within PLO 4584.

Total aggregated acreage approximately 82,824 acres.

Excluded from the above-described lands herein conveyed are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F–14929–EE.

Also excluded from the above-described lands herein conveyed are lands covered by tidal waters up to the line of mean high tide. The actual limits of tidal influence for those water bodies, if any, will be determined at the time of survey.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded because the lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14929–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 3 D1) An easement for a proposed access trail twenty-five (25) feet in width from Scammon Bay in Sec. 10, T. 20 N., R. 90 W., Seward Meridian, southeasterly to isolated public lands in Tps. 19 and 20 N., R. 89 W., Seward Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 3a C5) An easement for a proposed access trail twenty-five (25) feet in width from EIN 3 D1, in Sec. 32, T. 20 N., R. 89 W., Seward Meridian, southwesterly to isolated public lands in T. 19 N., R. 90 W., Seward Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 9 C5) An easement for a proposed access trail twenty-five (25) feet in width beginning on the west shore of Kongishluk Bay in Sec. 16, T. 20 N., R. 91 W., Seward Meridian, southerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 9a C5) A one (1) acre site easement upland of the mean high tide line in Sec. 16, T. 20 N., R. 91 W., Seward Meridian, on the west shore of Kongishluk Bay. The uses allowed are those listed above for a one (1) acre site easement.

e. (EIN 10 C5) An easement for a proposed access trail twenty-five (25) feet in width from the village of Scammon Bay westerly to site easement EIN 9a C5 located in Sec. 16, T. 20 N., R. 91 W., Seward Meridian, thence southerly via EIN 9 C5 to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Airport lease F–12091, located in Sec. 3, T. 20 N., R. 90 W., Seward Meridian, issued to the State of Alaska, Department of Public Works under the provisions of the act of May 24, 1928 (49 U.S.C. 211–214);

4. Requirements of Sec. 22(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1621(g)), that (a) the above described lands which were, on December 18, 1971, within the boundaries of the Clarence Rhode National Wildlife Range

(PLO 4584) (now known as the Yukon Delta National Wildlife Refuge (Pub. L. 96–487)), remain subject to the laws and regulations governing use and development of such refuge, and that (b) the right of first refusal, if said land or any part thereof is ever sold by the above-named corporation, is reserved to the United States; and

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Askinuk Corporation is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 82,824 acres. The remaining entitlement of approximately 9,336 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above, excluding those lands which, on December 18, 1971, were withdrawn by PLO 4584, and which were reserved thereby as a national wildlife refuge, shall be issued to Calista Corporation, when the surface estate is conveyed to Askinuk Corporation, and shall be subject to the same conditions as the surface conveyance. This conveyance to Calista Corporation will include the subsurface estate of those lands outside of PLO 4584, which were withdrawn, subject to valid existing rights, as the Yukon Delta National Wildlife Refuge by Pub. L. 96–487, on December 2, 1980. Section 12(a)(1) of ANCSA provides that when a village corporation selects the surface estate of lands within the National Wildlife Refuge System the regional corporation may make selections of the subsurface estate, in an equal acreage, from other lands withdrawn by Sec. 11(a) within the region. The total amount of wildlife refuge system lands withdrawn prior to December 18, 1971, which have been approved for conveyance to Askinuk Corporation is approximately 3,652 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

In accordance with Departmental regulation 43 CFR 2650.7(d) notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in *The Tundra Drums*.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board before June 30, 1982, or to the Interior Board of Land Appeals after June 30, 1982; provided, however, pursuant to Public Law 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken *before June 30, 1982,* the notice of appeal must be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

If an appeal is taken *after June 30, 1982,* the notice of appeals must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), address given above. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, address given above.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until July 12, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board or the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Askinuk Corporation, Scammon Bay, Alaska 99662

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-15686 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[AA-40704]

Alaska Native Claims Section

The document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area was ratified by Pub. L. (Pub. L.) 94–204 (89 Stat. 1145, 1151) on January 2, 1976, and clarified on August 31, 1976. Section II of the Terms and Conditions authorized reconveyance by the United States to Cook Inlet Region, Inc., of lands conveyed by the State of Alaska to the United States. On November 15, 1977, Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), authorized the Secretary of the Interior to identify and reserve within 2 years after initial conveyance of such lands to Cook Inlet Region, Inc., any easement he could have lawfully reserved prior to conveyance and to issue immediately thereafter a revised conveyance reflecting such reservation.

On August 18, 1980, Interim Conveyance No. 362 was issued to Cook Inlet Region, Inc., for approximately 21,630.00 acres of the surface and subsurface estates of lands conveyed to the United States by the State of Alaska. The land was conveyed pursuant to Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(e), 1621(j)) (ANCSA), and Sec. 12(c) of Pub. L. 94–204 (89 Stat. 1145, 1152), as amended by Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), and are described as follows:

Interim Conveyance No. 362 of August 18, 1980, Seward Meridian, Alaska (Surveyed)

T. 14 N., R. 15 W.,
That portion of Tract A previously described as protracted:
Secs. 31 to 36, inclusive, all.
Containing approximately 3,829.00 acres.

T. 16 N., R. 14 W.,
That portion of the surveyed township previously described as protracted:
Secs. 1 to 18, inclusive, all;
Secs. 21 to 27, inclusive, all;
Secs. 34, 35, and 36, all.
Containing approximately 17, 801.00 acres.
Aggregating approximately 21,630.00 acres.

There are no easements to be reserved pursuant to Sec. 17(b) of ANCSA. When this decision becomes final, a revised conveyance document will be issued to Cook Inlet Region, Inc. for the above-described lands with no

Sec. 17(b) easements reserved. The revised conveyance document will remain subject to all other rights, terms, conditions, and covenants contained in Interim Conveyance No. 362.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four(4) consecutive weeks, in the *Anchorage Times.*

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board before June 30, 1982, or to the Interior Board of Land Appeals after June 30, 1982.

If an appeal is taken *before June 30, 1982,* the notice of appeal must be filed with Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

If an appeal is taken *after June 30, 1982,* the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Divsion of ANCSA and State Conveyances (960), address given above. Do not send the appeal directly to Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, address given above.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until July 12, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board or the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–15688 Filed 6–9–82; 8:45 am]

BILLING CODE 4310–84–M

[AA–40705]

Alaska Native Claims Selection

The document entitled Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area was ratified by Pub. L. (Pub. L.) 94–204 (89 Stat. 1145, 1151) on January 2, 1976, and clarified on August 31, 1976. Section II of the Terms and Conditions authorized reconveyance by the United States to Cook Inlet Region, Inc., of lands conveyed by the State of Alaska to the United States. On November 15, 1977, Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), authorized the Secretary of the Interior to identify and reserve within 2 years after initial conveyance of such lands to Cook Inlet Region, Inc., any easement he could have lawfully reserved prior to conveyance and to issue immediately thereafter a revised conveyance reflecting such reservation.

On August 18, 1980, Interim Conveyance No. 363 was issued to Cook Inlet Region, Inc., for approximately 1,920.00 acres of the surface estate of lands conveyed to the United States by the State of Alaska. The land was conveyed pursuant to Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(e), 1621(j)) (ANCSA), and Sec. 12(c) of Pub. L. 94–204 (89 Stat. 1145, 1152), as amended by Sec. 3(a) of Pub. L. 95–178 (91 Stat. 1369), and are described as follows:

Interim Conveyance No. 363 of August 18, 1980

Seward Meridian, Alaska (Surveyed)

T. 14 N., R. 15 W.,
That portion of Tract A previously described as protracted:
Secs. 25, 26, and 27, all.
Containing approximately 1,920.00 acres.

There are no easements to be reserved pursuant to Sec. 17(b) of ANCSA. When this decision becomes final, a revised conveyance document will be issued to Cook Inlet Region, Inc., for the above-described lands with no Sec. 17(b) easements reserved. The revised conveyance document will remain subject to all other rights, terms, conditions, and covenants contained in Interim Conveyance No. 363.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.*

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board before June 30, 1982, or to the Interior Board of Land Appeals after June 30, 1982.

If an appeal is taken *before June 30, 1982,* the notice of appeal must be filed with Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

If an appeal is taken *after June 30, 1982,* the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), address given above. Do not send the appeal directly to Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, address given above.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until July 12, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board or the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of

appeal is: Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–15689 Filed 6–9–82; 8:45 am]

BILLING CODE 4310–84–M

[AA–6698–B]

Alaska Native Claims Selection

On December 17, 1974, Salamatof Native Association, Inc., for the Native village of Salamatof, filed selection application AA–6698–B under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Kenai and Soldotna, Alaska.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 3,664.84 acres, is considered proper for acquisition by Salamatof Native Association, Inc., and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska

T. 4 N., R. 11 W.,
Sec. 6, lots 1 and 2, E½SW¼;
Sec. 22, N½SW¼;
Sec. 27, SE¼NW¼.

Those portions of Tract A more particularly described as (protracted):
Sec. 4, W½, SW¼SE¼;
Sec. 5;
Sec. 6, E½, NW¼;
Secs. 7, 8, and 9.

Containing approximately 3,624.84 acres.

T. 4 N., R. 12 W.,
Sec. 1, SE¼NE¼.

Containing 40.00 acres.

Aggregating approximately 3,664.84 acres.

There are no inland water bodies considered to be navigable within the above-described lands.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f));

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file AA–6698–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsleds, animals, snowmobiles, two- and three-wheel vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

a. (EIN 5 C5) An easement sixty (60) feet in width for an existing road located in the SE¼ of Sec. 9, T. 4 N., R. 11 W., Seward Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

b. (EIN 35 L) An easement twenty (20) feet in width for an overhead electric distribution line which traverses the NE¼ of Sec. 5, T. 4 N., R. 11 W., Seward Meridan. This easement shall allow for the operation and maintenance of the existing powerline facilities. No other uses shall be allowed.

c. (EIN 36 L) An easement twenty (20) feet in width for an existing overhead electric distribution line which traverses the SW¼ Sec. 6, N½ Sec. 7, and SE¼ Sec. 7, T. 4 N., R. 11 W., Seward Meridian. This easement shall provide for the maintenance and operation of the existing powerline facilities. No other uses shall be allowed.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therin, if any, including but not limited to those created by any lease (including a lease issued under Sec 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Futher, pursuant to Sec. 17(b)(2) of the Alaka Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as in now provided for under existing law;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. A right-of-way, A–051647, for an oil and gas pipeline, located in Sec. 6, T. 4 N., R. 11 W., Seward Meridian, granted to the Alaska Pipeline Company, under the act of February 25, 1920 (30 U.S.C. 185); and

5. The following oil and gas leases: A–028047 located in Tract A, protracted Secs. 4 and 9, T. 4 N., R. 11 W., Seward Meridian, Alaska; A–028142 located in Tract A, protracted Secs. 5 to 8, incusive, T. 4 N., R. 11 W., Seward Meridian, Alaska; and A–028143 located in Sec. 1, T. 4 N., R. 12 W., Seward Meridian, Alaska.

Salamatof Native Association, Inc., is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of ANCSA. This entitlement is subject to reduction incurred by relinquishments made by Salamatof in the Lake Clark area as required by Sec. 12(a) of Public Law (Pub. L.) 94–204 (89 Stat. 1151), and also to reduction for exchanges pursuant to Sec. 7 of the agreement of August 17, 1979 as directed by Sec. 1432 of Pub. L. 96–487 (94 Stat. 2543).

Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 3,664.84 acres. The remaining entitlement will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Cook Inlet Region, Inc., when the surface estate is conveyed to Salamatof Native Association, Inc., and shall be subject to the same conditions as the surface conveyance.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.*

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board before June 30, 1982, or to the Interior Board of Land Appeals after June 30, 1982; provided, however, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land

Management concerning navigability of water bodies.

If an appeal is taken *before June 30, 1982,* the notice of appeal must be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

If an appeal is taken after June 30, 1982, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), address given above. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, address given above.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until July 12, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board or the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Salamatof Native Association, Inc., P.O. Box 2682, Kenai, Alaska 99611

State of Alaska, Department of Natural Resources, Division of Technical Services, Pouch 7–005, Anchorage, Alaska 99510

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–15687 Filed 6–9–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14908–A]

Alaska Native Claims Selection

On June 17, 1974, Sitnasuak Native Corporation, for the Native village of Nome, filed selection application F–14908–A under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (1976) (ANCSA), for the surface estate of certain lands in the vicinity of Nome.

On March 4, 1976, the General Services Administration (GSA) referred a certain tract of acquired lands (3.25-acre Nome Army Site) to the Bureau of Land Management for a determination of availability for Native selection. On May 21, 1976, GSA was informed that this property was not available for selection under ANCSA. The property was offered for sale and a legal action was filed on behalf of Sitnasuak Native Corporation to acquire the property under ANCSA (CA–N77–1). As a result of this legal action, an agreement was reached between the United States and Sitnasuak Native Corporation whereby GSA would offer a portion of the property for sale and the remainder of the property would be made available for conveyance to Sitnasuak Native Corporation under Sec. 14(a) of ANCSA as set forth in the court approved Stipulation for Settlement and Dismissal dated August 21, 1979.

As to the lands described below, the application submitted by Sitnasuak Native Corporation, as amended, is properly filed, and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 1.45 acres, is considered proper for acquisition by Sitnasuak Native Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

Official Plat of the Townsite of Nome, Alaska, (within the exterior boundary of U.S. Survey No. 451), lots 11, 12, 13, 14, and 15 of Block 67, and that portion of the alley in Block 67 lying southerly of said lots, and that portion of 5th Avenue lying northerly of said lots; and that portion of East E. Street lying between Lot 12 of Block 88 and Lot 7 of Block 89; all within the Townsite of Nome, Cape Nome Recording District, State of Alaska.

The above tract of land being more particularly described as follows:

Parcel #1—Lots 11 thru 15 per the 1905 Official Plat of the Townsite of Nome.

Parcel #2—That portion of the allley in Block 67 lying southerly of Lots 11, 12, 13, 14, and 15 of Block 67 being further described to wit (Per the unrecorded plat of the 1958 Dependent Resurvey of the Boundaries and Subdivision of U.S. Survey No. 451):

Commencing at the northeast corner of Lot 16, Block 67; thence N. 25°19′ E., a distance of 20 feet, along the westerly boundary of East "F" Street to the southeast corner of Lot 15, Block 67; thence N. 64°41′ W., a distance of 250 feet, along the northerly boundary of the alley in Block 67 to the southwest corner of Lot 11, Block 67; thence S. 25°19′ W., a distance of 20 feet, to a point on the southerly boundary of the alley in Block 67 and on the north boundary of Lot 20, Block 67; thence S. 64°41′ E., a distance of 250 feet, along the southerly boundary of the alley in Block 67 to the northeast corner of Lot 16, Block 67, the point of beginning. The whole thereof containing 0.1148 acres, more or less.

Parcel #3—That portion of East 5th Avenue lying northerly of Lots 11, 12, 13, 14, and 15 of Block 67 being further described to wit (Per the unrecoded plat of the 1958 Dependent Resurvey of the Boundaries and Subdivisions of U.S. Survey No. 451):

Commencing at the northeast corner of Lot 15, Block 67 which is monumented with a 2 inch aluminum cap set on a 3 foot rod; thence proceed along the west boundary of East "F" Street, N. 25°19′ E., a distance of 60 feet, to the southeast corner of Lot 7, Block 88; thence proceed along the southerly boundary of Block 88, N. 64°41′ W., a distance of 250 feet, to the southwest corner of Lot 11, Block 88; thence proceed S. 25°19′ W., a distance of 60 feet, to the northwest corner of Lot 11, Block 67; thence proceed along the northerly boundary of Block 67, S. 64°41′ E., a distance of 250 feet, to the northeast corner of Lot 15, Block 67, the point of beginning. The whole thereof containing 0.3444 acres, more or less.

Parcel #4—That portion of East "E" Street lying between Lot 12 of Block 88, and Lot 7 of Block 89, being further described to wit (Per the unrecorded plat of the 1958 Dependent Resurvey of the Boundaries and Subdivisions of U.S. Survey No. 451):

Commencing at the southwest corner of Lot 12, Block 88, which is monumented with a 2 inch aluminum cap set on a 3 foot rod; thence proceed along the northerly boundary of East 5th Ave., No. 64°41′ W., a distance of 60 feet, to the southeast corner of Lot 7, Block 89; thence proceed along the easterly boundary of Block 89, N. 25°19′ E., a distance of 140 feet, to the northeast corner of Lot 7, Block 89; thence proceed S. 64°41′ E., a distance of 60 feet, to the northwest corner of Lot 12, Block 88; thence proceed along the westerly boundary of Block 88, S. 25°19′ W., a distance of 140 feet, to the southwest corner of Lot 12, Block 88, the point of beginning. The whole thereof containing 0.1928 acres, more or less.

Aggregating approximately 1.45 acres.

There are no water bodies within the area considered.

The conveyance issued for the surface estate of the lands described above

shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)).

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Sitnasuak Native Corporation is entitled to conveyance of 161,280 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved the total acreage conveyed or approved for conveyance is approximately 1 acre. The remaining entitlement of approximately 161,279 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate or the lands described above shall be issued to Bering Straits Native Corporation when the surface estate is conveyed to Sitnasuak Native Corporation, and shall be subject to the same conditions as the surface conveyance.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the *Nome Nugget*.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board before June 30, 1982, or to the Interior Board of Land Appeals after June 30, 1982; provided, however, pursuant to Public Law 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appal is taken *before June 30, 1982*, the notice of appeal must be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

If an appeal is taken *after June 30, 1982*, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), address given above. Do not send the appeal directly to Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, address given above.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until July 12, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board or the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Sitnasuak Native Corporation, P.O. Box 905, Nome, Alaska 99762

Bering Straits Native Corporation, P.O. Box 1008, Nome, Alaska 99762.

B. Lavelle Black,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-15690 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

Idaho; Boise District Office

ACTION: Boise District, Idaho, Grazing Advisory Board Meeting.

SUMMARY: In accordance with Pub. L. 92-463 the Federal Advisory Committee Act, and Pub. L. 94-579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Grazing Advisory Board will meet on July 22 and 23, 1982.

SUPPLEMENTARY INFORMATION: The meeting will begin on July 22 with a tour of grazing projects to discuss existing and new projects proposed and needed to implement Allotment Management Plans in the Owyhee Resource Area. The tour will depart at 8:00 a.m. from the Lions Club Hall on Highway 95 in Jordan Valley, Oregon.

The meeting on July 23 will begin at 8:00 a.m. at the Lions Club Hall in Jordan Valley, Oregon. The agenda includes discussion of the tour, range improvement maintenance, and use of 8100 funds. A public comment period is scheduled for 1:00 to 2:00 p.m. on the 23rd.

The public may attend the tour and meeting, but must supply their own transportation, lodging, and food.

Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334-1582. Minutes of the meeting will be available for public inspection at the District Office.

Dated: June 2, 1982.

J. David Brunner,

Associate District Manager.

[FR Doc. 82-15685 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[M 55168]

Montana; Proposed Withdrawal and Reservation of Lands

June 1, 1982.

The Department of the Army, Corps of Engineers, on May 13, 1982, filed application, Serial No. M-55168 for the withdrawal of the following described lands from settlement, sale, location, or entry under all the general land laws,

including the mining laws, subject to valid existing rights:

Principal Meridian, Montana

T. 30 N., R. 29 W.,
Sec. 9, Unsurveyed island in the Kootenai River at River Mile 216 adjacent to Lots 3, 4, 5, and 6.

The area described contains 19.48 acres in Lincoln County, Montana.

The applicant desires the withdrawal for the Libby Dam and Lake Koocanusa project on the Kootenai River. The Corps intends to use the area for wildlife mitigation purposes.

On or before September 20, 1982, all persons who wish to make 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.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for public hearing in connection with the withdrawal is afforded. All interested person who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the State Director, Bureau of Land Management, at the address shown below by September 20, 1982. Upon determination by the State Director that a public hearing will be held, the time and place will be announced.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are neccessary to: (1) Determine the existing and potential demands for the lands and their resources; (2) insure that the area to be withdrawn is the minimum essential to meet the desired needs; and (3) provide for the maximum utilization of the lands.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested. The determination of the Secretary on the application will be published in the **Federal Register.** A separate notice will be sent to each interested party of record.

For a period of 2 years from the date of publication of this notice in the **Federal Register,** the lands will be segregated from location and entry as specified above unless the application is rejected or the withdrawal is approved prior to that date.

All communications in connection with this withdrawal should be addressed to the Bureau of Land Management, Department of the Interior, Montana State Office, P.O. Box 30157, Billings, Montana 59107.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-15696 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[N-3772, N-10656, N-13239, N-36586]

Nevada; Order Providing for Opening of Land

June 3, 1982.

The following described land was reconveyed to the United States under four exchange actions (Nev-051094, N-1099, N-7634, N-13104) and titles were accepted on August 1, 1958; March 31, 1969; October 2, 1973; and August 13, 1976, respectively.

Mount Diablo Meridian, Nevada

T. 14 N., R. 18 E.,
Sec. 2, S½SW¼SW¼(wn), NW¼SW¼, SW¼SW¼(wn).
T. 12 N., R. 19 E.,
Sec. 16, N½NE¼, SE¼NE¼, NE¼NW¼.
T. 16 N., R. 19 E.,
Sec. 16, W½NW¼, SE¼NW¼, NW¼SW¼.

The areas described comprise approximately 396 acres. The land lies in Douglas and Washoe Counties (236 acres in Douglas County; 160 acres in Washoe County) within the boundaries of the Toiyabe National Forest.

All minerals were reconveyed to the United States.

On the 30th day, commencing with the date of this publication, the land within the forest shall be open to such forms of disposition as may by law be made of national forest land.

Inquiries concerning the forest land should be addressed to Forest Supervisor, Toiyabe National Forest, 111 N. Virginia Street, Reno, Nevada 89501.

Wm. J. Malencik,

Chief, Division of Operations.

[FR Doc. 82-15772 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 5757]

Oregon; Termination of Classification for Multiple Use Management

1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on June 18, 1970 (35 FR 10043), approximately 17,827 acres of public lands under the jurisdication of the Bureau of Land Management were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR 2460. The lands are located in Douglas County, Oregon.

2. Pursuant to 43 CFR 2461.3(c)(2), the classification is terminated in its entirety upon publication of this notice in the **Federal Register.**

3. The public lands involved remain withdrawn for multiple use managment purposes by Public Land Order No. 5490 of February 12, 1975, and will therefore not be open to appropriation under the agricultural lands laws (43 U.S.C. Ch. 9, 25 U.S.C. 334). Subject to the provisions of other existing withdrawals and classifications, the lands have been and continue to be open to all other forms of appropriation, including the United States mining laws and mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 3, 1982.

Frank A. Edwards,

Acting State Director.

[FR Doc. 82-15781 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[W-15857]

Wyoming; Proposed Continuation of Withdrawal

The Bureau of Land Management, Department of the Interior proposes to continue the existing withdrawal of the following public lands made by Public Land Order 4915, of October 5, 1970, for a 20 year period pursuant to section 204 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2751; 43 U.S.C. 1714):

Sixth Principal Meridian, Wyoming

T. 29 N., R. 87 W.,
Sec. 25, S½S½;
Sec. 26, SE¼;
Sec. 35, N½NE¼.
T. 29 N., R. 89 W.,
Sec. 13, SW¼, S½N½;
Sec. 18, lots 6, 7, E½SW¼, SE¼;
Sec. 19, lots 1, 2, 3, 5, 6, 7, 8, and NE¼SW¼.
T. 28 N., R. 97 W.,
Sec. 5.
T. 29 N., R. 97 W.,
Sec. 22, SW¼SW¼;
Sec. 27, NW¼, SW¼NE¼;
Sec. 28, N½;
Sec. 34, SE¼, E½SW¼, SW¼SW¼.
T. 27 N., R. 101 W.,
Sec. 4, SW¼, S½NW¼;
Sec. 5, SE¼, S½NE¼.

The area described contains 3,326 acres in Fremont and Natrona Counties, Wyoming.

The purpose of the withdrawal is for the protection of National Historic sites (segments of the historic Oregon Trail Corridor and Associated Historical

Landmarks). The withdrawal closed the described lands to all forms of appropriation under the Public Land Laws, including the Mining Laws (30 U.S.C., Ch. 2), but not from leasing under the Mineral Leasing laws. No change in the segregative effect or use of the land is proposed by this action.

Comments, suggestions, or objections to this proposed withdrawal continuation must be submitted in writing to the undersigned authorized officer of the Bureau of Land Management, on or before September 8, 1982.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a meeting to the undersigned before September 8, 1982. Upon determination by the State Director, Bureau of Land Management, that a public meeting will be held, a notice will be published in the **Federal Register** giving the time and place of such meeting. Public meetings are scheduled and conducted in accordance with BLM Manual, Section 2351.16B.

The authorized officer of the Bureau of Land Management will make necessary investigations to determine the existing and potential demands for the land and its resources and review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be sent to the undersigned officer, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-15770 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[W-23824]

Wyoming; Revocation of Section 24 Restriction on Portions of Power Site Reserves No. 115 and No. 647

June 4, 1982.

1. By order dated June 29, 1972, the Federal Power Commission (now Federal Energy Regulatory Commission), in DA-168, Wyoming, vacated the land withdrawn in part for Power Site Reserves Nos. 115 and 647 as to the following described lands:

T. 55 N., R. 94 W.,
Sec. 4, lot 7;
Sec. 8, NE¼NE¼;
Sec. 9, lots 2 and 3.
T. 57 N., R. 94 W.,
Sec. 27, NE¼SW¼.

The area described contains 211.62 acres in Big Horn County, Wyoming.

2. By virtue of the authority contained in section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1970), and in accordance with the authority delegated by the Bureau of Land Management Order No. 701, dated July 23, 1964, (29 FR 10526), as amended, it is ordered that at 10:00 a.m. on July 27, 1982, the lands described above will be relieved of the restrictions imposed by the provisions of section 24 of the Federal Power Act, supra, and the Act of August 11, 1955, (69 Stat. 681; 30 U.S.C. 621).

3. The above described lands were previously revoked and restored, subject to section 24 of the Federal Power Act, by **Federal Register** publications dated June 7, 1934, and March 30, 1954. The lands in sections 4 and 9 were subsequently withdrawn for the Bighorn Canyon National Recreation Area and the Missouri River Basin Reclamation Project. The lands in section 27 were also withdrawn for the Missouri River Basin Reclamation Project. The lands described in sections 8 and 27 have been and will continue to be open to applications and offers under the mineral leasing laws, and the lands in section 8 to location under the United States mining laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-15768 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[W-74453]

Wyoming; Realty Action—Exchange of Public Lands for Private Lands in Natrona and Converse Counties

June 2, 1982.

The surface estate of the following described public lands has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Wyoming

T. 32 N., R. 77 W.,
Sec. 7, lots 5, 6, 7, 9, 10, 11 and 16.
T. 33 N., R. 77 W.,
Sec. 10, SE¼SE¼;
Sec. 11, W½SW¼;
Sec. 28, SE¼SW¼;
Sec. 29, NE¼SE¼.
T. 31 N., R. 78 W.,
Sec. 21, NE¼SE¼ and S½SE¼;
Sec. 28, N½, NE¼SW¼, SW¼SW¼ and NW¼SE¼;
Sec. 29, SE¼.
T. 34 N., R. 78 W.,
Sec. 6, N½SE¼.

Containing 1,191.14 acres in Natrona and Converse Counties.

In exchange for the above lands, the United States will acquire the surface estate of the following lands from the B. B. Brooks Co., Casper, Wyoming:

Sixth Principal Meridian, Wyoming

T. 31 N., R. 78 W.,
Sec. 7, lot 4 and SE¼SW¼;
Sec. 18, lot 1 and NW¼NE¼.

Containing 150.66 acres in Natrona County.

The lands proposed for acquisition would become an addition to the Bureau of Land Management's Environmental Education Area on Muddy Mountain, a natural area managed for public environmental education and outdoor recreational activities.

This action is consistent with the provisions of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The public interest will be well served by completing the exchange.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945, for the lands being transferred out of Federal ownership;

2. Reservation to the United States of all minerals in the lands being transferred out of Federal ownership;

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record);

4. Value equalization by cash payment or acreage adjustment;

5. The requirements of 43 CFR 4110.4–2(b).

Publication of this notice in the Federal Register shall segregate the above public lands and the reserved Federal mineral estate in the above private lands from appropriation under the United States mining laws as provided by 43 CFR 2201.1(b).

Detailed information concerning the exchange including the planning documents and environmental assessment, is available for review at the Casper District Office, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601.

Until July 19, 1982 interested parties may submit comments to the State Director, Bureau of Land Management (910), P.O. Box 1828, Cheyenne, Wyoming 82001. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this Notice of Realty Action will become the final determination of the Department of the Interior.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-15769 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 42308]

Realty Action; Noncompetitive Sale of Public Land in Grant County, New Mexico

May 24, 1982.

The following described land has been examined and indentified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at the appraised fair market value shown:

Legal Description, Acreage, and Value, New Mexico Principal Meridan, New Mexico

T. 17 S., R. 12 W., NMPM,
Sec. 25, Lots 6 and 7, containing 20.71 acres; $18,600.00.

The above described land is being offered as a direct, non-competitive sale to Chino Mines Company (formerly Kennecott Corporation). Chino Mines Company has mining operations adjacent to these tracts, controls all adjacent lands, and needs the land for millsite operations associated with leaching of mine waste, overburden storage, support facilities and for safety purposes in connection with general mining operations. The sale is consistent with the Bureau's land use planning. The public interest will be best served by making the land available for industrial use. The land does not have public values or public access and the proposed use is the highest and best use for it. The land will not be offered for sale for least 60 days after the date of this notice.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals rights in the land to be patented will be reserved to the United States pursuant to the Act of October 21, 1976 90 Stat. 2751, 43 U.S.C. 1713.

3. A reservation to the United States of all the geothermal steam and associated geothermal resources in the land, and to it, or persons authorized upon compliance with the conditions and subject to the provisions and limitations of the Act of December 23, 1970 (84 Stat. 1566).

Detailed information concerning the sale is available for review at the BLM Las Cruces District Office, 317 North Main Street, Las Cruces, New Mexico.

For a period of 45 days, interested parties may submit comments to the District Manager of the Las Cruces District. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

The required payment, at fair market value, shall then be requested of Chino Mines Company. The payment, in full, is in accordance with 43 CFR 1822.1–2.

Donnie R. Sparks,

Associate District Manager.

[FR Doc. 82-15675 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

[ORE-016753]

Oregon; Modification of Proposed Withdrawal and Reservation of Lands

Notice of Corps of Engineers, U.S. Department of the Army, application ORE 016753 for withdrawal and reservation of lands was published as FR Doc. 65–9866 on page 11926 of the issue of September 17, 1965, and republished as FR Doc. 79–1782 on page 3788 of the issue of January 18, 1979. The purpose of the proposed withdrawal is to protect the Elk Creek Reservoir Project. The following described lands are currently included in the application:

Willamette Meridian

T. 33 S., R. 1 E.,
Sec. 30, E½E½ and NW¼NE¼.

Revested Oregon and California Railroad Grant Lands

T. 32 S., R. 1 E.,
Sec. 33, NE¼NE¼NW¼, S½NE¼NW¼, and SE¼NW¼.
T. 33 S., R. 1 E.,
Sec. 5, NE¼SW¼SE¼ and S½SW¼SE¼;
Sec. 9, W½NE¼NW¼;
Sec. 17, Lots 5 and 6;
Sec. 19, E½W½NE¼, NE¼SE¼, E½NW¼SE¼, S½SW¼NW¼SE¼, and SW¼SE¼;
Sec. 21, S½NW¼SW¼NW¼ and SW¼SW¼NW¼;
Sec. 29, NW¼, N½SW¼, and SW¼SW¼.

The areas described aggregate 840.69 acres in Jackson County, Oregon.

The proposed withdrawal is hereby modified to provide that pursuant to the regulations contained in 43 CFR 2310.2–1(c), the above-described lands will be open to applications and offers under the mineral leasing laws at 9:30 a.m., on July 16, 1982. The lands remain segregated from operation of the public land laws, including the mining laws (30 U.S.C. Ch. 2).

Dated: June 1, 1982.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-15695 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Receipt of Exchange Proposal of Public Lands in Deschutes County North of the City of Bend for County Land Situated Near Sisters, Tumalo and the High Desert Areas of Deschutes County

May 28, 1982.

Notice is hereby given that a proposal was received from the Deschutes County Board of Commissioners, to exchange the following described County lands, for the described parcel of public land, pursuant to sections 205 and 206 of the Federal Land Policy and Management Act of 1976.

County Lands

Willamette Meridian, Oregon

T. 14 S., R. 11 E.

Sec. 6: E½NE¼, SE¼;
Sec. 7: SE¼SW¼, W½SE¼, SE¼SE¼.

T. 15 S., R. 12 E.

Sec. 32: N½NE¼.

T. 16 S., R. 11 E.

Sec. 1: SW¼ (irregular section);
Sec. 2: SW¼ (irregular section);
Sec. 5: SE¼SE¼;
Sec. 6: That portion of SW¼SW¼ lying west of the road;

Sec. 7: NW¼, W½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 8: NE¼NE¼, S½NE¼, SE¼NW¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 9: W½W½;
Sec. 11: NE¼NE¼, NW¼;
Sec. 16: SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 17: NE¼NE¼, S½NE¼, NW¼, S½;
Sec. 18: NE¼, W½NW¼, SE¼NW¼, S½;
Sec. 19: S½NE¼, W½NE¼NW¼, W½NW¼, SE¼NW¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 20: N½NE¼, SW¼NE¼, NE¼NW¼, E½NW¼NW¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 30: N½NE¼.

T. 17 S., R. 14 E.

Sec. 33: S½NE¼, SE¼NW¼.

T. 22 S., R. 19 E.

Sec. 36: E½SE¼.

T. 22 S., R. 21 E.

Sec. 17: W½E½SW¼.
Total acreage of county land—4,451 acres.

Public Land

T. 16 S., R. 12 E.

Sec. 34: SE¼NE¼, SW¼SE¼, E½SE¼;
Sec. 35: N½NW¼, SW¼NW¼.

T. 17 S., R. 12 E.

Sec. 2: N½NW¼, SW¼NW¼, W½SW¼;
Sec. 3: E½;
Sec. 10: All;
Sec. 11: W½W½.
Total acreage public lands—1,600 acres.

The purpose of this notice is to inform the public of the exchange proposal which would provide the County with lands needed for planned Community expansion. Interested parties desiring to express their comments or opinions may do so in writing, within 45 days from the date of this notice. Comments should be sent to the Prineville District Manager, Bureau of Land Management, P.O. Box 550, Prineville, Oregon 97754.

Lyle D. Johnston,

Acting District Manager.

[FR Doc. 82-15673 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Supplemental Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3148, Block 52, Eugene Island Area, offshore Louisiana.

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 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 Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 3, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-15697 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Gulf Oil Exploration and Production Co.

AGENCY: Minerals Management Service, U.S. Department of the 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 3540, Block 330, East Cameron Area, offshore Louisiana.

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 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 Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 3, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-15693 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-31-M

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 seven abandoned mine land projects under the State of Illinois Reclamation Plan.

SUMMARY: OSM has prepared EAs on projects submitted in the Federal Grant Application from the State of Illinois to the Office of Surface Mining.

A FONSI has been made on the seven 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.

ADDRESS: Copies of the EAs and FONSI are available for inspection or may be obtained at the following location between the hours of 8:00 a.m. and 4:00 p.m.:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204, and
Illinois State Office, Number 4, Old State Capital Plaza North, Springfield, Illinois 62701

FOR FURTHER INFORMATION CONTACT: Rayford Cole, Chief, AML Program, 317/269–2687.

Reclamation Projects included in FONSI, location and description:

1. Little John Mine #5 Reclamation Project—Phase II, Knox County, Illinois, Coal refuse, acid drainage.

2. Alden Mine #6 Reclamation Project, Fulton County, Illinois, Refuse, mine shafts, abandoned structures.

3. E. B. Catton Mine Reclamation Project, Stark County, Illinois, Coal refuse, acid drainage.

4. Clyde Mine Reclamation Project, Macoupin County, Illinois, Air shaft, mine refuse.

5. Coal Valley Group, Rock Island and Henry Counties, Illinois; Adits, shafts, mine refuse.

6. Coulterville Mine Reclamation Project, Perry County, Illinois, Open shafts, mining debris.

7. Littleton Mine Reclamation Project, Schuyler County, Illinois, Toxic refuse, acid drainage, open shaft.

Dated: June 4, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-15777 Filed 6-9-82; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications

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 be consummated or than 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-notices 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-79809. By decision of May 20, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to LOUIS J. ALI, d.b.a. D. ALI TRUCKING of Certificate No. MC-119999 issued to JOSEPH ALI, JAMES DOMINICK ALI, LOUIS J. ALI, AND JOSEPHINE ALI, a partnership, d.b.a. ALI TRUCKING authorizing the transportation of *concrete pipe, plain and reinforced, concrete manholes, concrete pipe-making equipment, vitrified clay pipe and fittings, vitrified clay liner plates, cast iron manholes steps, and tops, and seiver pipe joint compounds and supplies* used in the manufacture and processing of concrete and vetrified clay pipe (except such of these commodities as may, because of their size or weight, require the use of special equipment for their transportation) (A) from the facilities of the United States Concrete Pipe Company at Oakdale, PA, to points in that part of OH on and east of U.S. Hwy 21, points in that part of WV on and north of U.S. Hwy 60, points in that part of VA on and north of U.S. Hwy 50, and points in that part of MD on and west of a line beginning at DC, and extending along U.S. Hwy 1 to Baltimore, MD, and then over U.S. Hwy 111 to the MD-PA state line, and (B) from Uhricksville and Palmyra, OH, and Relay, MD, to the facilities of the United States Concrete Pipe Company at Oakdale, PA. Representative: Robert D. Barozzini, 707 Grant Building, Pittsburgh, PA 15219.

Notes.—Transferee presently holds no authority from the Commission.

MC-FC-79817. By decision of May 21, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to SAVAGE AND SON TRUCKING, a partnership, of West Sacramento, CA, of Certificate No. MC-151318 issued to CALIFORNIA CONTRACT CARRIERS, of West Sacramento, CA, authorizing the transportation of *printing paper* between the facility used by Simpson Paper Company in San Joaquin County, CA, on the one hand, and, on the other, points in AZ. Representative: Handler, Baker, Greene, and Taylor, Attorneys at Law, Suite 2550, 100 Pine Street, San Francisco, CA 94111.

Note.—Transferee is not an ICC motor carrier.

MC-FC-79826. By decision of May 21, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to WILLIAM B. JANSEN, d.b.a. BLACK LINE TRUCKING of Permit No. MC-145352 and Certificate No. MC-149482 issued to R. W. McDANIEL TRANSPORTATION CORPORATION authorizing the transportation of (1) *carbonated soft drinks, beverage compounds,* and *containers,* between points in MD, PA, VA, NY, OH, IL, DE, WV, MI, IN, WI, and NJ, under continuing contract(s) with Faygo Beverages, Inc. of Detroit, MI, and (2) *automotive parts,* between pints in MI, IN, OH, KY, MD, DE, VA, KS, MO, TN, SC, WI, IL, PA, NY, NJ, WV, OK, IA, MN, NC, and AR. Representative: Reginald Lyng, 122 Broadway, Suite 2, Kissimmee, FL 32741.

Note.—Transferee is a non-carrier.

MC-FC-79829. By decision of May 25, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to McELROY TRUCKING, INC. of Yakima, WA of Certificate No. MC-144676 and (Subs 1 through 9X) and Permit No. MC-143616 and (Subs 7, 10, 15, 16, 20, and 21) issued to M & S TRANSPORT LINES, INC. of Sultana, CA, authorizing. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101.

MC-FC-79821. By decision of May 24, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BACHINI MOVING CO., INC., of Certificate No. MC-2018 issued December 23, 1965 to COUTU BROS. MOVERS, INC. authorizing the transportation of household as defined by the Commission, between points in RI, on the one hand, and, on the other, points in MA, NY, NH, and CT. Representative: Mr. Ezio J. Bachini, 388 Walcott Street, Pawtucket, RI 02860.

MC-FC-79824. By decision of May 26, 1982, issued under 49 U.S.C. 10926 and

the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BIG T. & D. TRUCKING CO., INC., d.b.a. BIG T. & D., of Medford, MA of Certificate of Registration No. MC-97417 (Sub-No. 1) issued June 18, 1964, to ARLEX TRANSPORTATION, INC., of Lexington, MA, authorizing the transportation of general commodities between points in MA. Representative: Norman Novinsky, 41 Arlington Street, Brockton, MA 02401.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15660 Filed 6-9-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP-3-085-A]

Motor Carriers; Permanent Authority Decision

Decided: May 28, 1982.

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 of 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.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

Agatha L. Mergenovich,

Secretary.

MC 161864 filed May 6, 1982. Applicant: NATIONWIDE EXPRESS SERVICE, INC., 1500 Walnut St., 19th Fl. S., Philadelphia, PA 19102. Representative: John C. Bradley, 1600 Wilson Blvd., Suite 1301, Arlington, VA 22209, (703) 522-0900, and H. Beatty Chadwick, 1500 Walnut St., 18th Fl. N., Philadelphia, PA 19102, (215) 985-6831. 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).

Note.—This application is directly related to MC-F-14855, published in this same **Federal Register** issue.

[FR Doc. 82-15659 Filed 6-9-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP-3-085]

Motor Carriers; Permanent Authority Decision

Decided: May 28, 1982.

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 1100.241. A copy of an 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).

Amendents 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 Commmission'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.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

Agatha L. Mergenovich,

Secretary.

MC–F–14855, filed May 6, 1982. EXPRESSWAY TRANSPORTATION SYSTEM, INC. (EXPRESSWAY) (100 West Tenth Street, Wilmington, DE 19801)—CONTINUANCE IN CONTROL—NATIONWIDE EXPRESS SERVICE, INC. (NATIONWIDE) (1105 N. Market Street, Wilmington, DE 19801). Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703) 522–0900 and H. Beatty Chadwick, 1500 Walnut Street, 18th Fl., N., Philadelphia, PA 19102, (215) 985–6831. Expressway Transportation Systems, Inc. seeks authority to continue in control of Nationwide Express Services, Inc., in interstate or foreign commerce, as a motor common carrier. Nationwide Express Service, Inc. is a newly formed corporation and holds no interstate operating authority. IU International Corporation is a publicly held non-carrier corporation that controls Expressway Transportation Systems, Inc. and IU Transportation Services, Inc., a holding company controlling Ryder Truck Lines, Inc., Pacific Intermountain Express Co., Gemini Trucking, Inc., Pioneer Trucking, Inc., Customized Transportation, Inc., Vanguard Contract Carriers, Inc. Ryder also controls Ryder Truck Lines, Ltd., Ryder Forwarding, Inc. and RTL Holdings.

[FR Doc. 82–15658 Filed 6–9–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 265]

Motor Carriers; Permanent Authority Decisions; Restriction Removals

Decided: June 3, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian carrier applicants: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shafer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 116561 (Sub-6)X, filed May 27, 1982. Applicant: KELLER-WEBER TRUCKING, INC., 2231 Edgewood Terr., Scotch Plains, NJ 07076. Representative: Larry R. McDowell, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Sub 5 permit: broaden to "between points in the U.S. (except AK and HI)." under continuing contract(s) with a named shipper.

MC 126034 (Sub-8)X, filed April 26, 1982. Applicant: McHUGH BROTHERS HEAVY HAULING, INC., P.O. Box 196, Penndel, PA 19047. Representative: E. Stephen Heisley, 1919 Penn. Ave., N.W., Suite 500 Washington, D.C. 20006. Sub-No. 7 broaden to "transportation equipment and machinery" from self-propelled articles, each weighing 15,000 pounds of more; "clay, concrete, glass or stone products, chemicals and related products, metal products, lumber and wood products, and rubber plastic products" from lime and fence materials; "machinery, metal products, and waste or scrap materials" from such machinery (including pumps, condensers, dynamos, motors and parts) as would be embraced within lime, fence materials, and building materials, from such machinery (including pumps, condensers, dynamoc, motors, and parts) as would be embraced within machinery and boilers, and factory equipment, together with stocks and supplies when part of the movement of factory, from such machinery (including pumps, condensers, dynamos, motors, and parts (as would be embraced within construction machinery and equipment) in (5); from such machinery (including pumps, condensers, dynamos, motors, and parts) as would be embraced within construction machinery and equipment; from such machinery and boilers, and factory equipment, together with stocks and supplies when part of the movement of a factory as would be embraced within machinery (including pumps, condensers, dynamos, motors and parts); from such machinery and boilers, and factory equipment, together with stocks and supplies when part of a movement of a factory as would be embraced within lime, fence materials, and building materials; from such machinery and boilers, and factory equipment, together with stocks and supplies when part of a movement of a factory as would be embraced within construction machinery and equipment; from such machinery and equipment as would be embraced within machinery (including pumps, condensers, dynamos, motors and parts); from such construction machinery and equipment as would be embraced within machinery and boilers, and factory equipment, together with stocks and supplies when part of the movement of a factory; to "clay, concrete, glass or stone products, chemicals and related products, metal products, lumber and wood products and rubber and plastic products" from such lime, fence materials and building materials as would be embraced within machinery (including pumps, condensers, dynamos, motors and

parts); from such lime, fence materials and building materials, as would be embraced within construction machinery; from such lime, fence materials and building materials as would be embraced within construction machinery and equipment, as would also be machinery and boilers, and factory equipment, together with stocks and supplies when part of the movement of a factory; from such lime, fence materials, and building materials, as would be embraced within machinery and boilers, and factory equipment together with stocks and supplies when part of the movement of a factory and machinery further embraced within (including pumps, condensers, dynamos, motors, and parts), construction machinery; from such lime, fence materials, and building materials, as would be embraced within machinery and boilers and factory equipment, together with stocks and supplies when part of the movement of a factory, and as further embraced within construction machinery and equipment; from such lime, fence materials, and building materials, as would be embraced within machinery, including pumps, condensers, dynamos, motors, and parts and further embraced within construction machinery and equipment; from such lime, fence materials, and building materials as would be embraced within machinery and boilers, and factory equipment, together with stocks and supplies when part of the movement of a factory and further embraced within construction machinery and equipment; from such lime, fence materials, and building materials as would be embraced within machinery (including pumps, condensers, dynamos, motors, and parts), and further embraced within construction machinery; from such lime, fence materials, and building materials as would be embraced within machinery (including pumps, condensers, dynamos, motors, and parts) as further embraced within machinery and boilers, and factory equipment, together with stocks and supplies, when part of the movement of a factory; (2) (a) to Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, PA, Burlington, Camden, Gloucester, Hunterdon, Mercer, Monmouth, and Salem Counties, NJ, and New Castle County, DE, from Philadelphia, PA; (b) to New Castle County, DE, Gloucester and Salem Counties, NJ, and Chester and Delaware Counties, PA, from Wilmington, DE; (c) to Bradford County, PA, and Chemung and Tioga Counties, NY, from Sayre, PA; (d) to Erie County, PA, from Erie, PA; (e) to Cecil and Harford Counties, MD from Aberdeen, MD; (f) to Berkeley and Jefferson Counties, WV, from Martinsburg, WV; (g) to points in Atlantic, Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Salem, Somerset and Warren Counties, NJ, Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton and Philadelphia Counties, PA, and Kent and New Castle Counties, DE, from points in PA and NJ and DE within 40 miles of Philadelphia, PA, including Philadelphia; (h) to Bucks County, PA, from points in Bucks County, PA, other than incorporated municipalities; (i) to points in Atlantic, Burlington, Camden Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean Somerset, and Warren Counties, NJ, from points in New Jersey that are within 40 miles of Philadelphia and on and north of a line beginning at the Delaware River on Mantua Creek near Woodbury, NJ, extending along Mantua Creek to junction NJ Hwy 47, then along NJ Hwy 47 to junction U.S. Hwy 322, then along U.S. Hwy 322 to Weymouth; (j) to points in Bucks, Berks, Chester, Lancaster, Lehigh, Montgomery, and Northampton Counties, PA, from points in PA that are within 40 miles of Philadelphia and on and north of a line beginning at the Delaware River on U.S. Hwy 202, then west on U.S. Hwy 202 to PA Hwy 309, then north on PA Hwy 309 to PA Hwy 113, then south of PA Hwy 113 to PA Hwy 73, then west on PA Hwy 73 to PA Hwy 100, then south of PA Hwy 100 to PA Hwy 23, then west of PA Hwy 23 to the end of the 40 mile radius; (k) to points in Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Warren Counties, NJ, and Bucks, Berks, Lehigh, Montgomery, and Northampton Counties, PA, from points in PA and NJ which are within 40 miles of Philadelphia PA, and are also on and north of a line beginning at Lakewood, NJ, and extending along named highways to the junction of PA Hwy 422 with PA Hwy 61 near Reading, PA; (l) to points in Bucks County, PA, from unincorporated points in Bucks County, PA, within 40 miles of Philadelphia, PA; (m) to points in Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia Counties, PA, from points in PA that are within 40 miles of Philadelphia and are on and east of a line extending along PA Hwy 100 to its junction with U.S. Hwy 202, then south of U.S. Hwy 202 to the Delaware line; (n) to points in Bucks, Delaware, Montgomery, and Philadelphia Counties, PA, and Kent and New Castle Counties, DE, from points in PA and DE within 40 miles of Philadelphia and also on and east of a line beginning at St. Georges, DE, and extending north along named U.S. and PA highways to the intersection of U.S. Hwy 202 with the Delaware River in New Hope, PA; (o) to points in Bucks, Chester, Delaware, Lehigh, Montgomery, Northhampton and Philadelphia Counties, PA, from points in PA that are within a 40 miles radius of Philadelphia and are on and east of a line beginning on PA Hwy 309 near Allentown, PA, and extending generally south and west of the intersection of U.S. Hwy 202 to the DE–PA State line; (p) to points in Berks, Bucks, Chester, Lancaster, Lehigh, Montgomery, and Northhampton Counties, PA, from points in Pennsylvania that are within a 40 mile radius of Philadelphia, and are on and north of a line beginning at the Delaware River on Interstate Hwy 276, then west on Interstate Hwy 276 to the western edge of the 40 mile radius of PA; (q) to points in Chester, Delaware, Lancaster, Montgomery and Philadelphia Counties, PA, from points in PA within 40 miles of Philadelphia and are also on and south of a line beginning at the Delaware River near Philadelphia and extending west along U.S. Hwy 30 to its junction with PA Hwy 10 near Parkersburg, PA; (r) to points in Atlantic, Burlington, Camden, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Warren Counties, NJ, and Berks, Bucks, Lehigh, Montgomery, and Northampton Counties, PA, from points in New Jersey that are within a 40 miles radius of Philadelphia and are on and north of a line beginning at the Delaware River near Woodbury, NJ, then east of NJ 534 to its junction with the Atlantic City Expressway, then on the Atlantic City Expressway to the limits of the 40 mile radius, and points in Pennsylvania within 40 miles of Philadelphia and are on and north of a line beginning at the Delaware River on the PA Turnpike, then east of the PA Turnpike to its junction with PA Hwy 422, then north and west of PA Hwy 422 to the limits of the 40 mile radius; (s) to points in Atlantic, Burlington, Camden, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren Counties, NJ, from points in New Jersey that are within a 40 mile radius of Philadelphia and are on and north of a line beginning at the Delaware River near Woodbury, NJ, on an unmarked highway, then east to NJ Hwy 534, to its junction with the Atlantic City Expressway, then east to the eastern edge of the 40 mile radius; (t) to points in Burlington, Hunterdon,

Mercer, Middlex, Monmouth, Ocean, Somerset and Warren Counties, NJ, and Bucks and Montgomery Counties, PA, from points in PA and NJ that are within a 40 mile radius of Philadelphia and on and north of a line beginning near Lakehurst, NJ, on NJ Hwy 571 and extending north of NJ Hwy 711 to its junction with Interstate Hwy 195, then extending west on Interstate Hwy 195 to its junction with U.S. Hwy 206, then extending north on U.S. Hwy 206 to its junction with U.S. Hwy 1, then south of U.S. Hwy 1 to its junction with the PA Turnpike, then west on the PA Turnpike to its intersection with PA Hwy 309, then north of PA Hwy 209 to its junction with PA Hwy 113, then northeast along PA Hwy 113 to its junction with PA Hwy 611, then north to its junction with PA Hwy 32 at the Delaware River; (u) to points in Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren Counties, NJ, and Bucks and Montgomery Counties, PA, from points in PA and NJ within 40 miles of Philadelphia and are on and north of a line beginning near Lakehurst, NJ, over named highways to the junction of the PA Hwy 32 at the Delaware River; (v) to points in Burlington, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren Counties, NJ, and Bucks County, PA, from points in PA and NJ that are within a 40 mile radius of PA and on and north of a line beginning near Toms River extending along NJ Hwy 530 over various other named NJ and PA highways to the junction of PA Hwy 32 at the Delaware River; (w) to points in Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Warren Counties, NJ, and Bucks County, PA, from points in PA and NJ that are within a 40 mile radius of Philadelphia and on and north of a line beginning near Lakewood, NJ, extending along NJ Hwy 526 and other NJ and PA highways to junction PA Hwy 32 at the Delaware River; (x) to points in Atlantic, Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren Counties, NJ, and Bucks, Montgomery, and Philadelphia Counties, PA, from points in PA and NJ within a 40 mile radius of Philadelphia and north of a line beginning near Millville, NJ, and extending along named NJ and PA highways to the junction of PA Hwy 611 to junction PA Hwy 32 at the Delaware River; (y) to points in Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Warren Counties, NJ, and Bucks and Montgomery Counties, PA, from points in PA and NJ that are within a 40 mile radius of Philadelphia and are on and north of a line beginning near Lakewood, NJ, and extending over named NJ and PA highways to the junction of PA Hwy 611 to junction PA Hwy 32 at the Delaware River; (z) to points in Atlantic, Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren Counties, NJ, and Bucks, Montgomery and Philadelphia Counties, PA, from points in NJ and PA within a 40 mile radius of Philadelphia and are on and north of a line beginning at Millville, NJ, and extending along named highways to the junction of PA Hwy 611 and PA Hwy 32 to the Delaware River; and (3) to radical authority.

MC 139973 (Sub-101)X, filed May 17, 1982. Applicant: J. H. WARE TRUCKING, INC., 909 Brown St., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Subs 2, 5, 6, 9, 18, 21, 22, 24, 26, 31F, 35, 39F, 48F, 61F, 62F, 77F, and 78F. Remove except hides, commodities in bulk and tank vehicles restrictions in all but Subs 31 and 77; remove originating at/destined to named facilities/points restrictions in all Sub 78; broaden: to radial authority in all but Sub 77; to "food and related products" from lime juice, bloody mary mixes and grenadine syrups" (Sub 2); meat, meat products, meat by-products, and articles distributed by meat packinghouses (Subs 5, 6, 9, 18, 21, 22, 26, 48F, 61F, 62F, and 78F); prepared animal and poultry feed (Sub 24); prepared frozen foods (Sub 31F); foodstuffs (Subs 35 and 39F); and frozen foodstuffs (Sub 77F); Kent and Providence Counties, RI, for Warwick, RI (Sub 2): Seward County, KS and Beaver and Texas Counties, OK, for Liberal, KS facilities (Sub 5); Curry County, NM, for Clovis, (Sub 6); Saline and Lancaster Counties, NE, for Crete facilities (Subs 9, 26, and 78F); Crawford County, IA, for Denison facilities (Subs 9, 26, and 78F); Carroll County, IA, for Carroll facilities and Hardin County, IA, for Iowa Falls facilities (Subs 2, 26, and 78F); Logan County, CO, for Sterling and Arapahoe, Adams, Jefferson, and Douglas Counties, CO, for Denver (Sub 18); Bates County, MO, for Rockville, (Sub-21); Morgan County, CO, for Fort Morgan and Weld County, CO, for Greeley (Sub 22); Muscatine County, IA and Rock Island County, IL for Muscatine, IA facilities (Sub 24) Carroll County, MO, for Carrollton, Macon County, MO, for Macon; Saline County, MO, for Marshall; and Randolf County, MO, for Moberly (Sub 31); Saline County, MO for Marshall (Sub 62); Morgan County, IL, for Jacksonville (Sub 35); Platte, Jackson, Clay, and Cass Counties, MO, and Wyandotte, Leavenworth, and Johnson Counties, KS, for Kansas City, MO, (Sub 39F); Henry County, IL, for Geneseo, and Rock Island County, IL, for Joslin (Sub 61F); Marion, Hancock, Hamilton, Boone, Hendricks, Morgan, Johnson, and Shelby Counties, IN, for Indianapolis (Sub 77F); Lancaster County, NE, for Lincoln (Sub 78F); Sarpy, Douglas, and Washington Counties, NE and Mills and Pottawattamie Counties, IA, for Omaha, NE facilities; Polk, Warren, and Dallas Counties, IA, for Des Moines facilities; Webster County, IA, for Fort Dodge facilities and Woodbury and Plymouth Counties, IA, Dakota County, NE, and Union County, SD, for Sioux City, IA (Sub 78F).

MC 142369 (Sub-1)X, filed May 17, 1982. Applicant: CLARENCE CORNISH AUTOMOTIVE SERVICE, INC., d.b.a. CLARENCE CORNISH WRECKER SERVICE, 2557 S. Riverside Drive, Fort Worth, TX 76104. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684. Lead, broaden wrecked, disabled, repossessed and replacement vehicles and trailers by wrecker equipment, to "transportation equipment".

[FR Doc. 82-15657 Filed 6-9-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29772]

Rail Carriers; Guilford Transportation Industries, Inc.—Control—Delaware and Hudson Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Oral Argument.

SUMMARY: Guilford Transportation Industries, Inc. filed an application on January 29, 1982, for the purchase of Delaware and Hudson Railway Co. Notice of intent to file was published at 46 FR 58784, and notice of the filing of the application and establishment of a procedural schedule in the proceeding was published at 47 FR 5484, February 5, 1982. This notice names the date and location for the oral argument to be held in this proceeding.

DATE: June 29, 1982, 9:30 a.m.

ADDRESS: Headquarters Building, Interstate Commerce Commission, Washington, DC, in Hearing Room A.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 275-3002.

SUPPLEMENTAL INFORMATION: For additional information concerning the schedule of arguments and the specific issues to be addressed, *see* the

Commission decision served June 8, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15656 Filed 6-9-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket 29877]

Amherst Industries, Inc.—Exemption—Construction and Operation of a Switching Track at or Near Landisville, in Lancaster County, Pa.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: On the basis of supplementary information furnished in a petition to reopen this proceeding, the Commission exempts from the requirement of prior approval under 49 U.S.C. 10901, the proposed construction and operation over an 800-foot switching track connecting a line to be acquired by petitioner from the Consolidated Rail Corporation (Conrail) under the Northeast Rail Service Act of 1981 and a line of the National Railroad Passenger Corporation over which Conrail will continue to operate.

DATES: This exemption will be effective on June 10, 1982. Petitions to reopen must be filed by June 30, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423, and

(2) William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210

Pleadings should refer to Finance Docket No. 29877.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, 202-275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision in Finance Docket No. 29877. To purchase a copy of this decision write to TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC, 20423, or call locally at 289-4357 or toll free 800-424-5403.

Dated: June 2, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15806 Filed 6-9-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 80-92-H]

United States v. Montana Nursing Home Association, Inc.

Pursuant to 15 U.S.C. 16(d), the Department of Justice publishes below a comment it received on the proposed Final Judgment in *United States* v. *Montana Nursing Home Association, Inc.*, Civil No. 80-92-H, together with its response thereto.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court, District of Montana

United States of America, Plaintiff, v. *Montana Nursing Home Association, Inc.*, Defendant.

Judge James F. Battin, Civil Action No. 80-92-H (D. Montana, Helena Division).

Plaintiff's Response to Comments Regarding the Proposed Final Judgment

The plaintiff has received one comment regarding the proposed Final Judgment. A copy of this comment is attached. The letter of comment and this response will be promptly published in the **Federal Register** as required by 15 U.S.C. Sec. 16(d).

By a letter dated May 6, 1982, John Bierma, M.A., indicated that he believed the proposed Final Judgment is inadequate because it does not require an admission of "wrongdoing" by the defendant. Mr. Bierma also states that it is wrong to allow representatives of nursing home associations to participate in the process of formulating rules governing their facilities. Finally, Mr. Bierma states that reimbursement for nursing homes should be established through a process of direct negotiations between a nursing home and the consumer-patient or his/her guardian.

Requiring the defendant to make an admission of wrongdoing in the decree would not affect the relief which the decree provides. And, unless accompanied by explicit admissions of facts alleged by the plaintiff, a general admission by the defendant that it had done wrong would not be of use to persons who might consider bringing suit for treble damages under the antitrust laws. Insisting on inclusion of such admissions would, of course, make defendants less willing to enter into consent decrees and thus tend to frustrate the basic purpose of such decrees—to obtain relief adequate to vindicate the public interest while avoiding the delays, expense and uncertainties of litigation.

The second matter raised by Mr. Bierma, regarding collective nursing home participation in rule formulation, does not take into consideration the fact that state agencies administering state Medicaid programs have indicated that in many instances nursing home operators can play a constructive and important informational and advisory role with respect to various aspects of a state's Medicaid program. Their suggestions are frequently solicited by state agencies seeking realistic solutions to an array of difficult problems. It is the Government's position that nursing homes and their associations can offer informative comments to state Medicaid agencies without crossing over the line and engaging in illegal conduct by such tactics as threatening to boycott.

Mr. Bierma's final point, involving the nursing home rate-setting process, concerns a matter which would have to be addressed by Congress. Under current federal law, Montana and other States are required to establish reasonable reimbursement for nursing homes participating in the Medicaid program. Under this system, Medicaid patients or "consumers" do not have a direct role in setting appropriate reimbursement levels.

Conclusion

This letter of comment does not alter the Government's belief that the proposed Final Judgment is in the public interest.

Dated: May 28, 1982.

Respectfully submitted,

Charles R. Schwidde,
Elizabeth M. O'Neill,
Attorneys, Department of Justice Antitrust Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, Telephone: (202) 633-4479.

Certificate of Service

I, Charles R. Schwidde, Jr., attorney for Plaintiff the United States of America, hereby certify that a copy of the attached Plaintiff's Response To Comments Regarding The Proposed Final Judgment has been served this 28th day of May, 1982 by first class mail, postage prepaid, upon James Douglas Welch, Esquire, attorney for the Defendant, Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., 2000 L Street, N.W., Suite 802, Washington, D.C. 20036.

Charles R. Schwidde,
Attorney, U.S. Department of Justice, 10th & Constitution Avenue, NW., Washington, D.C. 20530, Telephone: (202) 633-4479.

May 6, 1982.

John W. Poole, Jr.,
Chief, Special Litigation Section, Room 7218, Antitrust Division, Department of Justice, Washington, D.C.

Dear Mr. Poole: I think your proposal concerning the Montana Nursing Home Association and Medicaid falls short by allowing the Association to not admit wrongdoing.

State departments in Michigan routinely *invite* representatives from both the non-profit association and proprietary association to be on committees writing rules governing their operation as facilities. I believe that it is wrong to recognize them collectively or allow anyone to represent them. For by doing so, you institutionalize antitrust violations.

The nursing homes should be forced to go to their marketplace consumers to argue for higher reimbursement rates, thus incorporating consumer accountability and education into the process.

Currently, the nursing homes view the elderly as their adversaries. They attempt to by pass them and deal with their insurance

company or government directly on issues that should be decided by consumers. If the health care marketplace were truely competitive, the consumer or his/her guardian would negotiate for service, but as it stands, they have little say in the process as it operates today.

Thank you for receiving comments on this issue.

Sincerely,

John Bierma, M.A.

[FR Doc. 82-15668 Filed 6-9-82; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts, Theater Advisory Panel; 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 Theater Advisory Panel to the National Council on the Arts will be held on June 28-29, 1982 from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 29, 1982 from 11:30 a.m. -5:30 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on June 28, from 9:00 a.m.-5:30 p.m. and on June 29, 9:00 a.m.-11:30 a.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 applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from 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, Office of Council and Panel Operations, National Endowment for the Arts.

June 3, 1982.

[FR Doc. 82-15676 Filed 6-9-82; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts; Visual Arts Advisory Panel (Crafts Fellowships); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Crafts Fellowships) to the National Council on the Arts will be held on June 28-July 2, 1982, from 9:00 a.m.-5:30 p.m. in the Consul Building (West Lobby) of the Columbia Plaza, 2400 Virginia Avenue, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

June 3, 1982.

[FR Doc. 82-15677 Filed 6-9-82; 8:45 am]

BILLING CODE 7537-01-M

RAILROAD, RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) Collection title: Debtor's Financial Statement.

(2) Form(s) submitted: G-423.

(3) Type of request: Extension.

(4) Frequency of use: On occasion.

(5) Respondents: 1,550.

(6) Annual responses: 1,550.

(7) Annual reporting hours: 1,550.

(8) Collection description: Under Section 10(a) of the Railroad Retirement Act, the Board has the authority to secure from a debtor a statement of that individual's assets and liabilities. The information will be used for determining means for recovery of overpayment of benefits.

(1) Collection title: Supplemental Information on Accident and Insurance.

(2) Form(s) submitted: SI-1c.

(3) Type of request: Extension.

(4) Frequency of use: On occasion.

(5) Respondents: 20,000.

(6) Annual responses: 20,000.

(7) Annual reporting hours: 1,667.

(8) Collection description: The RUIA provides for reimbursement of sickness benefits paid if the employee receives a settlement for the same injury for which benefits were paid. The collection obtains identifying information about the person or company responsible for such payments and for sending notices of lien by the Board.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692.) Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhaus (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 82-15702 Filed 6-9-82 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12462; 812-5185]

Allied Capital Corp. and Allied Investment Corp.; Application for an Order Exempting Proposed Transaction

June 4, 1982.

Notice is hereby given that Allied Capital Corporation ("ACC"), 1625 I Street, N.W., Washington, D.C. 20006, a closed end, managment investment company registered under the Investment Company Act of 1940 ("Act"), and its wholly-owned subsidiary, Allied Investment Corporation ("AIC"), a closed-end, management investment company registered under the Act, and licensed as small business investment company under the Small Business Investment

Company Act of 1958, filed an application on May 6, 1982, requesting an order of the Commission pursuant to Section 17(b) of the Act exempting the proposed transaction from Section 17(a) of the Act; and pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder to permit AIC to participate to the extent of $400,000 in a $6,000,000 senior and junior subordinated notes financing to a partnership ("Buyco") formed by Louis Marks & Co., Inc., a Delaware corporation (LM), and Lesfay Corp., a newly organized Delaware corporation ("Lesfay"), and in that connection to purchase 2,073 shares of Lesfay common stock for $10,365. The Buyco senior and junior subordinated notes and the Lesfay shares have been purchased by five other institutional investors, one of which, Teribe, S.A. ("Teribe"), a Panamanian corporation, is the parent of Alcap, Limited ("Alcap"), the holder of 18.7% of ACC's outstanding capital stock; hence Teribe may be deemed an affiliate or an affiliate of an affiliate of ACC pursuant to Section 2(a)(3) of the Act.

Applicant states that of ACC's outstanding capital stock, 250,000 shares (18.9%) are held by Alcap limited, ("Alcap"), a British Virgin Islands corporation. Alcap is a wholly owned subsidiary of Teribe, a second-tier subsidiary of Enterprises Quilmes, S.A. ("EQ"), a Luxembourg holding company listed on the Paris and Luxembourg Stock Exchange. Mr. Willem F.P. de Voget, a Vice President of Three Cities Research, Inc. ("Three Cities"), a New York corporation affiliated with EQ, is a member of ACC's and AIC's boards of directors. Under an agreement dated October 30, 1980, pursuant to which Alcap acquired its investment in ACC, Alcap has the right to nominate two persons for election to ACC's board of directors, but to date has chosen to nominate only one person, Mr. de Vogel. As a matter of practice, ACC elects all members of its own board of directors to the board of directors of AIC.

Buyco was organized by LM and Lesfay to effect the "leveraged buyout" of the business and substantially all of the assets, subject to substantially all of the liabilities, of Leslie Fay Inc. (the "Seller"). That transaction was approved by the Seller's stockholders at a meeting held on April 30, 1982 pursuant to a proxy statement, filed with the Commission, dated April 8, 1982.

Under a Chapter 11 Plan of Reorganization, 52.5% of the stock of LM was acquired by certain of its former creditors and 47.5% of the stock of LM was acquired by Mr. Wilmer J. Thomas, Jr. ("Thomas") for $275,000 cash. In addition, LM borrowed $600,000 from Manufacturers Hanover Trust Company ("MHT").

Lesfay was capitalized with $2,000 of 6% cumulative non-voting non-convertible preferred stock and $500,000 of common stock. The preferred stock was purchased by Thomas and Mr. Ira J. Hechler ("Hechler"). The common stock was purchased, to the extent of $249,500 (49.9%), by three persons who were members of the Seller's management (The "Management Group"); to the extent of $108,670 (21.734%), by Mrs. Hechler and Mr. Harold S. Geneen ("Geneen"); and, to the extent of $141,830 (28.366%), by the senior and junior subordinated debt investors. In addition, Lesfay borrowed $10,250,000 from MHT, Chemical Bank (which was a creditor and has become a shareholder of LM) and Bankers Trust Company ("BT").

In forming Buyco, LM contributed $500,000, and Lesfay contributed $10,500,000 to its capital. The junior subordinated debt investors as such lent to Buyco an aggregate of $1,700,000 for $2,300,000 principal amount of junior subordinated notes bearing interest on their principal amount at the per annum rate of the greater of 14.8% or the product of .7391 times 3% over prime; and the subordinated debt investors as such lent to Buyco $4,300,000 at 19% (or 2% over prime, if higher) per annum interest. The senior subordinated notes will mature on April 30, 1988, subject to payment in whole or in part at any time. The junior subordinated notes also mature on Aril 30, 1988, but subject to the payment in full of the senior subordinated notes, may be prepaid in whole or in part at anytime after November 30, 1985. The junior subordinated notes may be paid with an aggregate of $1,700,000 plus accrued interest if paid in full before January 1986.

The lenders who participated in the senior subordinated dept financing to Buyco include, in addition to Teribe and AIC, BT's holding company and the small business investment company affiliates of BT, of MHT and of another U.S. commercial bank ("SBIC C"). All of the foregoing other than the BT affiliates also participated in the junior subordinated debt financing. The following table shows, assuming AIC's participation, the participations of each of the foregoing in the senior and junior subordinated debt financing, as well as the number of Lesfay's 100,000 common shares to be purchased by them at $5 per share:

	Senior subordinated notes ($1,000)	Junior subordinated notes (at cost) ($1,000)	Lesfay shares in respect of A	Lesfay shares in respect of B	Total Lesfay shares
	(a)	(b)	(c)	(d)	(e)
Holding BT	$1,450		$4,999		$4,999
SBIC BT	1,000		4,972		4,972
Teribe [1]	857	$793	3,488	$5,069	8,557
SBIC MHT	470	430	1,913	2,748	4,661
SBIC C	315	235	1,282	1,822	3,104
AIC	208	192	846	1,277	2,073
Total	4,300	1,700	17,500	10,866	28,366

[1] As to the Buyco loans, per its affiliate in the Netherlands Antilles.

The common shares of Lesfay are entitled to cumulative voting and accordingly all the subordinated note investors in the aggregate will be entitled to representation on the seven member board of Lesfay by at least one and possibly two directors, who may be executives of Three Cities, including possibly Mr. de Vogel.

In connection with the senior and junior subordinated debt financings, Buyco paid financing fees aggregating $150,000. These were allocated among the participants as a function of the contribution which they are considered to have made to the structuring and negotiation of the transaction. Of the total, $32,500 is proposed to be paid to Three Cities, the U.S. affiliate of Teribe of which Mr. de Vogel, a director of ACC and AIC, is an officer, and $5,000 to AIC. Applicant states that in the opinion of the Boards of Directors of ACC and AIC, such fees, including specifically the $32,500 fee to be paid to Three Cities, represent fair and reasonable compensation to the parties to which they are payable for services rendered by them in structuring and negotiating the transaction. Applicant submits that the payment of financing fees as a function of services rendered by them in negotiating the transaction rather than in proportion to their investment should not be considered as differentiating the basis of Applicants participation from that of the other investors in contravention of Rule 17d–1.

Section 17(a) of the Act, in relevant part, provides, in substance, that it is unlawful for an affiliated person or an affiliated person of a registered investment company, acting as principal, knowingly to sell any security or other property to such registered investment company or to any company controlled by such registered company. The Commission may, pursuant to Section 17(b) of the Act, exempt a transaction from Section 17(a) if it finds that: (1) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent withthe general purposes of the Act.

Section 17(d) of the Act and Rule 17d–1 thereunder make it unlawful for an affiliated person, or an affiliated person of such affiliated person, of a registered investment company, acting as principal, to effect any transaction in which such registered investment company or a company controlled by such registered investment company, is a joint or a joint and several participant with such person, unless an application regarding such joint enterprise has been filed with the Commission and granted by an order entered prior to the submission of such plan to security holders for approval, or prior to adoption, if not submitted to the security holders for approval. In granting such application consideration is given to whether the participation in such joint enterprise is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants submit that participation by AIC in a transaction in which Teribe also participates might be considered a participation by AIC and Teribe in a joint enterprise in contravention of Section 17(d) of the Act and Rule 17d–1 thereunder unless authorized by order of the Commission. Applicants further submit that the terms of the transaction required the other parties to the transaction to proceed to a closing thereof on April 30, 1982, the last day of the Seller's fiscal year. Applicant states that it was impractical to obtain the required Commission order prior to that date, and thus Teribe bought for its own account the participation proposed for AIC and has offered, upon issuance of the requested order within a resasonable time; to resell it to AIC at cost plus accrued interest. Such resale would, however, contravene Section 17(a)(1) of the Act unless exempted therefrom by order of the Commission pursuant to Section 17(b).

Applicants submit that the proposed transaction meets the standards for exemption of both Section 17(b) and Rule 17d–1 and that an order of the Commission should therefore be issued authorizing the proposed transaction.

Applicants represent that the boards of directors of ACC and AIC unanimously approved the proposed transaction and that the boards of directors include one representative of Alcap, one representative of another institutional investor not involved in the proposed transaction, and nine others. The ten directors unaffiliated with and not interested in Alcap personally own, in the aggregate, a number of ACC's outstanding voting shares greater than the number ownd by Alcap.

Applicants further represent that the terms of the proposed transaction are fair and reasonable because they have been negotiated at armslength by parties all of whom are or are advised by sophisticated investment professionals, and all of whom are represented by independent and competent legal counsel. According to Applicants, none of the parties has the economic power or influence to overreach any of the other parties.

Applicants submit that the terms of AIC's participation in the Buyco senior and junior subordinated notes financing and in the common stock of Lesfay are identical to the terms of participation by the other investors in both senior and junior subordinated notes. The sole difference is in the allocation of the financing fees paid to the participants for services rendered in structuring and negotiating the transaction, rather than in proportion to their investment. As noted above, Applicants submit that their boards of directors consider the fees fair and reasonable under the circumstances and that this pay structure should not be considered as differentiating the basis of their participation from that of other parties to the transaction.

Applicants submit that the proposed investment is consistent with the fundamental investment policies of AIC and, hence, of ACC, and that the proposed transaction is consistent with the general purposes of that Act.

Notice is further given that any interested person may, not later than June 29, 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/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application 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. 82–15753 Filed 6–9–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12460; 812–5143]

Canadian Imperial Bank of Commerce; Filing of Application Exempting Applicant From All Provisions of the Act

June 4, 1982.

Notice is hereby given that Canadian Imperial Bank of Commerce ("Applicant") c/o Peter V. Darrow, Esq., Shearman & Sterling, 53 Wall Street, New York, New York 10005, filed an application on March 22, 1982, and an amendment thereto on April 27, 1982, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant is the second largest commercial bank in Canada in terms of total assets and that it developed from the amalgamation in June 1961 of The Canadian Bank of Commerce and Imperial Bank of Canada. Applicant provides traditional

banking services, such as deposit accounts, savings accounts, mortgage loans and personal installment loans, and also offers additional services including automated banking services, factoring, lease financing, currency exchange, and acceptance credit facilities. The application states that Applicant and three other Canadian banks and four other financial institutions comprise the Visa card system in Canada under the registered name "Chargex." The application further states that Applicant does not carry on any trust, fiduciary, or insurance business in Canada.

The application states that Applicant is engaged in international banking activities through 116 offices in 24 countries. The application states that, in the United States, Applicant has wholly-owned subsidiaries in California and New York; it maintains agencies in Atlanta, New York, and San Francisco; and it has branches in Portland and Beaverton, Oregon, and Seattle, Washington. It also has representative offices in Chicago, Dallas, Houston, and Denver, and limited state branches in Chicago and Pittsburgh. In connection with its ownership of California Canadian Bank and Canadian Imperial Bank of Commerce Trust Company, New York, both wholly-owned subsidiaries, the application states that Applicant registered with the Board of Governors of the Federal Reserve System under the U.S. Bank Holding Company Act of 1956, as amended (the "Bank Holding Company Act").

The application states that at October 31, 1981, Applicant had total assets of approximately $66.8 billion,[1] of which approximately 65.6% constituted loans extended by Applicant. The application further states that at October 31, 1981, Applicant had total liabilities (including capital) of approximately $66.8 billion, of which deposits (including demand, time, and savings deposits) constituted approximately 85.6% and debentures outstanding constituted approximately 0.9% of such liabilities. For the year ended October 31, 1981, the application states that Applicant's total revenues were $8,984,053,000. Of this amount, $6,981,491,000, or 77.7%, represented revenues from loans.

Applicant represents that it is subject to extensive regulation pursuant to the Bank Act of Canada (the "Bank Act"). The Bank Act contains provisions pertaining to the business of banking and the organization of banks in Canada, including the business and powers of chartered banks, their shareholders and directors, their capital stock and debentures, the maintenance of primary and secondary reserves, liquidity requirements, auditing requirements, financial disclosure, and regular inspection by the Insepector General of Banks to ensure compliance with the Bank Act. It is further asserted that Canadian chartered banks do not participate in any material way in the Canadian securities business.

The application states that Applicant is subject to extensive United States federal regulation pursuant to the Bank Holding Company Act. in addition, it is represented that pursuant to the International Banking Act of 1978, each of its United States branches and agencies is subject to direct examination by the Federal Reserve Board. It is also stated that Applicant's activities through its agencies and branches are subject to extensive regulation and examination under the laws of the state in which they are located.

Applicant proposes to unconditionally guarantee short-term commercial paper notes (the "notes") denominated in United States dollars to be issued in the United States by Canadian Imperial Holdings, Inc. ("CIHI"), a proposed bank holding company organized under the laws of the State of Delaware. CIHI was established as a bank holding company pursuant to a plan of corporate reorganization, under which Canadian Imperial Holding Corporation ("CIHC"), a Delaware corporation, will become a wholly-owned subsidiary of CIHI. As part of the reorganization, California Canadian Bank and Canadian Imperial Bank of Commerce Trust Company are, with the exception of directors' qualifying shares, to become wholly-owned subsidiaries of CIHC. The application states that the proceeds from the sale of the notes will be deposited with Applicant in a non-interest bearing account for use in its lending operations.

The application states that under current Canadian law, if Applicant were to issue commercial paper notes directly, it is possible that Canadian withholding tax could be imposed on payments constituting interest on the notes paid to non-Canadian persons. Accordingly, the application states that Applicant has arranged to use CIHI as a vehicle for issuing commercial paper notes in the United States. In the event of a change in Canadian law regarding the imposition of withholding tax or the receipt of a favorable tax ruling by Applicant from the appropriate tax authorities, Applicant states that it may also issue the notes directly.

Applicant states that the notes will be in denominations of 100,000 United States dollars or more, will mature not more than nine months from the date of issuance, and will not be payable on demand or include any provision for extension, renewal or automatic "roll-over" at the option of either the holders or CIHI. The notes are intended to be of prime quality and of a type eligible for discounting by a Federal Reserve bank.

The application states that the notes will be sold through one or more United States commercial paper dealers to institutional and other investors who normally purchase commercial paper, and Applicant undertakes to cause CIHI to ensure that the notes will not be advertised or otherwise offered for sale to the general public. Applicant represents that the aggregate principal amount of the notes to be outstanding at any time is not expected to exceed one billion United States dollars. The application states that the notes will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated indebtedness of CIHI, and ahead of its share capital. Applicant's guarantee will rank *pari passu* with all of Applicant's other unsecured and unsubordinated indebtedness, except for indebtedness of Applicant which is given a statutory preference under the Bank Act or other statute.

Applicant and CIHI plan to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance on the written opinion of Applicant's legal counsel in the United States to the effect that the notes will qualify for the exemption from the registration requirements of the 1933 Act provided by Section 3(a)(3) thereof. The application states that the notes will not be issued until Applicant has received such an opinion. Applicant does not request Commission review or approval of such opinion, and the Commission expresses no opinion as to the availability of any such exemption. Applicant states that the presently proposed issue of commercial paper notes and any future issue of debt securities offered for sale in the United States by CIHI and similarly guaranteed by Applicant, or issued directly by Applicant, will be conditioned upon the receipt, prior to issuance, of one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and Applicant's United States counsel will have certified that such a rating has been received.

[1] All dollar amounts referred to are Canadian dollars unless specified otherwise. On October 31, 1981, the Canadian dollar exchnge rate for United States dollars was US $1 = $.8334.

Applicant undertakes to cause CIHI to ensure that each offeree who has indicated an interest in the notes will receive, prior to sale, a memorandum that describes the businesses of Applicant and CIHI and contains Applicant's and, to the extent available, CIHI's most recent publicly available annual financial statements, including a balance sheet and profit and loss statement, audited in accordance with Canadian and American accounting principles, respectively, and the most recent publicly available unaudited interim financial statements of Applicant and, to the extent available, of CIHI. Applicant represents that such memorandum will state the material differences between Canadian accounting principles applicable to Canadian banks and generally accepted accounting principles applicable to United States commercial banks. Applicant states that the memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States, and will be updated promptly to reflect material changes in the business and financial condition of Applicant and CIHI.

Applicant further undertakes that any future offering of other debt securities in the United States by Applicant or guaranteed by Applicant and issued through CIHI will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under the 1933 Act. Applicant further undertakes that any such offering will be made on the basis of disclosure documents at least as comprehensive in their description of the Applicant and CIHI and their respective businesses and financial statements as the memorandum described above, and in any event, as comprehensive as those disclosure documents customarily used in offerings of similar debt securities in the United States. Applicant undertakes to update promptly, and to cause CIHI to update promptly, any such documents to reflect material changes in their financial conditions, and to ensure that such a disclosure document will be provided to each offeree who has indicated an interest in such securities prior to any sale of such securities to such offeree. Applicant consents to having any order granting the relief requested under Section 6(c) expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that Irving Trust Company will be appointed to issue the notes from time to time. The application states that Applicant and CIHI will expressly accept the jurisdiction of any state or federal court in the Borough of Manhattan in the City and State of New York in respect of any action based on the notes or arising out of the offering and sale of the notes, or any action based on or arising out of the guarantee of Applicant instituted by the holder of any note. In that connection, the application states that the Applicant and CIHI will appoint Canadian Imperial Bank of Commerce Trust Company or a corporate entity that normally acts in such capacity as agent to accept any process which may be served in any such action. Such appointment of an authorized agent to accept service of process and such consent of jurisdiction will be irrevocable until all amounts due and to become due with respect to the notes have been paid. The application states that Applicant and CIHI will also be subject to suit in any other court in the United States that will have jurisdiction because of the manner of the offering of the notes or otherwise, and that the right of any holder of a note to bring suit in any court that shall have jurisdiction over Applicant or CIHI by virtue of the offer and sale of the notes, Applicant's guarantee, or otherwise, shall not be affected by the foregoing submission to jurisdiction or appointment of an agent for service of process.

Applicant similarly undertakes, in connection with any future offering of debt securities in the United States issued by CIHI and guaranteed by the Applicant, or issued by the Applicant directly, to appoint, and to cause CIHI to appoint, an agent to accept any process which may be served in any action based on such securities or such guarantee and instituted by any holder of any security so guaranteed. The Applicant further undertakes that it will expressly accept, and will cause CIHI to accept, the jurisdiction of any state or federal court in the Borough of Manhattan in the City and State of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as securities so guaranteed or issued remain outstanding and until all amounts due and to become due in respect of such securities have been paid. The application states that the Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether or not a foreign commercial bank would be considered an investment company as defined by the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of 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.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that it is not the type of institution intended to be regulated by the Act. Applicant also submits that its compliance with a number of substantive provisions of the Act would, as a practical matter, conflict with its operation as a bank and would effectively preclude Applicant from selling securities in the United States. Applicant further submits that an exemptive order pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors in the United States because they would otherwise be precluded from purchasing commercial paper notes guaranteed by Applicant. Moreover, the application contends that because of the development of the large Eurodollar market, the major foreign banks that deal in the market need a source of United States dollars in case of a disruption of the market. Applicant concludes that granting an order or exemption pursuant to Section 6(c) of the Act would be 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.

Notice is further given that any interested person may, not later than June 28, 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 Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application 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. 82–15755 Filed 6–9–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22522; 70–6725]

Central and South West Services, Inc., et al.; Proposed Extension of System Money Pool; Issuance of Notes to Banks and Commercial Paper to Dealers; Exception From Competitive Bidding

In the matter of Central and South West Services, Inc., Central and South West Corporation, 2700 One Main Place, Dallas, Texas 75250; Central Power & Light Company, P.O. Box 2121, Corpus Christi, Texas 78403; Southwestern Electric Power Company, P.O. Box 21106, Shreveport, Louisiana 71156; Public Service Company of Oklahoma, P.O. Box 201, Tulsa, Oklahoma 74102; West Texas Utilities Company, P.O. Box 841, Abilene, Texas 79604; Transok Pipe Line Company, 600 South Main Street, Tulsa, Oklahoma 74101.

Central and South West Corporation ("CSW"), a registered holding company, and six of its subsidiaries (collectively, the "Subsidiaries"), Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEP"), West Texas Utilities Company ("WTU") and Central and South West Services, Inc. ("CSWS"), and PSO's subsidiary Transok Pipe Line Company ("Transok"), have filed an application-declaration and an amendment thereto with this Commission pursuant to Section 6, 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, 50(a)(2), 50(a)(3) and 50(a)(5) promulgated thereunder.

The applicant-declarants seek authorization to make short-term borrowings in an aggregate principal amount outstanding not to exceed $300,000,000 through December 31, 1983. The aggregate borrowings for all of the applicant-declarants together will not exceed the $300,000,000 limit for CSW. Provided that the companies aggregate borrowings do not exceed the $300,000,000 limit, each company may individually borrow up to the following maximum amounts:

CSW	$300,000,000
CPL	110,000,000
PSO	110,000,000
SWEP	100,000,000
WTU	35,000,000
CSWS	10,000,000
Transok	20,000,000

In no case will borrowings exceed 10% (or, in the case of PSO and WTU, 20%) of the aggregate of the borrower's secured debt, capital stock and premiums thereon, and surplus (consolidated, in the case of CSW and PSO) at the time of borrowing.

Short-term money operations for the CSW System are coordinated through use of a "money pool" concept. Under the money pool concept, short-term funds are available for use within the CSW System from time to time from the following sources:

(1) Surplus funds in the treasuries of the operating companies.

(2) Surplus funds in the treasury of CSW.

(3) External borrowings by CSW from the sale of commercial paper notes and/or bank borrowings.

Loans are made to the subsidiaries from these fund sources in the stated order of priority. In other words, if any of the operating companies has surplus funds available (subject to exceptions described below), these will be used to satisfy borrowing needs of other subsidiaries before funds of CSW are used, and CSW will not borrow externally if sufficient surplus funds are available from subsidiaries.

Each borrowing subsidiary will borrow pro rata from each lending subsidiary and CSW in the proportion which the total amount being loaned by that lending company through the money pool bears to the total amount being loaned through the money pool. No loan will be made by CSW or a subsidiary if the borrowing subsidiary could borrow more cheaply directly from banks or through the sale of its own commercial paper, if authorized by the Commission. The chief financial officer or treasurer, or their designee, will determine if surplus funds are available to lend and will authorize any loan. No subsidiary may make a loan to CSW. Operation of the System money pool as a whole, including record keeping and coordination of loans, is handled by CSWS under the authority of the chief financial officer of CSW and CSWS.

Loans to the subsidiaries through the System money pool could be made pursuant to open account advances, although any lender would at all times be entitled to receive upon demand a promissory note evidencing the transaction. In the case of loans from CSW, any such note will be dated as of the date of the borrowing, mature on a date agreed to by the parties to the transaction, but in no event later than the earlier of December 31, 1983 or one year from the date of the borrowing, and prepayable in whole or in part at any time without premium or penalty. In the case of loans by a subsidiary, any promissory note would be substantially similar to CSW's notes, except that its maturity date would in no event be later than the earlier of (a) the date the borrower could be expected to obtain funds with which to pay the note or (b) the date the lender would require the excess funds for its own use. If a note matures in accordance with (b) above, the loan would be continued by another subsidiary or CSW from surplus funds or by CSW through the external borrowings proposed in this application-declaration.

The interest rate applicable on any day to then outstanding loans through the System money pool of surplus funds from the treasuries of CSW or any of the subsidiaries will be the weighted average daily cost incurred by CSW for borrowings from external sources or if there are no borrowings outstanding then the highest annual rate for that day published in *The Wall Street Journal* for General Motors Acceptance Corporation 30 to 179 day commercial paper. The interest rate applicable to loans made from funds borrowed by CSW from external sources would be equal to CSW's net cost for such borrowings.

CSW in recent years has customarily satisfied most of its short-term borrowing needs and those of the subsidiaries through the sale of

commercial paper notes through commercial paper dealers ("dealers"). CSW requests authorization for the issuance and sale of such notes during the period to one or more dealers subject to the limitations on aggregate outstanding principal amount stated above. There is no affiliation between CSW or any of the subsidiaries and any dealer or any of its affiliates. The proceeds from the sale of commercial paper to dealers would be added to CSW's treasury funds and would be invested in or loaned to the subsidiaries in the manner herein described.

The commercial paper notes which CSW proposes to issue to dealers would have varying maturities of not more than nine months from date of issue, exclusive of days of grace, would be in varying denominations of not less than $25,000 each, and could be issued and sold by CSW from time to time to and including December 31, 1983. Such notes would be issued and sold by CSW directly to dealers at a rate not to exceed the rate per annum prevailing at the time of issuance thereof to commercial paper of comparable quality and maturity sold by issuers thereof to commercial paper dealers and at an interest cost which would not exceed the effective cost of money for unsecured prime commercial bank loans prevailing on the date of issue of such commercial paper. No commission or fee would be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, however, would reoffer such notes at a rate less than the rate to the issuer.

The dealers, as principals, would reoffer such notes in such manner as not to constitute a public offering under the Securities Act of 1933. The notes would be reoffered to no more than 200 customers designated in a list prepared in advance by the dealers and filed with this Commission. The customer list will include commercial banks, insurance companies, corporate pension funds, investment funds, foundations, colleges and universities, municipal and state benefit funds, eleemosynary institutions, finance companies and nonfinancial corporations which invest surplus funds in commercial paper. Any change in the list of customers will be furnished to the Commission in connection with the reports listed below.

CSW's commercial paper notes sold to dealers are expected to be held by customers to maturity, except that if customers wish to sell such notes prior thereto, the dealer, pursuant to a repurchase agreement, would repurchase such notes and reoffer them to others in the group of customers on the dealer's list. CSW's commercial paper would not be subject to prepayment prior to maturity or extension.

CSW also requests authorization to sell commercial paper directly to certain approved financial institutions. Sales of commercial paper directly to such institutions would be undertaken only if the resulting cost of money would be equal to or less than that available from dealer-placed commercial paper or bank borrowings. Direct sales would be made only to institutions on a list furnished in advance to the Commission. Terms for directly-placed notes would be similar to those of dealer-placed notes.

CSW believes that the use of commercial paper would in most periods result in effective interest costs lower than those that would result from borrowings from commercial banks. However, if bank borrowings would produce a lower cost of money and if inadequate funds were available from the System money pool, CSW will borrow from banks from time to time through December 31, 1983 and subject to the aggregate limits for all borrowings stated above. The notes to banks would be for the principal amount to be borrowed at the time from the lending bank and be payable to the order of such bank, would be dated the date each such borrowing is made and would mature on a date not more than 12 months from the date thereof. Such notes would bear interest at a rate no higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of such borrowing and would be subject to prepayment by the borrower in whole at any time or in part from time to time, without premium or penalty. None of the notes would be issued nor would any of the proposed borrowings be made under a credit agreement or contract.

Compensation arrangements under the lines of credit maintained by CSW and any subsidiaries are on a balance or fee basis. The most onerous compensating balance or commitment fee arrangement is a compensating balance of 10% of the line of credit. Based on a prime interest rate of 16.5%, such an arrangement results in an effective interest cost of 18.33%.

The cost of compensating balances and fees paid to banks to maintain credit lines will be initially allocated to the subsidiaries on the basis of 10% to WTU and 30% each to CPL, PSO and SWEP, and such costs will be retroactively reallocated at the end of each calendar year on the basis of relative maximum outstanding short-term borrowings of each company (including CSW when it borrows for its own corporate needs). Thus each company will be reallocated that proportion of the total line of credit costs which is equal to the percentage which its maximum short-term borrowings during the year represent of the aggregate of the maximum short-term borrowings, on a non-coincidental basis, of all the companies.

CSW requests authorization within the aggregate borrowing limits stated above to continue arrangements for borrowings from funds managed by the trust departments of banks. Trust fund borrowings would be made only from the banks on a list furnished in advance to the Commission, would be evidenced by notes payable on demand and would bear interest at a rate equal to the highest annual interest rate on 30- to 179-day commercial paper placed by General Motors Acceptance Corporation as reported in *The Wall Street Journal.*

Commercial paper and bank borrowings would be tailored to mature at such time as excess funds from CSW or any subsidiary were expected to become available for loans through the System money pool. Upon the availability of any such funds, external borrowings would be retired and loans refinanced to the extent of such funds.

Proceeds of any short-term borrowings (other than borrowings by CSWS) would be used (i) in the case of borrowings by CPL, PSO, SWEP, WTU and Transok (the "operating companies"), for the interim financing of their capital programs during the period and to provide for other temporary working capital needs; (ii) in the case of borrowings by CSW, to loan or contribute as capital (subject, in the case of any capital contribution, to separate authorization by the Commission) to the subsidiaries for such purposes; and (iii) to repay borrowings previously incurred for such purposes. Proceeds of borrowings by CSWS will be used to provide working capital for CSWS's operations or to repay borrowings used for such purpose.

The estimated capital programs for 1982 and 1983, respectively for the operating companies are as follows (in millions):

	1982	1983
CSW (consolidated)	$637	$711
CPL	222	236
PSO	102	134
SWEP	221	243
WTU	55	77
Transok	37	21

CSW requests an exception from the competitive bidding requirements of

Rule 50(b) pursuant to subparagraph (a)(5) for the issuance of commercial paper because it is impractical to obtain competitive bids for commercial paper, current commercial paper rates for prime issuers are published in daily financial publications and the commercial paper will have maturities not in excess of 270 days.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 28, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and serve a copy on the applicant-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15751 Filed 6-9-82; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 4, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Cigna Corporation
Common Stock, $1 Par Value (File No. 7-6227)
Florida Progress Corporation
Common Stock, $2.50 Par Value (File No. 7-6228)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 25, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15749 Filed 6-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22518A; 70-6669]

The Connecticut Light & Power Co., the Hartford Electric Light Co., the Connecticut Gas Co., Selden Street, Berlin, Connecticut 06037; Supplemental Notice Correcting Error

June 4, 1982.

The notice issued in this proceeding on June 1, 1982 (HCAR No. 22518) used the wrong items for the dividend restrictions therein described. The last sentence of the second paragraph of the notice is hereby amended to read:

Although a separate computation is required for each series of bonds of each issuer, the effective restrictions are those contained in the most recent series which restrict about $113.5 million for CL&P and $102.5 million for HELCO, a total of $216.0 million.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15750 Filed 6-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12458; 812-5085]

Insured Municipals—Income Trust; Application for Order Exempting Applicant

June 3, 1982.

In the matter of Insured Municipals-Income Trust, Investors' Quality Tax-Exempt Trust, Investors' Corporate-Income Trust, Investors' Governmental Securities-Income Trust, Investors' Municipal Pennsylvania Unit Trust, Pennsylvania Insured Municipal Bond Trust, New York Insured Municipal Bond Trust, California Quality Tax-Exempt Trust and Van Kampen Merritt Inc.; c/o Van Kampen Merritt Inc., 1901 North Naper Boulevard, Naperville, Illinois 60566.

Notice is hereby given that Insured Municipals—Income Trust, Investors' Corporate-Income Trust, Investors' Governmental Securities-Income Trust, Investors' Quality Tax-Exempt Trust, Investors' Municipal Pennsylvania Unit Trust, Pennsylvania Insured Municipal Bond Trust, New York Insured Municipal Bond Trust, California Quality Tax-Exempt Trust (collectively, "the Funds"), all unit investment trusts registered under the Investment Company Act of 1940 ("Act"), and Van Kampen Merritt Inc., the sponsor of the Funds ("Sponsor") and collectively with the Funds, ("Applicants"), filed an application on January 15, 1982, and an amendment thereto on April 15, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Rule 22c-1 under the Act to the extent necessary to permit the Sponsor to offer units of fractional undivided interest ("Units") of each future Series ("Series") of each Fund at a public offering price other than the price next computed after receipt of a purchase order on the first business day only of the initial offering period for each future Series. 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 each Series of a Fund is created under New York or Massachusetts law by a separate Trust Agreement between the Sponsor and a trustee. Applicants further state that as of January 12, 1982, an aggregate of 114 separate Series of the Funds had been offered and that the underlying securities of each Series consist of either long term municipal, corporate or governmental debt obligations ("Securities").

Applicants state that, upon determining to offer a Fund Series, the Sponsor files with the Commission under the Securities Act of 1933 ("1933 Act") the documents necessary to register for sale Units of the particular Series, the Trust Agreement is signed (the "Date of Deposit") and the Sponsor deposits (with the trustee) Securities or contracts to purchase Securities accompanied by an irrevocable letter of credit in an amount sufficient to complete the purchase in exchange for certificates for Units representing the entire ownership of that Series.

Applicants state that upon the effectiveness of the 1933 Act registration for such Units on the Date of Deposit, the initial offering period commences, during which the Units of that Series are offered for sale to the public by the Sponsor and other underwriters. Applicants represent that the initial offering period continues from day to day as may be necessary until all the Units initially offered have been sold (but not exceeding 30 days unless extended by the Sponsor for up to four additional successive 30-day periods). Applicants maintain that the initial offering period of a Fund Series normally requires several days but many trades are consummated on the Date of Deposit. Applicants assert that since the indications of interest received prior to the effectiveness of the registration statement for a Series are only approximations and cannot be firm offers to purchase, the actual purchases upon the effectiveness of an offering may be considerably different from that estimated due to, for example, mistake, changed market conditions or inaccurate estimates.

Rule 22c–1 adopted under the Act provides, in pertinent part, that no registered investment company issuing any redeemable security, and no dealer in any such security, shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants propose to offer Units of each future Series of a Fund to the public at a public offering price determined as of 3:30 p.m. on the business day preceding receipt of the purchase order ("backward pricing") for the first day of the initial offering period for each such Series (the Date of Deposit). Since the public offering price so determined will be effective for all sales of the Units until such time on the next business day, the "forward pricing" requirement of Rule 22c–1 under the Act would not be met.

Applicants state that the forward pricing requirements of Rule 22c–1 are often confusing to investors who purchase Units on the Date of Deposit, particularly when the Unit price increases from the day preceding the Date of Deposit. Applicants submit that investors purchasing Units on the Date of Deposit can be confused in two ways. First, the price of Units of Applicant are normally calculated to create a market price as of the close of business on the day before the Date of Deposit equal to $1,000 per Unit. Applicants state that this is the price shown in the related prospectus (which happens to be dated the Date of Deposit) and that to accomplish the $1,000 price, a sufficient number of Units are created so that the aggregate offering price of the underlying portfolio Securities plus the applicable aggregate sales charge equal the number of Units divided by 1,000. Applicants state further that as a consequence of this pricing practice, brokers quote to prospective investors a price of $1,000 per Unit and that should the price of the underlying Securities actually change during the Date of Deposit, confirmations are sent out with the revised price (which is required by the forward pricing prodedure). Applicants state that investors, upon receipt of this revised confirmation, are often confused since they believe they purchased Units for exactly $1,000 per Unit, especially when they have also received a current prospectus with the $1,000 price indicated. Applicants state further that particularly in the situation where prices have increased, investors may contact their brokers for an explanation since they are required to pay more than was quoted. Applicants assert that assuming a broker understands forward pricing requirements, explaining the procedure to investors at a minimum can be time consuming and may in fact be quite difficult. It is further asserted that adding to this confusion is the fact that the actual estimated current return, which is alleged to be perhaps the most significant factor in making an investment decision relating to unit investment trusts, will be somewhat different from that quoted by the broker and indicated in the prospectus. Thus, Applicants believe that backward pricing on the Date of Deposit both removes investor confusion regarding pricing and insures the investor of his anticipated estimated current return.

Even though Applicants believe that backward pricing on the Date of Deposit is necessary to remove all investor price confusion and insure that quoted returns equal actual ones, Applicants currently believe that on balance when prices decrease on the Date of Deposit investor confusion is outweighed by the benefit of lower prices per Unit (and resulting increase in estimated current return).

Consequently, Applicants propose to eliminate all backward pricing if the price decreases on the Date of Deposit. Thus, if the price per Unit increases on the Date of Deposit, the price indicated in the related prospectus will apply, for trades on the Date of Deposit, but if such price decreases, such lower price will be charged.

Applicants believe that Rule 22c–1 has two purposes: (1) to eliminate or reduce any dilution of the value of outstanding redeemable securities of registered inestment companies which might occur through the practice of selling securities at a price based upon a previously established value which permits a potential investor to take advantage of an upswing in the market and an accompanying increase in the value of investment company shares by purchasing such shares at a price which does not reflect such invcrease, and (2) to minimize speculative trading practices which so compromise registered investment companies as to be unfair to the holders of their outstanding securities. Applicants submit that the proposed backward pricing of Units will not undermine or contravene the purposes of Rule 22c–1. In this regard, Applicants state that dilution of the Fund is not relevant since the Sponsor and the other underwriters, having deposited all of the Securities, own all of the Units, and the price at which the Sponsor and the other underwriters sell those Units can affect only the Sponsor and the other underwriters and not the value of the Securites nor the fractional undivided interest in the Securities represented by each Unit outstanding.

Applicants state further that possible speculative features relating to backward pricing are of such a limited nature to be a practical impossibility. First, Applicants state that of the 28 series of the various Funds initially offered during the last 12 month period, the average daily price change on the Date of Deposit was $1.98 per Unit (or 0.198% of the initial public offering price). Applicants assert that the largest price change was only $10.03 per Unit and that the estimated current returns were affected on average by 0.026% with the largest change being 0.17%. Applicants contend that in light of the applicable sales charges (generally $49.00 per Unit) and the difference between offering prices of the underlying Securities (which are the

prices used to compute the initial public offering price) and the bid prices thereof (which are used to compute redemption prices) (generally a difference of between $10 and $20 per Unit), such one day price changes do not approach the transactional costs related to any attempted speculation by investors. Applicants maintain that even though each Fund is comprised of long term securities, the volatility of market prices in any one day simply is not of such a magnitude to overcome the related costs of speculation. In addition, Applicants submit that even if the volatility existed, it is unlikely a prospective investor would know what specific Securities are in a portfolio before he gets a prospectus, how much principal amount of each Security will be included or the market prices related thereto (since such Securities are not traded on any exhange), and that, thus, it will be practically impossible for an investor to accurately determine the amount, if any, of a change in the net asset value of the Fund on the Date of Deposit. Finally, Applicants assert that unit investment trusts are marketed in a manner that is the antithesis of speculation since Units are sold for long term fixed income.

In connection with speculation by the Sponsor, underwriters and dealers, Applicants submit that since the Sponsor and certain of the underwriters intend to maintain a market for Units, to allow immediate redemptions to occur is both disruptive and expensive because the current prospectus would have to be supplemented to indicate changes in the underlying portfolio resulting from sales of Securities to meet redemptions. Applicants state that such costs would be borne by the Sponsor. Moreover, it is contended that the Sponsor, underwriters and dealers have less incentive to speculate since they already share in the sales charge. Applicants assert that of the typical initial $49.00 sales charge per Unit, the Sponsor receives $14.00, the underwriters receive $35.00 (if sold themselves) or $5.00 if sold to dealers and dealers receive $30.00 for each Unit they sell. Applicants maintain that, consequently, even if the practical limitations discussed in the previous sentence were ignored and the extremely unlikely possibility of a large one day price increase occurred, the profits generated, not to mention the goodwill created with investors, greatly mitigates against speculation. Nevertheless, because speculation is still a remote possibility, Applicants propose to ban any redemptions during the first 30 days of an initial offering period of a series of a Fund by the Sponsor, other underwriters and dealers.

Notice is further given that any interested person may, not later than June 28, 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. 82–15756 Filed 6–9–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18788; File No. SR–NYSE–82–9]

New York Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

Comments requested on or before July 1, 1982.

In the matter relating to the prohibition contained in NYSE Rule 107 against Registered Competitive Market-Markers ("RCMMs") handling "not held" orders.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1), notice is hereby given that on May 17, 1982, the New York Stock Exchange, 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 consists of amendments to Exchange Rule 107, to enable an RCMM to accept and execute "not held" orders when acting as a Floor broker for a member organization other than the one with which he is associated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule 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

Exchange Rule 13 defines a "not held" orders as * * * "a market or limited price order marked 'not held', disregard tape', 'take time' or which bears any such qualifying notation." In other words, the executing broker is permitted to use his judgement as to the time and price of execution.

Presently, Rule 107 prohibits and RCMM from accepting a "not held" order from any source, i.e., the customer himself, a non-member, the RCMM's firm or another member organization. In the past, the Commission has recommended that the Exchange remove the "not held" prohibition. Basically, the Commission believed that the prohibition may be discouraging members who wish to continue to handle "not held" agency business from registering as RCMMs. The Exchange's proposal partially removes the prohibition by allowing an RCMM to accept a "not held" order when acting as a Floor broker for a member organization other than his own firm.

The purpose of the proposed rule change is to encourage RCMM registration and at the same time preserve the potential contributions of

RCMM dealer participation to the Exchange marketplace.

The Exchange believes that total removal of the "not held" prohibition at this time may be inappropriate. Allowing RCMMs to handle such orders will enhance the RCMM's agency role. Any increased time and effort that an RCMM gives to "not held" agency business reduces the amount of time he could devote to his dealer activities. In addition, Rule 107 contains another prohibition (see Rule 107.40) whereby an RCMM is prohibited from acting as broker and dealer in the same stock during the same trading session. Thus, an RCMM would be unable to assist as dealer in those stocks in which he accepted a "not held" order during the trading sessions in which he handles the "not held" order. Consequently, total removal of the "not held" prohibition may have the effect of overemphasizing the RCMM's agency role to the detriment of his primary responsibility as dealer.

The Exchange's proposal effectively enhances the RCMM's agency role to a lesser degree than if the prohibition were completely repealed. Thus, any adverse effect with removing the prohibition could have on potential RCMM dealer participation is reduced by only partially removing it. The number of stocks in which an RCMM could assist as dealer on a given day would still be lessened to the extent that he accepts "not held" order. However, by limiting the sources through which he can accept such orders, the impact on RCMM availability to the market and the amount of time spent on agency activities hopefully would be curtailed.

Moreover, by allowing RCMMs to accept "not held" orders only from another member organization, the RCMM maintains a passive role in acquiring such orders. By retaining the prohibition with respect to his own firm or customers, the Exchange's proposal addresses the possibility of the RCMM excessively promoting his agency role.

The proposed rule change provides RCMMs with more flexibility than they presently have to receive additional income from their agency business. This will make RCMM registration a more viable business opportunity for members and would also encourage RCMMs to deal when necessary to assist in maintaining markets. Thus, to the extent that relaxing the prohibition will encourage new bona-fide RCMM registrations, the Exchange marketplace can be expected to benefit by the entry of increased competition and capital.

Statutory Basis for the Proposed Rule Change

By providing RCMMs with more flexibility to accept and execute "not held" orders, the proposed rule change promotes the objectives of Section 6(b)(5) of the Securities Exchange Act which calls for the removal of impediments to the mechanism of a free and open market. The proposed change also furthers the purposes of Section 11A which calls for fair competition among brokers and dealers. Finally, the proposed rule change is in keeping with Section 6(b)(8) of the Act in that it reduces a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change would significantly ease the burden on competition which is imposed by the "not held" order prohibition presently stated in Rule 107, while at the same time continuing that prohibition insofar as necessary to encourage RCMMs' participation in the market as supplemental market-makers. The Exchange believes that the partial "not held" prohibition that would remain in Rule 107 following adoption of the proposed rule change is necessary and appropriate in furthering the purposes of the Act. Essentially, it is the Exhange's intent to emphasize the dealer aspects of the RCMM's role in the marketplace rather than his agency aspects. By encouraging RCMM dealer participation, the RCMM's potential benefits to the quality of Exchange markets can be increased thereby promoting more fair and orderly markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before July 15, 1982 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. 522, will be available for inspection and copying in the Commission's Public Reference Section, 1100 "L" Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15748 Filed 6-9-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12461; 812-4978]

Trilogy Computer Development Partners, Ltd. and Trilogy Systems Corp.; Application for an Order Exempting Applicant From all Provisions of the Act

June 4, 1982.

Notice is hereby given that Trilogy Computer Development Partners, Ltd. ("Trilogy Partners"), 5150 Great America Parkway, Santa Clara, California 94050 and Trilogy Systems Corporation ("Trilogy Systems") (together, "Partnership") filed an application on September 28, 1981, and an amendment thereto on April 21, 1982, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a

statement of the representations contained therein, which are summarized below.

The application states that Trilogy Partners is a California limited partnership formed for the purpose of designing a new IBM-compatible computer system and realizing income from the licensing of the use of such design ("the Project"). Trilogy Partners publically offered 11,000 units of limited partnership interest pursuant to a registration statement that became effective on August 6, 1981. The application also states that the general partner of the Partnership is Trilogy Systems, a California corporation which is wholly owned by Trilogy Limited, a Bermuda holding company.

According to the application, development of a new computer system requires enormous capital resources and years of effort. Because of the substantial capital required to develop and produce a new computer system, Trilogy Partners must attract a broad range of investors. The organizational structure of the Partnership is designed to do just that. Outside financing for Trilogy Limited has been received from institutional investors who have been attracted to Trilogy Limited, in part, because investments in Trilogy Partners do not immediately dilute their interests. The limited partners, on the other hand, have been attracted by the tax benefits that flow from the Partnership's structure.

Accordingly to the application, Trilogy Partners is carrying out the Project through a binding development contract between itself and Trilogy Systems under which Trilogy Systems will develop the design and Trilogy Partners will pay for the costs of development plus, if the Project is successful, a sliding scale profit ranging from 0 to 15 percent of the cost of development (subject to a maximum total expenditure equal to substantially all of the funds of Trilogy Partners). Under the sliding scale, the profit component becomes progressively smaller as costs approach the total funds of Trilogy Partners. Trilogy Systems will receive no profit at all if costs equal or exceed the total funds or if the Project is not successfully completed. The application states that it has been estimated that Trilogy Systems should receive a profit of 7.5 percent of costs.

The application further states that because of the substantial capital required for the Project and the resulting need to attract investors, the Partnership and its investment advisers believe that all the funds necessary to successfully complete the design must be committed at the commencement of the Project in order to attract potential investors. Trilogy Partners, because it is required to register its units under the Securities Act of 1933, cannot offer its units pursuant to a staged investment program and therefore must accumulate all its cash reserves at the beginning of the Project. Further, during the period of development, Trilogy Partners' balance sheet, in accordance with generally accepted accounting standards, will never reflect as assets the expenditures on the Project or the existence of the resulting computer design. Rather, the assets will consist almost entirely of cash reserves.

Section 3(a)(3) of the Act provides, in pertinent part, that an issuer which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis" is an investment company. If Trilogy Partners were to invest any of its reserves in instruments other than Government securities and cash items, it would prima facie be an investment company. To limit investment to these securities, the application avers, would greatly reduce Trilogy Partners' possible contribution to the Project.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions 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.

The Partnership submits that its exemptive order should be granted pursuant to Section 6(c) because it is both necessary and appropriate in the public interest because the Partnership, by investing in the Project, is implementing national policies favoring research and development and small business. The Partnership further submits that it is consistent with investor protection the purposes and policies underlying the Act to exempt it from the Act because the Partnership is so designed as to eliminate the potential for many of the abuses addressed by the Act. Management's discretion to invest investor's money is limited by the obligations of Trilogy Partners under the Partnership Contract, which prescribes that all of Trilogy Partners' assets be committed to the Project and that the assets accordingly be invested solely for the purpose of preserving the value of the assets. The Partnership has adopted a policy fo not speculating in securities and intends to purchase short-term, high quality money market securities that it will hold to maturity unless earlier liquidation is prudent because of operating needs or unforeseen events. Investors in Trilogy Partners are informed by the prospectus that any interest or incidental profit realized by Trilogy Partners on its cash reserves will be applied to the Project and not paid out to investors. The Partnership further submits that investors are protected by the provisions of the Securities Act of 1933 and by the limited partnership agreement, which grants investors the right to receive information about Trilogy Partners, to inspect its books and records and to remove Trilogy Systems and elect a successor general partner. Finally, units in Trilogy Partners were sold only to investors meeting substantial net worth and income qualifications.

Finally, to further assure the protection of investors, the Partnership has consented to its exemptive order containing the following conditions:

(1) While it is general partner of the Partnership, Trilogy Systems will be and remain primarily engaged in the business of research and development, manufacturing and/or marketing of computer systems and computer-related products and services.

(2) Any successor general partner will be and remain primarily engaged in the business of research and development, engineering, manufacturing and/or marketing and will not be primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities.

(3) Trilogy Partners will invest the proceeds of the sale of its interests only in the following money market instruments without material exception:

(i) obligations issued by or guaranteed as to principal or interest by the United States or its agencies or its instrumentalities;

(ii) obligations of banks, including certificates of deposit and time or demand deposits in commercial banks, bankers' acceptances, Eurodollar deposits and notes (either fixed rate or floating), and instruments secured by such obligations, provided, however, that Triology Partners shall limit to investments in obligations of banks and instruments issued by banks to; (a) those of domestic banks with total

assets of more than five hundred million dollars, (b) those of foreign banks whose total assets rank them within the top one hundred foreign banks in total asset size, or (c) those instruments whose principal is guaranteed or insured by the Federal Deposit Insurance Corporation;

(iii) savings and loan deposits of savings and loan associations whose principal business office in California and whose total assets rank them among the top ten such savings and loan associations, or savings and loan deposits whose principal is guaranteed or insured by the Federal Savings and Loan Insurance Corporation;

(iv) commercial paper rated A–1 by Standard and Poor's Corporation or Prime–1 or better by Moody's Investor Services, Inc., or substantially equivalent ratings of the successor of either of the foregoing.

(4) Trilogy Partners will use its best efforts to provide an annual report to every person who was a limited partner of Trilogy Partners at any time during the fiscal year containing (i) financial statements of Trilogy Partners prepared in accordance with generally accepted accounting principles consistently applied and accompanied by a reprot containing an opinion of a firm of independent certified public accountants; (ii) a report of any material transactions between Trilogy Partmenrs and Trilogy Systems or its affiliates, including fees or compensation paid by Trilogy Partners and the services performed by Trilogy Systems or any such affiliates for such fees or compensation.

Notice is further given that any interested person may not later than June 28, 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/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application 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. 82–15754 Filed 6–9–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 05/05–0169]

Michigan Tech Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

Correction

In FR Doc. 82–14875 appearing on page 24009 in the issue for Wednesday, June 2, 1982, please make the following correction:

On page 24010, in the first column, in the third complete paragraph, in the second line, "(not later than 15 days from the publication of this Notice)", should have read "not later than June 17, 1982."

BILLING CODE 1505–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 809]

Declaration of Hostile Action

Pursuant to 22 CFR 191.1(a), I declare that:

As of December 17, 1981, and for a period deemed to continue until January 28, 1982, Brigadier General James L. Dozier, United States Army, has been placed in captive status in Italy because of hostile action abroad directed against the United States.

Dated: May 25, 1982.

Alexander M. Haig, Jr.,

Secretary of State.

[FR Doc. 82–15672 Filed 6–9–82; 8:45 am]

BILLING CODE 4710–24–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Form Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Form Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Copies of the form proposed for extension may be obtained from the Agency Clearance Officer, whose name and telephone number appear below.

Agency Clearance Officer: E. Eugene Mynatt, (615) 751–2146, FTS 858–2146.

Type of Request: Extension.

Title of Information Collection: TVA 6157, Electric Sales Statistics.

Frequency of Use: Monthly.

Type of Affected Public: Municipal and cooperative electric utilities distributing TVA power.

Standard Industrial Classification: 491.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 120.

Estimated Total Annual Burden Hours: 90.

Estimated Annual Cost to Federal Government: $50,400.

Need for and Uses of Information: "Electricity Sales Statistics" provides necessary information for comprehensive reporting of wholesale purchases and retail sales for local systems distributing TVA power and a summary of statistics for use by all distributors of TVA power. It also provides information for the TVA power program evaluation and direction.

Dated: June 3, 1982.

Charles Bonine, Jr.,

Manager, Office of Management Services.

[FR Doc. 82–15682 Filed 6–9–82; 8:45 am]

BILLING CODE 3120–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82–064]

Memorandum of Understanding Between the United States Coast Guard and the American Bureau of Shipping Concerning Plan Review and Inspection Functions for New Vessel Construction for Vessels Certificated by the Coast Guard

On April 27, 1982, the Coast Guard and the American Bureau of Shipping (ABS) signed a Memorandum of Understanding (MOU) which sets forth

guidelines for cooperation in plan review and inspection of vessels which are certificated by the Coast Guard. This MOV supersedes the MOV between the Coast Guard and The ABS dated June 9, 1981 (published in the Federal Reister of June 18, 1981 at 46 FR 31977). In accordance with the MOU, the Coast Guard has also issued a Navigation and Vessel Inspection Circular (NVC) which outlines the procedures for plan review and inspection of new U.S.-flag vessels under the MOU. This circular, NVC 10–82, was signed on May 18, 1982, and went into effect on June 1, 1982. Copies of the NVC may be obtained from Commandant (G–MP–4/14), U.S. Coast Guard, Washington, D.C. 20593. The full text of the MOU reads as follows:

Dated: June 4, 1982.

Clyde T. Lusk, Jr.

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

Memorandum of Understanding Between the United States Coast Guard and the American Bureau of Shipping Concerning Plan Review and Inspection Functions for New Vessel Construction for Vessels Certificated by the Coast Guard

I. Purpose

The purpose of this memorandum is to set forth guidelines for cooperation between the American Bureau fo Shipping and the United States Coast Guard in plan review and inspection of vessels under construction which are certificated by the Coast Guard. Appropriate provisions of the Memorandum of Understanding (MOU) of 9 June 1981 are incorporated in this Memorandum, therefore, the MOU of 9 June 1981 is cancelled.

II. United States Coast Guard

The United States Coast Guard (USCG) has statutory authority, under the laws governing marine inspection, to regulate in order to promote the safety of life and property at sea and to protect the marine environment.

III. American Bureau of Shipping

The American Bureau of Shipping (ABS) is a classification society which provides classification services for ships and other marine vehicles and structures, and which is authorized by law to perform various functions in cooperation with, and on behalf of, the United States Coast Guard.

IV. USCG Acceptance of ABS Plan Review and Inspection

A. General. Plan review and inspection functions as described in USCG Navigation and Vessel Inspection Circulars (NVC's) for implementing this agreement, performed by full time employees of the ABS, may be accepted by the Officer in Charge, Marine Inspection, as part of the USCG vessel certification process without review or attendance by USCG personnel. NVC's implementing this Agreement will be mutually developed between the USCG and the ABS.

B. Approval and inspection standards. The standards to be applied by the ABS in approvals and inspection for the USCG in order of precedence are:

1. The requirements of (1) Safety of Life at Sea (SOLAS) or other international conventions to which the United States is party, (2) United States statutes, and (3) USCG regulations including specific industry standards incorporated therein.

2. Rules and standards of the ABS.

C. Verification. Unless specified elsewhere, copies of ABS approval letters, stamped plans, class certificates, and other ABS documents provided to the Officer in Charge, Marine Inspection, will be deemed sufficient for verification of compliance with USCG requirements.

D. Fees. The Coast Guard recognizes that services which are in addition to classification requirements may be subject to additional fee assessments by the ABS.

V. Appeals

Actions of the ABS performed under this memorandum may be appealed according to existing appeal procedures in USCG regulations. In the event of an appeal resulting from any such action, the ABS, upon request, will provide the Officer in Charge, Marine Inspection, with a statement concerning the status of the matter with respect to class, if applicable.

VI. Savings Provision

The USCG will continue to perform services as required in accordance with regulations and law. Nothing in this memorandum shall be deemed to alter in any way the statutory or regulatory authority of the USCG or the classification responsibilities of the ABS. The Coast Guard will maintain oversight sufficient to ensure that its regulatory and statutory requirements are maintained.

VII. Effective Date

This Memorandum is effective immediately. Effective dates of implementing this Memorandum of Understanding will be determined by mutual agreement between the ABS and the USCG.

VIII. Termination

This memorandum may be terminated by one party after written notice to the other party.

Signed at New York on this 27th day of April 1982.

J. B. Hayes,

Commandant, United States Coast Guard.

William N. Johnston,

President and Chairman, American Bureau of Shipping.

[FR Doc. 82-15664 Filed 6-9-82 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147; Traffic Alert and Collision Avoidance Systems; Meeting

Pursuant to the section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert & Collision Avoidance Systems to be held on June 30 and July 1, 1982 in Conference Rooms 8A–B–C, Federal Aviation Administration Building, 800 Independence Avenue, S.W., Washington, D.C., commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Seventh Meeting Held on April 28–29, 1982; (3) Presentation of Working Group Reports; (4) Review of Draft Minimum Operational Performance Standards for TCAS; (5) Review of Action Items and Assignment of Tasks; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296–0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 28, 1982.

Karl F. Bierach,

Designated Officer.

[FR Doc. 82-15411 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 148; Airborne Radio Communication Equipment Operating in the Radio Fequency Range of 117.975—137.000 Megahertz; Cancellation of Meeting

This Notice announces the cancellation of the Radio Technical Commission for Aeronautics (RTCA) Special Committee 148 meeting which was scheduled for June 15–16, 1982, and announced in the **Federal Register** on May 24, 1982, (47 FR 22444). The meeting will be rescheduled and a Notice of Meeting published in the near future.

Issued in Washington, D.C. on June 1, 1982.

Karl F. Bierach,

Designated Officer.

[FR Doc. 82-15409 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Hanalei, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project located in the Hanalei District, Island of Kauai, State of Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. H. Kusumoto, Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 546-5150.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii, Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace Hanalei Bridge which is located on Kauai Belt Road (FAP56) on the island of Kauai. The existing bridge is of a single-lane design. It is severely deteriorated, structurally deficient, and functionally obsolete. The bridge provides a vital highway link for areas from Hanalei to Haena with the rest of the island-wide highway network. A closure of the bridge would place undue hardship on the community.

In addition, the project will explore the general implications of a "no-build" alternative. The project EIS will reveal anticipated effects should it be decided to forego any improvements to Hanalei Bridge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens. In addition, a public hearing will be held and testimony will be received regarding each of the proposed alternatives. A public notice will be published indicating the time and place of the hearing. A draft EIS will be available at the time of the hearing, for public review and comment.

No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on June 4, 1982.

Mr. H. Kusumoto,

Division Administrator, Honolulu, Hawaii.

[FR Doc. 82-15674 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Montgomery County, Ohio

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) is being prepared for a proposed highway project in Montgomery County, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McBee, Division Administrator, or Mr. Robert W. Cooper, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215. Telephone: (614) 469-6896 or 469-5150.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) in cooperation with the Ohio Department of Transportation (ODOT), Montgomery County, and the City of Dayton, has been preparing a draft environmental impact statement (EIS) since 1978 on the proposed construction of a limited access highway to complete the relocation of U.S. Route 35 in the Dayton metropolitan area. The facility would connect the existing interchange of U.S. Route 35 and Interstate Route 75 with a point on existing U.S. Route 35 in or near the western edge of Dayton.

Four major build alternatives and the no-build alternative are under consideration, with the build alternatives ranging from 4.7 to 7.5 miles in length. Two of the proposed routes would traverse the westside Dayton inner city, a closely settled area, and two would bypass this residential area to the south, entailing a parkland involvement. The western portions of three routes are identical, traversing agricultural and undeveloped land; the other utilizes a closer terminus. No preferred alternative has yet been identified; however, community objection to an inner city route has been strongly registered.

The proposed facility will complete a crosstown freeway, providing better access to major employment centers and public institutions, and it will relieve congestion on local streets.

There are currently no plans to hold a formal scoping meeting. To date, there has been extensive federal, state, local and public involvement with the proposed project. It is envisioned that such involvement will continue throughout further development of the project.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on June 2, 1982.

John W. McBee,

Division Administrator, Columbus, Ohio.

[FR Doc. 82-15684 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-22-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB, May 5-19, 1982

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, between May 5 and 19, 1982, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirments of Paperwork Reducation Act of 1980. (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-1887 or Donald Arbuckle or Wayne Leiss, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register** listing those information collection requests submitted to the Office of the

Management and Budget (OMB) for approval under the Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements.

On Mondays and Thursdays, as needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirments that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirements. OMB approval of an information collection requirements must be renewed at least once every three years. The published list also will include the following information for each itme submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for and uses to be made of the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above.

Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication is needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB between May 5 and 19, 1982:

DOT No: 1937
OMB No: 2125–0063
By: Federal Highway Administration (FHWA)
Title: Highway Safety Improvement Priorities
Forms: None
Frequency: Annual
Respondents: States
Need/Use: The clearance of this requirement is necessary for the FHWA to determine whether Federal-aid funds should be used for projects proposed by the States and to comply with Congressional reporting requirements.

DOT No: 1938
OMB No: 2127–0019
By: National Highway Traffic Safety Administration
Title: Automotive Fuel Economy Reports
Forms: None
Frequency: Semiannual
Respondents: Businesses or other institutions
Need/Use: 15 U.S.C. 2005 requires manufacturers to submit this report. This agency examines the reports to see if and how the manufacturer will comply with applicable average fuel economy standards.

DOT No: 1939
OMB No: None
By: United States Coast Guard
Title: Records of Testing, Repair, Drydocking and Certification
Forms: Coast Guard forms; CG–4678, CG–835, CG–841, CG–854, CG–858, CG–948 and CG–3753.
Frequency: As required
Respondents: Owners, operators and masters of U.S. and foreign merchant vessels operating in U.S. ports.
Need/Use: These reporting and recordkeeping requirements are used to make record of the inspection, repair or certification of a vessel's material condition and are needed to ensure safety of life and property at sea.

DOT No: 1940
OMB No: 2125–0079
By: Federal Highway Administration (FHWA)
Title: Medical Examination of Drivers Transporting Migrant Workers
Forms: None
Frequency: Every 3 years
Respondents: Drivers transporting migrant workers
Need/Use: The information is needed for enforcement personnel to ensure that only those persons who are physically and mentally fit transport migrant workers in interstate or foreign commerce.

DOT No: 1941
OMB No: (None)
Agency: Office of the Secretary
Title: Study of Shipper/Receiver Mode Choice in Selected Rural Communities
Form: Questionnaire
Frequency; One Time Follow-up
Respondents: Selected Shippers
Need/Use: Assess the freight service availability, wage and quality in rural areas. Data will be compared with that of pre and post Motor Carrier Act of 1980. Results for congressional oversight hearings and Motor Carrier Ratemaking Study Commission.

DOT No: 1942
OMB No: None
Agency: FAA
Title: Aircraft Trading and/or Selling Slots
Form: N/A
Frequency: On Occasion
Respondents: Air Carriers
Need/Use: Special Federal Aviation Regulation No. 44, 14 CFR Part 91, authorizes the collection of information to allocate landing slots after evaluation of air carrier requests.

Issued in Washington, D.C. on June 1, 1982.

Robert L. Fairman,

Assistant Secretary for Administration.

[FR Doc. 82–15540 Filed 6–9 82; 8:45 am]

BILLING CODE 4910–62–M

Minority Business Resource Center Advisory Committee; Cancellation and Rescheduling of Meeting

This notice is given to advise of the cancellation of the Minority Business Resource Center Advisory Committee meeting originally scheduled to be held June 23, 1982. Notice of meeting was published in the **Federal Register** issue of June 3, 1982 (47 FR 24246).

Notice is hereby given of the rescheduling of said meeting for July 12, 1982, at 10:00 p.m. until 1:00 p.m. in Room 10234–38 at the Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. The agenda for the meeting remains the same as published in the issue of June 3, 1982.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on June 4, 1982.

Melvin Humphrey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 82-15646 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

[Docket No. 82-H]

Third Party Contracting Guidelines

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of Issuance of UMTA C 4220.1A, Third Party Contracting Guidelines, and Request for Comments.

SUMMARY: The Urban Mass Transportation Administration (UMTA) has issued UMTA C 4220.1 which implements Office of Management and Budget (OMB) Circular A-102, Attachment O, and specifies third party contracting requirements for UMTA grant recipients. UMTA is soliciting comments on Attachment B, Bid Protest Procedures of UMTA C 4220.1A.

DATE: 1. This Circular was effective June 7, 1982.

2. Comments on Attachment B, Bid Protest Procedures, must be received by September 8, 1982.

ADDRESS: Comments on Attachment B, Bid Protest Procedures, should be submitted to UMTA Docket No. 82-H, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Jim Watson, Office of Third Party Contracts, UMTA, Room 6431, 400 Seventh Street, SW., Washington, D.C. 20590, 202/426-2710.

SUPPLEMENTARY INFORMATION: UMTA issued formal third party contracting guidelines in 1972 as part of its External Operating Manual, Section IIIC. Since that time, these procedures have been amplified and clarified on an *ad hoc* basis by UMTA. In 1979, in an attempt to revise and consolidate its third party contracting guidelines and procedures, UMTA issued a draft circular 4220.1 and disseminated it to grantees and other interested parties for comments. Shortly after the draft circular was distributed, OMB published its own revised guidelines for Federal grantor agencies administering third party contracts (OMB Circular A-102, Attachment O). Although Attachment O was similar to the draft UMTA circular in many respects, it prescribed a somewhat lower level of Federal grantor involvement in third party contract reviews and set up a different certification procedure. A significant number of comments received in connection with UMTA's draft guidelines pointed out these differences and urged UMTA to amend its procedures to conform to the standards set forth in Attachment O. The UMTA circular issued on June 7, 1982, accomplishes this task.

SIGNIFICANT FEATURES OF NEW GUIDELINES: UMTA Circular 4220.1A, together with its attachments, contains the following significant features:

1. *Minimum Procurement Requirements.* Grantees are required to follow their own State and local procurement procedures so long as they conform to minimum standards contained in UMTA C 4220.1A The requirements set forth in UMTA C 4220.1A are limited to the standards contained in OMB Circular A-102, Attachment O, certain additional Department of Transportation requirements, and UMTA statutory requirements.

This differs from the previous requirements in that UMTA has deleted a number of very specific requirements, including those related to preparing a summary of negotiations, determination and findings, contract modifications and change orders, professional and consulting services, and architect/engineer contracts.

2. *UMTA Preaward Review of Contracts.* Under UMTA C 4220.1A, there are three different categories or levels of UMTA review:

(1) If a grantee's procurement system is fully certified in accordance with paragraph 4 of Attachment O to OMB Circular A-102, UMTA will not conduct systematic preward reviews of its contracts;

(2) If a grantee submits a letter certifying that it complies with the minimum requirements of UMTA C 4220.1A, UMTA will limit its review to procurements over $10,000 which involve single bid, sole source or offer, brand name, or a proposed award to other than the apparent low bidder under a formally advertised procurement.

(3) If a grantee does not provide the above-referenced assurance of compliance, within 30 days of publication of this Notice, or prior to solicitation for award of a contract (whichever is later), then all contracts over $10,000 are subject to preaward review and approval by UMTA.

Under the former procedures, UMTA systematically reviewed all contracts involving single bid or offer, sole source or brand name over $10,000, all negotiated contracts over $10,000, and all awards to other than the low bidder. (For those grantees previously certified by UMTA, reviews had been limited to single bid or offer, sole source, and brand name procurements over $10,000, change orders over $1,000,000, negotiated contracts over $1,000,000, and force account contracts over $25,000.)

3. *Grantee Procurement System Reviews.* UMTA will review grantee procurement systems and procedures pursuant to paragraph 4 of Attachment O to OMB Circular A-102. These reviews may consist of both desk and on-site review, and will be as detailed or limited as deemed appropriate. Attachment A to UMTA C 4220.1A describes the procedure for obtaining such certification, and conforms to draft guidelines prepared by the Office of Federal Procurement Policy at OMB. Although UMTA's former draft circular 4220.1 provided for a limited certification under certain circumstances, it was not as comprehensive as the present procedure. *The certifications which were previously granted on September 11, 1978, to selected grantees are no longer in effect,* and grantees must now comply with the procedure set forth in UMTA C 4220.1A.

4. *Contents of Preaward Review Submission.* For those contracts which must be submitted to UMTA for review, the grantee should include:

(1) A complete copy of the proposed contract (including a copy of the successful bid/proposal, and in the case of formally advertised procurement, copies of all lower bids);

(2) A copy of the solicitation document:

(3) An explanation of the basis for selection of the contractor;

(4) A determination that the price is fair and reasonable;

(5) A cost or price analysis; and

(6) In the case of formally advertised procurements, a list of all bids received.

5. *Bid Protest Procedures.* Attachment B to UMTA C 4220.1A describes the circumstances under which an interested party may protest to UMTA the award of a third party contract and sets forth a procedure for filing such a protest. UMTA is permitted by paragraph 5 of Attachment O to OMB Circular A-102 to develop an

administrative procedure for handling such complaints. Although UMTA has always entertained third party bid protests as a matter of practice, it is in the best interest of all parties to formalize these procedures. Since UMTA has not previously published formal protest procedures, comments are solicited from all interested parties.

TEXT: The text of UMTA C 4220.1A is not reprinted in its entirety here due to the length and general availability of the information. However, copies will be available upon request. Both Attachments A and B are being printed in their entirety in this Notice, since they have not previously been made available. Attachment A conforms to OMB draft guidelines concerning the certification process, and Attachment B describes UMTA's bid protest procedure. Comments are solicited regarding all aspects of Attachment B.

Attachment A—Grantee Certification Procedure

1. *Scope.* This attachment sets forth the procedures for obtaining certification in accordance with paragraph 4 of Attachment O to OMB Circular A–102 and outlines the standards the grantee must achieve and maintain to be certified.

2. *Procedures.*

a. *Eligibility.* All grantees eligible for an UMTA grant may apply for certification.

b. *Application.* Requests for certification *must be submitted to the appropriate UMTA regional office.*

c. *Requirements for Submission.* The grantee must set forth its complete system for processing third party contracts under Federal grants and should show in detail how each of the standards in this attachment are met. Each set of these documents should be in two parts, with one part addressing the procurement portion and the other part addressing the technical portion. The following is a list of certification documents that the grantee must submit to UMTA:

(1) Two complete sets of the grantee's procurement policies and procedures;

(2) An organization chart of the grantee's organization down to at least the first level of supervision;

(3) Function manuals, procurement instructions, procedures, etc.;

(4) Copies of all important procurement forms; and

(5) Two sets of any other documents that may be used to meet the minimum standards set forth in this Attachment.

(d.) *Onsite Review.* The following is a list of actions UMTA will take in conducting onsite reviews:

(1) Upon satisfactory completion of the above (in-house) review, an onsite review will be conducted.

(2) A team of qualified procurement personnel will conduct the onsite review essentially as follows:

(a) Contracts and related documents will be selected for onsite review.

(b) Interviews will be conducted with grantee personnel from top management down to the operating level.

(c) Minimum areas of coverage will be as follows:

1 Advance procurement planning,

2 Degree and type of competition obtained,

3 Methods of evaluating contractor's responsibility,

4 Completeness of contracts, including forms used, contract history of actions, etc.,

5 Socio-economic programs,

6 Evaluation of make or buy and lease versus purchase,

7 Standards of conduct,

8 Maintenance of records and files,

9 System of contract administration,

10 System for resolution of protests or disputes and the grantee's history of protests or disputes,

11 Procurement policies and procedures,

12 Contract clauses,

13 Selection procedures of contractors for award,

14 Bonding requirements, and

15 Other procurement procedures necessary to ensure good and proper contracts.

(d) The onsite review will also look into the technical and procurement standards as outlined in this attachment.

e. *Certification.* If the UMTA review results in a determination that the grantee's system meets the minimum standards set forth herein, the grantee will receive a written certification, within specified limits, authorizing the grantee to manage its third party contract actions without preaward review by UMTA. If the grantee does not meet the minimum standards, it will be notified of the specific failures and the action required to correct them so that certification may be achieved.

3. *Grantee Technical Standards.*

a. To ensure that the grantee has the technical capability, certification review teams will include personnel qualified to determine the grantee's capabilities in accordance with the standards outlined in paragraph b. below.

b. The grantee's project management staff should have free access to the grantee top management and should be consulted regularly in respect to matters relating to the domain of the staff expertise.

(1) The project manager is responsible for:

(a) Examining and investigating alternate concepts to assure an end product with minimum life-cycle costs.

(b) Assuring that contracts for equipment and construction contain performance schedules and that the contractor's performance is monitored on a routine and periodic basis. Management should be kept informed in a timely manner by means of a written report of the status of each contract.

(c) Establishing and maintaining a process to routinely and periodically monitor the quality of a contractor's work. Written reports of these compliance reviews should be prepared and top management informed of significant deviations as they occur and corrective actions taken or proposed.

(d) Reviewing all contract amendments, change orders, changes in scope of work, etc., and concurring in such actions prior to execution by the contracting officer.

(2) The grantee staff is responsible for:

(a) Assuring the technical quality of all contract documents and for assuring that the documents do not contain exclusionary provisions that restrict free and open competitive bidding.

(b) Assuring compliance with the UMTA guidelines.

(c) Assuring compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations. For guidance, refer to the Land Acquisition and Relocation Assistance Procedures Manual (UMTA C 4530.1).

(d) Assuring compliance with MBE regulations, 49 C.F.R. Part 23.

(e) Reviewing contract documents to assure that they contain all the clauses and provisions required by Federal, State, and local governments and specifically OMB Circular A–102, Attachments B and O, and this circular.

(f) Establishing performance schedules and conducting design/work progress and schedule performance reviews in professional, consultant and architectural/engineering service activities. These reviews should be coordinated, as necessary, with segments of the grantee organizations such as safety, operations, maintenance, quality, reliability, etc.

4. *Grantee Procurement Standards.*

a. *Personnel.* The grantee should have personnel with knowledge and experience in contracts and procurement that is commensurate with the level of contracting and procurement authority granted in the certification.

b. *Organization.* The contracts and procurement function should be at a

level in the grantee's organizational structure to ensure autonomy for the contract and procurement office. Personnel awarding contracts should not be subject to undue pressures from technical and other groups.

c. *Ethics.* The grantee should have a written code or standards of conduct which will govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. The grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. To the extent permissible by State or local law or regulations, such standards of conduct should provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee's officers, employees, or agents, or by contractors or their agents.

In final form, it is not sufficient that the grantee be free from all conflict of interest situations; it should also be free from the appearance of conflict of interest.

d. *Operations.*

(1) The grantee should have written procurement procedures that show how each procurement is to be processed from receipt of procurement request through award and administration of contract to closeout and retirement of the contract. The procedure should clearly show that the grantee has the capability and does the planning necessary to accomplish procurement at a level commensurate with the authority granted for local management. Included in the procedures should be detailed directions on:

(a) How procurements are to be planned, advertised, and solicited;

(b) How bids/proposals are to be received and recorded;

(c) How determinations of responsiveness/responsibility are made;

(d) How and by whom bid proposal evaluations will be done;

(e) How and on what basis determinations that negotiated costs/prices are fair and reasonable will be made;

(f) How the successful bidder/proposer will be selected and the contract awarded; and

(g) How contract administration and closeout will be handled.

(2) Since each solicitation and contract action should be recorded, the written procurement procedure should also state how such documentation will be assured for the contract file.

(3) The written procurement procedure should indicate that the grantee is fully aware of the requirement for open and free competition and how the grantee will ensure compliance.

(4) The written procurement procedures should clearly indicate that the grantee understands and is in compliance with the requirements for involvement of Minority Business Enterprises as set forth in the Department's regulations.

e. *Support.* The grantee should have available, when necessary, the contract support tools such as:

(1) Cost/Price Analysis,

(2) Auditing,

(3) Preaward Survey Teams, and

(4) Technical Analysis.

f. *Contract and Solicitation Documents.* The grantee should have the ability to properly construct a solicitation package and contract document that includes all the required contract clauses and otherwise meets the requirements of OMB Circular A-102, Attachment O, and this circular.

g. *Contract Files.* The grantee should have a system of filing and maintaining contract files that ensures a complete and readily available record of all contract-related actions.

Attachment B—Bid Protest Procedures

1. *Purpose.*

Under certain limited circumstances (see paragraph 3a), an interested party may protest to UMTA the award of a contract pursuant to an UMTA grant. The purpose of this directive is to establish procedures for processing all such protests. This procedure permits review by UMTA, provided that: (1) The protest is filed within the time limits specified in Section 4; and, (2) the protester has exhausted all administrative remedies available to him at the grantee level.

2. *Definitions.*

a. The term "days" refers to working days of the Federal Government.

b. The term "file" or "submit" refers to the date of receipt by UMTA.

c. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of the grantee which is prejudicial to the position taken in a written protest filed with the grantee. It may include, but is not limited to:

(1) A final grantee decision on the merits of the protest.

(2) A procurement action such as the award of a contract or the rejection of a bid despite the pendency of the protest.

(3) Grantee acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest.

d. The term "interested party" includes all bidders on the contract or procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a substantial economic interest in a provision of the Invitation for Bids (IFB) or the Request for Proposals (RFP), or in the interpretation of such a provision.

e. Violation of Federal law or regulation is defined as the infringement of any valid requirement imposed by Federal statute or regulation which requirement governs the letting of contracts pursuant to a great agreement. However, any protests involving a local matter and/or determinations that are clearly within the discretionary powers of the grantee should be resolved at the local level. Specific examples of determinations that are within the discretionary powers of the grantee include, but are not necessarily limited to, determinations of responsiveness and responsibility, the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement, and determinations regarding bonding requirements. In other words, the protester must be able to demonstrate or establish a clear violation by the grantee of a specific law or regulation, e.g., a violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of the Buy American requirements.

f. The term "bid" as used herein also includes the term "offer" or "proposal" as used in the context of negotiated procurements.

3. *General Conditions.*

a. UMTA's review of any protest will be limited to:

(1) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(2) Violation of grantee's protest procedures or failure to review a complaint or protest.

b. Protests must be filed with the grantee in accordance with the local procedures and requirements. Following an adverse decision by the grantee, the protester may file a protest with UMTA, in accordance with paragraph 4 below, if there has been a violation as described in paragraph 3.a.(1) or 3.a.(2) above. Protests should be filed with the appropriate UMTA regional office and concurrent copies sent to the grantee and UMTA Headquarters, Attention: UAD-43. To expedite handling within UMTA, the address should include "Attention: Bid Protest."

c. The initial protest filed with UMTA shall:

(1) Include the name and address of the protester.

(2) Identify the grantee, project number, and the number of the solicitation contract.

(3) Contain a statement of the grounds for protest and any supporting documentation. (The grounds for protest filed with UMTA must be fully supported to the extent feasible. Additional materials in support of an initial protest will only be considered if filed within the time limits specified in paragraph 4.)

(4) Include a copy of the protest filed with the grantee, and a copy of the grantee's decision, if any.

(5) Indicate the ruling or relief desired from UMTA.

d. UMTA will not consider any data that was not submitted to the grantee. If new data becomes available after the exhaustion of administrative remedies at the grantee level, that data should be filed with the grantee with a request for reconsideration. If the request is denied or if the protester's administrative remedies at the grantee level are again exhausted, the protester may then submit the new data to UMTA. UMTA will consider the data if filed as part of an initial protest within the time limits specified in paragraph 4, or as additional material filed within the time limit specified in paragraph 4.

e. No formal briefs or other tehnical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

4. *Time for Filing.*

a. Protests shall be filed within the specified time limits set forth in the specifications which are the subject of the procurement and must adhere strictly to any procedures specified therein. The time period established for the filing of protests as set forth in all such specifications will be controlling and will take precedence over a time period established here.

b. Protests must be filed within the time limits set forth in this paragraph b. in order to be considered timely unless the specifications which are the subject of a particular procurement set forth a different period for filing a protest, in which case the provisions of paragraph a. above will apply. Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to bid opening or the closing date for receipt of intial proposals, shall be filed not later than three (3) days prior to bid opening or the closing date for receipt of initial proposals.

c. In cases other than those covered in the preceding paragraphs of this section, bid protests shall be filed not later than ten (10) days after the exhaustion of administrative remedies at the grantee level is known or should have been known, whichever is earlier.

d. A protest may be considered, even if the initial filing is late, in the following circumstances:

(1) Good cause based on a compelling reason beyond the protester's control, whereby the lateness is due to the fault of UMTA or the grantee in the handling of his protest submission.

(2) UMTA determines the protest raises issues significant to procurement practice or procedure.

(3) A court of competent jurisdiction requests, expects, or otherwise expresses interest in UMTA's decision.

5. *Time for Submission of Additional Information.*

Any additional information requested or required by UMTA from the protester, the grantee, or interested parties shall be submitted as expeditiously as possible but in no case later than five (5) days after the receipt of such request unless specifically excepted by UMTA.

6. *Notice of Protest, Confidentiality, Submission of Grantee Report, and Time for Filing Comments on Report.*

a. UMTA shall notify the grantee by telephone and in writing in a timely manner of the receipt of a protest, requesting the grantee to give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. All who receive such notice shall be instructed that they may communicate further directly with UMTA.

b. Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government agency which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

c. The grantee shall be requested to submit a complete report on the protest to UMTA, with a copy to the protester, as expeditiously as possible but not later than within twenty-five (25) working days of being notified by UMTA of the protest. The grantee report shall include:

(1) Copies of all relevant bids;

(2) A copy of the Invitation for Bids or Request for Proposals, including pertinent provisions of the specifications;

(3) A copy of the abstract of bids;

(4) Any other documents that pertain to the protest, including correspondence with the bidders; and

(5) A statement by the grantee explaining its actions and the reasons for them.

The protester must be informed that any comments must be submitted to UMTA within ten (10) days (see paragraph 6.d. below).

d. Comments on the grantee report shall be filed by the protester with UMTA within ten (10) days after receipt of the report, with a copy to the grantee which furnished the report. The grantee's rebuttal to these comments shall be filed with UMTA within five (5) days after receipt of the comments to which the rebuttal is directed.

e. The failure of a protester or of a grantee to comply with the time limits stated in this Attachment may result in resolution of the protest without consideration of the comments untimely filed.

7. *Furnishing of Information on Protests.*

UMTA shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by the protester, interested parties or grantees, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten (10) days.

8. *Withholding of Award.*

When a protest has been filed before award, the grantee will not make an award prior to the resolution of the protest, and when a protest has been filed before the opening of bids, the grantee will not open bids prior to the resolution of the protest, unless the grantee determine that:

a. The items to be procured are urgently required; or

b. Delivery or performance will be unduly delayed by failure to make the award promptly; or

c. Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

In the event that the grantee determines that the award is to be made during the pendency of a protest, the grantee will notify UMTA prior to making such award. UMTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest to UMTA.

9. *Conference*

a. A conference on the merits of the protest with members of UMTA may be held at the request of the protester or the grantee. Requests for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than the expiration of the time period allowed for filing comments on the grantee report as specified in Section 5(d). Except in unusual circumstances, requests for conferences after such time will not be honored.

b. Conferences normally will be held prior to the expiration of the period allowed for filing comments on the grantee report. Interested parties may request, and in UMTA's discretion may be invited to attend the conference.

10. *Request for Reconsideration.*

a. Reconsideration of a decision of UMTA may be requested by the protester or any grantee involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

b. Request for reconsideration of a decision of UMTA shall be filed not later than 10 days after the initial written decision, and shall be filed with the office which issued the decision being appealed. The protest shall not be considered pending during the 10-day period specified in this paragraph.

c. A request for reconsideration shall be subject to these bid protest procedures, consistent with the need for prompt resolution of the matter.

11. *Effect of Judicial Proceedings.*

UMTA may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in UMTA's decision.

Issued on: June 7, 1982.

Arthur E. Teele, Jr.,

Administrator.

[FR Doc. 82-15775 Filed 6-9-82; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period May 28 through June 3, 1982, the Department the 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: June 1, 1982.

Submitting Bureau: International Revenue Service.

OMB Number: 1545-0242.

Form Number: 6197.

Type of Submission: Revision.

Title: Fuel Economy Tax.

Purpose: Used to compute tax on gas-guzzler automobiles under section 26 U.S.C. 4064. Tax is reported quarterly on Form 720. One Form 6197 is filed when production and sales of a model year automobile is ended. Autos not meeting certain standards are taxable. IRS uses the information to verify computation of tax and compliance with the law.

OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: June 2, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0020.

Form Number: 709.

Type of Submission: Revision.

Title: United States Gift Tax Return.

Purpose: Form is used to report transfers subject to the gift tax and to compute the gift tax. IRS uses the information to enforce the gift gax and to compute the gift and the estate tax.

OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

[FR Doc. 82-15760 Filed 6-9-82; 8:45 am]

BILLING CODE 4810-25-M

Issuance of Directive License to the New York Federal Reserve Bank Relating to the Payment of Awards by the Iran-U.S. Claims Tribunal

June 7, 1982.

The Treasury Department today issued a directive license authorizing the New York Federal Reserve Bank ("Fed") to deduct two percent of each amount received in satisfaction of an award, including interest thereon, by the Iran-United States Claims Tribunal in favor of a United States national. The balance of each amount after deduction is to be paid immediately thereafter to the person identified by the award as the awardee, without further deduction or alteration. The two percent deduction is to be deposited in the Treasury to reimburse the United States Government for costs incurred for the benefit of U.S. nationals who have claims against Iran.

The Algiers Accords, which achieved the release of the American hostages from Iran, consisted primarily of two "declarations" by the Government of Algeria which were adhered to by the United States and Iran. The first of these (the General Declaration) provided for the revocation of sanctions and nullification of certain claims and attachments as well as the transfer of Iranian funds and other assets. In particular, the General Declaration provides for a Security Account at an initial funding level of $1,000,000,000 to secure the payment of claims against Iran in accordance with the second declaration (the Claims Settlement Agreement). The Claims Settlement Agreement provides for an Iran-United States Claims Tribunal at The Hague to decide, *inter alia,* claims by nationals of the United States against Iran arising out of debts, contracts, expropriations or other measures affecting property rights. Under implementing agreements signed on August 17, 1981, by the Federal Reserve Bank of New York as Fiscal Agent of the United States, Bank Markazi Iran, Bank Centrale d'Algerie as escrow agent and the Dutch Central Bank and its subsidiary depositary bank, awards by the Tribunal against Iran in favor of U.S. nationals will be certified by the President of the Tribunal for payment from the Security Account at the depositary bank to the Federal Reserve Bank of New York.

Directive License Federal Reserve Deduction From Tribunal Awards

To: Federal Reserve Bank of New York, Fiscal Agent of the United States

Pursuant to the Fiscal Agency Agreement between the United States and the Federal Reserve Bank of New York dated August 14, 1981, Executive Orders issued January 19, 1981 (Nos. 12276-12284), the authority of the Independent Office Appropriations Act (31 U.S.C. 483(a)) the Technical Agreement of August 17, 1981, among De Nederlandsche Bank N.V., Banque Centrale d'Algerie as Escrow Agent, Bank Markazi Iran, and the Federal Reserve Bank of New York as fiscal agent of the United States ("FRBNY") and the Technical Agreement of August 17, 1981, among the N.V. Settlement

Bank of the Netherlands, Banque Centrale d'Algerie as Escrow Agent, Bank Markazi Iran, and FRBNY, FRBNY is hereby licensed, authorized, directed and compelled:

1. As amounts are received from the Security Account provided for in the Declaration of the Democratic and Popular Republic of Algeria of January 17, 1981, for the execution of arbitral awards, including interest thereon, by the Iran-United States Claims Tribunal in favor of United States claimants, to deduct two percent of such amounts on behalf of the Treasury Department;

2. To pay the balance, immediately following deduction pursuant to paragraph 1, of such amounts to the U.S. claimants designated by the awards as recipients, without further deduction or alteration of the amounts; and

3. To pay to the Treasury Department for deposit in the general fund miscellaneous receipts the amounts deducted pursuant to paragraph 1 above.

FRBNY has no obligation to invest amounts received from the Security Account pending transfer to the recipient, and should transfer funds to recipients as soon as is practical in the circumstances. Further, FRBNY may rely on instructions from the N.V. Settlement Bank of the Netherlands or the Banque Centrale d'Algerie as Escrow Agent, or on telephone or telex instructions from recipients, designating the depository institution to which the funds are to be transferred.

Dated: June 7, 1982.

Treasury Department.

Robert E. Powis,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-15745 Filed 6-9-82; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit Review Board	Date	Time	Location
Basic sciences	June 24, 1982	8 a.m. to 5 p.m.	Room 817, VA Central Office.[1]
Do	June 25, 1982	do	Do.
Do	June 28, 1982	do	Council Room, Hotel Washington.[2]
Do	June 29, 1982	do	Do.
Do	June 30, 1982	do	Do.
Oncology	July 8, 1982	do	Assembly Room, Hotel Washington.[2]
Do	July 9, 1982	do	Do.
Surgery	July 8, 1982	do	Caucus Room, Hotel Washington.[2]
Do	July 9, 1982	do	Do.
Do	July 10, 1982	do	Do.
Immunology	July 13, 1982	do	Do.
Do	July 14, 1982	do	Do.
Endocrinology	July 14, 1982	do	Assembly Room, Hotel Washington.[2]
Do	July 15, 1982	do	Do.
Behavioral sciences	July 19, 1982	do	Council Room, Hotel Washington.[2]
Do	July 20, 1982	do	Do.
Do	July 21, 1982	do	Do.
Alcoholism and drug dependence	Aug. 3, 1982	do	Caucus Room, Hotel Washington.[2]
Cardiovascular studies	Aug. 11, 1982	do	Assembly Room, Hotel Washington.[2]
Do	Aug. 12, 1982	do	Do.
Nephrology	Aug. 12, 1982	do	Caucus Room, Hotel Washington.[2]
Do	Aug. 13, 1982	do	Do.
Hematology	Aug. 23, 1982	do	Do.
Do	Aug. 24, 1982	do	Do.
Neurobiology	Aug. 25, 1982	do	Council Room, Hotel Washington.[2]
Do	Aug. 26, 1982	do	Do.
Do	Aug. 27, 1982	do	Do.
Do	Aug. 28, 1982	do	Do.
Infectious diseases	Aug. 26, 1982	do	Caucus Room, Hotel Washington.[2]
Do	Aug. 27, 1982	do	Do.
Gastroenterology	Sept. 1, 1982	do	Assembly Room, Hotel Washington.[2]
Do	Sept. 2, 1982	do	Do.
Respiration	Sept. 2, 1982	do	Caucus Room, Hotel Washington.[2]
Do	Sept. 3, 1982	do	Do.

[1] Veterans Administration, Central Office, 810 Vermont Avenue NW., Washington, DC 20420.
[2] Hotel Washington, 15th and Pennsylvania Avenue NW., Washington, DC 20004.

These meetings will be for the purpose of evaluating scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration hospitals and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meetings involves: discussion; examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. Closure of these meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(6) and (9)(B).

Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Merit Review Board Staff Division, Medical Research Service, Veterans Administration, Washington, DC, (202)-389-5065 at least five days prior to each meeting. Minutes of the meeting and rosters of the members of the Boards may be obtained from this source.

Dated: June 3, 1982.

By direction of the Administrator.

Charles T. Hagel,

Deputy Administrator.

[FR Doc. 82-15641 Filed 6-9-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 112
Thursday, June 10, 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 18, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

AGENY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 25, 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, 254-6334.

[S-863-82 Filed 6-8-82; 9:03 am]

BILLING CODE 6351-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 15, 1982 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, June 17, 1982 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Advisory Opinion 1982-8—Paul E. Suplizio, Executive Director, International Association of Trade Exchanges (and BARTERPAC)
Ballot access exemptions
Addendum to final audit report—Kennedy for President Committee
Appropriations and budget
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-865-82 Filed 6-9-82; 8:45 am]

BILLING CODE 6715-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., June 16, 1982.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Docket No. 82-23: In the Matter of Rates Applicable to Ocean Shipments via American President Lines—Consideration of the record.
2. Informal Docket No. 1120(I): Singer Products, Inc. v. Delta Steamship Lines, Inc.—Petition for reconsideration.
3. Informal Docket No. 1126(I): Singer Products, Inc. v. Delta Steamship Lines, Inc.—Petition for reconsideration.

Portions closed to the public:

1. Agreements Nos. 2846-41 and 50; 5660-27 and 35; and 9522-38 and 47: Amendments to WINAC, Marseilles/North Atlantic U.S.A. Freight Conference and Med-Gulf Conference to conform self-policing provisions to Commission Order 7.
2. Docket No. 82-8: Compliance with General Order 7, Revised, Self-Policing—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-864-82 Filed 6-8-82; 3:28 pm]

BILLING CODE 6730-01-M

federal register

Thursday
June 10, 1982

Part II

Department of the Interior

Geological Survey

Onshore Oil and Gas; Unit or Cooperative Agreements; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 226

Unit or Cooperative Agreements

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations which govern the formation and operation of onshore Federal oil and gas unit plans. The provisions would be revised and modernized to eliminate unnecessary items and to incorporate necessary modifications in recognition of changed circumstances which have evolved since 1951, when the part was last published in its entirety. The model unit agreement (30 CFR 226.12) for unproven areas would be revised to incorporate all previously accepted modifications and those resulting from specific comments received as a result of the May 14, 1981, Notice of Intent to Propose Rulemaking (46 FR 26661).

DATE: Comments on this proposed rulemaking must be received by July 26, 1982.

ADDRESS: Comments may be mailed to: Mr. Andrew V. Bailey, Acting Associate Director for Onshore Minerals Operations, Minerals Management Service, Mail Stop 650, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860–7535, (FTS) 928–7535, or Mr. Stephen H. Spector, (703) 860–6259, (FTS) 928–6259.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Mr. Gilbert Kutchins and Mr. Leo Kozola of the Office of the Deputy Minerals Manager—Oil and Gas, North Central Region, Casper, Wyoming; Mr. Gerald R. Daniels, Chief, Branch of Fluid Minerals Management; and Mr. Stephen H. Spector, Branch of Onshore Rules and Procedures.

This proposed rulemaking is intended to remove from the present regulations those items that the Department of the Interior has identified as unnecessary to the effective formation and operation of onshore Federal oil and gas unitization plans, while also modernizing the regulations to reflect current circumstances. The Minerals Management Service's (MMS) predecessor, the Conservation Division of the U.S. Geological Survey, announced its intention to propose rulemaking by Notice of Intent published on May 14, 1981 (46 FR 26661). Comments were invited for 45 days ending June 29, 1981. Numerous responses were received including nine from oil and gas operators, one from a firm specializing in the formation of federally approved units, one from an oil and gas association, and one from an organization which represents several Indian Tribes which have energy interests. In addition, comments were received from one Regional Office of the U.S. Forest Service.

One general change which is proposed throughout this rulemaking is the designation to the responsible official as the Deputy Minerals Manager (DMM) rather than Area Supervisor. This change results from the 1980 reorganization, and in part from the 1982 reorganization of the Conservation Division, and is merely a title change. This administrative change does not enhance or diminish the authority of the responsible official, nor should it affect the existing relationship between either the parties to the agreement or the proponents and the Federal Government.

A second general change is the removal of all references to the "U.S. Geological Survey" or "GS" and inserting in their place the "Minerals Management Service." This change reflects the reorganization of the Conservation Division of the U.S. Geological Survey into a separate Agency by Secretarial Order 3071, January 19, 1982.

A third general change is to clearly limit the part as being applicable only to onshore Federal unit plans. This would eliminate references to cooperative agreements in which separate ownership units would be independently operated without allocation of production. Although such agreements are still authorized by law, the practice is no longer in use and its removal should not adversely impact industry.

The majority of the oil and gas lessees and/or operators who responded to the Notice of Intent indicated that, except for minor modifications, the unit regulations were satisfactory in the present form and no major changes were necessary. Several operators did suggest that the sample unit agreement for unproven areas, which is now set forth in the regulations (§ 226.12), should be updated to conform to the unit agreements that are currently in use with the modifications which have been developed since the regulations were promulgated. This is accomplished through the inclusion at § 226.12 of a new model unit agreement. The model agreement and model Exhibits A and B, have been updated to inlcude approved changes and those deemed necessary for further clarification.

The organization representing various Indian Tribes having energy interests suggested that a separate standard form of unit agreement for Indian lands be developed and included in the regulations. Although this comment has some merit, it is beyond the scope of this rulemaking. Moreover, there is currently no uniformity in the text of agreements which are now accepted by the numerous Indian Tribes and the Bureau of Indian Affairs. If such a model or standard form of agreement could be developed which would be acceptable to all parties involved with Indian oil and gas leases, it should be contained under a separate heading of either Title 30 or Title 25 (Indians) of the CFR.

The above organization also suggested the addition of a provision to clarify procedures when Indian lands are part of a Federal unit area. This suggestion has been adopted by expanding the section dealing with the inclusion of non-Federal lands to include a specific paragraph on Indian lands (§ 226.7(b)).

A suggestion to provide additional approval authority to Federal surface managing agencies has not been adopted. Procedures already exist whereby input is received from such agencies and if any changes are needed in the various interagency relationships, these can be accomplished by other means.

One commentor suggested that § 226.8 be modified to exempt non-Federal lands within a unit area from Federal regulation when less than 50 percent of the unit lands are Federal. We find the benefits to be gained by administering the entire unit under the same general control outweigh the benefits that would be achieved by adopting the recommendation. However, current practice in cases where the Federal lands consititute less than 10 percent is to commit the Federal lands to a non-Federal unit agreement. Therefore, the current provision in § 226.8(b) is proposed to be deleted as unnecessary.

Some commentors suggested that § 226.9 be revised to change the number of copies of documents required to be submitted. This suggestion has been adopted and the proposed § 266.9 requires only the minimum number of copies required for distribution following approval.

Most of the oil and gas operators responding to the Notice of Intent took exception to the implication that some units were being formed merely to gain extension of lease terms and not as a means of promoting orderly, cost-effective development of oil and gas. While the Notice was not intended to

imply that unitization does not contribute greatly to the exploration for oil and gas, instances have been observed where steps are begun to dissolve a unit agreement even before it has been formally approved. To eliminate such actions, sections 9 and 20 of the model agreement have been modified to provide for a minimum term of 1 year before initiating a request to voluntary termination unless one obligation well is drilled after the effective date of the unit agreement.

The remainder of the comments recommended modifications to address specific provisions of the model unit agreement (§ 226.12). Specific suggestions are discussed below by the section of the agreement to which they relate.

Section 2. Subsection (e) has been an approved modification of the agreement for many years. Two operators suggested further modification to provide a longer time period before lands not included within a participating area are automatically excluded. This provision was subjected to considerable review and analysis, and it has been concluded that 10 years is sufficient time in which to develop a unit area approved under existing or proposed guidelines. Accordingly, this suggestion has not been adopted and the section would be modified to include subsection (e) without the provision for extension beyond 10 years following the effective date of the initial participating area.

Section 9. In addition to the change concerning termination during the first year, previously discussed, a suggestion was made to clarify the term "beginning of a well." The word beginning has been replaced with "commencement (spudding)" in order to indicate that actual drilling must be in progress by the specified period.

Section 11. A commentor suggested a revision of this section to include lands within a participating area in tracts no smaller than 40 acres (legal subdivision). This suggestion has not been adopted since it would create inequities with existing units, and experience has shown many past instances when the inclusion of smaller tracts in a participating area is consistent with the intent of the law and the provisions of the unit agreement relating to the establishment and expansion of participating areas.

Section 14. One commentor suggested the inclusion of terms to clarify the meaning of this section; however, since no significant problems in interpretation have been observed, the provision has not been altered.

Sections 18(e) and 26. Several comments recommended changes which cannot be accomplished without statutory revisions.

Section 18(g). Commentors suggested that this provision (section 18(h) in most currently approved unit agreements) be deleted since it deals with non-Federal or "fee" leases and can be covered by the terms of such leases. The provision has been retained as an optional provision (section 18(h)) to provide the parties to unit agreements the flexibility to have the provision available where needed, while indicating that agreements would be acceptable without the provision.

Section 26. One operator recommended that the provision relating to unavoidable delay be expanded to include availability of drilling rigs. As rig availability has generally been given consideration in requests for unavoidable delay in the past, this recommendation has been adopted.

One commentor recommended much more extensive revision of the model agreement, but since the majority of those commenting suggested the model only required minor revision, this suggested was not adopted.

The "Note" has been redesignated "General Guidelines" and expanded. The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. The Department has also certified that this rulemaking will not have a significant economic impact on a substantial number of small entities, thus a small entity flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-354, is not required.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

Paperwork Reduction Act

Unit agreements which conform to the model set out in § 226.12 of these regulations are basically contracts between the private parties and not an information collection requirement. It is submitted for approval to insure that the rights granted to each lessee of a Federal lease are not adversely impacted through the joining of a lease in a unitized plan of development. All operations continue to be conducted under 30 CFR 221 and the information collection requirements of that section apply to the unitized operations as if it were a single lease. The model agreement does not constitute information collection as defined by 44 U.S.C. 3502 and therefore does not require OMB approval.

List of Subjects of 30 CFR 226

Government contracts, Oil and gas reserves, Public lands/mineral resources.

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189, 226e), and Executive Order 12291 (46 FR 13193), it is proposed to revise Part 226, Chapter II, Title 30 of the Code of Federal Regulations as set forth below.

PART 226—ONSHORE OIL AND GAS UNIT AGREEMENTS

Sec.

226.1 Introduction and jurisdiction.
226.2 Definitions.
226.3 Designation of unit area; depth of test well.
226.4 Preliminary consideration of unit agreement.
226.5 Parties to unit agreement.
226.6 Qualifications of Unit Operator.
226.7 Inclusion of non-Federal lands.
226.8 Approval of unit agreement.
226.9 Filing of papers and number of counterparts.
226.9-1 Retroactive approval of communitization agreement.
226.10 Bonds.
226.11 Appeals.
226.12 Model onshore unit agreement for unproven areas.
226.13 Model Exhibit "A."
226.14 Model Exhibit "B."
226.15 Model collective bond.
226.16 Model for designation of successor unit operator by working interest owners.
226.17 Model for change in unit operator by assignment.

Authority: The Act of February 25, 1920 (30 U.S.C. 181, 189, 226(e), 226(j)), as amended.

§ 226.1 Introduction and jurisdiction.

(a) The regulations in this part prescribe the procedures to be followed and the requirements to be met by the owners of any right, title, or interest in Federal oil and gas leases (see § 226.2(b)), and their representatives who wish to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan for the development of any oil or gas pool, field, or like area, or any part thereof. All unit operations are subject to the regulations contained in 30 CFR Part 221, Onshore Oil and Gas Operations.

(b) Subject to the supervisory authority of the Secretary, the administration of the regulations in this part shall be under the jurisdiction of the Deputy Minerals Manager (DMM). In the exercise of his jurisdiction, the DMM shall be subject to the direction and supervisory authority of the Director,

Minerals Management Service, and the appropriate regional Minerals Manager, Minerals Management Service, each of whom may exercise the jurisdiction of the DMM.

§ 226.2 Definitions.

The following terms, as used in this part or in any unit agreement approved under the regulations in this part, shall have the meanings here indicated unless otherwise defined in such unit agreement:

(a) Unit agreement (agreement). An agreement or plan for the development and operation which provides for the recovery of oil and/or gas made subject thereto, as a single consolidated entity without regard to separate ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan.

(b) Federal lease. A lease issued under the Act of February 25, 1920, as amended (30 U.S.C. 181, et seq.); the Act of May 21, 1930 (30 U.S.C. 351–359); the Act of August 7, 1947 (30 U.S.C. 351, et seq.); or the Act of November 16, 1981 (Pub. L. 97–78, 95 Stat. 1070). Such lease shall be issued in accordance with the regulations at 43 CFR Group 3100.

(c) Unit area. The area described in an agreement as constituting the land logically subject to exploration and/or development under such agreement.

(d) Unitized land. Those lands within a unit area which are committed to the agreement or plan.

(e) Unitized substances. Deposits of oil and gas contained in the unitized land which are recoverable by operation under and pursuant to an agreement.

(f) Unit operator. The person, association, partnership, corporation, or other business entity designated under a unit agreement to conduct operations on unitized land as specified in such agreement.

(g) Participating area. That part of a unit area which is considered proven productive and to which production is allocated in the manner described in a unit agreement.

(h) Working interest. An interest held in unitized substances or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in the agreement, the owner of such interest is vested with the right to explore for, develop, and produce such substances. The rights delegated to the unit operator by the unit agreement are not regarded as a working interest.

(i) Secretary. The Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(j) Director. The Director of the Minerals Management Service or any person authorized to act on the Director's behalf.

(k) Deputy Minerals Manager (DMM). A representative of the Secretary subject to the direction and supervisory authority of the Director; the Chief, Minerals Management; the Deputy Chief, Onshore Minerals Management; and the appropriate regional Minerals Manager, Minerals Management Service authorized and empowered to designate areas as logically subject to unitization, to execute proposals submitted for approval, and to supervise and direct onshore oil and gas operations, and to perform other duties prescribed in the regulations in this part.

§ 226.3 Designation of unit area; depth of test well.

An application for designation of an area as logically subject to development under a unit agreement and for determination of the depth of a test well may be filed by a proponent of such an agreement. Such application shall be accompanied by a map or diagram on a scale of not less than 2 inches to 1 mile, outlining the area sought to be designated under this section. The Federal, State and privately owned land should be indicated by distinctive symbols or colors. Federal oil and gas leases and lease applications should be identified by lease serial numbers. Geologic information, including the results of any geophysical surveys, and any other available information showing that unitization is necessary and advisable in the public interest should furnished. If requested, geologic information so furnished will be treated as confidential in accordance with the provisions of 30 CFR Part 221. These data will be considered by the DMM and the applicant will be informed of the decision reached. The designation of an area, pursuant to an application filed under this section, shall not create an exclusive right to submit an agreement for such area, nor preclude the inclusion of such area or any party thereof in another unit area.

§ 226.4 Preliminary consideration of unit agreement.

The model unit agreement set forth in § 226.12, is acceptable for use in unproven areas. Unique situations requiring special provisions should be clearly identified, since these and other special conditions may necessitate a modification of the model unit agreement set forth in § 226.12. Any proposed special provisions or other modifications of the model agreement should be submitted for preliminary consideration so that any necessary revision may be prescribed prior to execution by the interested parties.

§ 226.5 Parties to unit agreement.

The owners of any right, title, or interest in the oil and gas deposits to be unitized are regarded as proper parties to a proposed agreement. All such parties must be invited to join the agreement. If any party fails or refuses to join the agreement, the proponent of the agreement, at the time it is filed for approval, must submit evidence of reasonable effort made to obtain joinder of such party and, when requested, the reasons for such nonjoinders. The address of each signatory party to the agreement should be inserted below the signature. Each signature should be attested by at least one witness of not notarized. Corporate or other signatures made in a representative capacity must be accompanied by evidence of the authority of the signatories to act unless such evidence is already a matter of record with the DMM. The signing parties may execute any number of counterparts of the agreement with the same force and effect as if all parties signed the same document, or may execute a ratification or consent in a separate instrument with like force and effect.

§ 226.6 Qualification of unit operator.

A unit operator must qualify as to citizenship in the same manner as those holding interests in Federal oil and gas leases under the regulations at 43 CFR Group 3100. The unit operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests. The unit operator shall execute an acceptance of the duties and obligations imposed by the agreement. No designation of or change in a unit operator will become effective until approved by the DMM, and no such approval will be granted unless the successor unit operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

§ 226.7 Inclusion of non-Federal land.

(a) Where State-owned land is to be unitized with Federal lands, approval of the agreement by appropriate State officials must be obtained prior to its submission to the DMM for final approval. When authorized by the laws of the State in which the unitized land is situated, appropriate provision may be made in the agreement, recognizing such laws to the extent that they are applicable to non-Federal unitized land.

(b) When Indian lands are included, modification of the unit agreement will be required by the DMM. Approval of an agreement containing Indian lands by the Bureau of Indian Affairs must be obtained prior to submission to the DMM for final approval.

§ 226.8 Approval of unit agreement.

A unit agreement will be approved by the DMM upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval will be incorporated in a Certification-Determination document appended to the agreement (example in § 226.12). No such agreement will be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations. Any modification of an approval agreement will require the prior approved of the DMM.

§ 226.9 Filing of papers and number of counterparts.

(a) All papers, instruments, documents, and proposals submitted under this part should be filed in the office of the DMM for the region in which the unit area is situated.

(b) An application for designation of a proposed unit area and determination of the required depth of test well shall be filed in duplicate. A like number of counterparts should be filed of any geologic data and any other information submitted in support of such application.

(c) Where a duly executed agreement is submitted for final approval, a minimum of four signed counterparts should be filed. The number of counterparts to be filed for supplementing, modifying, or amending an existing agreement, including change of operator, designation of new operator, designation of a participating area, and termination shall be prescribed by the DMM.

(d) Two counterparts of a substantiating geologic report, including structure-contour map, cross sections, and pertinent data, shall accompany each application for approval of a participating area or revision thereof under an approved agreement.

(e) Three counterparts of all plans of development and operation shall be submitted for approval under an approved agreement.

(f) One approved counterpart of each instrument or document submitted for approval will be returned to the operator by the DMM or his representative, together with such additional counterparts as may have been furnished for that purpose.

§ 226.9–1 Retroactive approval of a communitization agreement.

(a) Generally, no communitization agreement shall be given an effective date that is prior to the date of its filing with the Deputy Minerals Manager (DMM). However, under circumstances of good faith mistake or error by lessee or operator, and in the absence of intervening third party rights, the effective date of a communitization agreement may be fixed as far back as the date of execution of the agreement between the lessees or operators.

(b) No retroactive approval of a communitization agreement may be made where the lease expired prior to execution of the agreement. The agreement need not be in a form required for approval by the Minerals Management Service to qualify for this equitable relief, but may be any agreement between lessees or operators, such as an operating agreement evidencing the intent of the parties to combine, and having the effect of combining, their leases or interests for operational purposes. If the agreement that combined such leases or interests is other then a formal communitization agreement acceptable for filing and approval as such, the DMM may require the parties to submit such an agreement in proper form, which, if submitted and approved, shall be deemed effective as of the date of the earlier agreement between the parties that combined their leases or interests.

§ 226.10 Bonds.

In lieu of separate bonds required for each Federal lease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond or a personal bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the Federal leases subject thereto. Personal bonds shall be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bonds, and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the obligations assumed. The liability under the bond shall be for such amount as the DMM shall determine to be adequate to protect the interests of the United States, and additional bond may be required whenever deemed necessary. The bond shall be filed with the State Director of the Bureau of Land Management having jurisdiction over the Federal leases in the unit. Evidence must be furnished to the DMM that such bond has been accepted by the Bureau of Land Management before operations will be authorized. A form of corporate surety bond is set forth in § 226.15. In case of change of unit operator, a new bond must be filed or consent of surety to such change of operator must be furnished.

§ 226.11 Appeals.

A technical and procedural review may be requested pursuant to 30 CFR 221.82 and/or an appeal may be taken as provided in 30 CFR Part 290 of this chapter from any order or decision issued under the regulations in this part.

§ 226.12 Model onshore unit agreement for unproven areas.

Introductory Section.
Section 1—Enabling Act and regulations.
Section 2—Unit area.
Section 3—Unitized land and unitized substances.
Section 4—Unit Operator.
Section 5—Resignation or removal of Unit Operator.
Section 6—Successor Unit Operator.
Section 7—Accounting provisions and unit operating agreement.
Section 8—Rights and obligations of Unit Operator.
Section 9—Drilling to discovery.
** Section 9a—Multiple well requirements.
Section 10—Plan of further development and operation.
Section 11—Participation after discovery.
Section 12—Allocation of production.
Section 13—Development or operation of nonparticipating land or formations.
Section 14—Royalty settlement.
Section 15—Rental settlement.
Section 16—Conservation.
Section 17—Drainage.
Section 18—Leases and contracts conformed and extended.
Section 19—Covenants run with land.
Section 20—Effective date and term.
Section 21—Rate of prospecting, development, and production.
Section 22—Appearances.
Section 23—Notices.
Section 24—No waiver of certain rights.
Section 25—Unavoidable delay.
Section 26—Nondiscrimination.
Section 27—Loss of title.
Section 28—Nonjoinder and subsequent joinder.
Section 29—Counterparts.
* Section 30—Surrender.
*Section 31—Taxes.
*Section 32—No partnership.
Concluding Section—in witness whereof.
General Guidelines.
Certification—Determination.

** Paragraph included when more than one obligation well is to be drilled.
* Optional sections (in addition, paragraph (h) of section 18 is optional).

Unit Agreement for the Development and Operation of the

Unit area ———————————
County of ———————————
State of ———————————

No. ———————————

This agreement, entered into as of the ——— day of ———, 19—, by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the "parties hereto,"

Witnesseth

Whereas, the parties hereto are the owners of working, royalty, or other oil and gas interests in the unit area subject to this agreement; and

Whereas the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sec. 181 et seq., authorizes Federal leasees and their representatives to unit with each other, or jointly or separately with others, in collectively adopting and operating a unit plan of development or operations of any oil and gas pool, field, or like area, or any part thereof for the purpose of more properly conserving the natural resources thereof whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

Whereas the parties hereto hold sufficient interests in the ———— Unit Area covering the land hereinafter described to give reasonably effective control of operations therein; and

Whereas, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operation of the area subject to this agreement under the terms, conditions, and limitations herein set forth;

Now, therefore, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined unit area, and agree severally among themselves as follows:

1. Enabling Act and regulations. The Mineral Leasing Act of February 25, 1920, as amended, supra, and all valid pertinent regulations including operating and unit plan regulations, heretofore issued thereunder or valid, pertinent, and reasonable regulations hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands, provided such regulations are not inconsistent with the terms of this agreement; and as to non-Federal lands, the oil and gas operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the terms hereof or the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

2. Unit area. The area specified on the map attached hereto marked Exhibit A is hereby designated and recognized as constituting the unit area, containing —— acres, more or less.

Exhibit A shows, in addition to the boundary of the unit area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator. Exhibit B attached hereto is a schedule showing to the extent known to the Unit Operator, the acreage, percentage, and kind of ownership of oil and gas interests in all lands in the unit area. However, nothing herein or in Exhibits A or B shall be construed as a representation by any party hereto as to the ownership of any interest other than such interest or interests as are shown in the Exhibits as owned by such party. Exhibits A and B shall be revised by the Unit Operator whenever changes in the unit area or in the ownership interest of the individual tracts render such revision necessary, or when requested by the Deputy Minerals Manager—Oil and Gas,[1] hereinafter referred to as "DMM," and not less than four copies of the revised Exhibits shall be filed with the DMM.

The above-described unit area shall when practicable be expanded to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this agreement. Such expansion or contraction shall be effected in the following manner:

(a) Unit Operator, on its own motion (after preliminary concurrence by the DMM), or on demand of the DMM, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the unit area, the reasons therefore, any plans for additional drilling, and the proposed effective date of the expansion or contraction, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the DMM, and copies thereof mialed to the last known address of each working interest owner, lessee, and lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the DMM evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with Unit Operator, together with an application in triplicate, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the DMM, become effective as of the date prescribed in the notice thereof or such other appropriate date.

(e) All legal subdivisions of lands (i.e., 40 acres by Government survey or its nearest lot or tract equivalent; in instances of irregular surveys, unusually large lots or tracts shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof), no parts of which are in or entitled to be in a participating area on or before the fifth anniversary of the effective date of the first initial participating area established under this unit agreement, shall be eliminated automatically from this agreement, effective as of said fifth anniversary, and such lands shall no longer be a part of the unit area and shall no longer be subject to this agreement, unless diligent drilling operations are in progress on unitized lands not entitled to participation on said fifth anniversary, in which event all such lands shall remain subject hereto for so long as such drilling operations are continued diligently, with not more than 90-days time elapsing between the completion of one such well and the commencement of the next such well. All legal subdivisions of lands not entitled to be in a participating area within 10 years after the effective date of the first initial participating area approved under this agreement shall be automatically eliminated from this agreement as of said tenth anniversary. The Unit Operator shall, within 90 days after the effective date of any elimination hereunder, describe the area so eliminated to the satisfaction of the DMM and promptly notify all parties in interest. All lands proved productive of unitized substances in paying quantities by diligent drilling operations after the aforesaid 5-year period shall become participating in the same manner as during said first 5-year period. However, when such diligent drilling operations cease, all nonparticipating lands shall be automatically eliminated effective as the 91st day thereafter.

Any expansion of the unit area pursuant to this section which embraces lands theretofore eliminated pursuant to this subsection 2(e) shall not be considered automatic commitment or recommitment of such lands.

3. Unitized land and unitized substances. All land now or hereafter committed to this agreement shall constitute land referred to herein as "unitized land" or "land subject to this agreement." All oil and gas in any and all formations of the unitized land are unitized under the terms of this agreement and herein are called "unitized substances."

4. Unit Operator. ———— is hereby designated as Unit Operator and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, and production of unitized substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in unitized substances, and the term "working interest owner" when used herein shall include or refer to Unit Operator as the owner of a working interest only when such an interest is owned by it.

5. Resignation or removal of Unit Operator. Unit Operator shall have the right to resign at any time prior to the establishment of a participating area or areas hereunder, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate Unit Operator's rights as such for a period of 6 months after notice of intention to resign has been served by Unit Operator on all working interest owners and the DMM, and until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment, whichever is required by the DMM, unless a new Unit

[1] In the Eastern Region and the Alaska Region, the responsible official is the Deputy Minerals Manager—Onshore Minerals.

Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

Unit Operator shall have the right to resign in like manner and subject to like limitations as above provided at any time after a participating area established hereunder is in existence, but in all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the working interest owners shall be jointly responsible for performance of the duties of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

The resignation of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation.

The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of working interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the DMM.

The resignation or removal of Unit Operator under this agreement shall not terminate its right, title, or interest as the owner of working interest or other interest in unitized substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, materials, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or to the common agent, if no such new Unit Operator is elected, to be used for the purpose of conducting unit operations hereunder. Nothing herein shall be construed as authorizing removal of any material, equipment, and appurtenances needed for the preservation of any wells.

6. Successor Unit Operator. Whenever the Unit Operator shall tender his or its resignation as Unit Operator or shall be removed as hereinabove provided, or a change of Unit Operator is negotiated by working interest owners, the owners of the working interests according to their respective acreage interests in all unitized land shall, pursuant to the Approval of Parties requirements of the unit operating agreement, select a successor Unit Operator. Such selection shall not become effective until:

(a) a Unit Operator so selected shall accept in writing the duties and responsibilities of Unit Operator, and

(b) the selection shall have been approved by the DMM.

If no successor Unit Operator is selected and qualified as herein provided, the DMM at his election may declare this unit agreement terminated.

7. Accounting provisions and unit operating agreement. If the Unit Operator is not the sole owner of working interests, costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of working interests, all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of working interests, whether one or more, separately or collectively. Any agreement or agreements entered into between the working interest owners and the Unit Operator as provided in this section, whether one or more, are herein referred to as the "unit operating agreement." Such unit operating agreement shall also provide the manner in which the working interest owners shall be entitled to receive their respective proportionate and allocated share of the benefits accuring hereto in conforming with their underlying operating agreements, leases, or other independent contracts, and such other rights and obligations as between Unit Operator and the working interest owners as may be agreed upon by Unit Operator and the working interest owners; however, no such unit operating agreement shall be deemed either to modify any of the terms and conditions of this unit agreement or to relieve the Unit Operator of any right or obligation established under this unit agreement, and in case of any inconsistency or conflict between this agreement and the unit operating agreement, this agreement shall govern. Two copies of any unit operating agreement executed pursuant to this section shall be filed with the DMM prior to approval of this unit agreement.

8. Rights and obligations of Unit Operator. Except as otherwise specifically provided herein, the exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided. Acceptable evidence of title to said rights shall be deposited with said Unit Operator and, together with this agreement shall constitute and define the rights, privileges, and obligations of Unit Operator. Nothing herein, however, shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that under this agreement the Unit Operator, in its capacity as Unit Operator, shall exercise the rights of possession and use vested in the parties hereto only for the purposes herein specified.

9. Drilling to discovery. Within 6 months after the effective date hereof, the Unit Operator shall begin to drill an adequate test well at a location approved by the DMM, unless on such effective date a well is being drilled in conformity with the terms hereof, and thereafter continue such drilling diligently until the ——— formation has been penetrated or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (to wit: quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the DMM that further drilling of said well would be unwarranted or impracticable, provided, however, that Unit Operator shall not in any event be required to drill said well to a depth in excess of —— feet. Until discovery of unitized substances capable of being produced in paying quantities, the Unit Operator shall continue drilling one well at a time, allowing not more than 6 months between the completion of one well and the commencement (spudding) of the next well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the DMM or until it is reasonably proved that the unitized land is incapable of producing unitized substances in paying quantities in the formations drilled hereunder. Nothing in this section shall be deemed to limit the right of the Unit Operator to resign as provided in Section 5, hereof, or as requiring Unit Operator to commence or continue any drilling during the period pending such resignation becoming effective in order to comply with the requirements of this section.

The DMM may modify the drilling requirements of this section as follows:

(a) For the initial obligation well or wells, a single extension as provided in Section 25, Unavoidable delay, may be granted; and

(b) For all other wells, a single extension, not to exceed 6 months, may be granted, in addition to any extension granted under Section 25.

** 9a. Multiple well requirements. Notwithstanding anything in this unit agreement to the contrary, except Section 25, Unavoidable delay, —— wells shall be drilled with not more than 6-months time elapsing between the completion of the first well and commencement of the second well and with not more than 6-months time elapsing between completion of the second well and the commencement of the third well, . . . regardless of whether a discovery has been made in any well drilled under this provision. Both the initial well and the second well must be drilled in compliance with the above specified formation or depth requirements in order the meet the dictates of this section; and the second well must be located a minimum of —— miles from the initial well in order to be accepted by the DMM as the second unit test well, within the meaning of this section. The third test well shall be diligently drilled, at a location approved by the DMM, to penetrate the ——— formation or to a depth of —— feet and must be located a minimum of —— miles from either the initial or second test well. Nevertheless, in the event of the discovery of unitized substances in paying quantities by any well, the unit agreement shall not terminate for failure to complete the ——— well program, but the unit area shall be contracted automatically, effective the first day of the month following the default, to eliminate by subdivisions (as defined in Section 2(e) hereof) all lands not then entitled to participation.**

Upon failure to commence any well as provided for in this (these) section(s) within the time allowed, prior to the establishment

**Provision is included when multiple wells are to be drilled.

of a participating area, including any extension of time granted by the DMM, this agreement will automatically terminate. Upon failure to continue drilling diligently any well commenced hereunder, the DMM may, after 15-days notice to the Unit Operator, declare this unit agreement terminated. The parties to this agreement may not initiate a request to voluntarily terminate during the first year of its term unless at least one obligation well has been drilled in accordance with the provisions of this (these) section(s).[2]

10. Plan of further development and operation. Within 6 months after completion of a well capable of producing unitized substances in paying quantities, the Unit Operator shall submit for the approval of the DMM an acceptable plan of development and operation for the unitized land which, when approved by the DMM, shall constitute the further drilling and development obligations of the Unit Operator under this agreement for the period specified therein. Thereafter, from time to time before the expiration of any existing plan, the Unit Operator shall submit for the approval of the DMM a plan for an additional specified period for the development and operation and subsequent plans should normally be filed on a calender year basis not later than March 1 each year. Any proposed modification or addition to the existing plan should be filed as a supplement to the plan.

Any plan submitted pursuant to this section shall provide for the timely exploration of the unitized area, and for the diligent drilling necessary for determination of the area of areas capable of producing unitized substances in paying quantities in each and every productive formation, shall be as complete and adequate as the DMM may determine to be necessary for timely development and proper conservation of the oil and gas resources of the unitized area and shall:

(a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling; and

(b) Provide a summary of operations and production for the previous year.

Plans shall be modified or supplemented when necessary to meet changed conditions or to protect the interests of all parties to this agreement. Reasonable diligence shall be exercised in complying with the obligations of the approved plan of development and operation. The DMN is authorized to grant a reasonable extension of the 6-month period herein prescribed for submission of an initial plan of development and operation where such action is justified because of unusual conditions or circumstances.

After completion of a well capable of producing unitized substances in paying quantities, no further wells, except such as may be necessary to afford protection against operations not under this agreement and such as may be specifically approved by the DMM, shall be drilled except in accordance with an approved plan of development and operation.

11. Participation after discovery. Upon completion of a well capable of producing unitized substances in paying quantities, or as soon thereafter as required by the DMM, the Unit Operator shall submit for approval by the DMM a schedule, based on subdivisions of the public-land survey or aliquot parts thereof, of all land then regarded as reasonably proved to be productive of unitized substances in paying quantities. These lands shall constitute a participating area on approval of the DMM, effective as of the date of completion of such well or the effective date of this unit agreement, whichever is later. The acreages of both Federal and non-Federal lands shall be based upon appropriate computations from the courses and distances shown on the last approved public-land survey as of the effective date of each initial participating area. The schedule shall also set forth the percentage of unitized substances to be allocated, as provided in Section 12, to each tract in the participating area so established, and shall govern the allocation of production commencing with the effective date of the participating area. A different participating area shall be established for each separate pool or deposit of unitized substances or for any group thereof which is produced as a single pool or zone, and any two or more participating areas so established may be combined into one, on approval of the DMN. When production from two or more participating areas is subsequently found to be from a common pool or deposit, the participating areas shall be combined into one, effective as of such appropriate date as may be approved or prescribed by the DMM. The participating area or areas so established shall be revised from time to time, subject to the approval of the DMM, to include additional lands then regarded as reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations, or to exclude land then regarded as reasonably proved not to be productive of unitized substances in paying quantities, and the schedule of allocation percentages shall be revised accordingly. The effective date of any revision shall be the first of the month in which the knowledge or information is obtained on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by Unit Operator and approved by the DMM. No land be excluded from a participating area on account of depletion of its unitized substances, except that any participating area established under the provisions of this unit agreement shall terminate automatically whenever all completions in the formation on which the participating area is based are abandoned.

It is the intent of this section that a participating area shall represent the area known or reasonably estimated to be productive in paying quantities; but, regardless of any revision of the participating area, nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

In the absence of agreement at any time between the Unit Operator and the DMM as to the proper definition or redefinition of a participating area, or until a participating area has, or areas have, been established, the portion of all payments affected thereby shall, except royalty due the United States, be impounded in a manner mutually acceptable to the owners of committed working interests. Royalties due the United States shall be determined by the DMM and the amount thereof shall be deposited, as directed by the DMM, until a participating area is finally approved and then adjusted in accordance with a determination of the sum due as Federal royalty on the basis of such approved participating area.

Whenever it is determined, subject to the approval of the DMM, that a well drilled under this agreement is not capable of production in paying quantities and inclusion of the land on which it is situated in a participating area is unwarranted, production from such well shall, for the purposes of settlement among all parties other than working interest owners, be allocated to the land on which the well is located, unless such land is already within the participating area established for the pool or deposit from which such production is obtained. Settlement for working interest benefits from such a nonpaying unit well shall be made as provided in the unit operating agreement.

12. Allocation of production. All unitized substances produced from each participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development purposes, for repressuring or recycling in accordance with a plan of development and operations first approved by the DMM, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts of unitized land of the participating area established for such production. For the purpose of determining any benefits accruing under this agreement, each such tract of unitized land shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land in said participating area, except that allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, shall be on the basis prescribed in the unit operating agreement whether in conformity with the basis of allocation herein set forth or otherwise. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein regardless of whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement, shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined

[2] If mutiple well provision (9a) is not included, this paragraph shall be the last paragraph of Section 9.

at the time that such transferred gas is finally produced and sold.

13. Development or operation of nonparticipating land or formations. Any party hereto owning or controlling the working interest in any unitized land having thereon a regular well location may with the approval of the DMM, at such party's sole risk, costs, and expense, drill a well to test any formation provided the well is outside any participating area established for the formation, unless within 90 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill the well in a like manner as other wells are drilled by the Unit Operator under this agreement.

If any well drilled under this section by a working interest owner results in production such that the land upon which it is situated may properly be included in a participating area, such participating area shall be established or enlarged as provided in this agreement and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this agreement and the unit operating agreement.

If any well drilled under this section by a working interest owner that obtains production in quantities insufficient to justify the inclusion of the land upon which such well is situated in a participating area, such well may be operated and produced by the party drilling the same, subject to the conservation requirements of this agreement. The royalties in amount or value of production from any such well shall be paid as specified in the underlying lease and agreements affected.

14. Royalty settlement. The United States and any State and any royalty owner who is entitled to take in kind a share of the substances now unitized hereunder shall hereafter be entitled to the right to take in kind its share of the unitized substances, and Unit Operator, or the working interest owner in case of the operation of a well by a working interest owner as herein provided for in special cases, shall make deliveries of such royalty share taken in kind in conformity with the applicable contracts, laws, and regulations. Settlement for royalty interest not taken in kind shall be made by working interest owners responsible therefor under existing contracts, laws and regulations, or by the Unit Operator on or before the last day of each month for unitized substances produced during the preceding calendar month; provided, however, that nothing in this section shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any royalties due under their leases.

If gas obtained from lands not subject to this agreement is introduced into any participating area hereunder, for use in repressuring, stimulation of production, or increasing ultimate recovery, in conformity with a plan of development and operation approved by the DMM, a like amount of gas, after settlement as herein provided for any gas transferred from any other participating area and with appropriate deduction for loss from any cause, may be withdrawn from the formation into which the gas is introduced, royalty free as to dry gas, but not as to any products which may be extracted therefrom; provided that such withdrawal shall be at such time as may be provided in the approved plan of development and operation or as may otherwise be consented to by the DMM as conforming to good petroleum engineering practice; and provided further, that such right of withdrawal shall terminate on the termination of this unit agreement.

Royalty due the United States shall be computed as provided in 30 CFR Part 221 and paid in value or delivered in kind as to all unitized substances on the basis of the amounts thereof allocated to unitized Federal land as provided in Section 12 at the rates specified in the respective Federal leases, or at such other rate or rates as may be authorized by law or regulation and approved by the DMM; provided, that for leases on which the royalty rate depends on the daily average production per well, said average production shall be determined in accordance with the operating regulations as though each participating area were a single consolidated lease.

15. Rental settlement. Rental or minimum royalties due on leases committed hereto shall be paid by appropriate working interest owners under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any rental or minimum royalty due under their leases. Rental or minimum royalty for lands of the United States subject to this agreement shall be paid at the rate specified in the respective leases from the United States unless such rental or minimum royalty is waived, suspended, or reduced by law or by approval of the Secretary or his duly authorized representative.

With respect to any lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provision of this agreement, be deemed to accrue and become payable during the term thereof as extended by this agreement and until the required drilling operations are commenced upon the land covered thereby, or until some portion of such land is included within a participating area.

16. Conservation. Operations hereunder and production of unitized substances shall be conducted to provide for the most economical and efficient recovery of said substances without waste, as defined by or pursuant to State or Federal law or regulation.

17. Drainage. The Unit Operator shall take such measures as the DMM deems appropriate and adequate to prevent drainage of unitized substances from unitized land by wells on land not subject to this agreement.

18. Leases and contracts conformed and extended. The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof, but otherwise to remain in full force and effect; and the parties hereto hereby consent that the Secretary shall and by his approval hereof, or by the approval hereof by his duly authorized representative, does hereby establish, alter, change, or revoke the drilling, producing, rental, minimum royalty, and royalty requirements of Federal leases committed hereto and the regulations in respect thereto to conform said requirements to the provisions of this agreement, and, without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) The development and operation of lands subject to this agreement under the terms hereof shall be deemed full performance of all obligations for development and operation with respect to each and every separately owned tract subject to this agreement, regardless of whether there is any development of any particular tract of the unit area.

(b) Drilling and producing operations performed hereunder upon any at that time, such lease shall be extended for 2 years, and so tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced.

(c) Suspension of drilling or producing operations on all unitized lands pursuant to direction or consent of the DMM shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of unitized land. A suspension of drilling or producing operations limited to specified lands shall be applicable only to such lands.

(d) Each lease, sublease, or contract relating to the exploration, drilling, development, or operation for oil or gas of lands other than those of the United States committed to this agreement which, by its terms might expire prior to the termination of this agreement, is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of this agreement.

(e) Any Federal lease committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production is had in paying quantities under this unit agreement prior to the expiration date of the term of such lease, or in the event actual drilling operations are commenced on unitized land, in accordance with the provisions of this agreement, prior to the end of the primary term of such lease and are being diligently prosecuted long thereafter as oil or gas is produced in paying quantities in accordance with the provisions of the Mineral Leasing Act, as amended.

(f) Each sublease or contract relating to the operation and development of unitized substances from lands of the United States

committed to this agreement, which by its terms would expire prior to the time at which the underlying lease, as extended by the immediately preceding paragraph, will expire is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of the underlying lease as such term is herein extended.

(g) The segregation of any Federal lease committed to this agreement is governed by the following provision in the fourth paragraph of sec. 17(j) of the Mineral Leasing Act, as amended by the Act of September 2, 1960 (74 Stat. 781–784) (30 U.S.C. 226(j)):

Any [Federal] lease heretofore or hereafter committed to any such [unit] plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to lands committed and the lands not committed as of the effective date of unitization: *Provided, however,* That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities.

* (h) Any lease, other than a Federal lease, having only a portion of its lands committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

19. Covenants run with land. The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest. No assignment or transfer of any working interest, royalty, or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

20. Effective date and term. This agreement shall become effective upon approval by the DMM and shall automatically terminate 5 years from said effective date unless:

(a) Upon application by the Unit Operator, such date of expiration is extended by the DMM, or

(b) It is reasonably determined prior to the expiration of the fixed term or any extension thereof that the unitized land is incapable of production of unitized substances in paying quantities in the formations tested hereunder, and after notice of intention to terminate this agreement on such ground is given by the Unit Operator to all parties in interest at their last known addresses, this agreement is terminated with the approval of the DMM, or

(c) A valuable discovery of unitized substances has been made or accepted on unitized land during said initial term or any extension thereof, in which event this agreement shall remain in effect for such term and so long thereafter as unitized substances can be produced in quantities sufficient to pay for the cost of producing same from wells on unitized land within any participating area established hereunder. Should production cease and diligent drilling operations to restore production or new production are not in progress during the period of nonproduction, and production is not restored or should new production not be obtained in paying quantities on committed lands within this unit area, this agreement will automatically terminate effective the last day of the month in which the last unitized production occurred, or

(d) It is voluntarily terminated as provided in this agreement. This agreement may be terminated at any time prior to the discovery of unitized substances which can be produced in paying quantities by not less than 75 per centum, on an acreage basis of the working interest owners signatory hereto, with the approval of the DMM. The Unit Operator shall give notice of any such approval to all parties hereto. Voluntary termination may not occur during the first year of this agreement unless at least one obligation well has been drilled in accordance with Section 9.

21. Rate of prospecting, development, and production. The DMM is hereby vested with authority to alter or modify from time to time, in his discretion, the quantity and rate of production under this agreement when such quantity and rate is not fixed pursuant to Federal or State law, or does not comform to any Statewide voluntary conservation or allocation program which is establish, recognized, and generally adhered to by the majority of operators in such State. The above authority is hereby limited to alteration or modifications which are in the public interest and the purpose thereof, and the public interest to be served must be stated in the order of alteration or modification. Without regard to the foregoing, the DMM is also hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this agreement when such alteration or modification is in the interest of attaining the conservation objectives stated in this agreement and is not in violation of any applicable Federal or State law.

Powers is this section vested in the DMM shall only be exercised after notice to Unit Operator and opportunity for hearing to be held not less than 15 days from notice.

22. Appearances. Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior and to appeal from orders issued under the regulations of said Department, or to apply for relief from any of said regulations, or in any proceedings relative to operations before the Department, or any other legally constituted authority; provided, however, that any other interested party shall also have the right at his own expense to be heard in any such proceeding.

23. Notices. All notices, demands, or statements required hereunder to be given or rendered to the parties hereto shall be in writing and shall be personally delivered to the party or parties, or sent by postpaid registered or certified mail, to the last-known address of the party or parties.

24. No waiver of certain rights. Nothing contained in this agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense as to the validity or invalidity of any law of the State where the unitized lands are located, or of the United States, or regulations issued thereunder in any way affecting such party, or as a waiver by any such party of any right beyond his or its authority to waive.

25. Unavoidable delay. All obligations under this agreement requiring the Unit Operator to commence or continue drilling, or to operate on or produce unitized substances from any of the lands covered by this agreement, shall be suspended while the Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, acts of God, Federal, State, or municipal law or agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials or equipment in the open market, or other matters beyond the reasonable control of the Unit Operator whether similar to matters herein enumerated or not.

26. Nondiscrimination. In connection with the performance of work under this agreement, the Unit Operator agrees to comply with all the provisions of section 202 (1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended, which are hereby incorporated by reference in this agreement.

27. Loss of title. In the event title to any tract of unitized land shall fail and the true owner cannot be induced to join in this unit agreement, such tract shall be automatically regarded as not committed hereto, and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title. In the event of a dispute as to title to any royalty, working interest, or other interests subject thereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled; provided, that, as to Federal lands or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the DMM to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Unit Operator as such is relieved from any responsibility for any defect or failure of any title hereunder.

28. Nonjoinder and subsequent joinder. If the owner of any substantial interest in a tract within the unit area fails or refuses to subscribe or consent to this agreement, the owner of the working interest in that tract may withdraw the tract from this agreement by written notice delivered to the DMM and the Unit Operator prior to the approval of this agreement by the DMM. Any oil or gas

*Optional subsection.

interests in lands within the unit area not committed hereto prior to final approval may thereafter be committed hereto by the owner or owners thereof subscribing or consenting to this agreement, and, if the interest is a working interest, by the owner of such interest also subscribing to the unit operating agreement. After operations are commenced hereunder, the right of subsequent joinder, as provided in this section, by a working interest owner is subject to such requirements or approval(s), if any, pertaining to such joinder, as may be provided for in the unit operating agreement. After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the working interest owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this unit agreement unless the corresponding working interest is committed hereto. Joinder to the unit agreement by a working interest owner, at any time, must be accompanied by appropriate joinder to the unit operating agreement, in order for the interest to be regarded as committed to this agreement. Except as may otherwise herein be provided, subsequent joinders to this agreement shall be effective as of the date of the filing with the DMM of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this agreement.

29. Counterparts. This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties or may be ratified or consented to by separate instrument in writing specifically referring hereto and shall be binding upon all those parties who have executed such a counterpart, ratification, or consent hereto with the same force and effect as if all such parties had signed the same document, and regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands within the above-described unit area.

* Surrender. Nothing in this agreement shall prohibit the exercise by any working interest owner of the right to surrender vested in such party by any lease, sublease, or operating agreement as to all or any part of the lands covered thereby, provided that each party who will or might acquire such working interest by such surrender or by forfeiture as hereafter set forth, is bound by the terms of this agreement.

If as a result of any such surrender, the working interest rights as to such lands become vested in any party other than the fee owner of the unitized substances, said party may forfeit such rights and further benefits from operation hereunder as to said land to the party next in the chain of title who shall be and become the owner of such working interest.

If as the result of any such surrender of forfeiture working interest rights become vested in the fee owner of the unitized substances, such owner may:

(1) Accept those working interest rights subject to this agreement and the unit operating agreement; or

(2) Lease the portion of such land as is included in a participating area established hereunder subject to this agreement and the unit operating agreement; or

(3) Provide for the independent operation of any part of such land that is not then included within a participating area established hereunder.

If the fee owner of the unitized substances does not accept the working interest rights subject to this agreement and the unit operating agreement or lease such lands as above provided within 6 months after surrendered or forfeited, working interest rights become vested in the fee owner; the benefits and obligations of operations accruing to such lands under this agreement and the unit operating agreement shall be shared by the remaining owners of unitized working interests in accordance with their respective working interest ownerships, and such owners of working interests shall compensate the fee owner of unitized substances in such lands by paying sums to the rentals, minimum royalties, and royalties applicable to such lands under the lease in effect when the lands were unitized.

An appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of such surrendered or forfeited working interest subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within 30 days.

The exercise of any right vested in a working interest owner to reassign such working interest to the party from whom obtained shall be subject to the same conditions as set forth in this section in regard to the exercise of a right to surrender.

*31. Taxes. The working interest owners shall render and pay for their account and the account of the royalty owners all valid taxes on or measured by the unitized substances in and under or that may be produced, gathered and sold from the land covered by this agreement after its effective date, or upon the proceeds derived therefrom. The working interest owners on each tract shall and may charge the proper proportion of said taxes to royalty owners having interests in said tract, and may currently retain and deduct sufficient amount of the unitized substances or derivative products, or net proceeds thereof from the allocated share of each royalty owner to secure reimbursement for the taxes so paid. No such taxes shall be charged to the United States or the State of ——— or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

*32. No partnership. It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing contained in this agreement, expressed or implied, nor any operations conducted hereunder, shall create or be deemed to have created a partnerhip or association between the parties hereto or any of them.

In witness whereof, the parties hereto have caused this agreement to be executed and have set opposite their respective names the date of execution.

Unit Operator; Working Interest Owners

General Guidelines

1. Executed agreement to be legally complete.

2. Agreement submitted for approval must contain Exhibit A and B in accordance with models shown in §§ 226.13 and 226.14.

3. Consents should be identified (in pencil) by tract numbers as listed in Exhibit B and assembled in that order as far as practical. Unit agreements submitted for approval shall include a list of the overriding royalty interest owners who have executed ratifications of the unit agreement. Subsequent joinders by overriding royalty interest owners shall be submitted in the same manner, except each must include or be accompanied by a statement that the corresponding working interest owner has consented in writing. Original ratifications of overriding royalty owners will be kept on file by the Unit Operator or his designated agent.

4. All leases held by option should be noted on Exhibit B with an explanation as to the type of option, i.e., whether for operating rights only, for full leasehold record title, or for certain interests to be earned by performance. In all instances, optionee committing such interests is expected to exercise option promptly.

5. All owners of mineral interests must be invited to join the unit agreement, and statement to that effect must accompany executed agreement, together with summary of results of such invitations. A written reason for all interest owners who have not joined shall be furnished by the unit operator.

6. In the event fish and wildlife lands are included, add the following section:

"Wildlife Stipulation. Nothing in this unit agreement shall modify the special Federal lease stipulations applicable to lands under the jurisdiction of the United States Fish and Wildlife Service."

7. In the event National Forest System lands are included within the unit area, add the following section:

"Forest Land Stipulation. Notwithstanding any other terms and conditions contained in this agreement, all of the stipulations and conditions of the individual leases between the United States and its lessees or their successors or assigns embracing lands within the unit area included for the protection of lands or fucntions under the jurisdiction of the Secretary of Agriculture shall remain in full force and effect the same as though this agreement had not been entered into, and no modification thereof is authorized except with the prior consent in writing of the Regional Forester, United States Forest Service, ———, ———."

8. In the event National Forest System lands within the Jackson Hole Area of Wyoming are included within the unit area, additional "special" stipulations may be required to be included in the unit agreement by the U.S. Forest Service, including the Jackson Hole Special Stipulation.

9. In the event reclamation lands are included, add the following as a new section:

*Optional sections and subsection. (Agreements submitted for final approval should not identify any provision as "optional.")

"Reclamation Lands. Nothing in this agreement shall modify the special Federal lease stipulations applicable to lands under the jurisdiction of the Bureau of Reclamation."

10. In the event a powersite is embraced in the proposed area, the following section should be added:

"Powersite. Nothing in this agreement shall modify the special Federal lease stipulations applicable to lands under the jurisdiction of the Federal Energy Regulatory Commission."

11. In the event special surface stipulations have been attached to any of the Federal oil and gas leases to be included, add the following section:

"Special surface stipulations. Nothing in this agreement shall modify the special Federal lease stipulations attached to the individual Federal oil and gas leases."

12. In the event State lands are included in the proposed area, add the appropriate State Lands Section as a new section. (See 30 CFR 226.7(a))

13. In the event restricted Indian lands are involved, consult the DMM regarding appropriate requirements under 30 CFR 226.7(b).

Certification—Determination

Pursuant to the authority vested in the Secretary of the Interior, under the act approved February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. sec. 181, et seq., and delegated to the appropriate Deputy Minerals Manager of the Minerals Management Service under the authority of 30 CFR 226, I do hereby:

A. Approve the attached agreement for the development and operation of the ————, Unit Area, State of ———.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental minimum royalty, and royalty requirements of all Federal lease committed to said agreement are hereby established, altered, changed, or revoked to conform with the terms and conditions of this agreement.

Dated ————.

Deputy Minerals Manager—Oil and Gas,* Minerals Management Service.

*In Eastern and Alaska Regions, Deputy Minerals Manager—Onshore Minerals.

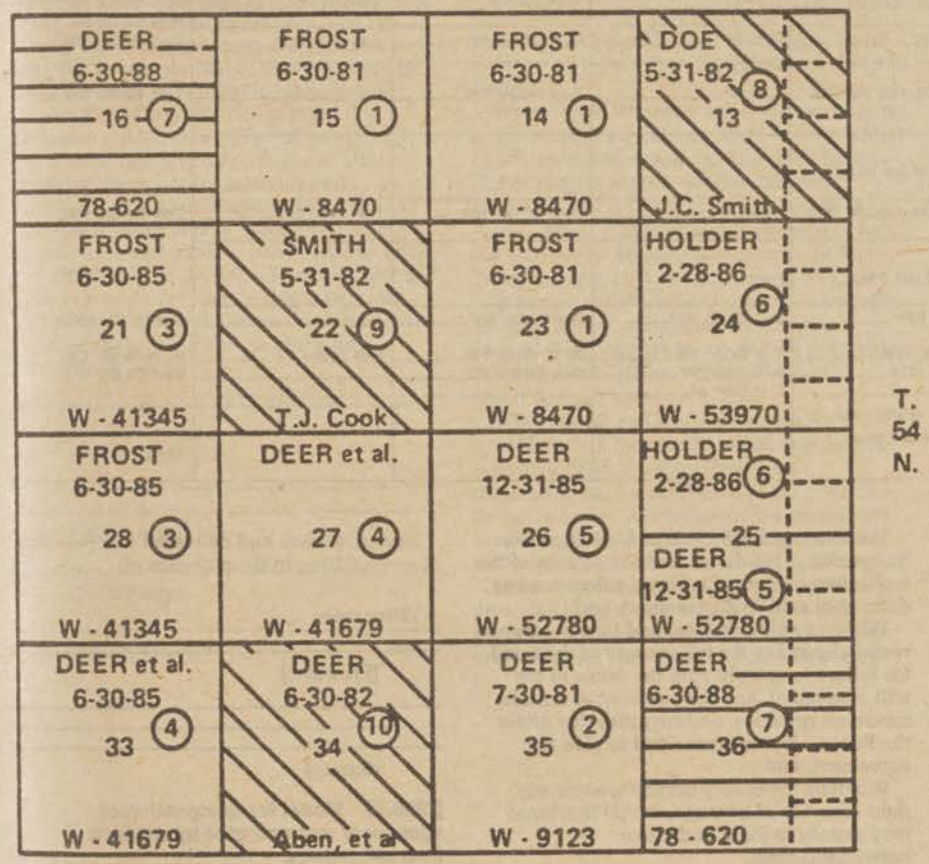
Contract Number————

BILLING CODE 4310-MR-M

§ 226.13 Model of exhibit A.

Company Name
Exhibit A
Swan Unit Area
Campbell County, Wyoming

R. 59 W.



(1) Means tract number as listed on Exhibit B

Public Land

State Land

Patented Land

Scale - Generally 2" = 1 mile.

Include acreage for all irregular sections and lots.

BILLING CODE 4310-MR-C

§ 226.14 Model of Exhibit B

EXHIBIT B.—SWAN UNIT AREA, CAMPBELL COUNTY, WYO.

Tract No.	Description of land	Number of acres	Serial No. and expiration date of lease	Basic royalty and ownership percentage	Lessee of record (percent)	Overriding royalty and percentage	Working interest and percentage
	All in the area of T54N–R59W,6thP.M.						
	Federal Land						
1	Sec. 14: All	1,920.00	W-8470, June 30, 1981	U.S.: All	T. J. Cook 100	T. J. Cook 2	Frost Oil Co. 100.
	Sec. 15: All						
	Sec. 23: All						
2	Sec. 35: All	640.00	W-9123, July 30, 1981	U.S.: All	O. M. Odom 100	O. M. Odom 1	Deer Oil Co. 100.
3	Sec. 21: All	1,280.00	W-41345, June 30, 1985	U.S.: All	Max Pen 50	Max Pen 1	Frost Oil Co. 100.
	Sec. 28: All				Sam Small 50	Sam Small 1	
4	Sec. 27: All	1,280.00	W-41679, June 30, 1985	U.S.: All	Al Preen 100	Al Preen 2	Deer Oil Co. 50.
	Sec. 33: All						Deer Oil Co. 50.
5	Sec. 26: All	961.50	W-52780	U.S.: All	Deer Oil Co. 100	J. G. Goodin 2	Deer Oil Co. 100.
	Sec. 25: Lots 3,4, SW/4,W/2SE/4.						
6	Sec. 24: Lots 1,2,3,4,W/2,W/2E/2 (All).	965.80	W-53970, Feb. 28, 1986	U.S.: All	T. H. Holder 100		T. H. Holder 100.
	Sec. 25: Lots 1,2,NW/4,W/2NE/4.						
	6 Federal tracts 7,047.30 acres or 68.76 pct of unit area.						
	State Land						
7	Sec. 16: All	1,280.60	65-67430, Aug. 31, 1985	State: All	Deer Oil Co. 100	T. T. Timo 2	Deer Oil Co. 100.
	Sec. 36: Lots 1,2,3,4,W/2,W/2E/2 (All).						
	1 State tract 1,280.60 acres or 12.49 pct of unit area.						
	Patented Land						
8	Sec. 13: Lots 1,2,3,4,W/2,W/2E/2 (All).	641.20	Aug. 2, 1974	J .C. Smith: 100	Doe Oil Co. 100		Doe Oil Co. 100.
9	Sec. 22: All	640.00	Sept. 15, 1976	T. J. Cook: 100	W. W. Smith 100	Sam Spade 1	W. W. Smith 100.
10	Sec. 34: All	640.00	June 1, 1975	A. A. Aben: 75 L. P. Carr: 25	Deer Oil Co. 100		Deer Oil Co. 100.
	3 patented tracts 1,921.20 acres or 18.75 pct of unit area.						
	Total: 11 tracts 10,249.10 acres in entire unit area.						

§ 226.15 Model collective bond.

Collective Corporate Surety Bond

Know all men by these presents. That we, ——— (Name of unit operator), signing as Principal, for and on behalf of the record owners of unitized substances now or hereafter covered by the unit agreement for the ——— (Name of unit), approved ——— (Date) ——— (Name and address of Surety), as Surety are jointly and severally held and firmly bound unto the United States of America in the sum of ——— (Amount of bond) Dollars, lawful money of the United States, for the use and benefit of and to be paid to the United States and any entryman or patentee of any portion of the unitized land here-to-fore entered or patented with the reservation of the oil or gas deposits to the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns by these presents.

The condition of the foregoing obligation is such, that, whereas the Secretary of the Interior on ——— (Date) approved under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, a unit agreement for the development and operation of the ——— (Name of unit and State); and

Whereas said Principal and record owners of unitized substances, pursuant to said unit agreement, have entered into certain covenants and agreements as set forth therein, under which operations are to be conducted; and

Whereas said Principal as Unit Operator has assumed the duties and obligations of the respective owners of unitized substances as defined in said unit agreement; and

Whereas said Principal and Surety agree to remain bound in the full amount of the bond for failure to comply with the terms of the unit agreement, and the payment of rentals, minimum royalties, and royalties due under the Federal leases committed to said unit agreement; and

Whereas the Surety hereby waives any right of notice of and agrees that this bond may remain in force and effect notwithstanding;

(a) Any additions to or change in the ownership of the unitized substances herein described;

(b) Any suspension of the drilling or producing requirements or waiver, suspension, or reduction of rental or minimum royalty payments or reduction of royalties pursuant to applicable laws or regulations thereunder; and

Whereas said Principal and Surety agree to the payment of compensatory royalty under the regulations of the Interior Department in lieu of drilling necessary offset wells in the event of drainage; and

Whereas nothing herein contained shall preclude the United States (from requiring an additional bond at any time when deemed necessary:

Now, therefore, if the said Principal shall faithfully comply with all of the provisions of the above-indentified unit agreement and with the terms of the leases committed thereto, then the above obligation is to be of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered this —— day of ———, 19—, in the presence of:

Witnesses:

_____

(Principal)

_____

_____

_____

(Surety)

§ 226.16 Model for designation of successor unit operator by working interest owners.

Designation of successor Unit Operator ——— Unit Area, County of ———, State of ———, No. ——.

This indenture, dated as of the — day of ———, 19—, by and between ———, hereinafter designated as "First Party," and the owners of unitized working interests, hereinafter designated as "Second Parties."

Witnesseth: Whereas under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, the Secretary of the Interior, on the — day of ———, 19—, approve a unit agreement for the ——— Unit Area, wherein ——— is designated as Unit Operator; and

Whereas said ——— has resigned as such Operator,[1] and the designation of a successor

[1] Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

Unit Operator is now required pursuant to the terms thereof; and

Whereas the First Party has been and hereby is designated by Second Parties as Unit Operator, and said First Party desires to assume all the rights, duties, and obligations of Unit Operator under the said unit agreement:

Now, therefore, in consideration of the premises hereinbefore set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the ———— unit agreement, and the Second Parties covenant and agree that, effective upon approval of this indenture by the Director of the Minerals Management Service First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges as Unit Operator, pursuant to the terms and conditions of said unit agreement; said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

(Witnesses)

(Witnesses)

(First Party)

(Second Party)

I hereby approve the foregoing indenture designating ———— as Unit Operator under the unit agreement for the ——— Unit Area, this — day of ————, 19—.

Director of the Minerals Management Service.

§ 226.17 Model for change in unit operator by assignment.

Change in Unit Operator ———— Unit Area, County of ————, State of ———, No. —. This indenture, dated as of the — day of ———, 19—, by and between ———— hereinafter designated as "First Party," and ———— hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Act of February 25, 1920, 41 Stat. 437 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, the Secretary of the Interior, on the — day of ———, 19—, approved a unit agreement for the ———— Unit Area, wherein the First Party is designated as Unit Operator: and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the rights, duties, and obligations of Unit Operator under the unit agreement; and

Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed, and assigned all his/its rights under certain operating agreements involving lands within the area set forth in said unit agreement unto the Second Party:

Now, therefore, in consideration of the premises hereinbefore set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of First Party's rights, duties, and obligations as Unit Operator under said unit agreement; and

Second Party hereby accepts this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said unit agreement to the full extent set forth in this assignment, effective upon approval of this indenture by the Director of the Minerals Management Service; said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

(Witnesses)

(Witnesses)

(First Party)

(Second Party)

I hereby approve the foregoing indenture designating ———— as Unit Operator under the unit agreement for the ———— Unit Area, this — day of ———, 19—.

Director of the Minerals Management Service.

Dated: April 30, 1982.

William P. Pendley,

Acting Assistant Secretary of the Interior.

[FR Doc. 82-15575 Filed 6-9 82; 8:45 am]

BILLING CODE 4310-MR-M

federal register

Thursday
June 10, 1982

Part III

Department of Transportation

Federal Highway Administration

Design Standards for Highways; Resurfacing, Restoration, and Rehabilitation of Streets and Highways Other Than Freeways; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 80-3, Notice 2]

Design Standards for Highways; Resurfacing, Restoration, and Rehabilitation of Streets and Highways Other Than Freeways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations to provide a flexible approach to resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways. No single geometric design criteria will be adopted for application nationwide. Instead, geometric design criteria and/or procedures will be adopted in each State to ensure that proposed projects meet Federal policy objectives. Present regulations require that all federally funded highway improvements meet geometric design criteria adopted for new construction, unless specific exceptions are granted. The primary purpose of RRR is to prolong and preserve the service life of existing facilities; consequently, design criteria for new construction are not particularly appropriate to most RRR projects. This action is necessary to allow the development and adoption of geometric design criteria and/or procedures more appropriate to the scope and purpose of RRR. The action should provide more flexibility to meet State and local needs with a less cumbersome Federal approval process. Comments are invited on experience obtained in implementing and operating under this rule.

DATES: This rule is effective on July 12, 1982. Comments should be submitted on or before July 12, 1983.

ADDRESS: Anyone wishing to submit written comments concerning the implementation of this rule may do so. Comments should be sent, preferably in triplicate, to FHWA Docket No. 80-3, Notice 2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Alvin R. Cowan or Kenneth H. Davis, Office of Engineering, Room 3124, 202-426-0312, or Lee J. Burstyn, Office of the Chief Counsel, Room 4223, 202-426-0754, 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: This is considered to be a major rule under Executive Order 12291. The requirement to conduct a Regulatory Impact Analysis has been waived by the Office of Management and Budget: its review found this final rule consistent with the principles of Executive Order 12291. A technical analysis of the rule is available for inspection in the public docket (No. 80-3) in Room 4205 at the address provided above. Copies of the 147 page analysis may be obtained by contacting Alvin R. Cowan or Kenneth H. Davis at the address provided above. The impact of this regulatory action falls primarily on the State highway agencies. 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. Based upon an evaluation of the implementation of this rule, including a review of the comments submitted to the public docket, the FHWA will determine the need for future revisions to its policies and procedures for the geometric design of nonfreeway RRR projects. Notice of this determination will be published in the **Federal Register.**

Background

While the FHWA has provided funding to the States to aid in the construction of the Nation's highways, it has always been the States' responsibility to maintain these highways once initial construction was completed. As highways began deteriorating at an increasing rate, Congress recognized the need to assist the States by providing funds for resurfacing, restoration, and rehabilitation work which had primarily been the States' responsibility to fund in the past.

In the Federal-Aid Highway Act of 1976, Congress amended Section 101 of Title 23, United States Code, by redefining the term "construction," to include "resurfacing, restoration, and rehabilitation" commonly referred to as "RRR". This allowed Federal-aid construction funds to be used for certain types of work which were previously considered to be heavy maintenance.

The RRR work is defined as work undertaken primarily to extend the service life of an existing facility. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders or bridges, the roadside, and appurtenances, to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The concept of RRR work does not include new construction or major reconstruction, such as adding continuous traffic lanes. Currently, all Federal-aid RRR projects are being designed under the same standards which have been approved by FHWA for use on new Federal-aid construction projects. These standards are incorporated by reference in Part 625 of 23 CFR, Design Standards for Highways, and include various standards, specifications, policies, guides, references, and other criteria. Part 625 provides that exceptions to these standards may be granted by FHWA on an individual project basis.

Following the 1976 Federal-Aid Highway Act, the FHWA initiated efforts to establish separate geometric design criteria for RRR. First, an advance notice of proposed rulemaking (42 FR 42876, August 25, 1977, Docket No. 77-4) was issued, requesting suggestions and comments on establishment of separate geometric design standards specifically for use on RRR projects. The standards would apply to Federal-aid RRR work on all highways other than freeways. The standards applicable to work on the Interstate System and other freeways would not be affected.

Three alternatives were offered for consideration: (1) Continue to operate under the existing regulations in part 625, (2) adopt the "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets," American Association of State Highway and Transportation Officials (AASHTO), 1977, or (3) permit State highway officials and FHWA Division Administrators to develop individual State criteria, using the AASHTO RRR Guide and/or other materials as a base. Following evaluation of the comments received, a decision was made to adopt national standards. However, because of the severe criticism of the AASHTO RRR Guide, it was decided not to adopt if for use as a national standard on Federal-aid projects. The advance notice was withdrawn (43 FR 2734, January 19, 1978), and a decision made by FHWA to draft its own RRR geometric design standards.

A notice of proposed rulemaking (NPRM) setting forth the FHWA's proposed "Geometric Design Standards for Resurfacing, Restoration, and

Rehabilitation (RRR) of Streets and Highways Other Than Freeways" was then published (43 FR 37556, August 23, 1978, Docket No. 78–10). Comments on the specific elements of the proposed standards and their effect on the Federal-aid highway program were requested. The FHWA standards for RRR work were to be more stringent than those in the AASHTO RRR Guide, but less stringent than the criteria for new construction in Part 625.

The various issues raised in response to the NPRM led FHWA to a reevaluation of its proposed action. Following the close of the comment period on the NPRM in January 1979, the FHWA established an internal task force and four working groups to evaluate RRR implementation and make recommendations for further action to the Administrator. The working groups addressed the following tasks: (1) Preparation of a summary of Docket No. 78–10 comments, (2) evaluation of Docket No. 78–10 comments, including those which suggested alternative procedures, (3) preparation of draft regulatory analysis, and (4) preparation of options for the Administrator's decision, based upon comments received and impact analysis. At that time, the FHWA published a notice (44 FR 29921, May 23, 1979) reporting the status of RRR rulemaking action and describing the objectives of the task force and the four working groups.

Technical Analysis

In analyzing the impacts of this rulemaking action, one of the FHWA working groups prepared a technical report, "RRR Alternative Evaluations for Non-Interstate Rural Arterial and Collector Highway Systems," which evaluates three levels of geometric design criteria for nonfreeway RRR work:

Case 1: Minimum tolerable conditions (MTC) are set at the level of the currently approved design criteria (23 CFR Part 625) for new construction. This case places emphasis on improving lane and shoulder widths, operating speeds, and horizontal and vertical alignments whenever a RRR project is undertaken. Case 1 is a theoretical bound which exceeds present practice for RRR in that the MTC used are the current criteria in Part 625 applied without exception to the roadway sections needing improvement. Case 1 represents the upper bound for RRR geometric design criteria.

Case 2: The MTC are essentially the criteria proposed by FHWA in the August 1978 NPRM (Docket No. 78–10). This case represents the lower bound that would be considered in this analysis as being acceptable for RRR work. Case 2 emphasizes reversing the present trend toward nonfreeway pavement surface deterioration without substantially changing the existing system relative to highway geometrics (i.e., lane and shoulder widths, operating speeds, etc.).

Mid-Case: The MTC used in the Mid-Case more nearly represent current State practices for Federal-aid RRR work (i.e., current design criteria in Part 625 with exceptions granted by the FHWA Division Administrator on a project-by-project basis).

The report evaluates the application of the various RRR geometric criteria relative to both total system needs and projected funding levels. The period examined was from 1975 to 1990.

The report concludes that under unlimited funding conditions the highest design criteria (Case 1), as expected, would provide the best safety and operational performance. However, given limited program funding, the report indicates that RRR projects would provide greater benefits nationally if they more closely parallel the Case 2 or Mid-Case conditions rather than the Case 1 condition.

The complete 139-page technical report was made available to the public as an appendix to the draft regulatory analysis for the NPRM (Docket 80–3).

Based upon a review and evaluation of the technical report and the comments submitted to the public docket, various options were considered by the FHWA task force. Two basic policy alternatives were available to the agency.

Under the first alternative, the FHWA would adopt design criteria for use on all nonfreeway RRR projects nationwide. The second alternative would involve adoption of a flexible approach to nonfreeway RRR projects that would encourage individual State initiative without establishing specific criteria for nationwide application. The recommendations of the FHWA task force to proceed with the second alternative form the basis for this final rule.

Final Rule

The FHWA is implementing the individual State approach by issuing a policy statement and establishing a framework for the adoption of geometric design criteria and/or procedures for nonfreeway RRR projects in each State. The only nonfreeway standards affected by this action are those related to the geometric features of a highway, e.g., lane and shoulder width, horizontal and vertical alignment, sight distances, cross slopes, side slopes, and vertical and horizontal clearances. Standards related to such other features as pavement design, traffic control devices, pavement markings, roadway lighting and construction materials are not affected. In addition, geometric design criteria and/or procedures covered by a State's Certification Acceptance Program (23 CFR Part 640) or Secondary Road Plan (23 CFR Part 642) are not affected by this rule.

The design standards applicable to work on the Interstate System and other freeways are not affected by this action.

The policy statement is, in part, a restatement of the statutory requirements in 23 U.S.C. 109(a) for all Federal-aid highway projects. It is also a statement of FHWA's official policy on RRR work and the overall standard by which a State's RRR process and eligible highway projects will be judged.

The RRR policy will be implemented in each State by the State highway agency and the FHWA Division Administrator. The appropriate Federal-aid requirements will be met by the development of criteria and/or procedures under which the State will ensure that all nonfreeway RRR projects conform to the FHWA's RRR policy.

This approach will allow for State and local discretion in the development and implementation of a RRR program. At the same time, it provides for guidance and oversight by the FHWA to assure consistency with national policy objectives.

Under this rule, the minimum geometric design criteria adopted in Part 625 for new construction or reconstruction will not necessarily apply to nonfreeway RRR projects. There will be sufficient flexibility to allow their use; however, other geometric design criteria may also be used for RRR, including criteria based on the AASHTO RRR Guide (Docket 77–4), the FHWA RRR criteria (Docket 78–10), safety performance standards, or combinations of these. The basic requirement is that the criteria selected be appropriate to the circumstances of their application and that they be conducive to safety, durability, and the economy of maintenance.

The criteria and/or procedures to be developed by each State would indicate the type of projects covered by the State's nonfreeway RRR criteria and could even provide for exceptions from the criteria under appropriate circumstances. Criteria could be established to cover all projects in the State, individual projects, or projects grouped by various factors such as geographic region, type of work involved, functional classification,

special project features (e.g., historic bridges), etc.

These criteria and/or procedures would not necessarily include specific, numerical standards. A State's proposal to satisfy the requirements of 23 CFR 625.3(a)(6) could be criteria with specific numerical values, a procedure or process, or any combination of these that adequately address such factors as pavement condition, traffic volumes, accident experience, physical characteristics, system or functional classification, traffic regulations and controls, treatment of high hazard locations and features, skid resistance, economics, and the potential impacts of various types of improvements.

Where a State develops or adopts more than a single set of criteria for a group of projects, the State's procedures would indicate how a particular set of criteria would be selected for a given project. For example, a State could indicate that the choice of design criteria would depend upon the accident history of the highway section involved and the availability of funds for various types of improvements. A State's procedures could be included in its criteria and would not have to be set out in a separate document.

These design evaluation procedures should not be confused with normal project processing procedures. It is not the FHWA's intention to suggest the States develop detailed procedures for processing RRR projects. These projects are currently processed and will continue to be processed under normal Federal-aid procedures.

The FHWA will monitor the RRR program in each State to provide oversight necessary to ensure that full consideration is given to both safety and highway preservation objectives and that Federal assistance is provided where needed in the development and implementation of the program.

It should be noted that the upgrading of those features that would improve highway safety will continue to be eligible for funding with safety funds and regular Federal-aid funds.

The FHWA's choice of the individual State approach as opposed to national criteria was based primarily on non-technical factors. The major advantages of this approach are summarized below:

1. Provides needed program flexibility and discretion at the State and local level.

2. Encourages the design of projects that conform to the particular needs of each locality (23 U.S.C. 109(a)(2)).

3. Maintains sufficient Federal oversight to ensure that proper consideration is given to promoting the safety of highway users and preventing continued deterioration of the Nation's highway systems.

4. Reflects the intent of Congress to provide greater flexibility in the use of Federal funds for obtaining maximum use from the extensive system of existing highway facilities.

5. Implements the requirements of Executive Order 12291, Federal Regulation (46 FR 13193, February 19, 1981), the national policy on minimization of redtape in Federal highway programs as expressed by Congress in 23 U.S.C. 101(e), and the FHWA's well-established policy on the minimization of redtape (43 FR 10578, March 14, 1978).

6. Avoids disproportionate impacts on urban areas and rural communities that might result from the imposition of uniform criteria nationwide.

A disadvantage of this approach is that in order to utilize the flexibility provided by the regulation, it is necessary for States to develop their own criteria and/or procedures for RRR projects. However, the FHWA believes that sufficient resources are available to minimize the burden on State highway agencies. The States may select from or expand on a variety of existing references with adequate technical support and guidance provided by FHWA. If a State is not interested in exercising its option under this regulation, it can simply notify the FHWA of its intention to continue operating under geometric design criteria currently adopted for new construction and reconstruction.

Standards developed on a national level often provide for uniformity at the expense of local needs and preferences. This is particularly true with regard to RRR work—what works well in one part of the country, or even one area of a State, may be totally unacceptable in another. To a certain extent, criteria such as those currently approved for use on the construction of new highways and reconstruction projects recognize the need for local variations by providing ranges of acceptable values, alternate standards for use under varying conditions, and a procedure for requesting exceptions on individual projects. Because of the type of work included in most nonfreeway RRR projects, it is anticipated that the number of requests for exceptions from national standards would be quite large. The FHWA believes that this process would impose an unreasonable burden on grant recipients and agency field offices and could unnecessarily delay needed improvements.

Discussion of Comments

The FHWA published a notice of proposed rulemaking (46 FR 1228, January 5, 1981, Docket 80–3) setting forth this rule for public review and comments. A 120–day comment period was provided. Thirty-six formal responses to the NPRM were received from 35 organizations and individuals. In addition, a public meeting was held on February 3, 1981, at DOT Headquarters in Washington, D.C., to discuss this rule. A summary of the discussion at this public meeting has been included in the public docket (No. 80–3).

Twenty-six responses to the NPRM favored the rule, including 10 which offered suggestions and recommendations for revisions. Most of these favorable comments came from those directly affected by the rule, namely the State and local highway agencies.

Ten responses were opposed to the rule, six because of perceived adverse impacts on highway safety, two because they preferred adoption of the 1977 AASHTO Geometric Design Guide for RRR (Purple Book) instead, and two because they preferred the status quo—granting exceptions to standards for new construction on a project-by-project basis for RRR projects.

The paramount concern of those opposed to the rule because of perceived impacts on highway safety is that RRR work would involve only resurfacing and other pavement restoration activities, with little or no attention given to safety or geometric improvements. They maintain that a renewed surface will increase operating speed, and when coupled with the lack of safety or geometric improvements, will lead to increased accident rates. In effect, they believe the rule will cause highway safety to diminish.

The FHWA disagrees with this assessment. First and foremost, the FHWA believes that with the limited amount of funds expected to be available for highway improvements, greater overall system safety and fewer total accidents can be achieved by improving more miles of highway with less costly improvements than by improving many fewer miles completely to current criteria for new construction. That is the primary reason why separate, more flexible geometric design criteria are necessary for RRR.

While it may be argued that operating speeds will increase following RRR work, the FHWA questions the assumption that accident rates will increase following RRR work, even RRR

work involving only resurfacing. Studies identified during FHWA's analysis of RRR alternatives indicate that there is no discernible difference in the before and after accident rates for RRR work involving only resurfacing.

The FHWA also believes the assumption that RRR work will involve only resurfacing, without regard for safety, is unfounded. While the primary objective of RRR has been and will continue to be to preserve and prolong the service life of existing highways, appropriate safety improvements have been and will continue to be made in conjunction with RRR work. Safety has been a major concern of State and local highway agencies for many years, and has been reflected in their highway design, construction, maintenance, and operation activities. The FHWA is confident that this concern will be reflected in the geometric design criteria and/or procedures developed for RRR. This rule serves to reinforce this concern for safety, and provides a control measure for instances where safety might not be sufficiently addressed.

One adverse comment emphasized that this rule incorporates an approach previously considered and rejected. The FHWA acknowledges this. The approach was reevaluated and finally adopted as a direct result of comments received during earlier rulemaking efforts and the conclusions drawn from the analysis of RRR alternatives. It became increasingly evident that the flexible approach was the only alternative which could provide for the preservation and prolonged service life of the existing highway system and at the same time provide a vehicle for justified and cost-effective safety improvements.

The FHWA also acknowledges the observation that geometric design criteria previously rejected as unacceptable for national standards may be acceptable as a basis for individual State or local criteria. Each State's criteria and/or procedures will be evaluated on their own merits and circumstances of application. The flexible approach is based on the fact that many variables do exist (traffic, geography, climate, topography, etc.) and the realization that these variables determine to a large extent what criteria are most cost-effective for a particular State or local area.

The FHWA also agrees with the observation that many safety deficiencies do exist on older highways and that some of these deficiencies will not be corrected under this rule. It simply will not be possible to correct all deficiencies with the funds likely to become available within the foreseeable future. However, this rule will enable the most cost-effective safety improvements to be accomplished in conjunction with RRR work. Furthermore, the rule does not preclude the inclusion of major safety improvements in RRR projects. The FHWA expects that many of the most hazardous and costly deficiencies will be corrected in this manner. Lastly, projects that would result in the deterioration of safety as compared to existing conditions will not be eligible for Federal-aid funding under this rule.

The FHWA disagrees with the allegation that adoption of the rule constitutes an attempt by FHWA and the States to avoid responsibility and the opportunity to reduce accidents and promote a safer driving environment. For the reasons noted previously, FHWA believes that this rule is the most realistic and cost-effective approach for preserving our highway system while still achieving a reasonable and fiscally obtainable level of safety improvements.

Similarly, the FHWA does not agree with the allegation that it is attempting to reinterpret the Secretary of Transportation's duties concerning safety, durability, and economy of maintenance. The only reinterpretation of duties occurred when the 1976 Federal-Aid Highway Act changed the definition of construction to include RRR. That action made it clear that Federal funds were to be made available for work primarily intended to preserve and prolong the service life of existing facilities. Improvements for safety, capacity, or any other purpose are a secondary and often optional objective of RRR. The FHWA believes this rule is in complete accord with the Secretary's statutory responsibilities under Federal-aid highway laws, including the revisions in the 1976 Federal-Aid Highway Act.

The FHWA emphatically disagrees with the charges that the rule will not diminish the rate of structural decay or that it does not require the use of engineering practices that will guarantee long term durability of highways. Those objectives are precisely what the rule is intended to accomplish—timely structural rehabilitation and/or restoration of existing pavements. The FHWA has been and will continue to stress all aspects of pavement management, including the latest and most reliable or promising techniques for extending pavement life. With the limited funding now available, FHWA believes this rule provides the needed emphasis and flexibility to preserve the long-term durability and serviceability of our highway system in the most cost-effective manner.

The FHWA acknowledges that maintenance efforts over the past several years have not kept pace with the deterioration of the highway system. The FHWA believes that this situation is a reflection of the rapidly mounting maintenance burden rather than the result of an attempt by the States to evade maintenance obligations or qualify for Federal funding for RRR by deferring normal maintenance, or due to any lack of enforcement effort on the part of FHWA.

The highway system has grown to be very large, and increasingly complex. Unfortunately, it is also beginning to show its age. Many segments have served well beyond their expected service life. The net result of all these factors is a much greater need for both maintenance and RRR. These increasing needs coincide with rapidly escalating costs, thus, severely taxing most States' current and traditional sources of revenue. Many States have been forced to cut back on major improvements and even on RRR work to meet essential maintenance and operation needs.

The 1976 Federal-Aid Highway Act expanded the definition of construction to include RRR specifically to assist States in meeting essential RRR needs. Thus, RRR work became eligible for Federal-aid funding. This rule aids in implementing that change in definition by permitting the use of reduced geometric design criteria and increased flexibility. Continued adherence to geometric design criteria for new construction on RRR projects would thwart the intent of the 1976 Act. The FHWA believes the rule will enable States to establish and accomplish more effective highway management programs, and thereby arrest the advancing deterioration of the highway system.

The FHWA does not regard the lack of finite definitions for maintenance and RRR work to be a problem. With the aid of the legislative history of the Federal-Aid Highway Acts, the FHWA has been able to identify maintenance work and exclude it from Federal funding in the past without rigid definitions, and will continue to do so.

Contrary to the view expressed in some comments, the FHWA believes that this rule and normal Federal-aid procedures will provide adequate Federal oversight of the RRR program. This rule requires FHWA approval of all State developed geometric design criteria and/or procedures for nonfreeway RRR. In addition, federally funded RRR will be monitored in the same manner as other Federal-aid work within each State. At the same time, the

rule significantly reduces Federal involvement in individual project actions primarily by eliminating the need for FHWA approval of exceptions to current criteria for new construction. Such actions are frequently necessary under existing regulations because current criteria for new construction are frequently inappropriate to the scope and purpose of RRR. Elimination of needless Federal involvement and redtape is an important objective of this rule.

One comment noted that the rule has no effective link between safety programs and RRR work programs. Specifically, it noted that there are no requirements for accident data collection, performance reviews or other special monitoring procedures. The FHWA believes that ongoing accident monitoring activities conducted in all States pursuant to other legislative and regulatory requirements will provide sufficient information to adequately monitor the safety performance of RRR projects and programs. Highway Safety Program Standards Numbers 9 and 10 (23 CFR 1204.4) require State programs on identification and surveillance of accident locations and on maintenance of traffic records. The FHWA's National Highway Performance Monitoring System collects data relating to highway system performance and conditions, including safety, on an annual basis. This data is then analyzed in a variety of ways for a number of purposes, including a biannual report to Congress. Additional data collection, performance reviews and other special monitoring procedures specifically for RRR are not considered desirable or necessary.

One comment expressed concern that variations in geometric design criteria for RRR among the States would ultimately produce hazardous inconsistencies in geometric features of highways. It went on to assert that citizens of one State have a vital interest in the safety, durability, and maintenance of highways in other States.

The FHWA believes that the magnitude of potential hazards induced by variations in geometric design criteria for RRR among States is being overstated. If rigid national criteria were used for RRR, fewer miles of highway would be improved and even greater inconsistency would result in the actual condition of existing highways from State to State and even within States. The FHWA believes that the flexibility provided by this rule will yield the greatest overall benefit to society with the limited funds available.

Another comment expressed concern that this rule, and the lack of national geometric design criteria for RRR, would increase the likelihood of adverse legal actions based on unsafe and/or unimproved highways, and that this would require greater portions of already scarce highway revenues to be expended in the resulting legal settlements.

The FHWA believes that tort liability is incurred as a result of a failure to implement design criteria in a reasonable manner. State developed geometric criteria and/or procedures should, when implemented, enhance the States' ability to defend against liability actions.

Another comment expressed concern that reduced geometric design criteria for RRR work will eventually become accepted standards for other types of highway improvements. The FHWA believes this concern is unfounded. This rule clearly defines RRR and clearly indicates that the flexible procedures for developing geometric design criteria are applicable only to nonfreeway RRR improvements.

One comment suggested that guidelines on recommended practice be issued by FHWA in conjunction with the rule. The FHWA plans to issue guidelines which specify the essential factors which should be addressed in the geometric design criteria and/or procedures developed by each State for RRR projects. These essential factors, as described earlier, include pavement condition, traffic volumes, accident experience, physical characteristics, system or functional classification, traffic regulations and controls, treatment of high hazard locations and features, skid resistance, economics and other potential impacts. These guidelines will be included in an FHWA Technical Advisory to be issued after publication of this rule. However, the FHWA will not include specific numerical criteria in the guidelines because they could be interpreted as minimum national criteria.

If interpreted in that manner, they would serve to stifle the flexibility provided by the rule. The FHWA believes it is preferable for the geometric design criteria developed by each State to be justified on their own merits.

The two responses to the docket which favored adoption of the 1977 AASHTO Geometric Design Guide for RRR each offered a reason for their position. One felt it was unrealistic to expect FHWA Division Administrators to approve State developed geometric criteria which had previously been rejected by the FHWA at the Washington Headquarters level. The FHWA does not view this as a problem. As indicated before, acceptance of each State's geometric design criteria will be based on the merits of the proposed criteria and the circumstances of application.

The other response favoring adoption of the AASHTO RRR Guide felt that AASHTO should retain the lead role in developing all design criteria for highway work. The FHWA agrees that State and local agencies and their representative organizations such as AASHTO have an important role to play in the development of design criteria. At the same time, the FHWA also recognizes that it has the ultimate responsibility for assuring that all Federal-aid projects, including RRR, are carried out in conformance with certain basic requirements for design and construction set forth by Congress in the Federal-aid highway acts.

The two responses to the docket which favored the current procedures (compliance with geometric design criteria for new construction unless exceptions are approved by FHWA on a project-by-project basis) both indicated they were quite comfortable with current procedures and saw no reason for change. In addition, one of these responses indicated a fear that geometric design criteria developed under this rule may prove less flexible than the present procedures. The FHWA notes that this rule allows, rather than requires, States to develop separate geometric design criteria for RRR. Any State may continue the present procedure if it so desires.

As indicated earlier, 10 responses to the docket which favored this rule offered suggestions and recommendations for revisions.

Five responses suggested that the rule be revised to lend greater emphasis to local involvement (counties, cities, etc.) in the development of geometric design criteria for RRR. One additional response objected to State control of the development of geometric design criteria for RRR. The FHWA encourages local involvement, and nothing in this rule precludes local involvement. Local agencies may participate in the development of geometric design criteria for RRR, which may include separate criteria for local jurisdictions, areas, systems, or functional classifications, provided that development is coordinated through the State. Present law (23 U.S.C. 145) requires that the FHWA work through the States.

One response felt that the rule placed too much emphasis on safety considerations at the expense of extending the service life of as many roads as is possible. The FHWA

disagrees. It believes the rule does put the major emphasis on preserving and prolonging the service life. At the same time, FHWA believes the emphasis on safety considerations is both appropriate and necessary.

Another response suggested that the rule include provisions for and consideration of bicycle use in conjunction with RRR work. The FHWA believes decisions on inclusion of bicycle facilities with RRR are best made at the State or local level.

Two favorable responses suggested that the requirement that RRR work meet probable future traffic needs contradicted the basic definition of RRR—work undertaken primarily to extend the service life of an existing facility. Both noted that in many situations, additional lanes would be required to adequately meet future traffic needs, and that additional lanes are clearly beyond the scope of RRR.

The FHWA appreciates the fact that current traffic volumes are generally adequate for use in the geometric design of most RRR projects. The FHWA also realizes that strict adherence to geometric improvements necessary to provide unimpeded traffic operation for all probable levels of future traffic would dictate improvements beyond the scope of RRR. However, the FHWA also notes that both existing and forecast future traffic are significant factors in determining priorities for undertaking RRR projects and for determining whether RRR or major reconstruction is more appropriate. To preclude any overemphasis of future traffic on the geometric design of RRR projects, States may wish to address the issue of future traffic in their geometric design criteria and/or procedures.

One generally favorable comment recommended that § 625.3, paragraph (a)(6) be deleted because it required the establishment of minimum criteria and/or standards, and therefore, implied a requirement for improvement of geometric features. This, the respondent maintained, contradicted the basic purpose of RRR—to preserve the existing highway system.

The FHWA disagrees for two reasons. First, highway safety remains an important consideration even though it is not the primary purpose of RRR work. The FHWA believes a significant safety benefit can be achieved in a very cost-effective manner with RRR. Section 625.3(a)(6) serves to emphasize that potential. Second, the FHWA believes that some standard, criteria, or procedure must be established to govern the scope and direction of RRR. Through this rulemaking process, the FHWA has come to the conclusion that the standards, criteria, and/or procedures for RRR should be flexible, cost-effective, and locally developed (by or through the States). This paragraph conveys that requirement and is, therefore, essential to the rule.

Many of the responses favoring adoption of this rule also offered reasons for that position. The two reasons most often mentioned were (1) the flexible approach, and (2) the provision for State and/or local development of the geometric design criteria for RRR.

In addition to the comments received during the public comment period, the FHWA also received a National Transportation Safety Board (NTSB) report titled "Safety Effectiveness Evaluation of FHWA's Non-Interstate RRR Program". This report is critical of this rule and the entire RRR program. It contains five major recommendations which the NTSB subsequently issued as formal Safety Recommendations (H–81–88 through H–81–92) on November 19, 1981.

The FHWA agrees in essence with the first four NTSB recommendations. Actually, FHWA is already in substantial compliance with two of these four recommendations by virtue of established, ongoing procedures and studies, and will be in compliance with the other two upon issuance of this rule and completion of a review now being initiated. Recommendation H–81–88 suggested that a review of current RRR practices and procedures be made. FHWA is initiating this review and expects it to be completed within a few months. Recommendation H–81–89 suggested that guidelines be issued in conjunction with this rule to provide further direction on the review and approval of State developed geometric design criteria for use on RRR projects. This preamble identifies essential factors which should be addressed in State-developed geometric design criteria for RRR. A Technical Advisory further identifying these essential factors will be issued after publication of this rule. Recommendation H–81–90 suggested that the FHWA perform an analysis to identify the optimum combination of new construction, reconstruction and RRR projects. FHWA has worked for years with the States to develop and refine programming and project selection procedures, and will continue to do so. Recommendation H–81–91 suggested that the FHWA develop a plan for monitoring and evaluating the impact of the RRR program on the highway system condition and safety. The FHWA is continually monitoring highway conditions and needs through the ongoing National Highway Performance Monitoring Study and through accident data collection and evaluation activities conducted by the States in compliance with Highway Safety Program Standards 9 and 10. In addition, the FHWA is inviting comments on the implementation of this rule from all interested parties. Based upon an evaluation of the implementation of the rule, including a review of the comments submitted to the docket, the FHWA will determine the need for future revisions to its policies and procedures for the geometric design of nonfreeway RRR projects.

The FHWA does not agree with the fifth recommendation (H–81–92) which suggests that the FHWA continue to administer the RRR program using existing procedures and criteria for new construction, with exceptions permitted only if their basis and predicted impact are documented for review and future evaluation. The FHWA believes that geometric design criteria for new construction are not appropriate to the scope and purpose of most RRR projects, and that their continued application will generate an excessive number of requests for exceptions, needless red tape, further delays, and additional unwarranted costs. This rule, with its flexible approach, would avoid the application of inappropriate criteria by allowing local discretion and initiative in the development of geometric design criteria for RRR projects. The FHWA believes it is the most practical and cost-effective method of preserving and prolonging the service life of our existing highway system.

The FHWA's formal reply to the NTSB recommendations has been placed in the Public Docket 80–3.

The Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation conducted a series of hearings in September, October, and December, 1981, concerning this rulemaking and the nonfreeway RRR program in general. The FHWA testified twice during these hearings in support of this rule. Copies of the prepared statements of FHWA witnesses, the FHWA's answers to subsequent questions by Subcommittee members, and transcripts of FHWA's testimony have been placed in the Public Docket 80–3.

Several other groups and individuals also testified during the hearings, including AASHTO, NTSB, Midwest Research Institute, Howard Anderson, the Center for Auto Safety, the National Association of Governors Highway Safety Representatives, Potters Industries, Charles W. Prisk, Edmund R. Ricker, Robert R. Coleman, and James E.

Wilson. Issues raised by these groups and individuals were considered in the final development of this rule. Copies of their prepared statements have been placed in the Public Docket 80–3.

During the hearings, AASHTO was asked by the Subcommittee to survey its members to determine which basic approach to administration of the Federal-aid RRR program each member favored. The Summary Report for that survey showed that:

(a) 11 States favored adoption of national geometric design criteria for RRR, generally along the lines of the AASHTO RRR Guide or the 1978 FHWA RRR criteria.

(b) 21 States favored adoption of this rule which allows each State to develop its own geometric design criteria for RRR projects.

(c) 10 States favored continuation of the current procedure, using current geometric design criteria for new construction for RRR projects with exceptions granted by FHWA on a project-by-project basis.

The full Summary Report on the AASHTO Survey has been placed in the Public Docket 80–3.

The FHWA notes that half of the State transportation agencies responding favored this rule, and an overwhelming majority (31 of 42) favored either the proposed rule or the present procedures. Both alternatives would be permissible under this rule. The FHWA further notes that these State transportation agencies are the organizations most directly affected by this rule.

On May 17, 1982, the House Committee on Public Works and Transportation reported a bill (H.R. 6211) entitled "The Surface Transportation Assistance Act of 1982." Section 112 of this bill specifies that standards adopted by the FHWA for new construction projects on the Federal-aid primary, secondary and urban systems shall also apply to all nonfreeway RRR projects on those systems, unless the Secretary of Transportation or his designee, on request of the State highway agency, grants a specific exception or exceptions to these standards. The requirements of this provision are intended to require the FHWA to continue the current practice for nonfreeway RRR projects without alteration of the scope of the waivers currently being granted. H.R. Rept. No. 555, 97th Cong. 2d sess. 10 (1982).

The FHWA rule set forth herein would allow any State desiring continuation of the current procedure to do so (apparently at least 10 of the 42 States responding to the AASHTO Survey do favor this option). It would also permit other States to develop a more streamlined process, assuming FHWA agreement on geometric design criteria for nonfreeway RRR projects in those States.

For the reasons previously stated, the FHWA believes that mandatory national geometric design criteria for new construction are not appropriate to the scope and purpose of most RRR projects, and that their continued application to RRR projects will generate an excessive number of requests for exceptions, needless red tape, further delays, and additional unwarranted costs.

In accordance with the provisions of Executive Order 12291, in promulgating this rule the FHWA has determined that (a) the rule is clearly within the authority delegated by law and consistent with congressional intent, and (b) the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

In consideration of the foregoing, and under the authority of 23 U.S.C. 101, 109, 315 and 49 CFR 1.48(b), the Federal Highway Administration revises Chapter 1, Part 625 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on June 4, 1982.

R. A. Barnhart,

Federal Highway Administrator.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The table of sections is amended by adding a new section to read:

Sec.

* * * * *

625.2 Policy.

* * * * *

2. Section 625.2 is added to read as follows:

§ 625.2 Policy.

(a) Plans and specifications for proposed Federal-aid highway projects shall provide for a facility that will (1) adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; and (2) be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The development and overall management of highway facilities must be considered as a continuing program. This process of highway management commences with planning and extends through design, construction, maintenance, and operation. To assure a continuing acceptable level of safe traffic service, it is essential to provide for adequate maintenance and periodic resurfacing, restoration, and rehabilitation (RRR) throughout the life of the highway. The RRR work is defined as work undertaken primarily to extend the service life of an existing facility. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders or bridges, the roadside, and appurtenances to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The RRR work is an essential part of any highway program, and each State and local agency should provide for these types of improvements in each annual highway program.

(c) An important goal of the FHWA is to provide the highest practical and feasible level of safety for people and property associated with the Nation's highway transportation systems and to reduce highway hazards and the resulting number and severity of accidents on all the Nation's highways. Accordingly, the only constraint on the application of Federal-aid funds to RRR work is that they must be used to provide a facility that adequately meets existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance, and acceptable levels of community and environmental impact. The RRR projects should be designed and constructed in a manner that will prevent deterioration of safety and yet accomplish the foregoing objectives according to the particular needs of each State and locality.

§ 625.3 [Amended]

3. Paragraphs (a)(6) through (a)(20) of § 625.3 are redesignated (a)(7) through (a)(21), respectively.

4. A new paragraph (a)(6) of § 625.3 is added to read as follows:

(a) * * *

(6) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways shall be the procedures and the design or design criteria established for individual projects, groups of projects, or all nonfreeway RRR projects in a State, and as approved by the FHWA. The other geometric design standards in this section do not apply to RRR projects on highways other than freeways, except as adopted on an individual State basis. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community, and environmental needs of the projects.

* * * * *

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June 10, 1982

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Areas Unsuitable for Surface Coal Mining: Areas Designated by Act of Congress; Criteria for Designating Areas; State Processes for Designating Areas; Designating Lands as Unsuitable Under a Federal Program for a State; and Petition Process for Designation of Federal Lands

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 760, 761, 762, 764, 765, and 769

Areas Unsuitable for Surface Coal Mining: Areas designated by Act of Congress; Criteria for Designating Areas; State Processes for Designating Areas; Designating Lands as Unsuitable Under a Federal Program for a State; and Petition Process for Designation of Federal Lands

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

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend existing permanent program rules which establish procedures for implementing the requirements of the Surface Mining Control and Reclamation Act of 1977 for designating lands unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal mining operations are limited or prohibited, and for implementing those limits and prohibitions.

OSM has drafted these revisions in response to the Secretary's goal of removing burdensome or counterproductive rules. The proposed rules would afford States flexibility needed to accommodate unique State circumstances and would also enable the Department to implement the unsuitability process for Federal lands more efficiently.

DATES:

Written comments: Accepted until further notice.

Public hearings: Held on request only, on July 19, 1982, in Washington, D.C. and July 22, 1982 in Denver, CO., at 9:00 a.m. (local).

Public meetings: Scheduled on request only.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (SPA–04), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (SPA–04), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; Pittsburgh, Pa.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Program Operations and Inspection, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; 202–343–4225.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking. The comment period will remain open until the close of the comment period on the draft supplemental environmental impact statement that will consider this proposed rule.

Public Hearings

Public hearings will be held at any or all of the locations listed under "Addresses" only if OSM receives a timely request for a hearing at the particular location. Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed under "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Section 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) establishes a process through which mining may be limited or prohibited where other values are found to be more important than mining and specifies certain areas as unsuitable for mining. Section 522(a) establishes requirements for State regulatory programs and specifies the criteria for determining whether an area should be declared unsuitable for mining. Section 522(b) establishes a review process to determine whether Federal lands should be designated as unsuitable for mining. Section 522(c) describes the procedures and requirements for submitting and reviewing petitions to have areas designated as unsuitable for mining. Section 522(d) requires the consideration of certain factors prior to designating an area as unsuitable. Section 522(e) forbids mining in areas expressly designated by Congress as unsuitable for mining, with certain exceptions.

On March 13, 1979, the Secretary promulgated final rules (30 CFR Chapter VII) for the permanent regulatory program under the Act. These rules (30 CFR Parts 760 through 769) provide for the designation of lands as unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal mining operations are limited or prohibited under section 522(e) of the Act, and for implementing those limits and prohibitions. The proposed rules would modify existing requirements to provide States with new flexibility in carrying out the requirements of the Act. In some cases,

the proposed rules would allow regulatory authorities to modify procedural requirements for determining areas designated unsuitable by Act of Congress and processes for designating areas unsuitable for surface coal mining operations. Specifically, the changes would—

1. Eliminate duplicative regulatory language, or modify such language to more accurately reflect provisions of the Act;

2. Modify definitions and requirements;

3. Give States and OSM (in a Federal program or Federal lands program) an opportunity to require more information from the petitioners for complete and nonfrivolous petitions;

4. Allow States to suspend and OSM to reject petitions where no real and foreseeable potential for mining to occur is found;

5. Revise standing requirements for persons to submit a petition or intervene in the petition evaluation process;

6. Allow States to defer petitions when the State or local government has a land use planning process that provides comparable environmental protection and public participation;

7. Provide States and OSM with more flexibility regarding the fulfillment of public notice obligations;

8. Provide States and OSM with greater flexibility in the implementation of the unsuitability process, including acceptance of petitions and the nature of the hearing to be held on petitions for designation and termination of designation;

9. Provide States and OSM with the authority to withhold historic resources information from public disclosure, where such disclosure would expose the resources to substantial risk of harm or destruction (pursuant to 1980 Amendments to the National Historic Preservation Act); and

10. Limit or eliminate the petition process on Federal lands.

States may, of course, have rules which are different from the Federal requirements as long as they are consistent with them. "Consistent with" is defined by 30 CFR 730.5, as amended October 28, 1981 (46 FR 53376 *et seq.*). Thus, some States may wish to retain existing requirements even though this rulemaking would allow change.

The proposed changes are discussed below. In a number of cases, alternatives for proposed rule changes are set forth. OSM invites comments on specific alternatives.

OSM has proposed numerous changes for editorial clarity. Those which have no substance are not specifically discussed. For example, wherever the term "Regional Director" was used, is proposed to be changed to "OSM" or "Director" to reflect the September 13, 1981, reorganization of OSM.

III. Discussion of Proposed Rules

A. Section 736.15 Implementation, Enforcement, and Maintenance of a Federal Program (Amendment 1)

OSM proposes to revise § 736.15 to include the effective date for a Federal program for designating lands unsuitable for mining. This requirement is presently included in § 765.13(a). The present § 736.15 would be redesignated § 736.15(a), a sentence referencing Subchapter F would be deleted, and a new paragraph (b) would be added to include the provision being moved from § 765.13.

B. Part 760 (Amendment 2)

OSM proposes to eliminate all of Part 760. Section 760.1 explains requirements which follow in Subchapter F. It contains no substantive provisions.

Section 760.2, entitled "Objectives," is proposed to be removed because the text repeats information provided in Parts 761, 762, and 764, merely explains requirements which follow, and does not contain substantive provisions.

Section 760.3, entitled "Authority," is proposed to be removed in order to streamline the chapter. This section repeats materials presented elsewhere in the chapter.

Section 760.4, entitled "Responsibility," is proposed to be removed for editorial clarity. The deletion is proposed in order to streamline the chapter by eliminating those sections which are redundant or do not contain substantive requirements.

C. Sections 761.2 and 761.4 (Amendment 3)

Section 761.2, entitled "Objective," is proposed to be removed because the substantive text is incorporated in §§ 761.5, 761.11, and 761.12 of the rules. As in other sections this section is proposed for removal to streamline the chapter.

Section 761.4, entitled "Responsibility," is proposed to be removed because it repeats material contained elsewhere in the chapter.

D. Section 761.5 Definitions; Valid Existing Rights (Amendments 4 through 6)

Under section 522(e) of the Act, operators with valid existing rights (VER) may mine in areas where mining is otherwise forbidden. The present definition of valid existing rights distinguishes between haul roads and other types of rights and operations. Any road in existence as a August 3, 1977, plus any other right-of-way, easement, or permit for a road existing on August 3, 1977, is considered to have VER. "Any road in existence" means any road regardless of use, not just haul roads. No changes to the definition of haul road VER are proposed.

Under the existing definition, other facilities and operations must meet two tests to establish VER: First, coal production must have been authorized by "property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the applicant to produce coal by a surface coal mining operation;" second, either the operator must have received all necessary permits to mine by August 3, 1977, or must demonstrate that "the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all mine plan approvals and permits were obtained prior to August 3, 1977."

The existing definition of VER for facilities other than haul roads has been challenged as being unnecessarily restrictive and as destroying legitimate property rights. Informal comments from states and members of the public indicate that many believe that application of the definition is a taking without just compensation in violation of the Constitution and congressional intent.

OSM is proposing three options for revising the definition of VER. Option 1 is similar to the existing definition, with changes to reflect judicial action and to clarify terminology. Option 2 would establish ownership of the coal as VER, and Option 3 would make ownership plus the right to mine by the method to be used as the test for VER.

Option 1

OSM recognizes that, at a minimum, the existing definition needs to be revised to reflect a judicial decision and to clarify vague terminology.

First, Paragraph (a)(2)(i) is proposed to be amended to extend the definition of VER to include the case where an applicant had exercised a good faith effort to obtain, on or before August 3, 1977, all State and Federal permits necessary to conduct operations, in addition to operations which had been issued all necessary State and Federal permits. This change responds to *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (D.D.C. February 26, 1980), in which the court indicated that it believed "that a good faith attempt to obtain all permits

before the August 3, 1977, cutoff date should suffice for meeting the 'all permits' test." (February 26, 1980, opinion cited above at p. 20.) The proposed revision within Option 1 would accomplish that objective. A good faith effort would be considered met if all necessary permits had been applied for prior to August 3, 1977.

Second, Option 1 proposes changes for paragraph (a)(2)(ii) which provides that VER may be demonstrated where coal is both needed for, and immediately adjacent to, an ongoing operation for which all mine plan approvals and permits were obtained prior to August 3, 1977. The term "needed for" is ambiguous. Therefore, this section would be amended under Option 1 to specify that "needed for" means that the extension of mining is required to make the operation, as a whole, economically viable. This change is consistent with the U.S. District Court decision upholding the need concept in, *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (D.D.C. February 26, 1980).

Existing paragraph (d), which lists certain rights which would not be VER is proposed to be relettered paragraph (f) and revised to delete the phrase which indicates that applying for a Federal or State permit would not be a VER, as this statement is inconsistent with the proposed definition in Option 1.

Option 2

The present definition, modified as described in the preceding paragraph, is the most restrictive alternative proposed by OSM for a definition of VER. At the opposite extreme, ownership of the coal alone could be considered VER. The present definition links VER to the concept of substantial legal and financial commitments in section 522(a)(6) of the Act as defined in § 762.5 of the existing rules. Section 522(a)(6) exempts lands from the unsuitability petition process (but not from the section 522(e) prohibitions) if substantial legal and financial commitments had been made in such operations prior to January 4, 1977. When the present VER definition for application to section 522(e) was developed, OSM reasoned that to be entitled to an exemption from the areas where Congress had prohibited mining, property owners "must have a property interest in the mine that is even greater than the substantial legal and financial commitments needed to mine despite a designation by petition under section 522(a). Thus, OSM believes that VER must be more than 'significant investments, that have been made on the basis of a long-term coal contract, in powerplants, railroads, coal preparation, extraction, handling and storage facilities, and other capital itensive activities* * *' " (44 FR 14991–2; March 13, 1979). This rationale further enabled OSM in the original rules to apply to VER the legislative history applicable to substantial legal and financial commitments, which states that "The committee does not intend that mere ownership or acquisition costs of the coal itself or the right to mine it should constitute 'substantial legal and financial commitments.' " (H. Rept. 95–218, 95th Cong., 1st sess., p. 95 (1977)).

In reexamining the definition, however, it is important to note that the relationship between VER and substantial legal and financial commitments is not suggested by the legislative history. Both concepts were covered repeatedly in the long legislative history. Each was discussed separately in every case. Nowhere in the legislative history does Congress compare the two concepts. The Secretary believes that VER need not be a stricter test than substantial legal and financial commitments and it does not necessarily follow that VER requires more than ownership of the coal.

The legislative history indicates that VER was introduced to make clear that the language of section 522(e) is subject to previous court interpretations:

"The language 'subject to valid existing rights' in Section 522(e) is intended * * * to make clear that the prohibition of strip mining on the national forests is subject to previous court interpretations of valid existing rights." (H. Rept. 95–218, 95th Cong., 1st sess., p. 95 (1977)).

Similar language is found in several U.S. Congress reports (H. Rept. 94–1445, 94th Cong., 2d sess., p. 47 (1976); S. Rept. 94–28, 94th Cong., 2d sess., p. 220 (1976); and S. Rept. 95–128, 95th Cong., 1st sess., p. 94 (1977)). These reports also made clear that VER applies to all the other prohibitions in section 522(e); not just to national forests (section 522(e)(2)).

This legislative history gives no definitive guidance on how VER should be defined. The only consistent theme is that interpretation should be based on previous court decisions. In some instances, the history says only "court decisions," in others "State court decisions." This allows a great deal of latitude. Interpretations of rights to mine vary substantially from State to State. For example, in Kentucky coal-bearing lands purchased using the broad form deed prevalent in Appalachian States in the late 19th century could be mined using surface mining methods regardless of whether such methods were contemplated at the time of sale. Setting the standard at whatever the State laws and courts allow would result in an inconsistent interpretation of VER. The standard which would clearly allow consistency among all States would be to make ownership of the coal on August 3, 1977, VER.

Under this second option, paragraph (a) would be revised to read "Except for haul roads, those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which establishes ownership of the coal resource." In addition, paragraph (d) of the existing definition which states that ownership is not VER, would be removed, because it would contradict the proposed language of paragraph (a).

This definition would result in a significant expansion in the number of areas having VER.

Option 3

In its discussions of VER in the legislative history, Congress cited the *Polino* decision *(United States* v. *Polino*, 133 F. Supp. 722 (D. W. Va. 1955)) in a way which can be interpreted either as an example of VER or as the standard for VER. In *Polino*, the court held that strip mining was not authorized unless such rights were specifically granted. In other words, a coal owner did not have the right to strip unless the contract or other documents clearly conveyed that right. In House Report 95–218 (95th Cong., 1st sess., p. 95 (1977)), *Polino* is used as an example of previous court interpretations which should be accepted. In contrast, Senate Report 95–128 (95th Cong., 1st sess., p. 94 (1977)) requires that the VER claimant "must show usage or custom at the time and place where the contract is to be executed and must show that such rights were contemplated by the parties." This is the only definition suggested in the legislative history. Using this standard, VER would consist of (1) the ownership of the coal resource plus (2) the right as against the surface owner to mine the coal by the method intended.

Under this option, paragraph (a) would be revised to read "Expect for haul roads, those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which establishes ownership of the coal resource and authorizes the applicant to disturb the surface in connection with an underground mine, or, for surface mines, to produce coal by a surface coal mining method."

This definition would increase the number of areas having VER in comparison to Option 1, but would

result in fewer areas having VER than under Option 2.

Other options

OSM is also considering three related options. VER would consist of (a) ownership for owners of record on August 3, 1977, but not for subsequent purchasers, (b) ownership plus right to mine (but not requiring a right to a specific method) or (c) ownership, right to mine using the specific method at issue, and intent to mine. No language has been proposed because these have only minor differences from the basic options presented. The only difference in (a) is to limit transferability. With regard to (b), ownership itself generally carries some mining rights, at least using underground techniques. In (c), intent is difficult to prove or disprove without imposing highly specific requirements, such as for plans and financing, for which there is no support in the legislative history. Another alternative being considered is to specify a basic standard, such as one of the six options described above, plus alternative tests which would be accepted as equivalent to the basic standard. For example, if the basic standard were ownership, right to mine using surface mining methods, and intent to mine, OSM might also include the test that any operator who had received all permits as of August 3, 1977, had VER. Receipt of all permits would be considered evidence that the basic standard had been met. This combination of tests approach could be applied to any of the six basic options described. Comments are requested on all the options described, plus the alternative test. Any of these options or combinations or variations of them may be adopted as the final rule.

Continually Created VER

Experience with section 522(e) of the Act indicates that VER is not static; that is, new VER are continuously being created under certain situations. For example, OSM believes that an operator who obtains all permits required after August 3, 1977, should be able to mine the permit area even if an adjacent landowner subsequently builds a house closer than 300 feet.

Accordingly, OSM proposes to provide under each option above that VER can be shown when the operator proposing to conduct surface coal mining operations demonstrates that the operation existed or had been permitted at the time an area became protected under section 522(e), or at the time a structure, road, cemetery, or other activity listed in section 522(e) came into existence within the prohibited distance of an operation. This change is being proposed as a means to address future situations in which an operator will get a permit and be conducting operations in conformity therewith. Someone subsequently may build a home, for example, within 300 feet of the existing operations or begin a cemetery within 100 feet thereof, and the existing rules could be construed to require termination of such operations, no matter how long they had been existence.

Similarly, without this proposed change, an underground mine operator who acquired rights for just enough land for a power hole could be forced to stop using the hole if someone moved within 300 feet of it. To be protected, the underground operator would have to acquire rights to a 300-foot buffer area at each point of surface access, and the surface operator would have to acquire a 300-foot buffer area around each permit area. The preamble to the existing rules addressed this possibility by stating:

> "An operator would be well advised to obtain a waiver from a potential owner before beginning to mine." (44 FR 14991; March 13, 1979).

OSM now recognizes that it may be infeasible for operators to determine all potential owners of lands adjacent to proposed mining activity or to foresee the possible relocation of a public road or the possible beginning of a cemetery within the prohibited distances of their operations. A workable interpretation of the term "existing" as used in Section 522(e) is that of being in existence at the time a conflicting activity or comes into being. OSM believes that Congress meant to protect such operations whether or not they were permitted before enactment of the Act.

The proposed revision would apply such new VER both to operations in existence as well as to operations which have not yet begun but for which all permits have been obtained. OSM also is considering whether the right should be created earlier, when an operator applies for permits, or limited to when operations are actually initiated. OSM is proposing to use permit issuance as the cutoff point because the public notice and public participation requirements of the permit process give notice to the public that such new rights will be created. Members of the public may then participate in the permitting process if their interests would be affected. Similarly, OSM proposes to restrict the new VER to the permit area, because that area will have been subject to public review and comment. Selection of a broader area might affect persons without giving adequate notice and opportunity to participate in the decision process. However, OSM requests comments on the timing and areal extent of the VER which would be so created.

Avoidance of Takings

A new paragraph (d) is proposed for each option to provide that VER may be found where no reasonable use of the property other than surface mining would otherwise remain. As is discussed in the preamble to the existing definition of VER (44 FR 14992, March 13, 1979), there is evidence in the legislative history that Congress decided to protect property rights in order to ensure that section 522(e) of the Act would not lead to unconstitutional takings without just compensation. Under this theory, the Secretary's basic purpose in defining VER is to provide a simple administrative means of determining those rights which should be protected as VER to avoid the constitutional issue.

The proposed § 761.5(d) is based on case law which indicates that where the value of property is diminished to such an extent that the property has no reasonable remaining use, the governmental action causing this loss constitutes a taking. *Pennsylvania Coal Co* v. *Mahon*, 260 U.S. 322 (1922); *Goldblatt* v. *Hempstead*, 369 U.S. 590 (1962); *South Terminal Corp.* v. *EPA*, 504 F. 2d 646 (1st Cir. 1974).

Interpretation of Documents

The existing paragraph (c) is proposed to be redesignated pargraph (e) and amended in each of the options. In addition, the rule being proposed is a revised version of an earlier proposal (45 FR 8242, February 6, 1980) which is intended to provide an alternative basis for interpreting the document authorizing the applicant to conduct surface mining, under the first part of the test for VER in § 761.5(a)(1). Paragraph (c) of the existing rule provides that interpretation is to be "based upon the usage and custom at the time and place where it [the document] came into existence and upon a showing by the applicant that the parties * * * actually contemplated a right to conduct the same * * * mining activities for which the applicant claims a valid existing right." The rule being proposed here would provide that where a State has statutory or case law establishing some standard for interpreting documents conveying mineral rights, that law will be used to interpret documents executed in that State. Only if no such statutory or case law existed would custom and usage be

relied upon for interpretation. This amendment to the existing rule was proposed in order to implement Congress' intent that State case law on interpretation of documents not be overruled. As stated in the 1974 Conference Committee Report and other reports, "the language of 522(e) is in no way intended to affect or abrogate any previous State court decisions." (H. Rept. 93–1522, 93d Cong., 2d sess., p. 85 (1974)). Comments received when this change was previously proposed are addressed as follows:

1. Several commenters on the February 6, 1980, proposed rule supported the proposed amendment but suggested it should be further expanded to recognize State statutory law in addition to State case law and provide flexibility for relying on future State decisions where State courts have not yet had an opportunity to rule on these issues. OSM agrees that valid State statutes as well as case law may be used to interpret documents relied upon to establish the first part (ownership) of the test for VER, and the new proposed rule would reflect this. OSM expects this revision in the rule to have minimal effect since the majority of problems with VER concern the intent of the parties to deeds executed prior to 1940, when surface mining had not yet become the viable method of mining that it is today. OSM agrees with the comment that the rule should accommodate future State court decisions, and OSM interprets "State case law" to encompass both existing and future decisions.

One of the commenters also suggested that, where no State case law exists, interpretations of documents should be based on interpretations by local courts of competent jurisdiction. OSM believes the commenter may have misunderstood the meaning of "State case law." State case law includes decisions of local courts as well as the decisions of appellate or higher courts.

2. One commenter opposed the proposed change, stating that it would negate the intent of Congress to establish a uniform national standard. However, Congress also intended that applicable State law should not be ignored in VER determinations. (H. Rept. 93–1522, 93d Cong., 2d sess., p. 85 (1974)). OSM invites further discussion of this commenter's statement.

3. One commenter suggested that the applicant should not have to show that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a VER. The commenter claimed that the choice or method of extraction is the right of the owner of the mineral rights, subject to usage and custom. This comment is related to the test set forth in *United States* v. *Polino*, 133 F. Supp. 722 (D. W. Va. 1955) which was the basis for VER paragraph (c) as originally issued (44 FR 14992, March 13, 1979). Option 2 for paragraph (a) reflects this suggestion.

Paragraph (f) for Option 1

The existing paragraph (d), which states that VER is more than the expectation of a right to mine, is proposed to be redesignated paragraph (f) for editorial purposes. Note that if Options 2 or 3 of paragraph (a) were adopted, this paragraph would be removed, as it would contradict the basic definition.

Paragraph (f) for Options 2 and 3 or Paragraph (g) for Option 1

A new paragraph (f) for Options 2 and 3 or (g) for Option 1 is proposed to provide that, notwithstanding paragraphs (a) through (e) or (f), as applicable, VER includes those private property rights for which a judicial finding of a taking of property without just compensation has occurred. The reasoning for this change is to clarify that VER extends to those rights which, if destroyed, would constitute a taking of property.

Under this paragraph, an owner who fails to meet the administrative definition of VER in § 761.5 may go to court for a determination that the governmental restriction on mining will constitute a taking unless the agency treats the owner as having VER. This paragraph recognizes that although there are several principles such as the reasonable remaining use principle, which courts seem to apply in many "taking" cases, there is no set formula for determining whether a particular factual situation constitutes a taking. Each case must be decided on its individual facts. *Penn Central Transportation Co.* v. *City of New York*, 438 U.S. 104 (1978).

Paragraph (g) for Options 2 and 3 or Paragraph (h) for Option 1

A new paragraph (g) for Options 2 and 3 or (h) for Option 1 is proposed to clarify that the Act's section 522(e) prohibition on mining within national forest boundaries does not apply to private inholdings. The legislative history makes clear that Congress did not intend that private inholdings be covered by section 522(e)(2) of the Act. House Report 95–218 (95th Cong., 1st sess., p. 95 (1977)) states "it is not the intent, nor is it the effect of this provision to preclude surface coal mining on private inholdings within the national forests."

E. Section 761.5 Definitions: No Significant Recreational, Timber, Economic, or Other Values Incompatible With Surface Coal Mining Operations (Amendment 7)

This provision defines those values that might be damaged by mining and cannot exist together with mining for the purposes of determining when mining could be allowed in national forests. Four changes are proposed to the existing definition. First, the use of the word "no" in the existing rule is inappropriate to the definition and would be eliminated. "No" refers to the type of findings to be made, not to the definition. Second, the term "damaged" would be changed to "irreparably damaged." This change reflects the fact that, under the Act, mining is intended to be a temporary use of the land. A temporary disruption which is fully repaired when mining is complete is consistent with the standards of the Act and is not a significant concern. Third, the term "offsite areas," which in the existing definition indicates that values outside the permit area are to be considered would be changed to "affected areas," a more precise and usable term. The present use of the term is "on offsite areas" which could be affected by mining. By substituting the term "affected areas" similar coverage is attained without necessarily implying coverage of an undefined, perhaps remote area away from the minesite. Finally, paragraph (d) is proposed to be changed to "other values which may be incompatible with surface mining operations" in order to reflect the specific language of the statute.

F. Section 761.5 Definitions: Occupied Dwelling (Amendment 8)

Section 522(e) of the Act prohibits mining within 300 feet of an occupied dwelling. The existing rules define an occupied dwelling as "any building that is currently being used on a regular or temporary basis for human habitation." OSM proposes to clarify the term "occupied dwelling" by defining the term "temporary" to mean that the dwelling is used for human habitation for not less than three consecutive months each year. The 3-month standard is suggested because it corresponds to a full season of use. Less than 3 months suggests intermittent use, which would not expose an occupant to the steady impact of nearby mining. OSM requests comments on other periods of time which would be an appropriate standard for temporary use.

G. Section 761.5 Definitions: Public Building (Amendments 9 and 10)

Section 522(e)(5) of the Act forbids mining within 300 feet of public buildings. "Public building" is presently defined as "any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings." OSM is considering two options to amend the definition of public building. Option 1 would define public building to mean "any structure that is owned, leased, or principally used by a governmental agency for public business, meetings, or other group gatherings." This revision would modify the existing definition by including in the concept structures not only owned or used but also those leased by government agencies for public purposes. Modifying the term "public" to "government" would eliminate certain community building from consideration in this context.

Option 2 would revise the definition to encompass only those structures that are owned by a public agency. Under this revision, the definition would narrow considerably the application of the prohibition on mining within 300 feet of a public building.

OSM requests comments on these two proposed options and whether the existing definition is satisfactory.

H. Section 761.5 Definitions: Public Park (Amendments 11 and 12)

Section 522(e)(5) of the Act prohibits mining within 300 feet of public parks. The existing definition of "public park" includes areas dedicated or designated by a public agency for public recreation, including lands leased, reserved or held open for that use. OSM is considering two options to modify the definition. First, OSM is considering eliminating the existing reference to lands "held open to the public" because it is not clear that Congress intended to cover private lands that have not been designated as a public park by a government agency. OSM rejected similar comments in the preamble to the existing rules (44 FR 14991, March 13, 1979) by noting that lands which are owned by nonprofit organizations whose primary purpose is the protection of natural resources, and which are open to the public, should be protected as provided under this definition since they are dedicated for public purposes. Such lands have no official status as parks, however, and could include areas which could not meet the usual governmental standards for public recreation areas.

The second option being considered by OSM would limit the definition of public park to areas or portions of areas "dedicated or designated by any Federal, State, or local agency primarily for public recreational use.* * *" This suggestion is based on concerns that, under the existing definition, in some circumstances, lands which are reserved as watershed property or other public service facility areas may be considered public parks. In some cases, parts of a broader area might be designated as a public park under the proposed revision, allowing other parts of the area to be managed for other purposes. Also, certain areas are devoted to mixed uses, which, at the discretion of the regulatory authority, may be deemed public parks. For example, one State has raised the problem that, on certain game lands which are considered public parks in that State, the State does not own the mineral rights and mining has historically been permitted to occur, subject to certain criteria. Under the existing rules, mining would not be permitted on such lands.

OSM has been considering the question whether all or part of the Fishtrap Lake Army Corps of Engineers' reservoir in eastern Kentucky is a public park. Several areas of the project lands are termed high density recreation areas. Recreation was one of the principal reasons for creation of the Fishtrap Lake project. OSM is of the view that these areas should qualify as pubic parks under either option. Such areas were designated for recreational use on the maps and plans for the reservoir project. Facilities for camping, boating, and swimming have been constructed and are used extensively by the public. OSM believes such areas fall within the protections of section 522(e)(3) and (5) of the Act becuase they were specifically designated and developed as recreation areas by the public agency charged with administration of the land. In addition, the recreational use is the dominant use and is concentrated in a defined area. This would allow operators to easily determine what areas within a large public project such as Fishtrap Lake will fall within the section 522 protections. The insertion of the term "primarily" in the second option would more explcitly include the high density recreation areas of Fishtrap Lake or similar facilities but OSM believes that the language of Option 1 would provide the same results as well.

In addition to these two options, OSM is considering a middle position which would allow the classification of multiple use areas to change, depending upon the use which is dominant at the time. For example, the use of an area might shift from timber mangement to wildlife to public recreation; it might be designated as a public park only during the recreation phase.

I. Section 761.5 Definitions: Public Road (Amendment 13)

OSM proposes to delete the definition of "public road." The definition of "road" and the public road concept in the definition of "affected area" would be used in the future to define public roads. These definitions are the subject of a separate rulemaking (47 FR 41–57, January 4, 1982).

J. Section 761.5 Definition: Cemetery (Amendment 14)

OSM proposes to revise the definition of "cemetery" to reflect the August 6, 1981, decision of the United States Court of Appeals for the Sixth Circuit. 655 F.2d 732 (6th Cir. 1981).

In that decision, the Court distinguished between public cemeteries and private family burial plots. It stated "There is no evidence that Congress ever intended to regulate private family burial plots not open to the public. It can hardly be claimed that the mining close to the graves on private property interferes with interstate commerce." Id. at 738.

In reviewing the legislative history, OSM has found no statement that indicated Congress intended that family burial plots should be considered cemeteries for the purpose of section 522(e) of the Act. Accordingly, OSM proposes to add to the existing definition the phrase "but does not include family burial grounds."

K. Section 761.11 (Amendment 15)

Section 761.11(a): Wild and Scenic Rivers

Existing § 761.11(a) provides that, subject to valid existing rights, no surface coal mining operations shall be conducted within the boundaries of certain national systems, such as the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)). A proposed boundary for rivers under study for wild and scenic designation has been identified by the National Park Service (NPS) in guidelines published in the **Federal Register** on Janaury 28, 1981 (46 FR 9148). The study area defined by NPS would cover, at a minimum, a corridor extending the length of the study segment and extending in width one-quarter mile from each bank of the river. Accordingly, OSM proposes to revise § 761.11(a) to include this clarification, which would give States discretion to establish these boundaries or others which would exceed the

minimum standard established by NPS. OSM invites comments on this issue.

Section 761.11(c): National Register of Historic Places

Section 522(e)(3) of the Act prohibits, subject to valid existing rights, surface coal mining operations "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites [sic] unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site." When promulgating § 761.11(c) of the permanent program rules, OSM interpreted section 522(e)(3) to be as broad as the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C. 470) and thus to include publicly owned properties listed in the National Register and properties merely eligible for listing in the National Register. As a result of litigation in the United States District Court for the District of Columbia, *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (D.D.C. Feb. 26, 1980), OSM suspended this rule insofar as it covered areas merely eligible for the National Register and privately owned properties. OSM is proposing to amend § 761.11(c) to apply only to publicly owned properties listed on the National Register.

The proposed change would delete privately owned properties listed in the National Register and all eligible properties from the prohibition and procedures established in section 522(e)(3) of the Act and Part 761. This amended language would be consistent with OSM's present interpretation of section 522(e)(3) and with the proposed amendment to § 761.12(f)(1), discussed below.

Section 761.11(d)(2): Public Road Decisions

Existing § 761.11(d)(2) provides that, subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where the regulatory authority allows the public road to be relocated or the area affected to be within 100 feet of the road. OSM has found that decisions regarding public road relocations are rarely made solely by the regulatory authority but are typically made by a public road authority in coordination with the regulatory authority. In accord with this finding, OSM proposes to amend § 761.11(d)(2) by providing that the regulatory authority, or public road authority upon being designated as the responsible agency by the regulatory authority, may take action provided that the procedures in § 761.11(d) are followed. In addition, this section would be modified to allow roads to be closed as an alternative to relocation.

Section 761.11(e): 300-Foot Limitation on Mining

Existing § 761.11(e) provides that, subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on that date, within 300 feet, measured horizontally, of any occupied dwelling, except when the owner thereof has provided a written waiver consenting to operations closer than 300 feet. OSM proposes to add a second exception haul roads which connect with public roads opposite occupied dwellings.

This provision is being proposed to address the issue of whether an existing public road adjacent to and within 300 feet of an occupied dwelling essentially negates the purposes of prohibiting a haul road that intersects the public road on the opposite side and within 300 feet of the dwelling. Such a haul road would not bring impacts any closer to a dwelling on the opposite side of the road, because the dwelling is already subject to the impacts of public road use.

L. Sections 761.12 (b) and (d): Procedures for Reviewing Permit Applications (Amendment 16)

Section 761.12(b)

Section 761.12(b) provides that, where a proposed surface coal mining operation would be located on any lands listed in § 761.11(a), (f), or (g), the regulatory authority shall reject the application if the applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date. The proposed modifications to the definition of valid existing rights would allow valid existing rights to be vested after August 3, 1977, pursuant to circumstances specified in proposed § 761.5. In correlation with these proposed modifications, § 761.12(b)(1) is proposed to be amended to provide that the regulatory authority shall reject the application if the applicant has no valid existing rights for the area pursuant to § 761.5.

Section 761.12(b)(2) provides that, when the regulatory authority is unable to determine whether the proposed operation is located within the boundaries of certain prohibited or limited areas, it will transmit information to the appropriate agency, which must respond within 30 days of receipt of the request.

Section 761.12(b)(2) is being proposed for revision to provide that the appropriate agency has 30 days from receipt of the request in which to respond or the regulatory authority may make a determination based on available information. This change would clarify that regulatory authorities have the discretion to proceed with determining areas prohibited or limited by Congress when response from outside agencies is not forthcoming within the designated comment period. Nonetheless, regulatory authorities are still responsible for making sure that section 522(e) of the Act is not violated.

Section 761.12(d)

Existing § 761.12(d) provides procedures for obtaining approval to mine within 100 feet of a public road or to relocate public roads. OSM proposes to revise this section to reflect the change proposed to § 761.11(d) to allow a public road authority, as appropriate, to act on road relocation and to include the additional option of closing a road. Actions involving roads generally are required to be coordinated with the agency responsible for public roads. OSM believes that there is no need for regulatory authorities to duplicate the actions of a road authority. If the road authority provides the opportunity, notice, and findings consistent with these rules to protect the interests of the public and landowners, the road authority should be able to take action. OSM also proposes to allow roads to be closed using the same procedures. Road closings are presently available to States to deal with other problems. Provided that the public interest is protected, OSM believes that closings should be available to deal with mining problems.

Sections 761.12(d)(2) and (3) are proposed to be revised for clarity. No substantive change is intended.

Section 761.12(d)(4) specifies that a written finding will be made based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. This section is proposed for revision in conjunction with the changes proposed for § 761.12(d)(2) and (3) to provide that a finding will be made within 30 days after completion of the hearing, or at the end of the public comment period if no hearing is held.

M. Section 761.12(e) Waivers (Amendments 17 Through 19)

Section 761.12(e) provides requirements for obtaining waivers from certain limitations on mining. OSM previously proposed changes for this section (45 FR 8240–8245, February 6, 1980) and is reproposing these as part of this proposed rulemaking. OSM previously proposed to redesignate § 761.12(e) as § 761.12(e)(1). OSM also previously proposed to add § 761.12(e)(2), providing that where an applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling prior to August 3, 1977, a new waiver would not be required to mine within 300 feet of that dwelling (45 FR 8242–43, February 6, 1980).

OSM now proposes two options for proposed § 761.12(e)(1) option 1 for § 761.12(e)(1) would leave the existing text of Paragraph (e) unchanged except to remove the term "mine plan," which will be redefined in future revisions to 30 CFR Subchapter D of Chapter VII (Federal Lands Program) and will no longer be applicable to this situation. Option 2 would provide that, where proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall allow such operations within a closer distance of the dwelling as specified.

The revisions proposed in Option 2, which correspond to the previously proposed revisions, respond to the comments received in response to the February 6, 1980, rulemaking. These comments are summarized below.

One commenter suggested that the rule should not contain language requiring a written waiver "that is knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver." The commenter also suggested that such a rule improperly empowers the Secretary to prescribe the form of and construe the effects of acts or instruments subject to common law rule. Another commenter suggested that a valid waiver be limited to a written instrument in which it is clear that the signator had the legal right to deny mining and knowingly waived that right. The commenter stated that prior to August 3, 1977, most States did not allow an individual to deny the right to mine within 300 feet of his residence unless he owned the surface area in question. Option 2 reflects these concerns by allowing the waiver to be made through any appropriate conveyance and by requiring that the waiver indicated that the owner understood his right to deny mining and knowingly waived that right.

One commenter suggested adding the phrase "by lease, deed, or other conveyance" after the word "waiver" to clarify that the waiver can be accomplished through normal land conveyance procedures. Option 2 also incorporates this comment.

Previously proposed paragraph (e)(2), which would provide that no new waiver need be obtained if a permit applicant had obtained a valid waiver prior to August 3, 1977, is again proposed as Paragraph (e)(2).

OSM proposes at this time to add § 761.12(e)(3)(i), which would provide that where an applicant for a permit after August 3, 1977, had obtained a valid waiver, the waiver would remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. Proposed § 761.12(e)(3)(ii) would provide that a subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if mining has already proceeded within the prohibited distance at the time of purchase. It should be noted that a valid waiver may encompass the transfer of both valid leases and permits. Several commenters supported the February 6, 1980, proposed amendment, which would provide that a new waiver would not be required if an applicant had obtained a valid waiver prior to August 3, 1977. One commenter suggested that the phrase "valid waiver" should refer only to "the right to mine" obtained prior to August 3, 1977. However, under the proposed rules discussed for § 761.5(a)(3), there are circumstances in which VER could be shown when rights to mine were obtained after August 3, 1977. Therefore, this change is not included in the proposed rule.

Many commenters on the February 6, 1980, proposed rule recommended that as an alternative to, or in place of, the requirement that subsequent purchasers have actual knowledge of a waiver, a waiver should be deemed effective if properly filed in public records pursuant to applicable State recordation laws. With the rule so modified, the waiver would be accorded the same treatment as any outstanding lien, easement, or other interest in the property. An opposing commenter recommended that OSM require a prospective purchaser to provide a signed statement that he has been placed on notice of a waiver before he signs a purchase agreement. OSM agrees with the first recommendation that a waiver should be deemed effective if the waiver was properly filed in public property records or if a subsequent purchaser has actual knowledge of the waiver. These recommendations are reflected in proposed § 761.12(e)(3)(ii). As noted by these commenters, a prospective purchaser has the responsibility to check property records, consistent with many State recording statutes. Knowledge of the waiver would be imputed to a subsequent purchaser regardless of his or her actual knowledge if the waiver was properly recorded. This alternative would also provide a greater degree of certainty for operators, who are not parties to property sales negotiations and cannot be sure if an owner has given actual notice of the waiver to a subsequent purchaser. The opposing suggestion that the rule require a signed statement from a prospective purchaser is not accepted. The revised proposed rule, by requiring actual knowledge or constructive knowledge through recordation of waivers, would allow diligent prospective purchasers to know that their right to prohibit mining within 300 feet of their dwelling has been waived.

N. Section 761.12(f): Agency Review of National Register of Historic Places (Amendment 20)

Section 761.12(f)(1) establishes requirements and procedures for consulting with agenices which have responsibility for reviewing the impact of mining on public places and historic plans. OSM proposes to revise this section to eliminate reference to places eligible for listing on the National Register of Historic Places. This reflects a change similar to that proposed for § 761.11(c), discussed above. This amendment would also modify the language to "Where the proposed surface coal mining operation *will* adversely affect any public park or any publicly owned site * * *" (Emphasis added.) The existing rules use "may" rather than "will." Both of these changes are proposed to reflect the actual wording of section 522(e)(3) of the Act.

OSM also proposes to revise this section to provide that lack of response from other agencies with jurisdiction over parks or sites on the National Register within 30 days from receipt of the request would constitute approval of the proposed permit, subject to final

regulatory authority determination. This is proposed because a lack of agency action could result in long delays to permit approval.

OSM is considering additional modification to this section to provide States with further flexibility in establishing the appropriate government contacts for review and approval. One State has requested that the regulatory authority need only submit information requested pursuant to interagency agreements. OSM requests comments regarding whether such an approach would comply with the breadth of notification and review requirements under section 522(e)(3) of the Act.

Section 761.12(f)(2) is proposed to be revised to delete the words "mine plan approval or" from the requirement that a mine plan approval or permit for the operation shall not be issued unless jointly approved by all affected agencies. This change is proposed to be consistent with proposed rules published January 4, 1982 (47 FR 41–57) which would delete the definition of mine plan area and planned changes to 30 CFR Subchapter D of Chapter VII which would limit the application of "mine plan" to certain actions applicable only to Federal lands.

OSM has also considered clarifying what are "affected agencies" which must approve of a permit where the proposed operation will adversely affect sites listed on the National Register. OSM believes, however, that the term "affected agencies" is adequately defined in the proposed paragraph (f)(1) as "the Federal, State, or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the public park or publicly owned National Register site."

O. Section 762.5 Definitions (Amendments 21 Through 23)

Fragile Lands (Amendments 21 and 22)

The existing § 762.5 provides that the term "fragile lands" means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. A number of examples are then provided, including uncommon geologic formations and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited. OSM is proposing two alternative revisions to this definition.

In Option 1, the term "damaged" would be modified by adding "irreparably" to reflect the fact that mining is an appropriate temporary use of the land and should not be prohibited where adequate reclamation can be accomplished. In addition, the "fragile lands" example of "areas where mining may cause flooding" is proposed to be changed to "areas where mining may result in flooding" as mining is not necessarily in itself the direct cause. In this option, the rest of the existing "fragile lands" definition would be left unchanged.

In Option 2, the definition of "fragile lands" would be narrowed in several ways. "Fragile lands" would mean geographic areas containing important natural, ecological, scientific, or esthetic resources that could be irreparably and significantly damaged or destroyed by surface coal mining operations.

Adding the words "important" and "significantly" to the definition would make the definition parallel the wording included in the Act (Section 522(a)(3)(B)) as part of the criteria for designation of unsuitability. Adding "irreparably" reflects the fact that mining is an appropriate temporary use of land and should not be prohibited where adequate reclamation is possible. The addition of these words would narrow the definition of fragile lands, therebyallowing State regulatory authorities to preclude certain lands from consideration for petition review and subsequent unsuitability designation. This could be done by finding a petition "frivolous" because no "fragile lands" were affected which were perceived to contain "important" resources subject to "irreparable" and "significant" damage or destruction. Importance and significance are included in the existing rules as part of the criteria for designation and are addressed in the evaluation of any petition deemed complete.

OSM further proposes in Option 2 to modify and eliminate certain examples. The example of "areas where mining may cause flooding" would be changed to "areas where mining may result in flooding" as mining is not necessarily in itself the direct cause. Also, the reference to "buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 522(e) of the Act and Part 761 of this chapter" would be eliminated, since Congress specifically included certain buffer zones in the limitations of section 522(e) where it wanted to establish such buffer zones.

OSM is considering a further suggestion to eliminate examples from each of the definitions in § 762.5, including all examples of "fragile lands." These examples appear to provide useful explanation and assistance in carrying out the provisions of the Act. Therefore, they have been retained in the proposed rules, but comments are invited on whether they should be deleted or retained in the final rule.

Historic Lands (Amendment 23)

The existing definition of "historic lands" includes a broad array of historic, cultural, and scientific areas.

OSM proposes to define "historic lands" to mean important historic, cultural, and scientific areas that could be irreparably damaged or destroyed by surface coal mining operations. Examples of historic lands include sites listed on the National Register of Historic Places, National Historic Landmark sites, and sites for which historic designation is pending. This change would add the terms "important" and "irreparably" to make clear that areas of minor importance or temporary disruptions would not qualify a site for designation. In addition, the list of examples would be reduced to the types of areas which would clearly qualify for designation. The term "eligible for listing" would be deleted to eliminate confusion over its meaning. This does not mean that an area eligible for listing under the highly technical definition of that term under the National Historic Preservation Act would not receive proper consideration; rather the change indicates that important and significant areas should be considered regardless of their relationship to the National Register of Historic Places. Similarly, deletion of the examples of sites listed on State registers of historic places and sites with religious or cultural significance to native Americans or religious groups would not preclude their consideration.

Renewable Resource Lands (Amendment 23)

OSM proposes to add a definition of the term "renewable resource lands" to clarify its use as a discretionary basis for designation of unsuitability under the Act (section 522(a)(3)(C)). "Renewable resource lands" is proposed to mean "geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas."

Substantial Legal and Financial Commitments (Amendment 23)

OSM proposes to revise the definition or substantial legal and financial commitments (SLFC). The existing definition requires both investments and commitments in capital intensive activities and a long-term coal contract. The proposed revision would recognize that substantial commitments can be made with or without a long-term coal

contract. An operator could purchase equipment, construct facilities, and contract for construction without having a coal supply contract in hand. These obligations can be as substantial and binding as those made by an operator who also has a long-term supply contract. In either instance, the operator would have made both legal and financial commitments which go far beyond ownership and the right to mine. OSM believes that Congress intended to exempt areas where major commitments have been made, but not to specify an inflexible definition which would very rarely be met. OSM believes that the House committee which discussed the role of contracts may have been merely describing an example of the type of commitment required (H. Rept. 95–218, 95th Cong., 1st sess., p. 95 (1977)). This example was not used in any Senate report. If Congress had intended to limit SLFC to cases where the operator had a coal contract, it could have placed this limitation in the Act. Thus, under the proposed revision, SLFC would mean that significant investments and legal commitments have been made in activities and facilities such as powerplants, railroads, coal handling, preparation, extraction or storage facilities, and other capital-intensive activities. The existence of a contract would be consideration, but not a requirement.

OSM also has been presented with questions regarding the transferability of substantial legal and financial commitments from one coal operator to another, for a given operation and land area. OSM preliminarily believes that substantial legal and financial commitments may be transferred as part of the rights and commitments sold along with a business. Once established, this right is similar to others which are ordinarily transferred in the sale of businesses and properties. Not to allow such a transfer would diminish the value of the property.

P. Section 762.11 Criteria for Designating Lands as Unsuitable

OSM has considered revising § 762.11(b) to provide that lands should be designated only on the basis of allegations raised in the petition rather than on the basis of any or all criteria for designation specified in the Act, regardless of whether or not they were alleged by the petitioner. This concept would deny regulatory authorities the discretion to designate areas on the basis of information or allegations not provided in a petition. OSM has chosen to maintain the existing rule intact, at the request of States which want an opporunity to implement the processes for designating lands unsuitable under the identified criteria in a variety of acceptable ways.

The existing rule, which repeats the discretionary criteria from section 522(a)(3) of the Act, does not prevent States from either (1) addressing only the allegations presented in a petition or (2) addressing all unsuitability criteria for a given petitioned area, regardless of allegations presented.

State regulatory authorities must recognize that when a State process provides for designations only on the basis of specific allegations the State may receive repeated petitions for the same area of land, thereby potentially increasing the administrative burdens of review.

Furthermore, all relevant information in the entire data base and inventory system must be considered in each designation decision, as provided in § 764.19(a)(1). The data base may bring forth information not alleged which might serve as the basis of a designation decision. Limiting consideration to criteria specified by the petition, might prevent the regulatory authority from using information available in its own records.

Q. Section 762.12 Additional Criteria

Section 762.12 provides that State regulatory authorities and the Secretary may establish additional criteria for determining whether lands within their jurisdiction should be designated as unsuitable for surface mining operations. OSM has received comments requesting deletion of this section. However, OSM notes that, as stated by the court in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (D. D.C. Feb. 26, 1980 at p. 63), section 523(a) of the Act states: "The Federal lands programs shall, at a minimum, incorporate all of the requirements of this Act * * *" The decision goes on to state that "The language 'at a minimum' indicates Congressional authorization for the Secretary to establish additional criteria for Federal lands. Similarly, the language 'more stringent' in section 505(b) of the Act, permits State regulatory authorities to promulgate factors in addition to those enumerated in the SMCRA." The provisions of additional criteria is at the discretion of the States. Therefore, no change is proposed for § 762.12.

R. Sections 764.2 and 764.3 (Amendment 24)

Section 764.2, entitled "Objective," which states the general objective of Part 764, is proposed to be deleted. This change is intended to streamline the chapter by eliminating unnecessary and redundant provisions. Section 764.3, entitled "Authority," which summarizes the authority of the Secretary and the States related to State programs and procedures for designating lands unsuitable, is proposed to be deleted. This change is intended to steamline the chapter by eliminating unnecessary provisions.

S. Section 764.13(a) (Amendment 25)

Existing § 764.13(a) extends the right to petition to any person "having an interest which is or may be adversely affected." This extremely broad criterion allows persons with very minor interests to prevent mining. OSM proposes that this right be limited to persons with more significant and tangible ownership interests in land or mineral resources. Such interest are more nearly equal to those of potential mine operators or minerals owners whose interests are threatened by the petition. Moreover, the impact of mining on such interests is more likely to be significant, as opposed to those of a casual user or visitor.

Section 764.13(b) (Amendments 26 and 27)

Information that must be provided in petitions to designate lands unsuitable for mining is set forth in § 764.13(b). Two options for amendments to this section are proposed to provide State regulatory authorities with flexibility to impose additional information requirements for designation petitions.

Proposed Option 1 would first amend § 764.13(b)(1) to reorder the list of information required in a petition. A complete petition for designation would include the petitioner's name, address, telephone number, and notarized signature; an identification of the petitioned area, included its location and size; an identification of the petitoner's interest which is or may be adversely affected by surface coal mining operations; and a description of how mining of the area has affected or may adversely affect people, land, air water, or other resources. These changes would not substantively modify the existing rule, except the requirement for a notarized signature which would be added to emphasize the importance of the petition and the need for a serious, nonfrivolous petition document. The requirement for notarized signatures would also prevent the inclusion of unauthorized names on a petition. When processing the Alton (Utah) petition, OSM added several names of the list of petitioners at the request of some of the original petitioners. Two of the persons

whose names were added objected, stating that no authorization to include them as petitioners had been given. The list then had to be amended.

Second, Option 1 would add a requirement that the allegations of fact and supporting evidence which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations assume that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. The last phrase is intended to clarify that, if damage would be prevented by following the Act, there is no basis for designation.

In addition, Option 1 would require that petitioners provide evidence for all lands covered by a petition, or conversely, to limit the areas covered by a petition to those lands for which there is supporting evidence. Information collected for a iimited area could not be extrapolated to a broader area and the petition area enlarged unless the petitioner also presented evidence tending to establish that the information was relevant to the larger area. This change is intended to prevent the inclusion of lands in a petition area without adequate justification.

In Option 1, § 764.13(b)(3) also would give the State regulatory authority discretion to require that the petition include allegations of fact and supporting evidence that tend to establish that the petitioned area is unsuitable pursuant to the criteria in section 522(a) (2) and (3) of the Act and how they relate to the petitioner's described interests. This change would allow States the discretion to require a more specific presentation of allegations as they relate to the petitioner's described interests and to the criteria specified in the Act, thereby clarifying key issues and concerns to be addressed by the regulatory authority. This option would also give States discretion to require that allegations be specific as to the mining operation or to the portion(s) of the petitioned area to which the allegations apply. Further, the State could require that allegations be supported by evidence that tends to establish the validity of the allegations for such mining operations or portions of the petitioned area and that such evidence be relevant to the mining practices which would be required under applicable regulatory programs should the area be mined.

Finally, Option 1 would provide, in proposed § 764.13(b)(3), that the State regulatory authority may request other supplementary information which is readily available to be provided by the petitioner. Readily available information could include public documents or publicly available information which can be obtained and used by a person who has no special training or knowledge. Failure to include such information would make a petition incomplete.

Option 2 for § 764.13 proposes several modifications and additions to the Option 1 proposal. Option 2 would also require a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area; a listing of property and mineral owners of record in the petitioned area; and evidence that all property and mineral owners of record have been notified of the petition. Such notice would describe the boundaries of the petitioned area and the allegations and provide information on where the petition may be reviewed and comments may be filed.

Option 2 would further require that the petitioner provide a copy of the newspaper advertisement on the petition, which is to be placed by the petitioner in a newspaper of general circulation in the locality of the petitioned area, to be published once a week for four successive weeks, and to include a description of the boundaries of the petitioned area, allegations of fact, and information regarding where the petition is available for public review.

Option 2 would provide for substantially increased petition requirements, based on the reasoning that the filing of a petition prevents the issuance of permits for all types of mining within the petitioned area, pursuant to section 510(b)(4) of the Act. Even with the changes proposed to § 764.15 below, the filing of a petition would prevent issuance of permits where permit applications had not been received by the cutoff date, no matter when that date is set. Under this option, the petitioner must meet specific requirements for notifying private land and mineral owners within the petitioned area, as well as the public.

U. Section 764.13(c) (Amendment 28)

Section 764.13(c) identifies information to be provided in petitions for the termination of unsuitability designations. Like § 764.13(b), this section is proposed to be amended in its entirety to allow regulatory authorities to expand the information requirements for termination petitions. The proposed changes are similar to those of Option 1 for petitions for designation, except that allegations of facts and supporting evidence would be focused on the reasons why the previous action should be changed.

The proposed amendment for § 764.13(c)(1) would provide that a complete petition for termination must include the petitioner's name, address, telephone number, and notarized signature; an identification of the petitioned area, including its location and size; an identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation; and allegations of facts with supporting evidence not contained in the record of the proceeding in which the area was designated unsuitable, that tend to establish that the designation should be terminated, based on several considerations which remain unchanged from the existing rules. The proposed § 764.13(c)(1) would renumber provisions of the existing § 764.13(c)(1) and (2) without substantive modification.

Proposed § 764.13(c)(2) would provide that the State regulatory authority may also require, in addition to the allegations of fact and supporting evidence in paragraph (c)(1), that the petition include allegations of fact with supporting evidence that tends to establish that the petitioner has an interest which may be adversely affected by the continuation of the designation. The allegations should also be specific as to the portions of the designated area to which they apply and be supported by evidence that tends to establish the validity of the allegations for the portion of the designated area, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. This proposed amendment would allow States to require a more focused presentation of allegations as they apply to standing and need to specific land areas.

Proposed § 764.13(c)(3) would provide that the State regulatory authority may request other supplementary information which is readily available to be provided by the petitioner. Readily available information could include public documents or publicly available information which can be obtained and used by a person who has no special training or knowledge. Failure to include such information would make a petition incomplete.

OSM is also considering whether, if Option 2 information requirements for submission of a petition to designate are adopted, similar requirements should be placed on petitions to terminate a designation.

V. Section 764.15 (Amendments 29 and 30)

The existing § 764.15(a)(1) provides a 30-day time limit within which the regulatory authority must notify the petitioner by certified mail as to whether the petition is complete. A proposed amendment would allow the regulatory authority 60 days in which the completeness determination must be made. The time limit is proposed for extension to encompass proposed new initial hearing procedures and more extensive analysis requirements which would be provided in § 764.15(b).

For example, under the proposed rules, the regulatory authority would determine whether the petition is complete, whether there is a real and foreseeable potential to mine (§ 764.15(a)(3)), and whether the allegations and supporting evidence are applicable to all or to part of the petitioned area (§ 764.15(a)(4)).

The proposed § 764.15(a)(1) also would provide a definition of "complete," meaning that the information required under § 764.13(b) or (c) has been provided.

OSM considered proposing a section that would allow States to accept a petition in part when the petition met the standard of completeness for some but not all of the petitioned area. If this procedure were applied, the regulatory authority could be imposing unnecessary burdens upon itself by rejecting portions of the petition hastily, and subsequently becoming obligated to comply with two related but distinct timetables for the processing of individual smaller petitions. Furthermore, OSM believes that it is the responsibility of the petitioner to submit petitions which are complete and nonfrivolous for the entire petitioned area. States may still adopt different procedures provided they are no less effective than the Federal rules.

OSM considered proposing a revision to § 764.15(a)(2) to require the existence of "minable" coal resources, thereby potentially reducing petition review costs for unminable areas. Although formal determinations of minability are typically made for Federal lands by the Minerals Management Service, they are not for State and private properties. Moreover, the proposed revision to § 764.15(a)(3) which follows would achieve the same effect without raising the question of whether coal is minable. Therefore, this concept does not appear to be necessary.

A new § 764.15(a)(3) is proposed which would provide that the regulatory authority may suspend petitions on lands where there is no real and foreseeable potential for surface coal mining operations to occur. "Real and foreseeable" potential means that the petitioned lands are likely to be subject to leasing or mining activity within 5 years. This concept would allow States to set a time frame for acceptable petitioning in relation to perceived imminent mining activity. Unless State regulatory authorities can limit petitioning to areas where mining is likely to occur within a reasonable period of time, States could be obligated to process immediately unsuitability petitions for which a clear need could not be shown. OSM considered various other options for the definition of "real and foreseeable potential," including 1 year, 10 years, and no specified time frame, which would leave States with discretion. Any such provision would have to include a requirement that no mining could occur until any suspended petition was evaluated. OSM invites comments on the 5–year time frame and alternatives to it.

Existing § 764.15(a)(3) is proposed to be renumbered § 764.15(a)(4) and a sentence added to define "frivolous." Frivolous would mean that a petition or the allegations of fact and supporting evidence are trivial, insignificant, or unworthy of serious attention. Congress intended that the Secretary adopt rules to preclude frivolous petitions, stating "The Secretary is intended to issue regulations defining those petitions to be considered valid, to preclude frivolous requests." (S. Rept. 95–128, 95th Cong., 1st sess., p. 94 (1975)). OSM has carefully addressed the definition of "frivolous." If petitions do not contain serious allegations and evidence, they would be frivolous. Further, OSM believes that the proposed revisions to §§ 764.13 and 764.15, which would give regulatory authorities the discretion to require additional petition information and base decisions regarding completeness on this revised information, would help to clarify application of the term "frivolous" in petition processing. OSM also proposes to delete the second sentence of this section which states that no burden of proof may be imposed to be consistent with changes proposed to § 764.17(a).

Paragraph (a)(4) of § 764.15 is proposed to be renumbered Paragraph (a)(5) and modified to provide that, when the regulatory authority finds that a petition for an area which has been previously and unsuccessfully petitioned does not contain new significant allegations of fact, the regulatory authority may choose not to consider the petition. By adding the terms "significant" and "may choose not to," OSM would allow States to determine whether allegations for a repetitioned area are nontrivial and substantive in nature, warranting indepth review.

Paragraph (a)(5) of §764.15 is proposed to be renumbered paragraph (a)(6) for clarity.

Paragraph (a)(6) of §764.15 is proposed to be renumbered paragraph (a)(7) for clarity.

Paragraph (a)(7) of §764.15 is proposed to be renumbered paragraph (a)(8) for editorial purposes and revised as discussed in the following section.

W. Section 764.15(a)(8) (Amendments 31 and 32)

Two options for revising § 764.15(a)(8) are being proposed for the new § 764.15(a)(8). The present § 764.15(a)(7) allows the regulatory authority to proceed with permit decisions if a petition is received after the end of the public comment period. Option 1 would allow the regulatory authority not to process any petition which pertains to lands for which a complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority would not be prevented from issuing a decision on such a permit application and would return the petition to the petitioner with a statement explaining why the regulatory authority cannot consider it. This provision would not be applicable in cases where a permit application is filed for an area where one or more petitions have been suspended due to no real and foreseeable potential to mine. In such cases, the regulatory authority would be required to immediately initiate petition review and not issue any permit.

This provision is being proposed in response to the concern that operators who have invested significant expense and time initiating permit approval remain in considerable jeopardy even after obtaining and submitting the extensive documentation and information required for permit review. Moreover, many of the issues which may be raised in a petition can and should be considered during permit review. For example, a regulatory authority may not issue a permit unless it finds that the land can be reclaimed, that water quality will be protected and that significant aquifers will be protected. Further, the purpose of the petition process is to avoid last minute conflicts by advance planning, not create new conflicts at the permit issuance stage.

Option 2 for § 764.15(a)(8) would provide, as does the existing rule, that any petitions received after the close of

the public comment period on a permit application relating to the same permit area shall not prevent the regulatory authority from issuing a decision on that permit application. Under this option, OSM would redefine "close of the public comment period" as 30 days after the last advertisement giving notice of filing of a permit application under § 786.11(a). The existing rules define "close of the public comment period" as the close of any informal conference held under § 786.14, or, if no conference is requested, at the close of the period for filing written comments and objections under §§ 786.12 and 786.13. An informal conference must be requested within 30 days of the last advertisement giving notice of the filing, but may be held at an unspecified later date. The close of the period for filing written comments is not specified; the regulatory authority is required only to provide a "reasonable time." This change is proposed in response to concerns presented to OSM that the public comment period as defined in the existing rules is too vague for the purpose of implementing the unsuitability process requirements. Other potential cutoff points for the public comment period were also considered. This option is an attempt to clarify a precise time period within which petitions may be submitted in relation to permit applications. This option also would change reference from "mine plan area" to "permit area" pursuant to proposed OSM policy on this remanded term. See *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144, (D. D.C., Feb. 26, 1980, pp. 35 and 36, and May 16, 1980, p. 57); 47 FR 41-57 (January 4, 1982).

Section 764.15(a)(8) is proposed to be further amended by providing that, if a petition submitted during the public comment period on a permit application is deemed incomplete, the State regulatory authority may allow the petitioner to resubmit the petition within 15 days from the date of rejection, even if the deadline for petition submission has passed. A petitioner may, in any case, submit a revised petition prior to the deadline. Resubmissions after the deadline would be for the purpose of clarifying or refining the materials which were originally submitted, not providing new allegations as the basis of the petition. This proposed option is intended to give petitioners an opportunity to adequately respond to the requirements for completeness in the proposed § 764.13. However, the provision is not intended to allow petitioners to correct frivolous petitions or petitions where no apparent effort was made to meet minimum requirements. The existing rule does not provide such a mechanism for resubmission of incomplete petitions.

X. Section 764.15(a)(9), 764.15(b), 764.15(c), and 764.15(d) (Amendment 33)

Section 764.15(a)(9)

In new § 764.15(a)(9), OSM proposes to allow the regulatory authority to incorporate petitions into State or local land use planning programs if such programs would provide protections equivalent to the petition process. Some States and localities may have land use planning programs which must precede coal leasing or mining activities (one of the criteria for acceptable land use planning under the proposed provision). Therefore, this provision is being proposed for comment. Land use planning could not be substituted for the petition process in its entirety, however. Issues raised by a petition which is incorporated into the planning process would have to be fully considered in that process. Also, petitions could continue to be used to raise new issues or new evidence, or to examine areas not being covered by the land use planning process.

To be acceptable for this purpose, a State or local land use planning program would have to include policies and procedures consistent with those required by Parts 762 and 764 of this subchapter. For example, land use planning would have to—

1. Be required prior to the issuance of any permit for surface coal mining operations;

2. Explicitly address the unsuitability criteria of section 522(a)(2) and (3) of the Act and Part 762 of this subchapter;

3. Develop and utilize a data base and inventory system comparable to that required by § 764.21;

4. Include an analytical and evaluation methodology which addresses, at a minimum, areawide and site-specific attributes and concerns in a systematic and comprehensive manner;

5. Provide notice to the public and an opportunity for public participation; and

6. Possess the authority to declare areas off limits to mining and to prevent mining in such areas.

If a State or local agency is engaging in an acceptable type of land use planning under the above listed criteria or such planning is scheduled to begin within 1 year, petitions could be rejected, and the allegations of the petitioners addressed in the land use planning process. If no land use planning were scheduled for the petition area within 1 year, the petition would have to be accepted for processing.

OSM also considered an amendment which would specify a time period within which new petitions would not be accepted subsequent to a nondesignation decision for a previous petition on the same land area. This was based on the idea expressed by some State officials that a petition should be evaluated using the full range of designation criteria, that a decision should be made, and that the area should then be precluded from subsequent petition activity. Such a limitation would preclude consideration of significant new information developed subsequent to a petition decision. Also, this approach contradicts the methodology used by certain States whereby a petition evaluation may be limited to the specific criteria cited in the allegations of the petition. These issues are further discussed in Section III.O. of the preamble to these proposed rules at § 762.11. In the rules proposed today, the concern for repeated petitioning on a given land area is addressed in proposed § 764.15(a)(5), under which, if new significant allegations of fact are not made, the regulatory authority would be able to choose not to consider the petition.

Section 764.15(b)

Existing § 764.15(b) requires that public participation in the petition process begin only after a petition is found to be complete. OSM proposes to revise the procedures in § 764.15(b) to provide for public input to the decision on completeness. The completeness decision is not intended to take the place of the decision whether to designate and the public input into the completeness decision is not intended to turn it into such a substitute. One of the elements of a complete petition is allegations supported by evidence which tends to establish their validity, but this should not be confused with sufficient evidence on which to base a decision to designate. Thus, the completeness determination should not turn into a complex battle of evidence and counterevidence over whether the area should be designated. The proposed rule would provide for public notice within 3 weeks of the date a petition is received and require copies to be made available to allow for comment on whether the petition is complete. It would also eliminate the petitioner as a recipient, because this notification procedure is unnecessary. Section 764.15(b)(1) would also clarify that "persons with an ownership interest of record," who are to receive copies of petitions for notification and response purposes shall be identified and notified

according to requirements of applicable State law. This change would expand the flexibility of States regarding acceptable notification procedures.

The proposed § 764.15(b)(1) would further provide that the regulatory authority shall inform the specified persons and governmental agencies of an opportunity to request a completeness hearing, or to provide written comments within 6 weeks from the date of petition filing as to whether the petition is complete. A completeness hearing, if requested, would be announced in local and regional newspapers and any State register of public notices and held within 5 to 6 weeks after petition filing with the regulatory authority. The petitioner would be notified of the hearing by certified mail. On the basis of regulatory authority review as well as consideration of all comments, the regulatory authority would be required to issue a written decision on whether the petition is complete within 60 days after petition filing, as specified in proposed § 764.15(a)(1).

Section 764.15(b)(2) is proposed to be revised to increase from 3 weeks to 5 weeks the period within which the regulatory authority must notify the general public of petition completeness. The extension of this time period would provide the regulatory authority with the time needed to place the various required newspaper advertisements.

Existing § 764.15(b)(2) requires publication of a newspaper advertisement in the locale of the area covered by the petition, in the newspaper of largest circulation in the State, and in any official State register of public notices. Publication in the newspaper of largest circulation in the State does not, in a number of circumstances, reach those persons with an interest in such proceedings. Therefore, OSM proposes to modify this particular phrase by requiring notice in the newspaper providing broadest circulation in the region of the petitioned area rather than the newspaper with largest circulation in the State. In the context of this proposed rule, "region" is intended to encompass a wider geographic area than the locale of the area covered by the petition, but in any case, the advertisement should be placed in the newspaper generally read by residents of the area potentially affected by mining or the designation petition. This change is intended to accommodate the need for adequate notice to persons with an interest in unsuitability proceedings.

OSM received other comments suggesting revisions to § 764.15(b)(2) which would specify the content of general public notices, including suggestions that all known evidence should be presented in the pending proceeding and that such evidence should not be accepted in connection with any subsequent petition on the petitioned lands. OSM tentatively has determined that the content of notices should be determined by the States. Further, any requirement for submission of all known evidence is both enormously burdensome and unenforceable. It would probably be impossible to determine what was known and now is known to a broadly defined audience at any one time.

OSM considered specifying in the rules other information to be included in newspaper notices. However, OSM wishes to recognize that States have flexibility to expand upon the specified components of public notices, as each State deems appropriate.

If proposed Option 2 for revising the petition information requirements of § 764.13(b) is adopted, additional changes may be required in § 764.15(b). Under the proposed Option 2, petitioners would be required to notify property and mineral owners of record that a petition has been filed. Option 2 would not require that the petitioner provide copies of the petition to property and mineral owners. OSM requests comments on whether such notice is sufficient or whether the regulatory authority should provide copies of the petition as is presently required in § 764.15(b).

Section 764.15(c)

Section 764.15(c) provides that "any person" may intervene in an unsuitability proceeding. This standard does not even require that an intervenor have an "interest" which may be affected and is far broader than any standards proposed or applied to petitioners. It allows any person, regardless of interest, to prolong and complicate an unsuitability process. This would increase the time requirements and costs to the regulatory authority, petitioners, and intervenors with interests. Accordingly, OSM proposes the same requirements for intervenors as petitioners. The proposed revision to § 764.15(c) would allow "any person having a property interest in land or mineral resources which is or may be adversely affected" to intervene in an unsuitability proceeding.

Section 764.15(d)

Section 764.15(d) requires the development, maintenance, and availability of a public record both at a central location of the county or multicounty area in which the petitioned land is located and at the main office of the regulatory authority. OSM has received a number of questions regarding the practicality and desirability of maintaining more than one complete public record for each petition. OSM proposes to modify the existing rule to provide that the complete record shall be available to the public for inspection free of charge and for copying at reasonable cost, during all normal business hours at the main office of the regulatory authority. Under the proposed rule, the regulatory authority would also be required to maintain information in or near the area in which the petitioned land is located. This information, at a minimum, would include a copy of the petition and would be available for inspection and copying similar to the public record. As an alternative to maintaining information at a remote locale, OSM is also considering requiring that copies of the petition be mailed to interested persons and that other information be made available at no expense. OSM invites comments on the proposed rule and alternative.

Y. Section 764.17 Hearing Requirements (Amendments 34 Through 37)

Options 1, 2, and 3 for § 764.17(a) (Amendments 34 Through 36)

Section 764.17(a) requires that a legislative hearing be held after receipt of a complete petition. OSM is considering three options for amending this rule. All three options would eliminate the requirement that the hearing be purely legislative in nature. In place of these requirements, the three proposed options would provide for a hearing with a record, made and preserved according to State law, and no relevant part of the data base and inventory system or public comments would be excluded from consideration in decisions on the petition. Nonrelevant portions of the data base and inventory have no bearing on the decision and should be excluded. Factual challenges to portions of the data base and inventory would be allowable. The differences among the three options pertain to cross-examination of witnesses and burden of proof.

Option 1 would provide that no cross-examination of witnesses would be allowed. This option was included in the existing rules in response to concern that cross-examination procedures would expose certain interested or affected parties to intimidation at the hearing. To date OSM has no knowledge that would indicate that changing this provision would have such an effect.

Option 2 would provide that cross-examination of expert witnesses would be an acceptable procedure. Under this option, only those persons qualifying and testifying as expert witnesses would be subject to cross-examination. In addition, the prohibition against imposing a burden of proof on any party would be deleted, giving the regulatory authority discretion to determine who, if anyone, should bear this responsibility.

Option 3 would provide that cross-examination is an acceptable procedure. Under this option, the regulatory authority and any party to the petition would be given the prerogative to cross-examine any or all available witnesses. In addition, the burden of proof would be assigned to the petitioner.

Options 2 and 3 would provide States with the flexibility to employ a broader range of hearing procedures. The flexibility proposed here would allow States to use procedures which allow sworn testimony. In these options, states would have the right to subpoena witnesses. These attributes of quasi-judicial hearing procedures are viewed in some States as desirable for resolving factual disputes, assuring due process for landowners where uses of property may be limited, and for developing a more complete record by eliciting more information during the hearing.

OSM has determined that certain State discretion may be allowed without forfeiting those measure essential for nationwide consistency. Section 522(c) does not specify the type of public hearing which must be held. While an informal hearing meets the requirements of the Act, a more formal hearing is potentially more helpful in clarifying factual issues. Since property rights are directly involved in these decisions, the right of cross-examination appears reasonable.

OSM has also proposed revisions to the requirements on burden of proof. The existing rules do not impose such a burden on any party. However, many hearing procedures do assign such a responsibility. There are at least two reasons for assigning the burden of proof to the petitioner: (1) Such a responsibility would discourage frivolous petitions, and (2) submission of a petition disrupts the permitting process and may cause substantial economic losses whether or not a petition is eventually granted. Such power should be accompanied by the responsibility to submit and defend sound petitions.

Option on Hearing Deadlines

OSM also requests comments on an option to revise the 10-month deadline for holding a hearing. This proposal differs from *Options 1, 2, and 3* only in the wording of the introductory phrase in Paragraph (a). The present rules require that the hearing be held within 10 months of the receipt of a complete petition. This is reflected in the proposed language to *Options 1, 2, and 3.* Under the optional revisions being considered, the regulatory authority would be required to hold the hearing instead within 10 months of a determination that a petition is complete. Such a determination could come as long as 2 months after receipt. OSM recognizes that to begin a detailed study of allegations and evidence prior to the completeness determination could result in a significant waste of resources if a petition is later rejected for incompleteness. At the same time, a complex petition or issue may require a full 10 months of study before a hearing would be useful. This proposed revision would require that the first sentence of §764.17(a) be revised as follows for each of *Options 1, 2, and 3:* "(a) Within 10 months of the determination that a petition is complete, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition." OSM specifically requests comments on this option.

Section 764.17(b) (Amendment 37)

Section 764.17(b)(1)(iii) requires notice of the hearing to any person with an ownership or other interest known to the regulatory authority in the area covered by the petition. An amendment is being proposed which would require such notice only for persons with an ownership interest of record in the property and other persons known to the regulatory authority to have an ownership interest in the property. It would further provide proper notice to persons with an ownership interest of record as required by State law. This change would limit notification to persons with an identifiable or known ownership interest and delete the "other interest" category, which is vague and undefined. However, under § 764.17(c) the general public would still receive notice through a newspaper advertisement. This change would make the notice requirements for hearings consistent with the notice requirements for petition filing in § 764.15(b)(1).

Section 764.17(b)(2) is proposed for change to require that notice of hearing shall be sent by certified mail only to petitioners and intervenors. Property owners and government agencies would receive notice by regular mail. The requirement that hearing notices shall be sent by certified mail to other parties to the proceeding in the existing regulation has been found to be unnecessarily burdensome and costly. Since the petitioners and intervenors will receive a certified notice, OSM believes that regular mail, plus the required newspaper advertisements, are suitable notices for other interested parties.

Z. Section 764.19 Decision procedures (Amendment 38)

Section 764.19(a)(3)

Section 764.19(a)(3) is proposed to be amended by clarifying that in reaching a decision, the detailed statement on the coal resources, demand for coal, and impacts on the area involved as prepared under § 764.17(e) will be considered when it is prepared prior to a designation of unsuitability pursuant to section 522(d) of the Act. This change is proposed to reflect the wording of section 522(d) of the Act (30 U.S.C. 1272), which states only that the detailed statement shall be prepared prior to a designation and does not require that such a statement shall be prepared for every unsuitability proceeding.

Section 764.19(b)

Section 764.19(b) is proposed to be amended by eliminating the requirement that the decision be sent by certified mail to every party to the proceeding and the Regional Director (OSM), as this is burdensome and costly. The amended section would require that the decision be sent by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the petition. The requirement to notify OSM would be deleted, as it duplicates reporting requirements being developed for oversight of approved State programs.

Requests have been made for clarification of the types of decisions available to State regulatory authorities under § 764.19(b). OSM believes that final decision may be (1) to designate the petitioned land areas in whole or in part for all or certain types of mining, (2) not to designate the petitioned land areas, or (3) to place conditions on future operations in all or part of the petitioned areas which would successfully mitigate the impacts of such operations.

Paragraph (b) which requires a decision within 12 months of receipt of a petition if no hearing is held is also proposed to be revised to require that, where no hearing is held, the decision be made within 12 months after a petition is determined to be complete. This is consistent with Options 4, 5, and 6 proposed for § 764.17(a) and would allow the regulatory authority to adopt

the broader review proposed for completeness without reducing the time to study a petition. This change would not be included if Option 1, 2, or 3 is selected.

Section 764.19(c)

Section 764.19(c) requires that State regulatory authority decisions with respect to a petition, or failure to act within time limits set forth in § 764.19(b), be subject to judicial review by a court of competent jurisdiction.

An amendment is being proposed to require that all relevant portions of the data base and inventory system and public comments received during the public comment period be included in the record of the administrative proceeding. This proposed change is necessary because of the proposal that the hearing not be required to be legislative in nature and to ensure that courts review the relevant record as a whole in making their findings as required under section 526 of the act. A corresponding change is proposed for § 764.17(a) to ensure that all relevant parts of the data base, inventory system, and public comments be included in the public record.

AA. Section 764.23(a) Public Information (Amendment 39)

Section 764.23(a) requires that the regulatory authority make the information and data base system developed under § 764.21 available to the public for inspection free of charge and for copying at a reasonable cost. OSM proposes that this be amended to modify public disclosure requirements regarding historic resources information. These proposed changes would comply with section 304 of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515) and afford regulatory authorities the discretion to withhold historic resources information from the public where disclosure would expose the resources to risk of harm or destruction. The change would encompass all protected cultural and archeological sites proposed to be nominated to, or listed on the National Register. The State regulatory authority, with the assistance of the State Historic Preservation Officer, would make these determinations regarding the withholding of such information, which must be disclosed when a potential designation for unsuitability rests primarily on an allegation based on that data. This provision is being considered in conformity with the National Park Service Interim Rules on the National Register of Historic Places (46 FR 56191, Nov. 16, 1981; 36 CFR 60.6(x)).

BB. Section 764.25 (Amendment 40)

Section 764.25 is proposed to be amended by requiring States to maintain maps or other unified and cumulative records of areas designated unsuitable for all or certain types of surface coal mining operations. The existing rule provides that the regulatory authority must maintain maps of designated areas. The proposed changes would provide regulatory authorities with additional flexibility concerning the type of records to be maintained.

CC. Part 765 (Amendment 41)

OSM proposes to delete Part 765, which contains provisions for designating lands unsuitable under a Federal program for a State. The substantive provisions in this part are generally covered by Part 736, Federal Program for a State. By adding to Part 736 the requirement to implement a program for designating lands unsuitable one year after a Federal program is established and deleting a cross reference to Part 765, all of Part 765 would become unnecessary. The change proposed for Part 736 is discussed above before the proposed revisions to Parts 760 through 769.

Section 765.1

OSM proposes to delete § 765.1. This section describes the scope of Part 765 and does not include any substantive requirements.

Section 765.11

OSM proposes to delete § 765.11, which describes the requirements of a procedure to designate land unsuitable under a Federal program. It duplicates § 736.22.

Section 765.12

OSM proposed to delete § 765.12, which requires that a Federal program consider the unique features of a State and that more stringent State requirements be incorporated in a Federal program. These requirements are included in §§ 736.22 and 736.23.

Section 765.13

OSM proposes to move the requirements of § 765.13(a), which specifies the effective date of a Federal program for designating lands unsuitable for mining, to § 735.15. Section 765.13(a) would then be deleted. OSM also proposes that § 765.13(b) be deleted. This section authorizes OSM to implement immediately an unsuitability program in those cases where a Federal program is required because a State has failed to implement, maintain, or enforce a State unsuitability program. This contradicts section 504(a) of the Act (30 U.S.C. 1254), which states "If a Federal program is implemented for a State, section 522(a), (c), and (d) shall not apply for a period of 1 year following the date of such implementation."

DD. Part 769—Petition Process for Federal Lands (Amendments 42 through 57)

Existing 30 CFR Part 769 establishes a petition process for designation of Federal lands as unsuitable for mining and for termination of such designations. The process is similar to that required of States in 30 CFR Part 764, but with such changes as are needed to reflect the differences between Federal and non-Federal lands, and the organization and management of the process within the Department of the Interior. This section of the preamble discusses only those proposed changes to the rules on Federal lands which are not equivalent to changes proposed for State lands. The preceding preamble for State lands is applicable to the Federal lands proposal insofar as it describes proposals which are also included in the Federal lands proposal.

There are four major issues discussed here involving the interpretation of section 522 as it applies to Federal lands: (1) Whether the petition process applies to Federal lands, (2) when petitions are ripe for processing, (3) the extent and type of information needed to determine whether a petition is frivolous ("sufficient merit"), and (4) the elements and their specificity necessary for a petition to be accepted as complete for further processing ("completeness"). OSM is proposing various options for resolving these issues. They are discussed below, followed by a discussion of other issues and a section-by-section explanation of the proposed changes.

1. *Major changes proposed. a. Petition process.* The first issue is whether persons having an interest which is or may be adversely affected by surface coal mining operations may petition to have Federal lands designated as unsuitable for such operations.

The Act is ambiguous concerning the issues of whether or not the petition process was intended to cover Federal lands. Section 522(b) requires a "review" of Federal lands "to determine * * * whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations * * *" This section goes on to state that "when the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations, he shall withdraw such area or

condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area * * *" The means by which the review is to be conducted are not specified. Thus, the statute expressly requires an unsuitability review for all Federal lands, making a petition process unnecessary on Federal lands.

Section 522(c) of the Act states that "Any person having an interest which is or may be adversely affected shall have the right to petition the *regulatory authority* to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated." [Emphasis added.] Section 701(22) of the Act defines "regulatory authority" as "The State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering this Act under a Federal program." Federal programs are programs established by the Secretary on non-Federal lands when the State involved fails to have approved or to maintain a State program; thus the term "regulatory authority" does not include the Secretary in his capacity as regulator of Federal lands (sections 701(6) and 504 of the Act). This suggests that the petition process is required only on State lands and that the Federal lands review is to fulfill a similar role on Federal lands.

The language of section 523(a) of the Act also suggests that the Federal lands review process rather than the petition process is to apply on Federal lands. That section requires that the Federal lands program include the requirements of any approved State program, with the proviso that the Secretary must retain his responsibility for "designation of Federal lands as unsuitable for mining in accordance with section 522(b) of this title." (Emphasis added.)

Section 522(b) establishes the Federal lands review requirement. If Congress had intended that there be a petition process on Federal lands, it logically would have mentioned sections 522 (a) and (c) in this provision as well as section 522(b) and reserved that authority too for the Secretary.

Based upon the foregoing, OSM is of the view that the Act does not require a petition process on Federal lands. Therefore, OSM is proposing as one alternative the deletion of 30 CFR Part 769.

In the event, that OSM does not adopt the first option and the petition process is retained for Federal lands, OSM believes that several changes, discussed below, are needed.

b. Ripeness (§ 769.14(a)(2) Procedures: Initial processing, recordkeeping, and notification requirements).

The ripeness criterion is being proposed pursuant to section 522(a)(5) of the Act to integrate the petition process with land use planning. Proposed § 769.14 would state that, with certain exceptions discussed below, petitions would be accepted only if a "real and forseeable potential exists for surface coal mining operations to occur within 5 years on the lands subject to the petition." In addition, ripeness would mean that formal land use planning by the land management agency has been completed for the area petitioned or that the area is covered by a PRLA or by lease issued prior to 1979. For those areas where land use planning is required prior to leasing a petition would be deemed "not ripe" because no leasing and therefore no mining, could occur until land use planning had been completed.

The Act says that petitions may be filed, but neither the Act nor the current rules address ripeness. This lack of specificity has meant that petitions were accepted at any time, thus forcing OSM to accept, process, and rule on petitions even when there may be no potential for mining in the near future.

In one case, a petition evaluation was conducted at the same time a preleasing study was underway. To better understand what is being proposed, it is necessary to distinguish among (*a*) unleased land; (*b*) leased land; and (*c*) lands subject to preference right lease applications. The differences in these three types of Federal coal lands are explained as follows:

(1) *Unleased land.* A significant portion of all coal in the United States is under Federal ownership. Prior to any of this coal being mined, it must be leased by the U.S. Bureau of Land Management (BLM) which is responsible for leasing all Federal coal except that of the Tennessee Valley Authority (TVA). Before BLM leases, it (or the Federal land management agency administering the land) must conduct land use planning pursuant to the Federal Coal Leasing Amendments Act which amended the Mineral Leasing Act of 1920 (30 U.S.C. 181) and the Federal Land Policy and Management Act (43 U.S.C. 1701), and the Secretary conducts a "Federal lands review" under section 522(b) of the Surface Mining Control and Reclamation Act. The Secretary has delegated his oversight authority to the BLM to ensure that the other Federal agencies managing Federal land also subject their lands to the Federal lands review (per a delegation of authority by Under Secretary of the Interior James Joseph on July 5, 1978). The U.S. Bureau of Land Management, the U.S. Forest Service, the Tennessee Valley Authority, the U.S. Department of Defense, and the U.S. Bureau of Reclamation are the largest Federal land management agencies. During the Federal lands review, BLM applies unsuitability criteria to determine if the land in question should be assessed as unsuitable and conditioned or withdrawn from leasing. Although section 522(b) calls for a review pursuant to the criteria of section 522(a), other criteria have been added to the Federal lands review which were taken from section 522(e) of the Act and from other environmental legislation and executive orders. If, after the Federal lands review, land is not assessed unsuitable, it may be leased for coal mining. Under the existing rules, such land is still subject to petitioning for designation as unsuitable.[1]

BLM's unsuitability criteria include most of the Act's major unsuitability criteria. Therefore, the time and expense of much of the required evaluation needed in processing a petition could be saved if processing petitions were delayed until the Federal lands review was initiated on unleased lands.

(2) *Leased land.* Leased land falls into two categories: Those coal lands leased on or before July 19, 1979, and those leased after July 19, 1979, when BLM established a new coal management program (44 FR 42584). Pre-1979 leased lands have not had BLM's unsuitability criteria applied to them. Section 522(b) permits surface coal mining operations on these lands though the Federal lands review has not yet occurred. Those lands containing coal may also be reviewed for unsuitability prior to mining as part of the BLM lease review process. Post-1979 leased lands have been scrutinized with BLM's 20 criteria.

(3) Preference right lease applications (PRLA). A PRLA is a new noncompetitive application for a coal lease. Until the early 1970's the Federal Government issued prospecting permits to interested parties to explore for coal in areas where workable deposits were not known to exist. By demonstrating that the permit area contained commercially valuable coal, a prospecting permit holder could apply

[1] Land may be "assessed" as unsuitable as a result of a Federal lands review (pursuant to section 522(b) and 43 CFR Part 3461). Land may be "designated" as unsuitable as a result of the petition process (pursuant to 30 CFR Part 769). Being assessed unsuitable is not as formal a process as being designated unsuitable. To date, no lands assessed as unsuitable have been reassessed as suitable.

for and obtain a lease to mine the deposit. Under the Federal Coal Leasing Amendments Act, PRLA's are no longer given.

Once land subject to PRLA's is leased, it is treated just like other Federally-leased coal land. Lands subject to PRLA's will have unsuitability criteria applied in the development of a land use plan, or in an amendment to an existing land use plan for the area, if either action occurs prior to adjudication of the right to lease itself.

The significance of the distinction among unleased, leased, and PRLA land is that OSM's proposed application of the ripeness criterion to these lands would differ.

By intergrating the petition process and the land use planning process, Federal planning efforts for coal development, environmental protection, and total land use planning would be more rational and efficient. Petitions would be accepted where the land has been leased, is subject to a PRLA, or is owned by TVA. No coal may be mined on unleased Federal lands until mining has been determined to be an acceptable land use and the land subsequently leased. Rejecting a petition as not ripe until after land use planning has been completed would be appropriate because, with the exception of TVA-owned land, land is not leased for surface coal mining until the Federal lands review has been completed; therefore, no coal mining could occur before land use planning. Rejecting a petition as not ripe would also save funds, since the processing of petitions and consequent preparation of costly petition evaluation documents would be unnecessary if land use planning and the Federal lands review assessed the Federal lands in question as unsuitable for surface coal mining. The cost of processing the only petition to date (Tongue River) involving Federal land which would have been not ripe under these proposed rules, was approximately $440,000. Most of this would have been saved (not simply deferred) had the petition been rejected as not ripe until land use planning.

In addition to the option of defining ripeness to require that land use planning be completed before unleased Federal lands could be petitioned, OMB is considering requiring that if land use planning is scheduled to be initiated within 3 or 5 years, then a petition would be returned to the petitioner as not ripe. Alternatively, a petition would not be considered until a mine plan and permit application had been received for the petitioned area; it would instead be suspended and considered only when a mine plan or permit application was received.

The 3 and 5 year options are simply variations of the major "ripeness" option which is being proposed in these rules, that is, waiting until land use planning is completed before accepting petitions.

c. *Sufficient merit (§ 769.14(a) (3) and (4) Procedures: Initial processing, recordkeeping, and notification requirements).* The rules do not currently contain a "sufficient merit" criterion, per se. Sufficient merit is intended as an aid in eliminating frivolous petitions, which need not be considered under § 769.14(b), by further defining "frivolous" petitions.

Sufficient merit for designation petitions would encompass (1) the petitioner's interest; (2) the quality of the allegation of facts and supporting evidence; (3) whether there is "minable" coal, that is, coal that has development potential; and (4) whether the petitioner presents new evidence where a Federal lands review has been completed. The "minability" determination would be made by the Minerals Management Service at the time of the coal resource and minability inventory which the Department of the Interior's Regional Coal Team makes pursuant to the Mineral Leasing Act.

The proposed § 769.14 would require consideration of new evidence during initial petition review in instances where a Federal lands review or land use planning had been completed. It also would provide that a petition would not be processed if the petitioned lands were covered by a completed land use plan that found the land unacceptable for further consideration for coal leasing and that reserved the lands for uses other than coal development. In such cases, petitions serve no useful purpose, since the land use plan has barred coal mining (presumably the petitioner's desired outcome). Such a petition would not be processed, but would instead be returned to the petitioner.

d. *Completeness (§ 769.13 Procedures: Contents of petitions).* A discussion of the existing completeness criterion, its inadequacies, and the rationale for the proposed revisions appears in the preamble for proposed § 764.13, since the completeness criterion for the proposed State unsuitability rules (Part 764) is similar to the proposed Federal unsuitability rules (Part 769).

2. *Other proposed changes. a. Section 769.3 Authority.* This section would be deleted to streamline the chapter by eliminating redundant and unnecessary provisions.

b. Section 769.4 Responsibility. This section would be deleted to streamline the chapter by eliminating unecessary provisions.

c. Section 769.7 Regulatory policy. Paragraphs (a), (c), and (d), which establish procedures for maintaining maps, review of permanent program permit applications and review of interim program mining plans, would be removed because they are unnecessary. Such procedural matters can best be covered by agency procedures. Paragraph (b) which requires that mining be prohibited or limited in areas designated as unsuitable, would be revised to remove the term "mine plan" which will no longer be used under revised rules for Federal lands which are to be proposed shortly. Paragraph (b) would be placed in the last section of the rule, § 769.19. Placing it in the last section is appropriate because it deals with the results of designation.

d. Section 769.12: Procedures: Where to submit petitions. This section would be revised to reflect OSM's September 13, 1981, reorganization.

e. Section 769.14(g). In addition to major changes being proposed for § 769.14, OSM would delete some of the internal administrative procedures contained in that section related to assembling information on the petitioned area (§ 769.14(g)). OSM believes these procedures should instead be dealt with by agency and interagency memorandums and directives.

Two options are being proposed for the new § 769.14(g), which formerly was partially contained in § 769.19(i), regarding issuance of permits in petitioned areas. Explanations for these options are found in the preamble to the proposed § 764.15(a)(8).

f. Proposed Section 769.16 Procedures: Public information. Explanations for the revisions proposed to this section are found in the preamble to the proposed § 764.23.

g. Proposed Section 769.17 Procedures: Hearing requirements. Explanations for the revisions proposed in this section are found in the preamble to the proposed § 764.17.

h. Section 769.18 Procedures: Decisions on petitions. Explanation for the revisions proposed to this section are found in § 764.19 of this preamble.

i. Section 769.19 Regulatory policy. A new § 769.19 is proposed to ensure that mine plan permits or coal leases are conditioned to limit or prohibit surface coal mining operations on land designated as unsuitable for surface coal mining operations.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR Subchapter F of Chapter VII were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, (Paperwork Reduction Act of 1980, Pub. L. 96–511) and assigned new clearance numbers 1029–0029, 1029–0030, and 1029–0031 on April 1, 1981. Those approvals were identified in "notes" at the introductions to 30 CFR Parts 761, 764, and 769 under the old numbers RO599, RO600, and RO601 (under No. B–190462). Information collection requirements for 30 CFR Part 761 are not being changed. Information collection requirements for 30 CFR Parts 764 and 769 have affected less than 10 respondents over the past 3 years and are not expected to affect more than that in the future. Since this information collection has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act and does not require clearance by OMB.

The information required by 30 CFR Part 761 is needed to determine whether proposed surface coal mining operations can be authorized in light of the prohibitions and limitations in section 522(e) of the Act. The information required by 30 CFR Part 764 is necessary to establish minimum standards to be included in each State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations. The information required by 30 CFR Part 769 will be used by OSM in the implementation of the unsuitability procedures for petitioned Federal lands. The information required by 30 CFR Parts 761, 764, and 769 is mandatory.

Executive Order 12291

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 (February 17, 1981).

Regulatory Flexibility Act

The Department of the Interior has also determined that the proposed rule will not have a significant economic impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

OSM has prepared a cumulative environmental assessment (EA) on this and other proposed rules and has made an interim finding that this proposal would significantly affect the quality of the human environment. The cumalative EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. A final determination of the significance of the impact on the quality of the human environment will be made and a supplemental environmental impact statement will be prepared before issuance of the final rule.

List of Subjects

30 CFR Part 736

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

30 CFR Parts 760 and 762

Coal mining, Historic preservation, Monuments and memorials, National forests, National parks, Surface mining, Underground mining, Wildlife refuges.

30 CFR Part 761

Coal mining, Historic preservation, Monuments and memorials, National forests, National parks, Reporting requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR Parts 764 and 769

Administrative practice and procedure, Coal mining, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 765

Coal mining, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 736, 760, 761, 762, 764, 765, and 769 are proposed to be amended as set forth below.

Dated: May 17, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 736—FEDERAL PROGRAM FOR A STATE

1. Section 736.15 is revised to read as follows:

§ 736.15 Implementation, enforcement, and maintenance of a Federal program.

(a) The Director shall implement, administer, enforce, and maintain a Federal program or any revision not later than 30 days after a Federal program is promulgated or revised.

(b) The Director shall implement the procedures and criteria of a Federal program for a State for designating lands unsuitable for all or certain types of surface coal mining 1 year after a Federal program is made effective for a State.

PART 760—GENERAL [Removed]

2. Part 760 is removed.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

§§ 761.2 and 761.4 [Removed]

3. Sections 761.2 and 761.4 are removed.

Option 1 for § 761.5. Definition of valid existing rights.

4. Section 761.5 definition of "valid existing rights" is amended by revising paragraphs (a)(2)(i) and (ii), (c), and (d) and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 761.5 Definitions.

* * * * *

Valid existing rights means: (a) * * *

(2) * * *

(i) Had been validly issued, or exercised a good faith effort to obtain, on or before August 3, 1977, all State and Federal permits necessary to conduct such operations on those lands, or

(ii) Can demonstrate to the regulatory authority that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all mine plan approvals and permits were obtained prior to August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

* * * * *

(c) Valid existing rights may be found for a permit area when the operator can demonstrate that the operation existed or had been permitted at the time an area became protected under section 522(e), or at the time a structure, road, cemetery, or other activity listed in section 522(e) came into existence within the prohibited distance of an operations;

(d) Valid existing rights may be found where no reasonable use of the property other than surface coal mining operations remains, including all nonmining uses. For owners of only coal rights, there is not reasonable remaining use where surface coal mining operations cannot occur by any technological means available under the Act in the foreseeable future, and there is no other reasonable use available provided that coal rights were severed from surface rights prior to August 3, 1977;

(e) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable State law exists, upon the usage and custom at the time and place where it came into existence;

(f) Valid existing rights does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses and applications or bids for leases;

(g) Notwithstanding paragraphs (a) through (f) of this section valid existing rights include those private property rights for which a judicial finding has been made that the restriction on mining would constitute a taking without just compensation;

(h) Private inholdings within national forests shall be considered to have valid existing rights for the purposes of section 522(e)(2) of the Act and § 761.11(b)(2).

* * * * *

Option 2 for § 761.5: Definition of valid existing rights.

5. Section 761.5 is amended by revising paragraphs (a), (c), and (d) and adding paragraphs (e), (f), and (g) to the term "valid existing rights" to read as follows:

§ 761.5 Definitions.

* * * * *

Valid existing rights means: (a) Except for haul roads, those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which establishes ownership of the coal resource;

* * * * *

(c) Valid existing rights may be found for a permit area when the operator can demonstrate that the operation existed or had been permitted at the time an area became protected under section 522(e), or at the time a structure, road, cemetery, or other activity listed in section 522(e) came into existence within the prohibited distance of an operation;

(d) Valid existing rights may be found where no reasonable use of the property other than surface coal mining operations remains, including all nonmining uses. For owners of only coal rights, there is no reasonable remaining use where surface coal mining operations cannot occur by any technological means available under the Act in the foreseeable future, and there would be a deprivation of the use or value of that property, provided that coal rights were severed from surface rights prior to August 3, 1977;

(e) Interpretation of the terms of the documents relied upon to establish valid existing rights shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable State law exists, upon the usage and custom at the time and place where it came into existence;

(f) Notwithstanding paragraphs (a) through (e) above, valid existing rights include those private property rights for which a judicial finding has been made that the restriction on mining would constitute a taking without just compensation;

(g) Private inholdings within national forests shall be considered to have valid existing rights for the purposes of section 522(e)(2) of the Act and § 761.11(b)(2).

* * * * *

Option 3 for § 761.5: Definition of valid existing rights.

6. Section 761.5 is amended by revising paragraphs (a), (c), and (d) and adding paragraphs (e), (f), and (g) to the term "valid existing rights" to read as follows:

§ 761.5 Definitions.

* * * * *

Valid existing rights means: (a) Except for haul roads, those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which establishes ownership of the coal resource and authorizes the applicant to disturb the surface in connection with an underground mine or, for surface mines, to produce coal by a surface coal mining method;

* * * * *

(c) Valid existing rights may be found for a permit area when the operator can demonstrate that the operation existed or had been permitted at the time an area became protected under section 522(e), or at the time a structure, road, cemetery, or other activity listed in section 522(e) came into existence within the prohibited distance of an operation;

(d) Valid existing rights may be found where no reasonable use of the property remains, including all nonmining uses. For owners of only coal rights, there is not reasonable remaining use when surface coal mining operations cannot occur by any technological means available under the Act in the foreseeable future, and there would be a deprivation of the use or value of that property, provided that coal rights were severed from surface rights prior to August 3, 1977;

(e) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable State law exists, upon the usage and custom at the time and place and where it came into existence;

(f) Notwithstanding paragraphs (a) through (e) above, valid existing rights include those private property rights for which a judicial finding has been made that the restriction on mining would constitute a taking without just compensation;

(g) Private inholdings within national forests shall be considered to have valid existing rights for the purposes of section 522(e)(2) of the Act and §761.11(b)(2).

* * * * *

7. In § 761.5, the introductory text and paragraph (d) of the definition of "no significant recreational, timber, economic, or other values incompatible with surface coal mining operation" are revised to read as follows:

§ 761.5 Definitions.

* * * * *

Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those significant values which could be irreparably damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

* * * * *

(d) Other values which may be incompatible with surface mining operations.

* * * * *

8. Section 761.5 is amended by revising the definition of the term "occupied dwelling" to read as follows:

§ 761.5 Definitions.

* * * * *

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation. Temporary means that the dwelling is used for human habitation

for not less than three consecutive months each year.

* * * * *

Option 1 for Section 761.5: Definition of public building.

9. Section 761.5 is amended by revising the term "public building" to read as follows:

§ 761.5 Definitions.

* * * * *

Public building means any structure that is owned, leased, or principally used by a governmental agency for public business, meetings, or other group gatherings.

* * * * *

Option 2 for Section 761.5: Definition of public building.

10. Section 761.5 is amended by revising the term "public building" to read as follows:

§ 761.5 Definitions.

* * * * *

Public building means any structure that is owned by a public agency.

* * * * *

Option 1 for Section 761.5: Definition of public park.

11. Section 761.5 is amended by revising the term "public park" to read as follows:

§ 761.5 Definitions.

* * * * *

Public park means an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased or reserved because of that use.

* * * * *

Option 2 for Section 761.5: Definition of public park.

12. Section 761.5 is amended by revising the term "public park" to read as follows:

§ 761.5 Definitions.

* * * * *

Public park means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

* * * * *

§ 761.5 [Amended]

13. In § 761.5, the definition of the term "public road" is removed.

14. Section 761.5 is amended by revising the term "Cemetery" to read as follows:

Cemetery means any area of land where human bodies are interred, but does not include family burial grounds.

15. In § 761.11, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

* * * * *

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System including, for study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), a corridor extending one-quarter mile from each bank for the length of the segment being studied, and National Recreation Areas designated by Act of Congress;

* * * * *

(c) On any lands where mining will adversely affect any publicly owned park or any publicly owned site included in the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or site;

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except—

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the regulatory authority or the appropriate public road authority, pursuant to being designated as the responsible agency by the regulatory authority, allows the public road to be relocated, closed, or the area affected to be within 100 feet of such road, after—

(i) Public notice and opportunity for a public hearing in accordance with § 761.12(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet, measured horizontally, of any occupied dwelling, except when—

(1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haulroad which connects with an existing public road on the side of the public road opposite the dwelling;

* * * * *

16. Section 761.12 is amended by revising paragraphs (b) and (d) to read as follows:

§ 761.12 Procedures.

* * * * *

(b)(1) Where the proposed operation would be located on any lands listed in § 761.11 (a), (f), or (g), the regulatory authority shall reject the application if the applicant has no valid existing rights for the area.

(2) If the regulatory authority is unable to determine whether the proposed operation is located within the boundaries of any of the lands in § 761.11(a) or closer than the limits provided in § 761.11 (f) and (g), the regulatory authority shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. If no response is received within the 30-day period, the regulatory authority may make the necessary determination based on the information it has available.

* * * * *

(d) Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in § 761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the regulatory authority or public road authority shall—

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) Provide an opportunity for a public hearing in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected;

(3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or at the end of any public comment period if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated unless the regulatory authority or public road authority determines that

the interests of the public and affected landowners will be protected.

* * * * *

Option 1 for Paragraph (e) of § 761.12.

17. Section 761.12 is amended by redesignating paragraph (e) as (e)(1) and revising it to read as follows:

§ 761.12 Procedures.

* * * * *

(e)(1) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.

* * * * *

Option 2 for Paragraph (e) of § 761.12.

18. Section 761.12 is amended by redesignating paragraph (e) as (e)(1) and revising it to read as follows:

§ 761.12 Procedures.

* * * * *

(e)(1) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of a dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall consent to such operations within a closer distance of the dwelling as specified.

* * * * *

19. Section 761.12 is amended by adding paragraphs (e)(2) and (3)(i) and (ii) to read as follows:

§ 761.12 Procedures.

* * * * *

(e) * * *

(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

(3)(i) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

(ii) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

* * * * *

20. Section 761.12 is amended by revising paragraph (f) to read as follows:

§ 761.12 Procedures.

* * * * *

(f)(1) Where the proposed surface coal mining operations will adversely affect any public park or any publicly owned site included in the National Register of Historic places, the regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over, or a statutory or regulatory responsibility for, the public park or publicly owned National Register site a copy of applicable parts of the permit application containing a request for that agency's approval or disapproval of the operations, with a notice to the appropriate agency that it has 30 days from receipt of the request within which to respond. Failure to respond within 30 days shall constitute an approval of the proposed permit.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

* * * * *

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Option 1 for Section 762.5: Definition of fragile lands.

21. Section 762.5 is amended by revising the definition of the term "fragile lands" to read as follows:

§ 762.5 Definitions.

* * * * *

Fragile lands means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be irreparably damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 522(e) of the Act and Part 761 of this chapter.

* * * * *

Option 2 for Section 762.5: Definition of fragile lands.

22. Section 762.5 is amended by revising the definition of the term "fragile lands" to read as follows:

§ 762.5 Definitions.

* * * * *

Fragile lands means geographic areas containing important natural, ecologic, scientific, or esthetic resources that could be irreparably and significantly damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

* * * * *

23. Section 762.5 is amended by adding the definition of the term "renewable resource lands" in alphabetical order and revising the definitions of the terms "historic lands" and "substantial legal and financial commitments in a surface coal mining operation" to read as follows:

§ 762.5 Definitions.

* * * * *

Historic lands means important historic, cultural, and scientific areas that could be irreparably damaged or destroyed by surface mining operations. Examples of historic lands include sites that have been listed on the National Register of Historic Places, National Historic Landmark sites, and sites for which historic designation is pending.

* * * * *

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

Substantial legal and financial commitments in a surface coal mining operation means that significant investments and legal commitments have been made in activities and facilities such as powerplants; railroads; coal handling, preparation, extraction, or storage facilities; or other capital-intensive activities.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

§§ 764.2 and 764.3 [Removed]

24. Sections 764.2 and 764.3 are removed.

25. In § 764.13, paragraph (a) is revised to read as follows:

§ 764.13 Procedures: Petitions.

(a) *Right to petition.* Any person having a property interest in land or mineral resources which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

Option 1 for Paragraph (b) of § 764.13.

26. Section 764.13 is amended by revising paragraph (b) to read as follows:

§ 764.13 Procedures: Petitions.

* * * * *

(b) *Designation.* The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number; and notarized signature;

(ii) An identification of the petitioned area, including its location and size;

(iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations;

(iv) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined; and

(v) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources.

(2) The State regulatory authority may also require, in addition to the requirements of § 764.13(b)(1)(iv), that the petition include allegations of fact, with supporting evidence, that tend to establish that the petitioned area is unsuitable for surface coal mining operations pursuant to specific criteria of section 522(a)(2) and (3) of the Act. Each of the allegations of fact should be specific as to the mining operation, if any, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined.

(3) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

* * * * *

Option 2 for Paragraph (b) of § 764.13

27. Section 764.13 is amended by revising paragraph (b) to read as follows:

§ 764.13 Procedures: Petitions.

* * * * *

(b) *Designation.* The regulatory authority shall determine what information must be provided by the petitioner to have a petition accepted to determine if the area should be designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) Identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations;

(iv) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, assuming that contemporary mining practice required under applicable regulatory programs would be followed if the area were to be mined, pursuant to specific criteria of section 522(a)(2) and (3) of the Act;

(v) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests;

(vi) A list of property and mineral owners of record in the petitioned area;

(vii) Evidence that all property and mineral owners of record have been notified by regular mail that a petition requesting designation of land unsuitable for mining has been submitted. Such notification shall describe the boundaries of the petitioned area and the allegations and provide information on where the petition may be reviewed and comments may be filed; and

(viii) A copy of the newspaper advertisement on the petition to be placed by the petitioner in a newspaper of general circulation in the locality of the petitioned area; publication shall take place once a week for four successive weeks and shall include a description of the boundaries of the petitioned area, allegations of fact, and information regarding where the petition is available for public review.

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

* * * * *

28. Section 764.13 is amended by revising paragraph (c) to read as follows:

§ 764.13 Procedures: Petitions.

* * * * *

(c) *Termination.* The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size;

(iii) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation; and

(iv) Allegations of facts covering all lands for which the termination is proposed with supporting evidence not contained in the record of the proceeding in which the area was designated unsuitable, that tend to establish that the designation should be terminated, based on the nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on the criteria found in § 762.11(b) of this chapter; or reclamation now being technologically and economically feasible, if the designation was based on the criterion found in § 762.11(a) of this chapter; or the resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter.

(2) The regulatory authority may also require, in addition to the requirements of § 764.13(c)(1)(ii), that the allegations in the petition be specific as to the portion(s) of the designated area to which they apply. Each of the allegations of fact shall be specific as to the mining operation, if any, and the portions of the petition area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined.

(3) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

§ 764.15 [Amended]

29. Section 764.15 is amended by redesignating paragraphs (a) (5), (6), and (7) as paragraphs (a) (6), (7), and (8), respectively.

30. Section 764.15 is amending by revising paragraphs (a)(1), (a)(3), and (a)(4) and adding new paragraph (a)(5) to read as follows:

§ 764.15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 60 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether or not the petition is complete under § 764.13(b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13(b) or (c) has been provided. * * *

(3) The regulatory authority may suspend petitions related to lands where it finds that there is no real and foreseeable potential for surface coal mining operations to occur. Real and foreseeable potential means that the petitioned lands are likely to be subject to leasing or mining activity within 5 years. Where petitions are suspended, the regulatory authority will automatically resume review of the petition when the petitioned area is found to have real and foreseeable potential for surface coal mining operations to occur.

(4) The regulatory authority may reject petitions for designations or terminations of designations which are frivolous. Frivolous means that the petition or the allegations of fact and supporting evidence are trivial, insignificant or unworthy of serious attention.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the regulatory authority may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

* * * * *

Option 1 for paragraph (a)(8) of §764.15

31. Section 764.15 is amended by revising the newly redesignated paragraph (a)(8) to read as follows:

§ 764.15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) * * *

(8) The regulatory authority may determine not to process any petition received which pertains to lands for which a complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority shall not be prevented from issuing a decision on such a permit application and shall return the petition to the petitioner with a statement why the regulatory authority cannot consider it. When a permit application is filed for an area where a petition has been suspended pursuant to § 764.15(a)(3), the regulatory authority shall initiate petition review and not issue a permit until a decision is made on the petition.

* * * * *

Option 2 for Paragraph (a)(8) of § 764.15

32. Section 764.15 is amended by revising the newly redesignated paragraph (a)(8) to read as follows:

§ 764.15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) * * *

(8) Any petition received after the close of the public comment period on a permit application relating to the same permit area shall not prevent the regulatory authority from issuing a decision on that permit application. For the purposes of this section, close of the public comment period shall mean 30 days after the last advertisement giving notice of filing of a permit application under § 786.11(a) of this chapter. If a petition submitted during the public comment period on a permit application is deemed incomplete, and the comment period closes in less than 15 days, the State regulatory authority may allow the petitioner 15 days to resubmit the petition regardless of the end of the period.

* * * * *

33. Section 764.15 is amended by adding paragraph (a)(9) and revising paragraphs (b), (c) and (d) to read as follows:

§ 764.15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) * * *

(9) The regulatory authority may incorporate a petition into a land use planning process if formal land use planning by authorized State or local agencies is currently underway or is scheduled to be initiated within 1 year. Acceptable land use planning, for the purposes of this section must include criteria and procedures consistent with 30 CFR Part 762, 30 CFR Part 764 and section 522 of the Act. In addition, the land use planning program must be required by prior to any authorized mining activity in that State or local jurisdiction and possess the authority to declare areas off limits to mining and to prevent mining in such areas.

(b)(1) Within 3 weeks after a petition is received, the regulatory authority shall notify the general public of the receipt of the petition and request submissions of relevant information on completeness by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices. The regulatory authority shall make copies of the petition available to the public and shall provide copies of the petition to, and request submissions of relevant information on petition completeness from other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law. The regulatory authority shall inform these persons and governmental agencies of the opportunity to request a hearing or provide written comments within 6 weeks from the date of the petition filing with the regulatory authority regarding whether the petition is complete for further processing. Notice of a hearing shall be made by a newspaper advertisement placed in the

locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall notify the petitioner of a hearing by certified mail. On the basis of regulatory authority review as well as consideration of all comments, the regulatory authority shall issue a written decision on whether the petition is complete pursuant to the requirement of paragraph (a)(1) of this section.

(2) Within 5 weeks after the determination that a petition is complete, the regulatory authority shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.

(c) Until 3 days before the regulatory authority holds a hearing under § 764.17, any person having a property interest in land or mineral resources which is or may be adversely affected may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

(d) Beginning from the date a petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours at the main office of the regulatory authority. The regulatory authority shall also maintain information in or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

Option 1 for Paragraph (a) of § 764.17

33. Section 764.17 is amended by revising paragraph (a) to read as follows:

§ 764.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be conducted without cross-examination of witnesses, a record of the hearing shall be made and preserved according to State law, no party shall bear the burden of proof or persuasion, and all relevant parts of the data base and inventory system and all public comments received during the public comment period set by the regulatory authority shall be included in the record and considered by the regulatory authority in deciding the petition.

* * * * *

Option 2 for Paragraph (a) of § 764.17

35. Section 764.17 is amended by revising paragraph (a) to read as follows:

§ 764.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing shall be conducted with cross-examination of expert witnesses as an acceptable procedure, a record of the hearing shall be made and preserved according to State law, and all relevant parts of the data base and inventory system and all public comments received during the public comment period set by the regulatory authority shall be included in the record and considered by the regulatory authority in deciding the petition.

* * * * *

Option 3 for Paragraph (a) of § 764.17

36. Section 764.17 is amended by revising paragraph (a) to read as follows:

§ 764.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing shall be conducted with cross-examination as an acceptable procedure, a record of the hearing shall be made and preserved according to State law, the petitioner shall bear the burden of proof or persuasion, and all relevant parts of the data base and inventory system and all public comments received during the public comment period set by the regulatory authority shall be included in the record and considered by the regulatory authority in deciding the petition.

* * * * *

37. Section 764.17 is amended by revising paragraph (b)(1)(iii) and (b)(2) to read as follows:

§ 764.17 Procedures: Hearing requirements.

* * * * *

(b)(1) * * *

(iii) Any person known by the regulatory authority to have a property interest of record in the property and other persons known to the regulatory authority to have an ownership interest in the property. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

* * * * *

38. In Section 764.19, paragraphs (a)(3), (b), and (c) are revised to read as follows:

§ 764.19 Procedures: Decision.

(a) * * *

(3) The detailed statement when it is prepared under § 764.17(e); and

* * * * *

(b) A final written decision shall be issued by the regulatory authority, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after a petition is determined to be complete. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 526(e) of the Act and § 787.12 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be

considered and included in the record of the administrative proceeding.

39. Section 764.23 is amended by revising paragraph (a) to read as follows:

§ 764.23 Public information

* * * * *

(a) Make the information in the data based and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of specific information would create a risk of destruction or harm to such properties;

40. Section 764.25 is amended by revising paragraph (b) to read as follows:

§ 764.25 Regulatory authority responsibility for implementation.

* * * * *

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

* * * * *

PART 765—DESIGNATING LANDS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS UNDER A FEDERAL PROGRAM FOR A STATE [REMOVED]

41. Part 765 is removed.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

Alternative 1 (Amendments 42 Through 56)

§§ 769.3, 769.4 and 769.7 [Removed]

42. Sections 769.3, 769.4, and 769.7 are removed.

43. Section 769..12 is revised to read as follows:

§ 769.12 Procedures: Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM State Office responsible for that area where Federal lands are located.

Option 1 for Paragraph (a) of § 769.13

44. In § 769.13, paragraph (a) is revised to read as follows:

§ 769.13 Procedures: Contents of petitions.

(a) *Designation.* (1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) The identity, location, and size of that area to which the petition relates;

(iii) An identification of the petitioner's interest that is or may be adversely affected by surface coal mining operations;

(iv) Allegations of fact, with supporting evidence, which would tend to establish that the area described in the petition is unsuitable for surface coal mining operations under the criteria set forth in section 522(a) (2) and (3) of the Act; and each of which allegation should specify the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence which tends to establish the validity of the allegation, assuming that contemporary mining practices required under applicable regulatory programs would be followed should the area be mined; and

(v) A description of how mining of the area has affected or may adversely affect people, land, water, or other resources.

(2) OSM may request other supplementary information which is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSM's determination that the petition is complete for further processing.

Option 2 for paragraph (a) of § 769.13.

45. In § 769.13, paragraph (a) is revised to read as follows:

§ 769.13 Procedures: Contents of petitions.

(a) *Designation.* At a minimum, a complete petition for designation shall include—

(1) The petitioner's name, address, telephone number, and notarized signature;

(2) The identity, location, and size of the area to which the petition relates and a U.S. Geological Survey topographic map (or equivalent) outlining the perimeter of the petitioned area;

(3) An identification of the petitioner's interest that is or may be adversely affected by surface coal mining operations;

(4) Allegations of fact with supporting evidence which tends to establish that the area described in the petition is unsuitable for surface coal mining operations under the criteria set forth in section 522(a) (2) and (3) of the Act. Each allegation should specify the portion(s) of the petitioned area and petitioner's interests to which the allegation applies. The allegation should assume that contemporary mining practices required under applicable regulatory programs would be followed should the area be mined; and

(5) A description of how mining of the area has affected or may adversely affect people, land, water, or other resources.

(6) A listing of property and mineral owners of record in the petitioned area;

(7) Evidence that all property and mineral owners of record have been notified by certified mail that a petition requesting designation of lands unsuitable for mining has been submitted; such notification shall describe the petitioned area boundaries and the allegations and provide information both on where the petition may be reviewed and on where comments may be filed; and

(8) A copy of the newspaper advertisement to be placed by the petitioner in a newspaper of general circulation in the locality of the petitioned area; to be published once a week for four successive weeks; and to include a description of the boundaries of the petitioned area, allegations of fact, and information regarding where the petition is available for public review.

46. In § 769.13, paragraph (b) is revised to read as follows:

§ 769.13 Procedures: Contents of petitions.

* * * * *

(b) *Termination.* At a minimum, a complete petition for termination shall include—

(1) The petitioner's name, address, telephone number, and notorized signature;

(2) Identification of the petitioned area, including its location and size;

(3) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation;

(4) Allegations of fact covering all lands for which the termination is proposed with supporting evidence not contained in the record of the proceeding in which the area was designated unsuitable and which—

(i) Tends to establish that the designation should be terminated, based

on (A) the nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on the criteria found in § 762.11(b) of this chapter; (B) or reclamation now being technologically and economically feasible, if the designation was based on the criterion found in § 762.11(a) of this chapter; or (C) the resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter; and

(ii) Is specific as to the portion(s) of the designated area to which each allegation in the petition applies. Each of the allegations of fact shall be specific as to the mining operation, if any, and the portions of the petition area and petitioner's interest to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed should the area be mined.

47. In § 769.14, paragraphs (a), (b), (c), (d), (e), and (f) are revised to read as follows:

§ 769.14 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) Within 60 days of receipt of a petition the Director shall determine whether or not the petition is complete, ripe, and possesses sufficient merit for further processing. OSM may request other supplementary information which is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSM's determination that the petition is complete for further processing.

(1) *Complete,* for a designation or termination petition, means that all information required under § 769.13(a) or (b) has been provided.

(2) *Ripe,* for a designation petition, means that a real and foreseeable potential exists for surface coal mining operations to occur within 5 years on the lands subject to the petition. Real and foreseeable potential means that the petitioned lands are (A) subject to a Federal coal lease; or (B) covered by a preference right lease application; or (C) included in a tract for which land use planning has been completed and which tract is available for further consideration for coal leasing; or (D) subject to noncompetitive leasing procedures.

(3) *Sufficient merit,* for a designation petition, means that—

(i) For areas previously and unsuccessfully proposed for designation, new significant allegations of fact and supporting evidence are presented in the petition;

(ii) If a Federal lands review did not result in any part of the petitioned area being assessed unsuitable, the information submitted by the petitioner contains significant new evidence not considered in the Federal lands review that tends to establish that the lands are indeed unsuitable;

(iii) The information submitted by the petitioner provides a clear indication that the petitioner has an interest which is or may be adversely affected by surface coal mining operations on the petitioned land;

(iv) Available information shows that "minable" coal (coal contained in a "Known Recoverable Coal Resource Area") resources exist in the petitioned area or that the petitioned area is subject to related "surface operations and impacts incident to an underground coal mine" as defined in § 761.5 of this chapter; and

(5) *Sufficient merit,* for a termination petition, means that the petitioned area has been designated as unsuitable for surface coal mining operations and that—

(i) For an area previously proposed for termination which did not result in termination, new significant allegations of fact and supporting evidence are presented in the petition; or

(ii) The information submitted by the petitioner demonstrates that the petitioner has interests in property or in resource values which are or may be adversely affected by the continued unsuitability designation of the petitioned lands; or

(iii) Where a Federal lands review has been completed by the land management agency and the review for any part of the petitioned area resulted in lands being assessed unsuitable, the information submitted by the petitioner contains significant new evidence which has not been considered in the Federal lands review and which tends to establish that the lands are no longer unsuitable for surface coal mining operations.

(b)(1) When the Director finds that the petition is incomplete, not ripe, or without sufficient merit, he or she shall reject the petition with a written statement of reasons and advise the petitioner, via certified mail, that the petition may be reconsidered upon resubmittal with appropriate remedies.

(2) When rejection for lack of ripeness is based on land use planning not having occurred yet on unleased Federal land, the Director shall advise the petitioner of his/her opportunity to participate in the planning process. In addition, the Director shall advise the land management agency of the issues raised by the petitioner and will request the agency to specifically consider the issues in its planning effort and to advise the petitioner of all public participation activities for the planning unit. The planning agency shall give consideration to the issues raised in the petition.

(c) When the Director finds that the petition is complete, ripe and of sufficient merit, he or she shall accept the petition for further processing and so advise the petitioner via certified mail.

(d)(1) Within 2 weeks after accepting the petition for further processing, the Director shall send a copy of the petition to the authorized officer of the land management agency for the officer's recommendation on the petition.

(2) The authorized officer of the appropriate Federal land management agency shall furnish a recommendation on the petition to OSM within 30 days of its receipt, if the area covered by the petition has been included in a completed Federal lands review, or within 9 months, if the area has not been included in a Federal lands review.

(e) Within 3 weeks after accepting the petition for further processing, the Director shall notify the general public of the receipt of the petition and request submissions of relevant information on completeness, ripeness and sufficient merit by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in the **Federal Register.** OSM shall make copies of the petition available to the public and shall provide copies of the petition to, and request submission of relevant information from, other interested governmental agencies, the petitioner, and any person known by the Director to have an ownership interest in the property. OSM shall inform these persons and governmental agencies that within 6 weeks from the date the petition was filed with OSM they may request a hearing or provide written comments regarding whether the petition is complete, ripe, timely and has sufficient merit for further processing. Notice of a hearing shall be made by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the

petitioned area and in the **Federal Register.** OSM shall notify the petitioner of a hearing by certified mail. After considering all comments and the record of the hearing, if any, OSM shall issue a written decision on whether the petition is complete, ripe and of sufficient merit pursuant to § 769.14(a)(1).

(f) Where lands administered by the Department of the Interior and other Federal land management agencies are contiguous or intermingled or where one Department's resource management could affect resources on the other's land, the Director of OSM shall also refer a copy of the petition to the other Federal land management agency and shall consider that agency's recommendations about designating those lands unsuitable for all or certain types of surface coal mining or terminating such designations.

* * * * *

Option 1 for Paragraph (g) in § 769.14.

48. Section 769.14 is amended by removing paragraphs (h) and (i) and by revising paragraph (g) to read as follows:

§ 769.14 Procedures: Initial processing, recordkeeping, and notification requirements.

* * * * *

(g) OSM may determine not to process any petition received which pertains to lands for which a complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, OSM shall not be prevented from issuing a decision on such a permit application and shall return the petition to the petitioner with a statement why OSM cannot consider it.

Option 2 for paragraph (g) in § 769.14.

49. Section 769.14 is amended by removing paragraphs (h) and (i) and by revising paragraph (g) to read as follows:

§ 769.14 Procedures: Initial processing, recordkeeping, and notification requirements.

* * * * *

(g) Any petition received after the close of the public comment period on a permit application relating to the same permit area shall not prevent OSM from issuing a decision on that permit application. For the purposes of this section, close of the public comment period shall mean 30 days after the last advertisement giving notice of filing of a permit application under § 786.11(a) of this chapter. If a petition submitted during the public comment period on a permit application is deemed incomplete OSM may allow the petitioner to resubmit the petition within 15 days from the date of rejection even if this is after the close of the public comment period.

50. Section 769.16 is revised to read as follows:

§ 769.16 Procedures: Public information.

(a) Wihtin 5 weeks after determining that a petition is complete, the Director shall notify the general public of the receipt of the petition and request submission of relevant information by a newspaper advertisement placed once a week for four successive weeks in a newspaper of general circulation in the locality of the petitioned area, and in the **Federal Register.** The advertisement and **Federal Register** notice shall include a description of the boundaries of the petitioned area, the allegations of fact, and information regarding where the petition is available for public review.

(b)(1) Beginning immediately after a petition is determined complete, the Director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Director with the exception of that information excluded under § 769.16(b)(2). The Director shall make the record available for public inspection free of charge and for copying at a reasonable cost during all normal business hours at the OSM office nearest the petitioned land. OSM shall also maintain information in or near the area in which the petitioned land is located; this information shall be available for public inspection, free of charge, during all normal business hours.

(2) The Director need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief local elected official of the political jurisdiction in which the property is located, and the local historic preservation commission for certified local governments) information relating to the specific location of property proposed to be nominated to be listed or listed in the National Register of Historic Places if it is determined that disclosure of that information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information.

Option 1 for paragraph (a) of § 769.17.

51. Section 769.17 is amended by revising paragraph (a) to read as follows:

§ 769.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be conducted without cross-examination of witnesses, a record of the hearing shall be made and preserved, no party shall bear the burden of proof or persuasion, and no relevant part of the data base and inventory system and no public comment received during the public comment period set by OSM shall be excluded from consideration by OSM in deciding the petition.

* * * * *

Option 2 for Paragraph (a) of § 769.17.

52. Section 769.17 is amended by revising paragraph (a) to read as follows:

§ 769.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing shall be conducted with cross-examination of expert witnesses, a record of the hearing shall be made and preserved and all relevant parts of the data base and inventory system and all public comment received during the public comment period set by OSM shall be considered by OSM in deciding the petition.

* * * * *

Option 3 for Paragraph (a) of § 769.17.

53. Section 769.17 is amended by revising paragraph (a) to read as follows:

§ 769.17 Procedures: Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing shall be conducted with cross-examination of witnesses, a record of the hearing shall be made and preserved, the petitioner shall bear the burden of proof or persuasion and all relevant parts of the data base and inventory system and all public comment received during the public comment period set by OSM shall be considered by OSM in deciding the petition.

54. Section 769.17 is amended by revising paragraph (b) to read as follows:

§ 769.17 Procedures: Hearing requirements.

* * * * *

(b)(1) OSM shall give notice of the date, time, and location of the hearing to—

(i) Local, State, and Federal agencies which may have an interest in the decision on the petitions;

(ii) The petitioner and the intervenors; and

(iii) Any person known by OSM to have an ownership interest of record in the property and other persons known to OSM to have an interest in the property.

(2) Notice of the hearing shall be sent by certified mail to the petitioner and intervenors, and by regular mail to other persons involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

* * * * *

55. Paragraphs (a) and (b) of § 769.18 are revised to read as follows:

§ 769.18 Procedures: Decisions on petitions.

(a) In reaching his or her decision, the Director shall consider the information and recommendation provided by the Federal land management agency, information provided by other governmental agencies, the petition evaluation document (when it is prepared) under § 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, within 12 months after receipt of the petition. The Director shall simultaneously send the decision by certified mail to the petitioner and the intervenors and by regular mail to all other persons or agencies involved in the proceeding.

56. Section 769.19 is added to read as follows:

§ 769.19 Regulatory policy.

Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, the authorized officer shall condition any permit or lease in a manner so as to limit or prohibit surface coal mining operations on the designated areas in accordance with the designation.

Alternative 2 (Amendment 56)

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS [Removed]

57. Part 769 is removed.

(Pub. L. 95–87; 30 U.S.C. 1201 *et seq.*)

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Thursday
June 10, 1982

Part V

Department of Energy

Bonneville Power Administration

Proposed Amendments to Utility Power Sales Contracts Required for Settlement of Lawsuits and Full Implementation of Pacific Northwest Electric Power Planning and Conservation Act Opportunities for Public Review and Comment

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Amendments to Utility Power Sales Contracts Required for Settlement of Lawsuits and Full Implementation of Pacific Northwest Electric Power Planning and Conservation Act Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposed amendments to utility power sales contract offered August 28, 1981, required for settlement of several lawsuits and full implementation of the Regional Act; including proposed contract language, a discussion of the issues involved and implications of the proposed changes, and opportunities for public review and comment.

SUMMARY: This Notice announces for public review and comment proposed amendments to the utility power sales contract which was offered by BPA to its customers on August 28, 1981. The customers have 1 year, until August 28, 1982, to accept the offered contract. The proposed amendments, which are part of a package submitted to the Administrator by BPA's customers, are required for settlement of several lawsuits and for full implementation of the Regional Act.

This Notice contains the language of the original power sales contract, residential purchase and sale agreement, general contract provisions, and exhibit language with new language inserted and underlined. The language is followed by an explanation of the issue, how the contract language was added to or modified, who is affected by the proposed contract language, and alternatives considered by the customers in their discussions.

DATES: A public information forum to explain proposed amendments to the utility power sales contract will be held on June 30, 1982, at 7:30 p.m., in the Lloyd Center Auditorium, Multnomah Level (West of Mannings), Portland, Oregon. Registration will begin at 7 p.m. On July 19, 1982, meetings to receive pubic oral comment on the proposed amendments will be held in Portland, Oregon; Seattle, Washington; Boise, Idaho; and Missoula, Montana. All meetings will begin at 7:30 p.m. with registration starting at 7 p.m. The meeting in Portland will be held in Conference Rooms A and B, Activities Building, Willamette Center, 121 SW. Salmon. The meeting in Seattle will be held in the Fidalgo Room, Seattle Center, First North and Republican Street. The meeting in Boise will be held in the Bonneville Room, Boise City Hall, 150 North Capital Boulevard. The meeting in Missoula will be held in Room 201, Missoula County Courthouse Annex. Written comments will also be accepted and should be sent to the Public Involvement Coordinator. The deadline for receipt of written comments is, July 26, 1982.

ADDRESSES: Copies of the utility power sales contract offered on August 28, 1981, are available for distribution or review by contacting BPA's Public Involvement Office or the BPA Area and District Offices listed below. Written comments should be sent to the Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

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, Washngton 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. Richard Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas W. Wagenhoffer, 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: The Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501 (Regional Act), required BPA to simultaneously offer, within 9 months of the date of enactment, which was December 5, 1980, long-term power sales contracts to (1) existing public body and cooperative customers and investor-owned utility customers, (2) Federal agency customers, (3) electric utility customers participating in the residential exchange, and (4) direct-service industrial customers. BPA offered utility power sales contracts to its customers on August 28, 1981. The customers have 1 year, until August 28, 1982, to accept the offered contracts. This Notice contains amendments to the offered contracts which BPA customers have proposed.

On November 12, 1981, BPA's public agency customers met with BPA to discuss problems they felt remained unresolved with the offered contracts. They expressed the view that if these outstanding issues were resolved they might be able to sign the offered contracts.

PBA met with customer representatives on November 17 and November 20, 1981, to discuss the outstanding issues raised by the public agencies and investor-owned utilities. In response, on November 27, 1981, BPA's Administrator sent a letter to BPA's customers and interested parties noting customer concern regarding (1) errors and ambiguities in the contracts, (2) issues relating to the optimum, efficient, and economical use of BPA and its customers' systems, and (3) substantive issues related to each party's rights and obligations under the contracts. BPA stated that it would attempt to resolve issues included in categories (1) and (2) but would not discuss issues in category (3).

Just prior to expiration of the deadline for filing, each of BPA's customer classes filed a lawsuit challenging BPA's contract offers. These lawsuits include *Public Power Council* v. *Johnson, Pacific Power and Light* v. *Johnson,* and *Alcoa* v. *BPA,* Ninth Circuit Court of Appeals Action Nos. 81–7806, 81–7803, and 81–7813, respectively. The first two lawsuits involved challenges to the utility power sales contract offer. The third lawsuit challenges provisions of BPA's residential purchase and sale agreement offer.

In March 1982, BPA reached a settlement agreement with the investor-owned utilities which were petitioners in *Pacific Power and Light* v. *Johnson* and the direct-service industries which were petitioners in *Alcoa* v. *BPA.* Settlement of these two lawsuits was conditioned on the public agencies not raising issues in their briefs in *Public Power Council* v. *Johnson* which the petitioners felt affected the cost or quality of service to investor-owned utilities or direct-service industries.

In April 1982, the BPA Administrator met with public agency customers to discuss whether it would be possible to reach a settlement instead of proceeding with their lawsuit. BPA encouraged the public agency customers to attempt to reach a settlement of outstanding issues with BPA's other customer classes. BPA also informed its public agency customers that BPA could not commit itself in a settlement agreement to offer contract amendments, nor would BPA offer proposed contract amendments on issues of subtance until BPA had provided for public comment, consulted with interested agencies and groups, and complied with the National Environmental Policy Act of 1969 (NEPA).

Between April 26 and April 30, 1982, BPA's public agency customers called a series of meetings of all BPA customers to attempt to resolve outstanding issues in the contract offers, including the issues raised in the lawsuits. BPA attended these meetings at the request of the public agency customers.

The areas of discussion included (1) errors and ambiguities in the utility power sales contract, (2) an investor-owned utility proposal to modify the Contracted Requirements provisions of the contract, and (3) issues in the public agency customers' lawsuit. The public agency customers called an additional meeting on May 7 where agreement was reached by BPA's customer classes on a package of proposed solutions which the customers asked the BPA Administrator to implement.

Public Review and Comment. In order to meet its responsibilities to inform the public and involve interested persons in the process of amending the utility power sales contract offered August 28, 1981, BPA will hold a public information forum, informal meetings upon request, and four public comment forums. The public information forum to explain the nature and reasons for the proposed contract amendments will be held in Portland, Oregon, on June 30, 1982. Upon request, BPA will also meet with any person or group in the region desiring information on the proposed amendments. Requests for such meetings should be directed to the Office of the Public Involvement Coordinator or the BPA Area or District Managers shown in this Notice.

The four public comment forums will be held on July 19, 1982, in Portland, Oregon; Seattle, Washington; Boise, Idaho; and Missoula, Montana. Comments presented at these forums will become part of the Official Record. Written comments may also be made and should be sent to the Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212. The deadline for receipt of written comments is July 26, 1982.

Environmental Considerations: As required under the National Environmental Policy Act (NEPA), BPA is preparing an environmental assessment (EA) of the settlement package to the lawsuits on the utility power sales contracts. The EA will be available for public review and comment. Prior to any decision about offering contract amendments pursuant to the settlement package, BPA will make a decision about the appropriate documentation for NEPA compliance.

I. Introduction.

The proposed settlement package contains three separate documents. There is a stipulation for settlement between public agency customers and BPA, an agreement between the investor-owned utilities and BPA not to challenge the actions of the BPA Administrator in offering amendments or agreeing to the contract interpretations contained in the stipulation for settlement, and an Amendatory Agreement addressing the correction of errors and ambiguities described in the **Federal Register** Notice published June 4, 1982 (47 FR 24381). The stipulation for settlement and the agreement with the investor-owned utilities contain two exhibits, one describing interpretations of the power sales contract offered on August 28, 1981, and the other describing proposed amendments to the utility power sales contract and the residential purchase and sale agreement offered on August 28, 1981, which BPA agrees to consider offering to its customers. Some of the proposed amendments are also included in the errors and ambiguities amendment since BPA believes the proposed resolution of such errors or ambiguities reflects BPA's intention in offering the power sales contract. Some of the contract interpretations are also included as contract amendments in the errors and ambiguities amendment.

The stipulation for settlement provides that the contract interpretations were immediately effective upon execution of the stipulation. These interpretations addressed the following areas:

(1) The effect of the utility power sales contract on the rights to purchase nonfirm energy of a utility which purchases Firm Power on a Metered Requirements basis. This ambiguity is also addressed in the errors and ambiguities amendment.

(2) The effect of a notice of restriction issued to public agencies on BPA's ability to restrict deliveries of industrial firm power to each of BPA's direct-service industrial customers under their power sales contract and the effect of BPA's other obligations in determining whether to issue a notice of restriction to public agencies.

(3) The effect of participation by a utility in the development by a consumer of a resource at a facility to serve such facility which would otherwise be a New Large Single Load.

(4) The effect of consumer resources existing as of September 1, 1979, which the consumer was not obligated to use to serve its load, on a determination of the BPA Administrator on the amount of load contracted for or committed to as of September 1, 1979, at a consumer's facility.

(5) The effect of a New Large Single Load determination under section 8(e) of the utility power sales contract on the amount a utility will be billed by BPA and a description of "uncontrollable events" in section 8(e) which would prevent a New Large Single Load determination under such section.

(6) The effect on billing and rate design of language in section 8(i) of the General Contract Provisions that provides a utility will not be billed for Firm Power in excess of the amount it is entitled to take.

(7) The effect of the language in section 8(l) of the General Contract Provisions on the cost of exchange resources acquired by BPA pursuant to section 5(c)(2) of the Regional Act.

(8) The effect of notice requirements in sections 9(c) and 9(f) on the utility's ability to add loads at a single facility of 35 average megawatts or less.

(9) The effect of the power sales contract on BPA's obligation to acquire replacement power for a utility under section 9(i) of the Regional Act. This ambiguity is also addressed in the errors and ambiguities amendment.

The stipulation for settlement provides for dismissal of the lawsuit by the public agencies if BPA offers the amendments described in this notice by August 23, 1982. BPA agreed to consider offering such amendments after publishing the proposed amendments, seeking comment and consulting with interested agencies and groups on whether they should be offered, and taking appropriate steps to comply with the NEPA.

The language of the proposed contract amendments follows. The original utility power sales contract, residential purchase and sale agreement, general contract provisions and exhibit language is shown with the new language inserted and underlined. Deleted language is shown in brackets and struck through.

The language is followed by an explanation of the issue, how the contract language was added to or modified, and who is affected by the proposed contract language.

II. Proposed Amendments to Utility Power Sales Contract

A. *Exhibit B, Section 8(d)(3) is deleted and replaced by a new Exhibit B, Section 8(d)(3) as follows:*

1. *Existing general contract provision language with proposed new language inserted.*

"Upon adoption of a methodology as provided in section 4(f)(2) and section 4(e)(3)(G) of Pub. L. 96–501, Bonneville will give notice of intent to adopt a *policy*, provide opportunity for public comment, and publish draft procedures in the *Federal Register* for imposing surcharges. Such *proposed policy* shall include:

(A) standards to be met before Bonneville will excuse surcharges which would otherwise be appropriate, consistent with Bonneville's obligations to implement cost-effective conservation measures to the maximum extent practicable;

(B) that Bonneville will impose surcharges to the extent not excused or suspended under the terms of the *policy;*

(C) an opportunity for interested persons to present views, data questions, and arguments to Bonneville relevant to the imposition of surcharges in specific instances, and the adequacy of financial assistance made available by Bonneville;

(D) that surcharges imposed will be continued to the extent and for the period projected energy savings attributable to cost-effective model conservation standards are not achieved;

(E) for recovery from the Purchaser of the additional costs (including increases in the Utility's average system cost) that Bonneville will incur because the projected energy savings attributable to model conservation standards have not been achieved, subject to the limitations set forth in sections 4(f)(1) and 4(f)(2) of Pub. L. 96–501; *provided, however,* that surcharges will not be levied as a result of an increase in a Utility's average system cost except to the extent that the Utility failed to implement conservation measures that are designed to be cost-effective for its Consumers in terms of the electric rates its Consumers pay.

2. *Explanation of ambiguity and proposed resolution.* The utilities have expressed a concern that section 8(d)(3) of the General Contract Provisions imposed an unlawful method of establishing policy. Section 8(d)(3) requires BPA to establish standards for the imposition of conservation surcharges after the Regional Council adopts a methodology for determining when surcharges should be applied. Such standards should provide guidelines as to when BPA will exercise its discretion and not impose surcharges recommended by the Regional Council. Section 8(d)(3) included five standards and provided that "such rule shall include" these standards. The utilities were concerned that by stating that the rule must include these standards, they would be denied an opportunity to comment on the standards.

The concern of the utilities was an unintended result. The contract amendment changes "such rule shall include" to "such proposed policy shall include" to reflect BPA's intent to allow interested parties an opportunity to comment on the proposed standards. BPA also changed the language of section 8(d)(3) from the development of a "rule" to the development of a "policy" to clearly reflect the Agency action which is occurring.

The correcting language provides that BPA will issue a proposed policy containing standards described in section 8(d)(3). The correcting language reflects that BPA would be required to provide notice of an opportunity to comment on proposed standards under 8(d)(3) before adoption by BPA.

B. *Table 1 of Exhibit C of the utility power sales contract shall be changed by the addition of the following paragraph.*

1. *Existing Exhibit language with proposed new exhibit language following.*

"Table 1 of the Customer Service Objectives Exhibit is applicable to the Purchaser if the Purchaser is a public body, cooperative, or Federal agency. The provisions of Table 1 are subject to the provisions of Bonneville's Customer Service Policy, which Bonneville may amend from time to time.

Bonneville will provide service to its Customers by constructing transmission lines (115 kV or higher) and stepdown substations to the Customers utilization voltage (12.5 kV or higher), (Customer Service Facilities), which are necessary to provide the widest possible, diversified and efficient use of electric power. To accomplish this objective, construction of new Customer Service Facilities will be undertaken following studies conducted jointly by Bonneville and the Customer to determine the best engineering, economic, and environmental plan of service based on a one utility concept of evaluation.

Bonneville's primary transmission responsibility is to provide a stable and reliable transmission system for the integration and delivery of the bulk power requirements in the Pacific Northwest. It is intended that the Customer will assume the primary role for distribution of this power to the Consumer. In recognition of this basic division of responsibility, Bonneville will construct the necessary Customer Service Facilities, providing that capital recovery is reasonably assured, until such time that the load density in the area under consideration reaches a point that requires construction of customer service substations in relatively close proximity. At this point, the Customer will assume, as part of its distribution utility responsibility, construction of the transmission lines and stepdown substations required to serve the loads within this high load density area. Therefore, the scope of Bonneville's participation will be narrowed to providing the required high voltage transmission facilities into the load area and stepdown substations to the local transmission level while conforming with Bonneville's published reliability standards, which may be amended by Bonneville from time to time. It is the intent that the dividing line between Bonneville's transmission responsibility and the Customer's distribution responsibility be a dynamic relationship which will shift from Bonneville to the Customer as the load density in a particular area increases.

Joint utility planning and one utility concept of evaluation will be the foundation for all Bonneville customer service planning efforts. These concepts have become more important in recent years to insure maximum electrical system efficiencies, and minimize impact on the environment in addition to meeting other economic and engineering criteria.

Bonneville's Customer Service Policy will encourage additional joint utility planning including (1) better long-range planning; (2) energy loss reduction studies, including common standards of conductor economics, and distribution voltage levels; (3) voltage regulation on the transmission and distribution system; and (4) elimination of duplicate facilities such as may result from separate substations and low voltage circuit breakers.

At the request of Purchaser, which has not specified an amount of residential load or has specified an amount of zero under Exhibit D of the Residential Purchase and Sale Agreement, Bonneville shall enter into a transmission services agreement which shall provide benefits to such Purchaser for its transmission system which the Purchaser would have received under a

Residential Purchase and Sale Agreement and the Average System Cost methodology.

2. *Explanation of proposed new contract language.* The addition of the above paragraph to Table 1 of Exhibit C of the utility power sales contract is a compromise proposal to allow settlement of the dispute among the three customer classes regarding section 8(1) of the General Contract Provisions. Section 8(1) describes the method to be used in allocating the costs of exchange resources acquired by BPA under Residential Purchase and Sale Agreements. At issue among the respective customer classes is the method BPA will use in calculating the cost of exchange resources. The cost of these resources vary depending upon the average system cost of each utility which is participating in the Residential Purchase and Sale Agreement. Under dispute among the parties is whether BPA should average the cost of all exchange resources or should treat each exchange resource acquired from each utility as a separately priced resource and develop a methodology for allocating these different priced resources to different rate pools.

The average system cost methodology calculates the average cost of a utility's generation and the transmission necessary to deliver such generation to the utility load area. Under the Residential Purchase and Sale Agreement a utility exchanges these costs in an amount equal to its residential load for an equivalent amount of priority firm power from BPA. The inclusion of a utility's transmission costs necessary to move generation to its load area creates a potential benefit to certain public agencies which purchase their entire firm power requirements from BPA at the Priority Firm Power Rate. These utilities would receive a benefit due to these transmission costs if they executed a Residential Purchase and Sale Agreement. This potential exchange by public agencies which do not have generation of their own creates a low-cost exchange resource which exacerbates the dispute on whether exchange resources should be priced at the average cost of all exchange resources or allocated as separately identified exchange resources.

The effect of public agency exchanges for transmission benefits if exchange resources were priced at the average cost of all exchange resources would provide benefits to those utilities having transmission costs which were includable in the average system cost methodology but would increase the cost of service to the loads other public agencies and the residential loads of investor-owned utilities participating in the Residential Purchase and Sale Agreement. The compromise language proposed above allows public agencies which would benefit from the Residential Purchase and Sale Agreement to receive those benefits without creating a negative impact on other public agencies and the residential loads of investor-owned utilities.

Under the compromise language above all customer classes are able to agree on the pricing of exchange resources at the average cost of all exchange resources. Using the average cost of all exchange resources provides certainty to BPA's customers whose rates are largely based on the cost of exchange resources. Without certainty on the method BPA would use in allocating the costs of exchange resources, customers would be unsure of the methodology BPA would use in allocating these costs and would be unable to predict their rates into the future.

Such rate certainty benefits BPA's direct-service industries and investor-owned utilities which place their load growth requirement on BPA during the period prior to July 1, 1985. These customers can now predict how BPA will allocate costs which constitute a major portion of the cost used by BPA to design their rates. Without this certainty BPA's direct-service industries would face additional risks when considering new investments to modernize existing facilities. Investor-owned utilities might find the cost of service from BPA too expensive under worst case scenarios to allow them to sign power sales contracts without this rate certainty.

C. *Section 2 of the utility power sales contract shall be changed by addition of the following subsection:*

1. *Proposed new contract language.*

"(b) *This contract may be terminated by the Purchaser upon (i) 7 years' prior notice to Bonneville; (ii) concurrent submission by the Purchaser to Bonneville of a Firm Resource Exhibit reciting zero demand upon Bonneville as of the proposed date of termination; and (iii) a determination that termination will cause no adverse economic impacts on Bonneville's other customers."*

2. *Explanation of proposed new contract language.* The termination language suggested above is a compromise proposal by the utilities to allow them to keep the right to terminate a power sales contract with BPA. BPA's existing power sales contracts provide a utility with the right to terminate the contract on 60 days' notice if BPA increases the wholesale power rate it charges the utility under the contract. The utilities insist this right must be maintained in the present contract due to the flexibility BPA retains in its ability to establish different methods of rate design. The utilities are concerned that a new method of rate design may severely impact a single utility or a small group of utilities.

The proposal suggested by the utilities above recognizes the potential adverse impact caused by a utility's termination of its power sales contract under Pub. L. 96–501. These impacts may be caused by other contracts the utility executes with BPA under Pub. L. 96–501 such as conservation contracts, billing credit contracts, other resource acquisition agreements, and any other similar agreements where compensation is provided by BPA's other ratepayers to the terminating utility. The other potential impact on BPA's other ratepayers would be a failure of the terminating utility to plan or develop adequate resources to meet its loads after termination which caused such utility to request implementation of regional curtailment mechanisms.

A suggested alternative termination proposal provided an objective standard on when adverse economic impact occurred as opposed to the standard in (iii) above. Such standard provided that a utility would develop resources upon termination to meet its loads on a critical water basis and that adverse economic impact due to other contracts executed under Pub. L. 96–501 would be handled by provisions in such contracts.

D. *Section 3(b) is deleted and replaced by a new section 3(b) as follows:*

1. *Existing Contract language with proposed new contract language inserted.*

" 'Actual Firm Peak Load' and 'Actual Firm Energy Load' mean the actual maximum integrated one-hour monthly peak and average monthly energy loads, respectively, of the Purchaser's system in the Pacific Northwest, for each Billing Month, after adjustment pursuant to section 17(e). Such actual loads shall not include any load to the extent that the Purchaser had a unilateral right to interrupt such load during such month, even if such load was not actually interrupted, but shall include the amount of any load which the Purchaser *had a right to interrupt or* actually interrupted for the purpose of backing up or providing economic operation of *its system including* its Firm Resources. In addition, any New Large Single Load or portion of such load shall not be

included in the Purchaser's firm loads hereunder prior to the date Bonneville is obligated to supply such load with Firm Power pursuant to the terms of section 8(e). Contractual obligations of the Purchaser to utilities outside its normal service area may, if permitted by the terms of section 12(a), be included in the Purchaser's Firm Resources, but shall not be included in the Purchaser's Actual Firm Loads hereunder. Actual Firm Peak Load and Actual Firm Energy Load shall be referred to collectively as 'Actual Firm Load.' "

2. *Explanation of error or ambiguity and proposed resolution.* The contract as offered on August 28, 1981, includes a definition of Actual Firm Loads which BPA is obligated to serve pursuant to the power sales contract. There is a corresponding definition of Estimated Firm Loads which is used for planning purposes and determining BPA's estimated obligation to serve a utility in the upcoming Operating Year. Under the terms of both definitions, BPA does not provide service to any load where the purchaser has a unilateral right to interrupt service to such loads. The definitions provide an exception to this principle where the utility may interrupt the load only for the purposes of backing up its Firm Resources or promoting the economic operation of its Firm Resources. The parties agreed that the definition of Estimated Firm Load clearly included the loads covered by the exception but that it was ambiguous whether such loads were actually included by the language in the definition of Actual Firm Load. An additional issue was raised concerning the effect of the language on interruptible loads on the implementation of load management schemes. The utilities were concerned that the language on interruptible loads might prevent the use of load management schemes when load management was an alternative to the installation of additional distribution facilities in a congested urban area. Such result is an ambiguity in the language and would result in an unintended effect from the definition of Actual Firm Load and Estimated Firm Load.

It was determined that such ambiguities could be cleared up by the insertion of the words "had a right to interrupt or" between the words "purchaser" and "actually" in the second sentence of the definition of Actual Firm Loads which, would clear up the ambiguity regarding which interruptible loads could receive service from BPA. It was also determined that the insertion of the words "its system including" between the phrases "economic operation of" and "its Firm Resources" would make clear that load management schemes could promote economic operation of a utility's entire system instead of only its resource use. A corresponding change in the definition of "estimated firm loads" was also made to not preclude the intended use of loan management schemes.

E. *Section 11 is deleted and replaced by a new section 11 as follows:*

1. *Existing contract language with proposed new contract language inserted.*

"11. *Compensation Program for Regional Curtailment of Firm Loads.*

(a) The parties agree to commence negotiations as soon as practicable to develop a comprehensive agreement among utilities in the Pacific Northwest to buy and sell electric energy made available due to curtailments in consumption or from resources on a party's system during period when governmental bodies having the authority to do so have so ordered such curtailments or sales.

(b)(1) If the Bonneville Power Administrator and the governor of the State encompassing the Purchaser's service area publicly appeal for curtailments of electric power consumption or if mandatory curtailments of electric power consumption in the Purchaser's service area are ordered by governmental bodies having the authority to so order, Bonneville shall compensate the Purchaser as provided in this section for any reduction in Bonneville's obligation to supply Firm Power to the Purchaser. If the Purchaser's service area extends into more than one State and all of such States do not participate in the curtailments described above, the procedures of this section shall be applied only to those loads in service areas in the participating States.

Compensation under this section shall not be available to the Purchaser during any Operating Year that the Purchaser is purchasing Firm Power from Bonneville on a *Planned* Computed Requirements *or Contracted Requirements* basis. The compensation under this section may be reduced partially or in its entirety as described in (4) *or paragraph (5)* below. *The reductions described in paragraph (4) below shall be made after the adjustments described in paragraph (5) below.*

Compensation shall begin with the first full month following such appeal for curtailment or ordered curtailment. Compensation shall end with the month during which the Bonneville Power Administrator and the appropriate State political leaders publicly indicate that a need for curtailment no longer exists or such State officials rescind an order for curtailment.

(2) Bonneville shall pay the Purchaser each month an amount equal to the product of the rate set forth in this paragraph and the amount of load curtailment determined in paragraph (3) below unless such amount of load curtailment is reduced partially or in its entirety as set forth in paragraph (4) below. Such rate shall be the amount per kilowatthour by which the Purchaser's average revenue from retail sales of electric energy exceeds the wholesale firm power rate the Purchaser would have paid Bonneville for the increment of energy determined pursuant to paragraph (3) below.

(3) The amount of regional load curtailment on the Purchaser's system during a month shall be deemed to be the amount, if any, by which the Purchaser's Estimated Firm Energy load, after adjustment as specified below, exceeds the Purchaser's Actual Firm Energy load for such month after adjustment, if any, as set forth below. If the Purchaser does not regularly publish an Estimated Firm Energy Load, such Purchaser's Estimated Firm Energy Load for purposes of this section shall be the Purchaser's component of Bonneville's latest published estimate of its firm energy loads.

The Purchaser's most recently published Estimated Firm Energy Load shall be used herein to determine amounts of regional load curtailment in conjunction with information submitted by the Purchaser to Bonneville as soon as possible following the end of each month in which a regional load curtailment program is in effect. Such information shall be provided for each such month and for the three most recent, but not necessarily consecutive, months in which a regional load curtailment program *or a load curtailment program pursuant to section 17(e)* was not in effect. Such information shall include: (A) the Purchaser's Actual Firm Energy Load for such months; and (B) detail on any separately identifiable significant changes in the Purchaser's Actual Firm Energy Load from its Estimated Firm Energy Load which were not the result of a regional load curtailment program, *a load curtailment program pursuant to section 17(e), or an interruption of load for the purpose of providing economic operation of the Purchaser's system including its Firm Resources.*

The Purchaser's Actual Firm Energy Loads for all months used for calculations herein shall be adjusted to

reflect only those loads in the Purchaser's service area which are in States participating in the regional curtailment program. Such adjustments shall be made by subtracting the portion of the Purchaser's Actual Firm Energy Load in States which are not participating in the regional curtailment program from the Purchaser's Actual Firm Energy Load for such month. Such adjustment may be changed monthly to reflect changes in the States which are participating in the regional curtailment program.

The Purchaser's Estimated Firm Energy Load for all months for which information was requested above shall first be adjusted to reflect separately identifiable changes in load which were not the result of a regional load curtailment program, *a load curtailment program pursuant to section 17(e), or an interruption of load for the purpose of providing economic operation of the Purchaser's system including its Firm Resources.* The Estimated Firm Energy Load shall then be adjusted in the manner specified for Actual Firm Energy Loads above to reflect only those loads in the Purchaser's service area which are in States participating in the regional curtailment program. An adjusted Estimated Firm Energy Load for each month in which a regional load curtailment program is in effect shall then be determined by multiplying the Estimated Firm Energy Load for such month, as adjusted above, by the ratios of the Purchaser's Actual Firm Energy Load, as adjusted above, to its Estimated Firm Energy Load, as adjusted above, for the three most recent, but not necessarily consecutive, months in which a regional load curtailment program *or a load curtailment program pursuant to section 17(e)* was not in effect.

(4) If regional curtailment has been requested after July 1, 1983, because Bonneville is unable to acquire sufficient resources to meet its firm obligations, Bonneville shall reduce the amount of load curtailment determined in paragraph (3) above during any month if the Purchaser's load growth [after July 1, 1983,] as specified in subparagraph (A) below exceeds the amount of resources which the Purchaser dedicated to its own load or made available to Bonneville as specified in subparagraph (B) below. Such amount of load curtailment for each month shall be reduced partially or in its entirety by the amount which (A) exceeds (B) below:

(A) the excess of the Purchaser's Actual Firm Energy Load in average megawatts over the Purchaser's Actual Firm Energy Load in average megawatts for the same month during [the '82–83 Operating Year; and] *the Operating Year prior to the first Operating Year for which Bonneville's load growth notice provided in section 10(e) of this agreement is effective; and*

(B) the annual firm energy capability in average megawatts of (i) resources acquired by Bonneville from the Purchaser under Pub. L. 96–501; and (ii) the portion of the Purchaser's Firm Resources which are included as 5(b)(1)(B) resources in its Firm Resources Exhibit. Such resources shall not include conservation programs to the extent such programs have been reflected in the Purchaser's Actual Firm Energy Load in subparagraph (A) above.

(5) If the Purchaser purchases Firm Power from Bonneville on an Actual Computed Requirements basis, the amount of load curtailment determined in paragraph (3) above for any month shall be determined after the following adjustments:

(A) The amount of load curtailment determined in paragraph (3) above shall be reduced to provide compensation only for the portion of the Purchaser's Actual Firm Energy Load served by Bonneville. Such reduction shall be made by increasing the Purchaser's Actual Firm Energy Load used to determine the amount of load curtailment in paragraph (3) by the amount of load curtailment attributable to the Purchaser's Firm Resources. Such increase in the Purchaser's Actual Firm Energy Load shall be deemed to be the amount determined in the manner specified in section 17(e)(5) even if the Purchaser has not implemented a load curtailment program pursuant to section 17(e).

(B) if the Purchaser initially purchased Firm Power from Bonneville on a Metered Requirements basis, but is purchasing Firm Power from Bonneville on an Actual Computed Requirements basis at the time regional curtailment is requested hereunder, subparagraph (A) above will apply only if the Purchaser has implemented a load curtailment program pursuant to section 17(e). This subparagraph (B) shall no longer apply if the Purchaser was offered the opportunity to be a party to a comprehensive agreement among utilities in the Pacific Northwest described in subsection (a) above after it commenced purchasing on a Computed Requirements basis."

2. *Explanation of proposed new contract language.* The language above is a rewrite of section 11 of the utility power sales contract which provides compensation to utilities in the event of regional curtailment. This payment reflects the difference between a customer's resale rate and the wholesale power rate a customer pays to BPA. This provision is designed to reduce the effect on utility rates due to a regional curtailment program designed to assist another utility.

The contract offered on August 28, 1981, provided that such payments would be made only to metered requirements customers. Excluding Computed Requirements customers from such payments was a compromise between public agency generating utilities and the investor-owned utilities made during negotiations prior to the offer of the contract. Public agencies feel this compromise is unacceptable and believe that compensation payments should be made to Computed Requirements customers for that portion of their load served by BPA. The compromise proposal suggested above allows such partial payment to Computed Requirements customers. The proposal also provides a safety net for Metered Requirements customers who later purchase power on a Computed Requirements basis and are unable to participate in a regional shortage sharing mechanism.

F. *Section 17(b) is deleted and replaced by a new section 17(b) as follows:*

1. *Existing contract language with proposed new contract language inserted.*

"(b) On or before the effective date of this contract, and thereafter, as provided in paragraph (1) below, the Purchaser may request in writing to purchase on the basis of Contracted Requirements by submitting the data and proposed schedule of Contracted Requirements purchases of peak and energy pursuant to paragraph (2) below.

(1) The Purchaser may request that it begin to purchase on a Contracted Requirements basis at the time of submittal of any revised Firm Resources Exhibit. Such request shall become effective, *in accordance with* this subsection (b), for the seventh Operating Year of such exhibit, or for an earlier Operating Year if Bonneville is expected to have an excess of firm load over its firm resources in the first Operating Year for which the Purchaser requests to purchase on a Contracted Requirements basis. Bonneville's expected firm load-resource balance and the priority of competing requests for purposes of allocating the availability of the *subparagraph of* parapraph (1) shall be determined in the manner described in section 12(b)(7) above.

The Purchaser may elect to cease purchasing on a Contracted

Requirements basis at the time of submittal of any revised Firm Resources Exhibit. Such election shall become effective for the seventh Operating Year of such exhibit, or for an earlier Operating Year if Bonneville is expected to have an excess of firm resources over its firm load in the first Operating Year for which the Purchaser proposes to cease purchasing on a Contracted Requirements basis. Bonneville's expected firm load-resource balance and the priority of competing requests for purposes of allocating the availability of this *subparagraph of* paragraph (1) shall be determined in the manner described in section 12(b)(9) above.

(2) If the Purchaser requests to purchase on the basis of Contracted Requirements, it shall submit to Bonneville in the Purchaser's initial Firm Resources Exhibit in addition to data required in section 12(a), the Purchaser's annual Estimated Firm Peak Load, the annual average of Purchaser's Estimated Firm Energy Load, the estimated Assured Capabilities of the Purchaser's Firm Resources corresponding to the time period of such loads, and a schedule of annual Contracted Requirements purchases of peak and energy for each of the first seven Operating Years. If the Purchaser's Contracted Requirements peak purchase amount for any such Operating Year is based on its Estimated Firm Peak Load for the months June through November, such amount shall be the Purchaser's Contracted Requirements peak purchase amounts for June through November and the Purchaser shall also submit a lower amount which is based on its Estimated Peak Load for the months December through May. With each revised Firmn Resources Exhibit submitted in accordance with section 12(b), such Purchaser shall submit a new schedule deleting the amounts of Contracted Requirements peak and energy purchases for the current Operating Year and adding the amounts to be purchased in the seventh succeeding Operating Year together with Purchaser's annual Estimated Firm Peak Load and annual average Estimated Firm Energy Load in the seventh Operating Year, and new information on the estimated Assured Capability of all Firm Resources *and Estimated Firm Loads* for which information is *provided for* under paragraphs *(4)(5)* and *(6)* below. Such revised Firm Resources Exhibit shall be prepared in the same format as the initial Firm Resources Exhibit or such other format as Bonneville and the Purchaser may agree upon. *Submission of the data specified in this paragraph (2) shall be in lieu of preparation of an Assured Capability Exhibit as provided for in section 16 above.*

If Bonneville determines that the Purchaser's Estimated Firm Loads do not conform to the definitions in this contract, Bonneville shall notify the Purchaser, as soon as practicable, of the specific deficiencies and the Purchaser may submit revised data or revised schedule of Contracted Requirements purchases. If Bonneville expects to approve a reduced quantity of peak or energy in any period of time included in a schedule of Contracted Requirements purchases and Bonneville determines that such reduction under this paragraph (2) or paragraph (6) below is in any way affected by the Purchaser's Estimated Firm Loads, Bonneville shall notify the Purchaser in the manner specified above of specific deficiencies in the Purchaser's Estimated Firm Load data submission and shall determine any reduction described in this paragraph (2) on Bonneville's determination of the Purchaser's Estimated Firm loads unless the Purchaser submits revised data or revised schedule of Contracted Requirements purchases prior to the start of the Operating Year following initial submission of the data and such data or schedule are approved by Bonneville.

Bonneville shall approve either each requested schedule of Contracted Requirements purchases or a reduced schedule of Contracted Requirements purchases in any period of time included in such schedule; provided, however, that such reduced schedule shall not be reduced below the lesser of the following:

(A) the amount by which the Purchaser's Estimated Firm Load exceeds its estimated Assured Capability in such period of time; or

(B) the minimum amount of peak or energy which Bonneville would be obligated to make available to the Purchaser under the following assumptions: (1) such amount shall be determined as though a notice of restriction issued under section 7(a) was in effect during such period of time for the Purchaser and its class of Customers; (2) such amount shall be limited to the amounts that Bonneville would be obligated to make available to the Purchaser as determined under section 7(e), section 7(f), and Exhibit D for amounts of resources acquired by Bonneville under Pub. L. 96–501 from or on behalf of the Purchaser or its class of Customers with the amounts calculated under section 7(f) determined as though section 7(f)(1) and 7(f)(2) did not apply; and (3) such amount shall be deemed to be equal to the amount specified in (A) above, unless Bonneville has issued a notice of restriction under section 7(a) to such class applicable to such period of time or has reasonable expectation of issuing such notice, pursuant to the provisions of section 7, either with, or in the absence of, this reduction.

(3) The amounts of power shown in Purchaser's schedule of Contracted Requirements purchases, as submitted with the Firm Resources Exhibit for an Operating Year *and approved by Bonneville, shall not be revised thereafter except for changes as specifically provided for by paragraphs (4), (5) and (6) below.* The Estimated Firm Load on which the Purchaser's Contracted Requirements purchases for each Operating Year were based shall be deemed to be the Purchaser's Actual Firm Load during such Operating Year for the purpose of determining whether the Purchaser is using its purchase from Bonneville for resale.

(4) If the Purchaser makes a change in its Firm Resources as permitted by section 12(b), the Purchaser shall, at the time such change is submitted to Bonneville, make a change in its schedule of Contracted Requirements purchases shown in its Firm Resources Exhibit. Such change shall be equal and opposite to the change in the Purchaser's Assured Capability resulting from such change in Firm Resources.

(5) If the Purchaser's Estimated Firm Loads change for any Operating year for which the Purchaser is purchasing on a Contracted Requirements basis, and if such change corresponds to changes in Purchaser's Firm Resources which are permitted by sections 12(b) (7), (9), and (11) (as though an increase in Estimated Firm Loads corresponds to a removal of Firm Resource and a decrease in Estimated Firm Loads corresponds to an addition to Firm Resource) the Purchaser may submit such changed loads to Bonneville at the time it submits a revised Firm Resources Exhibit and may, at such time, make an equivalent change in its schedule of Contracted Requirements purchases show in its Firm Resources Exhibit.

(6) If prior to any Operating Year Bonneville determines that it would be required to acquire a resource under Pub. L. 93–454 or Section 6(a)(2) of Pub. L. 96–501 to meet Bonneville's firm loads including the Purchaser's previously approved schedule of Contracted Requirements purchases for such Operating Year, Bonneville may request the Purchaser to submit revised Estimated Firm Loads for such

Operating Year for Bonneville's approval in the manner specified in section 17(b)(2) above. Such request shall be made not less than 30 days prior to the date for submission of data for the modified regulation under the Coordination Agreement. Such revised Estimated Firm Loads shall be the Purchaser's most current estimate and shall include power savings for such Operating Year from all conservation measures and direct application renewable resources including those funded by Bonneville either directly or through billing credits. If due to the Purchaser's revised Estimated Firm Loads, the Purchaser's schedule of Contracted Requirements purchases are in excess of the amount specified in section 17(b)(2)(A) above, Bonneville may reduce the Purchaser's schedule of Contracted Requirements purchases to the amount specified in section 17(b)(2)(A) above. Bonneville shall notify the Purchaser of such reduction prior to the submission of data for the modified regulation.

In addition the schedule of Contracted Requirements purchases shown in the Purchaser's Firm Resource Exhibit may be changed for any Operating Year if and to the extent that Bonneville has given prior written consent.

(7) *Within seven days after receipt of the preliminary regulation under the Coordination Agreement prior to* each Operating Year, the Purchaser [shall prepare an Assured Capability Exhibit as provided for in section 16 above and] shall allocate its annual Contracted Requirements energy purchase among months of such Operating Year in a manner which results in a requirement on Bonneville each month equal to or between the amounts determined by (A) or (B):

(A) one-twelfth of the Purchaser's annual Contracted Requirements energy purchase from Bonneville for that Operating Year; and

(B) a fraction of such annual Contracted Requirements energy purchase obtained by dividing the Estimated Firm Energy Load for that month by the total of the twelve Estimated Firm Energy Loads for that Operating Year. If requested by the Purchaser and if Bonneville agrees, the Purchaser may allocate its annual Contracted Requirements energy purchase among months so as to place monthly requirements on Bonneville other than those determined by (A) or (B) above to reflect a period of planned thermal maintenance or other causes. The Purchaser's total Contracted Requirements purchase shall not be changed by such reallocation.

(8) For the purpose of determining the amount of power Bonneville shall make available to the Purchaser under this contract, the Purchaser's Contracted Requirements peak purchases shown in its schedule of such purchases submitted pursuant to paragraph (2) above shall be deemed to be the Purchaser's Computed Peak Requirement in each month of the Operating Year as specified in such schedule and the twelve monthly amounts of energy determined pursuant to paragraph (7) above shall be deemed to be the Purchaser's Computed Average Energy Requirement for each such month of the Operating Year.

(9) Before requesting implementation on its behalf of a regional load curtailment program affecting loads besides its own or a regional shortage-sharing mechanism affecting such loads, the Purchaser shall purchase all energy, to the extent necessary to make up its resource deficiency, from resources available to the Purchaser as documented by Bonneville at a cost equal to or less than the sum of 115 percent of the incremental operating cost of oil-fired generation from simple cycle combustion turbines and the cost for transmission and transmission losses not to exceed 15 percent of the cost of such generation.

For the purpose of this paragraph (9) a Purchaser's resource deficiency shall be the amount, if any, by which the Purchaser's most current estimate of its annual average Estimated Firm Energy Load for such Operating Year exceeds the sum of:

(A) The estimated Assured Energy Capability of the Purchaser's Firm Resources for such Operating Year, determined in the manner provided in paragraph (2) above;

(B) The assured energy capability, determined in the manner provided in section 16 and paragraph (2) above, of resources acquired by the Purchaser on a firm basis in addition to the Purchaser's Firm Resources for such Operating Year; and

(C) The amounts of energy shown in the Purchaser's schedule of Contracted Requirements purchases for such Operating Year.

2. *Explanation of new contract language.* The language proposed above is a rewrite of the Contracted Requirements section of the contract offered on August 28, 1981. The language proposed above is a compromise proposal to allow a utility greater flexibility in planning resources to meet its load while insuring adequate development of regional resources to meet regional loads. Such language was suggested by investor-owned utilities. They have proposed an economic incentive to insure they develop adequate resources as opposed to the current contract offer which provides that BPA will acquire the difference between their load and the resources they develop.

The utility power sales contract offered on August 28, 1981, included a Contracted Requirements basis for purchasing power which provided a "window" of 10 percent of a customer's load. This window allowed the utility to request BPA to acquire resources to the extent 90 percent of a utility's Estimated Firm Load exceeded the resources a utility listed in its Firm Resources Exhibit. The window allowed the utility the flexibility to acquire short to medium term resources to meet up to 10 percent of its load during the 7-year notice period under the Firm Resources Exhibit.

The compromise language suggested above makes the following changes in the Contracted Requirements portion of the contract. The suggested language provides an absolute right for a utility to purchase on the basis of Contracted Requirements. The contract offered on August 28, 1981, allowed BPA the right to refuse a request to purchase on the basis of Contracted Requirements if a utility did not submit load forecasts in conformance with the definition of Estimated Firm Load or did not submit a schedule of Contracted Requirements purchases sufficient to meet the 90 percent test of the window. The proposed revision of Contracted Requirements allows a utility to purchase any amount of power from BPA either above or below the needs of a utility purchasing power on a Computed Requirement basis. If a utility requests a schedule of Contracted Requirements purchases above its needs on a Computed Requirements basis, the language in paragraph 2 above allows BPA to reduce such requested schedule of Contracted Requirements purchases to a utility's needs on a Computed Requirements basis. The language in paragraph 2 also provides BPA the ability to reduce the schedule of Contracted Requirements purchases to the level a utility could purchase under a notice of insufficiency. This reduction allows BPA to reduce its obligations in lieu of invoking a notice of insufficiency. The language in paragraph 2 above also provides that BPA may reduce a schedule of Contracted Requirements purchases to BPA's determination of a utility's needs on a Computed Requirements basis if a utility's forecasted loads do not conform to the

definition of Estimated Firm Load contained in the contract.

The language proposed above contains two protections for BPA's other ratepayers which are not contained in the utility power sales contracts offered on August 28, 1981. Paragraph 6 of the language above provides that BPA may reduce a previously established schedule of Contracted Requirements to the amount a utility needs on a Computed Requirements basis prior to any Operating Year before BPA acquires a resource. The present contract language does not allow BPA to make this reduction even though the loads used to establish a schedule of Contracted Requirements had not materialized. This provision allows BPA to receive benefits from load underruns while leaving the risks of unanticipated load growth on the utility. Paragraph 9 of the proposed language above incorporates the resource planning standard BPA uses to acquire resources for Computed Requirements customers. Paragraph 9 provides that a utility purchasing on a Contracted Requirements basis will purchase available oil-fired generation prior to requesting implementation on its behalf of a regional load curtailment program affecting loads besides the utility's own loads. A utility purchasing on a Contracted Requirements basis accepts this obligation to acquire oil-fired generation until it has acquired resources equivalent to the resources developed by a utility and acquired by BPA to meet the needs of Computed Requirements customers.

G. *Section 17(c) is deleted and replaced by a new section 17(c) as follows:*

1. *Existing contract language with proposed new contract language inserted.*

"(c) If the Purchaser does not request that Bonneville sell to it on the basis of planned Computed Requirements or Contracted Requirements or if Bonneville disapproves *the Purchaser's* [*such*] request *to purchase on the basis of Planned Computed Requirements,* the Purchaser shall purchase on the basis of Actual Computed Requirements and its Computed Peak Requirement and Computed Average Energy Requirement shall be determined after the end of each month based on the Purchaser's Actual Firm Load."

2. *Explanation of new contract language.* The proposed language above implements the Contracted Requirements proposal suggested by investor-owned utilities. The suggested change in section 17(c) removes BPA's ability to disapprove a utility request to purchase on the basis of Contracted Requirements.

H. *Section 17 (g)(1) is deleted and replaced by a new section 17(g)(1) as follows:*

1. *Existing contract language with proposed new contract language inserted.*

"(1) During Heavy Load Hours: the larger of the Purchaser's Computed Peak Requirement or its Computed Average Energy Requirement; *provided, however,* that *after June 30, 1987,* Bonneville may limit the amounts of power it makes available during up to six Heavy Load Hours of each day designated by Bonneville to amounts less than the Purchaser's Computed Average Energy Requirement but not less than the Purchaser's Computed Peak Requirement. Bonneville shall not so limit the amounts of power it makes available unless: (A) Bonneville has informed the Purchaser's representative by the time specified in the Power Scheduling Provisions Exhibit that Bonneville will make such limitation; (B) Bonneville has limited all other Customers having contracts which permit this limitation approximately in proportion to the amount by which each such Customer's Computed Average Energy Requirement exceeds its Computed Peak Requirement for such month; *and (C) Bonneville has determined that such limitation is reasonably necessary either (1) to enable Bonneville to meet loads which Bonneville serves from firm load carrying capability as defined in the Coordination Agreement or (2) to serve other loads in the Pacific Northwest which Bonneville has previously committed to serve provided that the purchaser, using its best efforts, is able to comply with such request on an operating basis. Bonneville shall demonstrate to the Purchaser and to other Customers having similar contracts that Bonneville has sufficient firm capacity resources to meet its firm capacity obligations without invoking the limitations of this paragraph (1) before Bonneville renews any existing contracts or enters into any new contracts to deliver capacity to entities outside the Pacific Northwest.*

2. *Explanation of new contract language.* The contract language proposed above modifies BPA's rights to limit its deliveries of power for up to 6 Heavy Load Hours to a utility's Computed Peak Requirement. The existing BPA power sales contracts provide that a utiity may request delivery of the larger of its Computed Peak Requirement or its Computed Average Energy Requirement during any hour. These provisions allow a utility to require BPA to deliver its energy obligation to a utility in equal amounts during any hour of the day even though the utility may have sufficient peak resources to meet its loads during Heavy Load Hours. BPA had included a provision in the power sales contract offered on August 28, 1981, which allowed BPA to limit deliveries on up to 6 Heavy Load Hours to a utility's Computed Peak Requirement. The public agencies sued BPA over this provision.

BPA believes the 6-hour limitation is required to prevent the region from developing more peak resurces than are necessary to meet regional loads. To the extent a utility's resources used to calculate its Assured Peak Capability are unable to produce such Assured Peak Capability for 15 Heavy Load Hours day after day, BPA believes such utility should rerate the capability of its peak resources. BPA included provisions in the contract allowing a utility to rerate the capability of its resources and thereby purchase additional peak resources from BPA. BPA believed these provisions would prevent the region from developing more peak resources than necessary to meet regional loads.

The public agencies had three objections to the 6-hour limitation BPA included in the power sales contract offered on August 28, 1981. They objected to BPA using the 6-hour peak limition to serve nonfirm loads instead of their requirements on Heavy Load Hours which exceeded their Computed Peak Requirement. They objected to BPA using the 6-hour peak limitation to make additional sales of Firm Capacity outside the Pacific Northwest. They also felt it was impractical for them to rerate the capability of their peak resources.

The compromise suggested above addresses the three objections raised by the public agencies. First, it prevents BPA from invoking the 6-hour limitation until July 1, 1987, to allow utilities sufficient time to rerate the capability of their peak resources or to develop additional resources. Second, it qualifies BPA's right to use the 6-hour peak limitation to serve its loads in the Pacific Northwest other than loads served by BPA on a firm basis. BPA may use the 6-hour limitation in such instances only if a utility is able to comply on a best efforts basis. Third, BPA has agreed not to enter into new contracts or renew existing contracts to deliver Firm Capacity outside the Pacific Northwest based on the use of the 6-hour limitation.

The contract language proposed above preserves BPA's objective of insuring that the region does not develop more peak resources than needed to

meet regional loads. The suggested language may reduce revenues from capacity sales outside the Pacific Northwest which would not be offset by increased revenues from deliveries to utilities in the region.

III. Proposed Amendments to Residential Purchase and Sale Agreement

A. *Section 12 is changed by the addition of the sentences described below:*

1. *Existing contract language with proposed new language inserted.*

"12. *Exhibits.* Exhibit A (Priority Firm Power Rate, Schedule PF–1, and General Rate Schedule Provisions), Exhibit B (General Contract Provisions), Exhibit C (Average System Cost Methodology), Exhibit D (Residential Load Definition), Exhibit E (Load Factor Specification), and Exhibit F (Determination of New Large Single Loads) are hereby made part of this contract. Exhibit D shall be revised to incorporate additional qualifying tariff schedules, subject to Bonneville's determination that the loads served under these schedules are qualified under the Act. *If the Purchaser has not specified an amount of Residential Load in Exhibit D, the Utility may request and Bonneville shall revise Exhibit D, at any time during the one year period following the occurrence of conditions (1) and (2) specified in section I. of Exhibit D, to increase the amount of Residential Load sold to Bonneville under this agreement from zero. This provision does not preclude subsequent revision of the amount of residential load shown on Exhibit D, based on changes in Residential Load.* Each time Bonneville has a new rate adjustment date, the Utility shall submit a revised Exhibit E, prepared in the same manner as Exhibit E attached hereto, to Bonneville within 20 working days of such date. The revised Exhibit E shall become effective as of such date."

2. *Explanation of new contract language.* The proposed changes described above to the Residential Purchase and Sale Agreement allow a utility to execute the contract offered on August 28, 1981, and put such contract to sleep. Public agencies which felt that the compromise proposal of a transmission services agreement was acceptable also desired to preserve their options under the Residential Purchase and Sale Agreement. The proposed addition to section I of Exhibit D puts the Residential Purchase and Sale Agreement to sleep by deeming utilities residential load to be zero until a utility is using resources to serve its firm load which produce an average system cost which exceeds BPA's Priority Firm Power Rate. The proposed change to section 12 allows a utility to have one year to determine whether to actually exchange resources under the Residential Purchase and Sale Agreement after the conditions specified in Exhibit D are met.

B. *Exhibit D, Section I is deleted and replaced by a new Section I as follows:*

1. *Existing exhibit language with proposed new language inserted.* "The Utility's Residential Load means the sum of the Regional loads the Utility elects to use as a basis for the exchange under the tariff schedules described below adjusted for distribution losses as determined pursuant to Exhibit C, as the same may be amended, supplemented, or superseded. If Bonneville determines that any such action changes the Utility's general tariffs or service schedules in a manner which would allow loads other than residential loads, as defined in the Regional Act, to be included under these tariff schedules, such nonresidential loads shall, from the date the Utility is notified of Bonneville's determination, be excluded from the residential purchase and sale transaction hereunder.

The Utility's Residential Load shall be zero instead of the amount specified in A. and B. below until both of the following conditions have occurred:

(1) *The Utility has resources being used to serve its firm load other than the resources specified in section 5(b)(1)(A) of the Regional Act and its purchase of Firm Power from Bonneville; and*

(2) *The Utility's Average System Cost exceeds the cost of Firm Power purchased by the Utility from Bonneville at the Priority Firm Power Rate Schedule or its successor rate schedule.*

Such tariff schedules, as presently effective include:

A. all schedules listed below, the following designated percentages, or —— kilowatthours of the load supplied by the Utility under:

B. a portion of the load as determined pursuant to section II below supplied by the Utility under:"

2. *Explanation of new exhibit language.* The above provisions are designed to place public agencies in the equivlant positions faced investor-owned utilities when the Residential Purchase and Sale Agreement was offered on August 28, 1981. These changes preserve the utilities' options under the Residential Purchase and Sale Agreement. They allow a utility to participate in such agreement without requiring a utility to request a new contract under section 5(c) of the Regional Act. The conditions described above allow a utility to not exchange Residential Load until it has actually used a resource to serve its load which causes its average system cost to exceed BPA's Priority Firm Power Rate.

Issued at Portland, Oregon, June 7, 1982.

Earl Gjelde,

Acting Administrator.

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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
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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 Federl Register for inclusion in today's **List of Public Laws.**

Last Listing June 9, 1982

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