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federal register

Wednesday
June 30, 1982

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Environmental Protection Agency

Animal Feeds
Environmental Protection Agency

Coal Mining
Surface Mining Reclamation and Enforcement Office

Commodities Exchanges
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Selected Subjects

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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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Title 3—

The President

Memorandum of June 28, 1982

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the Office of the United States Trade Representative

Pursuant to Section 301(a)(2) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)), I have determined that the actions described below are appropriate and feasible responses to subsidies practices of the European Economic Community (EEC) with respect to sugar exports, which are inconsistent with the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code) and which have depressed U.S. sugar prices. With a view towards eliminating or reducing the harmful effects of the EEC subsidies on sugar exports, I am directing the Office of the United States Trade Representative (USTR) to continue its bilateral deliberations with the EEC and to support vigorously international efforts in the General Agreement on Tariffs and Trade (GATT) and the International Sugar Organization (ISO). The USTR may also resort to the dispute settlement provisions of the Subsidies Code, if the foregoing efforts do not produce satisfactory results in the near future. I further direct the USTR to report to me no later than October 31, 1982 on the status of the bilateral discussions, on the GATT proceedings initiated by the major sugar exporting countries, on the discussions in the ISO, and on what steps, if any, the EEC has taken to reduce or eliminate the adverse effects of its subsidies on sugar exports.

Statement of Reasons

The Office of the United States Trade Representative initiated an investigation under section 301 of the Trade Act of 1974 on October 5, 1981 (46 FR 49697) on the basis of a petition filed by the Great Western Sugar Company. The petitioner alleged that the EEC's subsidies on sugar exports have caused serious prejudice to U.S. interests and have resulted in the EEC having more than an equitable share of world trade and materially undercutting the world market price for sugar in violation of Articles 8 and 10 of the Subsidies Code. The petitioner also alleges that EEC exports of subsidized sugar have depressed world sugar prices and are an unreasonable burden on U.S. commerce.

Since the filing of the 301 petition, the world market price of sugar has fallen from almost 16 cents per pound in July, 1981, to less than eight cents per pound in the beginning of June, 1982. Before 1975 the EEC was a net importer of sugar but since then EEC exports of sugar have risen to a record 5 million metric tons in calendar year 1981 and its share of world sugar exports rose to 18.1 percent in 1981. EEC direct export subsidies on sugar, since last summer, have been consistently above 50 percent of the world market price of sugar and in recent weeks have been over 14 cents per pound while the world market price was only 8 cents per pound (i.e. 175 percent of the world market price). In addition, U.S. exports of refined sugar, which were expanding in 1980 and 1981, have fallen sharply.

U.S. trade officials have worked diligently to reach a satisfactory solution to the problems caused by EEC sugar exports both on a bilateral and multilateral basis. After acceptance of the 301 petition on October 5, 1981, consultations were requested with the EEC pursuant to Article 12 of the Subsidies Code. A public hearing was held on November 4 to solicit additional views on the

petition. After repeated requests by the United States, consultations with the EEC were finally held on February 16, 1982 and were followed by conciliation sessions in the context of Article 17 of the Subsidies Code. Neither the consultations nor the conciliation process resulted in a mutually satisfactory solution. Therefore, the United States may, if it so decides, resort to the dispute settlement provisions of Article 18 of the Subsidies Code.

The United States is not the only country that has been adversely affected by the EEC subsidy practices in question. Major exporters of sugar who have seen their exports displaced by growing EEC sugar exports have sought to require that the EEC limit its export subsidies on sugar in light of a GATT dispute settlement panel finding that EEC exports were causing serious prejudice to their interests. Minor modifications in the EEC sugar program, introduced July 1, 1981, did not result in a limitation on EEC export subsidies on sugar. Therefore, the major sugar exporters have recently initiated a new GATT proceeding which the United States fully supports and expects to be successful. The United States will monitor the proceeding closely. The United States is also participating actively in the current discussions between signatories to the International Sugar Agreement (ISA) and the EEC, which are aimed at persuading the EEC to join the ISA to limit its exports and undertake stocking at times of low world prices.

In view of the foregoing considerations, I have determined that the appropriate action to take at this time in response to EEC subsidies on sugar exports is to direct the USTR both to continue its deliberations with the EEC and to support and work with other countries in the GATT and ISO with the aim of bringing about an end to such practices. I am hopeful that these efforts will be successful, but if they are not, the USTR may resort to the dispute settlement procedures of the Subsidies Code. I am also directing the USTR to report to me not later than October 31, 1982, on the status of the bilateral discussion with the EEC, the GATT proceedings and the ISO discussions and on the steps the EEC has taken to eliminate or reduce the harmful effects of its subsidies on sugar exports.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 28, 1982.

[FR Doc. 82-17917
Filed 6-28-82; 3:54 pm]
Billing code 3195-01-M

Rules and Regulations

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Environmental Qualification of Electric Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In a Memorandum and Order issued on May 23, 1980, the Nuclear Regulatory Commission (NRC) directed that all operating plants complete the environmental qualification of safety related electric equipment no later than June 30, 1982. Also, as specified in the Memorandum and Order, the NRC proposed rules to codify the Commission standards in this area. The proposed rules contained a new implementation schedule which would supersede the June 30 deadline in the technical specifications when the proposed rules are adopted as final. The Commission had expected to publish final rules by June 30, however this has not proved possible. Therefore, the Commission finds it necessary to suspend the June 30 deadline now contained in the technical specifications or license conditions pending publication of final rules.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Satish K. Aggarwal, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301–443–5946.

SUPPLEMENTARY INFORMATION: On May 23, 1980, the Commission issued a Memorandum and Order in the Matter of the Petition for Emergency and Remedial Action, CLI–80–21, 11 NRC 707. In that Order, the Commission directed that all operating plants complete the qualification of safety-related electric equipment pursuant to the Division of Operating Reactors (DOR) Guidelines and NUREG–0588 no later than June 30, 1982, and stated that this requirement would be incorporated into the technical specifications for each operating plant. This was accomplished by a series of plant-specific orders issued by the Director of Nuclear Reactor Regulation. For plants receiving operating licenses after these orders had been issued, the deadline was placed in a license condition.

In the May 23 Memorandum and Order, the Commission also requested that the staff engage in rulemaking to codify the Commission's standards in this area. A notice of proposed rulemaking was published in the **Federal Register** on January 20, 1982 (47 FR 2876). The proposed rule contained a new implementation schedule which would supersede the June 30 deadline in the technical specifications or license conditions of operating plants. In addition, the proposed rule included a requirement that licensees of operating plants submit justification for continued operation while qualification efforts are still underway, but it was noted that, if these plant-specific justifications were voluntarily submitted and evaluated by the staff prior to publication of a final rule, this requirement would be deleted. The Commission expected to be able to publish the final rule prior to the June 30 deadline. This has not proved possible. Although Commission action on the final rule is nearly complete, publication will be delayed somewhat beyond June 30. It is therefore necessary to suspend the deadline now contained in technical specifications or license conditions pending publication of the final rule.

The Commission is today promulgating an interim 10 CFR 50.49 which will be superseded by the final rule bearing the same section number. The interim rule suspends the deadline now contained in technical specifications or license conditions pending publication of the final rule, the implementation schedule of which will be immediately effective. Although licensees will be operating under no deadline for a short period of time, the Commission expects that licensee efforts to meet the requirements of CLI–80–21 will continue without interruption.

The Commission has received, and the staff has evaluated, each operating plant licensee's justification for continued operation. On the bases of these analyses, the Commission has determined that continued operation of these plants pending completion of the equipment qualification program, will not present undue risk to the public health and safety. The state of environmental qualification at operating plants is much improved since imposition of the June 30 deadline, though much work remains, and the Commission finds that no public purpose would be served by placing licensees in jeopardy of enforcement actions for the brief interim period between June 30 and publication of the final rule which will establish a new schedule.

This rule may be made immediately effective upon publication in the **Federal Register**, pursuant to section 553(d)(1) of the Administrative Procedure Act, because it "relieves a restriction" previously imposed upon licensees of operating nuclear power plants. Furthermore, the Commission is dispensing with public notice and comment in promulgating this rule in final form. The Commission had intended to promulgate a final rule by June 30, 1982. However, because the Commission will be unable to promulgate a final rule by that date, and because licensees should not be placed in jeopardy of enforcement action pending promulgation of a revised schedule for implementation of equipment qualification requirements, the Commission finds good cause to dispense with notice and comment. In addition, the Commission has already solicited comments on the proposed rule's schedule delaying implementation beyond June 30 and the final rule will contain a schedule of this type.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The rule affects only operating nuclear power plant licensees, which do not fall within the definition of a small business as defined in the Small Business Act, 15 U.S.C. 632, or as defined in the Small Business Size Standards, 13 CFR Part 21.

Paperwork Reduction Act Statement

Pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511, the Commission has determined that this rule does not impose new recordkeeping, information collection, or reporting requirements.

List of Subjects in 10 CFR Part 50

Nuclear power plants and reactors.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 50, is published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. A new § 50.49 is added to read as follows:

§ 50.49 Environmental qualification schedules.

The June 30, 1982, deadline for completion of environmental qualification of safety-related electric equipment, now contained in the technical specifications or license conditions for all operating nuclear power plants, is hereby suspended pending publication of the final rule on qualification of such equipment.

2. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.78 also issued under Sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under Sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under Sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under Sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Dated this 25th day of June, 1982, at Washington, D.C.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR. Doc. 82-17722 Filed 6-29-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 1b, 2, 3, 3a, 3c, 4, 12, 16, 25, 32, 33, 34, 35, 41, 45, 131, 152, 153, 154, 156, 157, 158, 250, 270, 271, 275, 281, 282, 284, 286, 292, 375, 385, and 388

[Docket Nos. RM78-22-000, RM78-22-010, RM78-22-011, RM78-22-012]

Revision of Rules of Practice and Procedure to Expedite Trial-Type Hearings

Issued June 25, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for purpose of further consideration.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order granting limited rehearing on three applications filed with respect to the Commission's final rule revising its Rules of Practice and Procedure. Rehearing is granted solely to allow the Commission sufficient time for further consideration of the applications. The order does not constitute a grant or denial of any application on its merits, either in whole or in part.

FOR FURTHER INFORMATION CONTACT: Fredric D. Chanania, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing for Purpose of Further Consideration

Issued June 25, 1982.

On April 28, 1982, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its Rules of Practice and Procedure to expedite trial-type hearings (Docket No. RM78-22-000, Order No. 225, 47 FR 19014 (May 3, 1982)). The final rule reorganized and revised the Rules of Practice and Procedure, effective on August 26, 1982, and represented a major step in the Commission's overall effort to update and clarify its procedural rules.

The Commission has received timely applications for rehearing of this final rule from the Association of Oil Pipelines (Docket No. RM78-22-010), Phillips Petroleum Company, Inc. (Docket No. RM78-22-011), and Southern Union Gathering Company (Docket No. RM 78-22-012). To have sufficient time to consider the issues raised in these applications, the Commission will grant rehearing of the final rule solely for the purpose of such further consideration.

The Commission Orders: Rehearing of Order No. 225 is granted solely for the limited purpose of further consideration of the issues raised in the three applications for rehearing. This action does not constitute a grant or denial of any application on its merits, either in whole or part. As provided in § 1.34(d) of the Commission's present Rules of Practice, 18 CFR 1.34(d), no answers to these applications will be entertained by the Commission because this order does not grant rehearing on any substantive issues.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-17581 Filed 6-29-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-096 (Alabama-2); Order No. 236]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued June 23, 1982.

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 Oil and Gas Board of Alabama that the Hartselle Sandstone Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued June 23, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Hartselle Sandstone Formation in Walker and Winston Counties, Alabama, 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 Regulations (OPPR), issued March 4, 1982 (47 FR 10237, March 10, 1982) [1] based on a recommendation by the State Oil and Gas Board of Alabama (Alabama) in accordance with § 271.703(c) that the Hartselle Sandstone Formation be designated as a tight formation.

Evidence submitted by Alabama supports the assertion that the Hartselle Sandstone Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Alabama recommendation.

This amendment shall become effective immediately. The Commission has found 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.

Lists 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. 3301–3342; 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 June 23, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding a new paragraph (d)(90) to read as follows:

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

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(90) *Hartselle Sandstone Formation in Alabama.* RM79–76–096 (Alabama-2).

(i) *Delineation of formation.* The Hartselle Sandstone Formation in Alabama is found in Township 11 South, Ranges 7 to 9 West and Township 12 South, Ranges 6 to 10 West, in Winston County, and in Townships 12 to 17 South, Ranges 4 to 10 West, in Walker County. The Jasper Field located in Township 13 South, Range 7 West, Sections 21 through 28, and 33 through 36, in Walker County, is excluded from the designation.

(ii) *Depth.* The depth of the formation varies from approximately 400 feet in the northern part of the formation, to 3,000 feet in the southern part. It varies in thickness from zero feet at the downdip pinchout in southern Walker County and along the western border of Walker County, to over 150 feet in northern Walker County and southern Winston County.

[FR Doc. 82-17579 Filed 6-29-82; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-108 (New Mexico—11); Order No. 237]

High-Cost Gas Produced From Tight Formations; Final Rule

Issued June 23, 1982.

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 Pictured Cliffs Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 23, 1982.

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

SUPPLEMENTARY INFORMATION:

Issued June 23, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include the Pictured Cliffs Formation in Rio Arriba County, 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 March 30, 1982 (47 FR 14491, April 5, 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 Pictured Cliffs Formation be designated as a tight formation.

Evidence submitted by New Mexico supports the assertion that the Pictured Cliffs 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 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.

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 June 23, 1982.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by adding a new paragraph (d)(89) to read as follows:

[1] Comments were invited on the proposed rule and one favorable comment was received. No party requested a public hearing and no hearing was held.

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(89) *Pictured Cliffs Formation in New Mexico.* RM79–76–108 (New Mexico—11).

(i) *Delineation of formation.* The Pictured Cliffs Formation is found in the southeastern portion of the San Juan Basin in Rio Arriba County, New Mexico. The area is divided into two non-contiguous tracts described as Area A and Area B. Area A encompasses Township 25 North, Range 6 West, Sections 21, 22, 23, 26, 27, 28 NE/4, 34, 35, and 36 W/2. Area B encompasses Township 25 North, Range 7 West, Sections 4, 5 E/2, 8 NE/4, 9 N/2, and 10 N/2; Township 26 North, Range 6 West, Section 31; Township 26 North, Range 7 West, Sections 17 S/2, 18, 19 N/2, and SE/4, 20, 21, S/2, 22 S/2, 25 SW/4, 26 S/2, 27, 28, and 33 through 36.

(ii) *Depth.* The Pictured Cliffs Formation's vertical limits are defined by the Fruitland Formation above and the Lewis Shale Formation below. The average thickness through the formation is 70 feet, and the average depth to the top of the Pictured Cliffs Formation is 2,387 feet.

[FR Doc. 82–17578 Filed 6–29–82; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76–100 (Texas—3 Addition II); Order No. 239]

[High-Cost Gas Produced From Tight Formations; Final Rule

Issued June 23, 1982.

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 determnines 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 Railroad Commission of Texas that an additional area of the Cisco Sandstone Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued June 23, 1982.

The Commission hereby amends § 271.703(d) of its regulations to include an additional area of the Cisco Sandstone Formation in the Credo, East (Cisco, Upper) Field in Sterling County, Texas, 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 March 23, 1982 (47 FR 13001, March 26, 1982) [1] based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703(c) that an additional area of the Cisco Sandstone Formation found in the Credo, East (Cisco, Upper) Field be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the recommended formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.

This amendment shall become effective immediately. The Commission has found 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.

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 June 23, 1982.

[1] Comments were invited on the proposed rule and one favorable comment was received. No party requested a public hearing and no hearing was held.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—CEILING PRICES

Section 271.703 is amended by revising paragraph (d)(12)(ii) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(12) *Cisco Sandstone Formation in Texas.* RM79–76 (Texas—3).

* * *

(ii) *Credo, East (Cisco, Upper) Field.*

(A) *Delineation of formation.* The Upper Cisco Formation is located in the northwestern corner of Sterling County, in west Texas, and includes 24 sections in Block 29, W & NW Survey, 13 sections in Block 31, T–4–S, T & P RR Survey, 15 sections in Block 17, SP RR Survey, 5 sections in Block 14, SP RR Survey, 36 sections in Block 23, H & TC RR Survey, and 3 sections in J. G. Soulard Survey.

(B) *Depth.* The top and base of the Cisco Formation located in the Credo, East (Cisco, Upper) Field are found at an approximate depth of 7,125 feet and 7,550 feet, respectively, as measured in the log of the HNG Oil Co. No. 21–1 McEntire well.

[FR Doc. 82–17580 Filed 6–29–82; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 1H5285/T79; PH–FRL No. 2157–6]

Tolerances for Pesticides in Food; O,O-Dimethyl O-(4-Nitro-m-Tolyl) Phosphorothioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This food additive regulation permits residues of the insecticide *O,O*-Dimethyl *O*-(4-Nitro-*m*-Tolyl) Phosphorothioate in or on food resulting from its use in a proposed experimental program involving application of solutions containing a maximum of 1.0 percent active ingredient in food handling establishments. This regulation to establish a maximum permissible level for residues of the insecticide was requested by Stauffer Chemical Company.

EFFECTIVE DATE: Effective on: June 30, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, (A–110), Environmental Protection Agency, Rm. M–3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William H. Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of March 3, 1981 (46 FR 14954) that Stauffer Chemical Company, 1200 South 47th Street, Richmond, CA 94804, had submitted a food additive petition (1H5285) to the EPA. The petition proposed that 21 CFR Part 193.156 be amended by establishing a regulation permitting the combined residues of the insecticide, *O,O*-Dimethyl *O*-(4-Nitro-*m*-Tolyl) phosphorothioate and its cholinesterase inhibiting metabolite, *O,O*-Dimethyl *O*-(4-Nitro-*m*-Tolyl) phosphate at 0.5 part per million (ppm) in or on food resulting from its use in a proposed experimental program involving application of solutions containing a maximum of 1.0 percent active ingredient in food handling establishments.

No comments were received in response to this notice of filing.

The scientific data reported and other relevant material were evaluated and it was determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which has been issued under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

The toxicological data considered in support of the regulation included two-year rat and dog feeding studies with ChE no-observable-effect levels (NOEL's) of 10 ppm and 30 ppm respectively; a three-generation rat reproduction study with a NOEL of 30 ppm; rat and mouse teratology studies with NOEL's of 200 mg/kg (highest dose); a mouse oncogenicity study with a NOEL of 200 ppm (highest dose); and an acute delayed neurotoxicity study with a NOEL of 500 mg/kg. Based on the two-year rat feeding study with a 10 ppm NOEL (0.5 mg/kg/day) and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.05 milligram (mg)/kilogram (kg) of body weight (bw)/day, and the maximum permissible intake (MPI) is 3.0 mg/day for a 60-kg human.

The theoretical maximum residue contribution (TMRC) in the human diet from this regulation is .7500 mg/day. This value represents 25.0 percent of the ADI. The TMRC in the human diet from a permanent food additive regulation establishing a permissible level of 30.0 ppm for residues of the subject insecticide in wheat gluten (21 CFR 193.156) utilizes 3.96 percent of the ADI. A temporary tolerance previously established in the Federal Register of November 30, 1978 (43 FR 56101) for residues of the insecticide in milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.01 ppm utilized 0.20 percent of the ADI. This temporary tolerance expired June 5, 1980. The total TMRC in the human diet from the established tolerances and this regulation utilizes a total of 29.16 percent of the ADI.

Desirable data lacking from the petition are a mutagenicity study. The study will be requested when suitable test protocols have been finalized. There are no regulatory actions pending against registration of the insecticide, and no other considerations are involved in establishing this food additive regulation.

The metabolism of the insecticide is adequately understood and an adequate analytical method (gas chromotography using either a flame photometric detector or an alkali flame detector specific for phosphorus) is available for enforcement purposes. The insecticide is considered useful for the purpose for which the regulation is sought.

It is concluded that the insecticide may be safely used in the prescribed manner when such use is in accordance with the prescribed label and labeling registered pursuant to FIFRA as amended. Therefore, 21 CFR 193.156 is amended as set forth below.

Any person adversely affected by this regulation may, on or before July 30, 1982, file written objections with the Hearing Clerk, Environmental Protection Agency at the address above. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945). Effective on: June 30, 1982.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: June 17, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Program.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 193.156 is amended by designating the existing paragraph as paragraph (a) and adding the new paragraphs (b) through (d) to read as follows:

§ 193.156 O,O-Dimethyl O-(4-nitro-m-tolyl) phosphorothioate.

(a) * * *

(b) A food additive regulation is established for the combined residues of the insecticide *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate and its metabolite, *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphate in food items at 0.5 part per million resulting from the application of solutions containing a maximum concentration of 1.0 percent of the insecticide in food handling establishments. Application shall be limited solely to spot or crack and crevice treatments. For crack and crevice treatments, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food or food-contact surfaces shall be avoided. Such residues may be present therein only as a result of application with the provisions of an experimental use permit. This regulation expires June 17, 1983.

(c) Residues in food items not in excess of 0.5 part per million resulting from the use as described in paragraph (b) of this section remaining after expiration of the experimental use program will not be considered actionable if the insecticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and food additive regulation.

(d) Stauffer Chemical Company will immediately notify the EPA of any

findings from the experimental use that have a bearing on safety. The firm will also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

[FR Doc. 82-17597 Filed 6-29-82; 8:45 am]
BILLING CODE 6560-50-M

21 CFR Part 561

[FAP 0H5269/R105; PH-FRL No. 2157-7]

Tolerances for Pesticides in Animal Feeds; 2-Chloro-1-(2,4,5-Trichlorophenyl) Vinyl Dimethyl Phosphate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation permitting residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate as a feed additive for horses and swine. This regulation to establish the maximum permissible level for the insecticide in or on the commodities was requested by Diamond Shamrock.

EFFECTIVE DATE: Effective on June 30, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of September 2, 1980 (45 FR 58193) which announced that Diamond Shamrock, 1100 Superior Ave., Cleveland, OH 44144, had filed a feed additive petition (FAP 0H5269) with the EPA. The petition proposed that 21 CFR 561.91 be amended to permit the use of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate as a feed additive for horses at 0.00015 pound (0.07 gram) and swine at 0.00011 pound (0.05 gram), respectively, per 100 pounds of body weight per day.

No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. Residues resulting in the meat, fat, and meat byproducts of horses and swine from this use are not likely to exceed the established tolerances in 40 CFR 180.252 for residues of this pesticide. Although 40 CFR 180.252 lists only horse and swine fat, at the time the tolerance was issued meat and meat byproducts are considered to be covered by the fat tolerance.

The nature of the residues is adequately understood and an adequate analytical method is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the feed additive regulation is sought, and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et. seq.*). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before July 30, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

Effective on: June 30, 1982.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Lists of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

Dated: June 17, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 561.91 (a) and (b) are revised to read as follows:

§ 561.91 2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate.

* * * * *

(a) It is used as a feed additive in the feed of beef, dairy cattle, and horses at a rate of 0.00015 pound (0.07 gram) and swine at the rate of 0.00011 pound (0.05 gram) per 100 pounds of body weight per day.

(b) It is used for control of fecal flies in manure of treated cattle, horses, and swine.

[FR. Doc. 82-17598 Filed 6-29-82; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Minerals Management Service

30 CFR Chs. II and IV

Minerals Management Service and Geological Survey; Reorganization

AGENCY: Minerals Management Service, Geological Survey.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior has reorganized the Department to form the Minerals Management Service (MMS). Among its other duties, the MMS will perform the functions previously conducted in the Conservation Division of the Geological Survey. The regulations previously administered by the Conservation Division are amended to reflect this reorganization.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Cecil R. Feeney (703) 860-6259, (FTS) 928-6259.

SUPPLEMENTARY INFORMATION: The regulations identified in this final rule will be amended by:

1. Revising references to the Geological Survey, where appropriate, to read "Minerals Management Service";

2. Removing references to the Conservation Division;

3. Revising references to the Chief of the Conservation Division to read "Director, Minerals Management Service";

4. Revising references to the Regional Conservation Manager to read "Minerals Manager";

5. Revising references to a Deputy Conservation Manager to read "Deputy Minerals Manager";

6. Removing Part 229 and placing it in 30 CFR Chapter IV;

7. Revising the definition of *Director* to read "*Director* means the Director of the Minerals Manager Service or the Director's designee";

8. Removing a reference to "the Deputy Director for Minerals Management"; and

9. Removing a reference to "the Chief, Onshore Minerals Management Division.

The Department has determined that it is unnecessary, under 5 U.S.C. 553(b)(B), to require public comments on these changes through prior publication as a proposed rulemaking. This requirement and substantive provisions of the regulations are unaffected by this removal of an organization title and revision of position titles. Therefore, as an administrative change, proposed rulemaking is unnecessary.

The customary 30-day period between the publication date and effective date of a final rulemaking is hereby waived because this rule does not initiate change, but is an administrative action reflecting changes.

The principal authors of this final rulemaking are Platte Clark, Cecil Feeney, and Stephen Spector, all of the Minerals Management Service, assisted by the Office of the Solicitor.

Executive Order 12291

The Department has determined that this final rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291 because it has no economic impact.

Regulatory Flexibility Act of 1969

The Department has also determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act because it has no economic impact on small entities.

National Environmental Policy Act

It is hereby determined that this final rule 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 of 1980

There are no changes to the information collection requirements of the parts of Title 30 amended. All reporting locations, forms, and content are unchanged.

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 359); the Outer Continental Shelf Lands Act (43 U.S.C. 1334); the Geothermal Steam Act (30 U.S.C. 1023); Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); and Secretarial Order No. 3071 of January 19, 1982, as amended, Title 30 of the Code of Federal Regulations is amended as set forth below.

Dated: June 26, 1982.

Donald Paul Hodel,

Under Secretary.

1. Title 30 is amended by revising the title of Chapter II to read as follows:

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

* * * * *

2. Title 30 is amended by adding a new Chapter IV to read as follows:

* * * * * *

CHAPTER IV—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

* * * * *

3. 30 CFR Part 211 is amended by removing the words "Geological Survey" or "GS" and inserting in their place the words "Minerals Management Service" or "MMS" in the following places:

(a) 30 CFR 211.2 *Conservation Manager, Division Chief, Logical Mining Unit, Mining Supervisor* and note;

(b) 30 CFR 211.5(c)(2);

(c) 30 CFR 211.10(c)(6)(xii) and (d)(2)(i); and

(d) 30 CFR 211.11.

4. 30 CFR Part 221 is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 221.1;

(b) 30 CFR 221.2(c) and note; and

(c) 30 CFR 221.3.

5. 30 CFR Part 223 is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 223.2 and note; and

(b) 30 CFR 223.4(a).

6. 30 CFR 225.2(c) is amended by removing the consecutive words "the Chief, Conservation Division, Geological Survey".

7. 30 CFR Part 225 is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 225.2(c) and note;

(b) 30 CFR 225.6; and

(c) 30 CFR 225.7.

8. 30 CFR Part 225a is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 225a.2(d) and note; and

(b) 30 CFR 225a.8.

9. 30 CFR Part 226 is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 226.2(m) and note;

(b) 30 CFR 226.2a;

(c) 30 CFR 226.12;

(d) 30 CFR 226.16; and

(e) 30 CFR 226.17.

10. Part 229 of 30 CFR Chapter II is transferred to 30 CFR Chapter IV and redesignated as Part 400.

11. 30 CFR Part 231 is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 231.3(a), (b)(3), and (b)(4).

12. 30 CFR Part 250 is amended by removing the words "Geological Survey" or "U.S. Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 250.1;

(b) 30 CFR 250.2 (n) and (nn);

(c) 30 CFR 250.34–2(q);

(d) 30 CFR 250.49;

(e) 30 CFR 250.70;

(f) 30 CFR 250.71(a);

(g) 30 CFR 250.80–1(a)(1);

(h) 30 CFR 250.80–1(n)(1); and

(i) 30 CFR 250.80–1(o)(2).

13. 30 CFR Part 251 is amended by removing the words "Geological Survey" or "U.S. Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 251.2(k);

(b) 30 CFR 251.5–3(a), (b), (c), and (d); and

(c) 30 CFR 251.11(b)(2).

14. 30 CFR Part 252 is amended by removing the words "Geological Survey" or "U.S. Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 252.1;

(b) 30 CFR 252.2 (h);
(c) 30 CFR 252.3(d);
(d) 30 CFR 252.4(a); and
(e) 30 CFR 252.5(b).

15. 30 CFR Part 270 is amended by removing the words "Geological Survey" or "United States Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 270.2(c) and note, and (l); and
(b) 30 CFR 270.50(a).

16. 30 CFR Part 271 is amended by removing the words "Geological Survey," "United States Geological Survey," or "U.S. Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places:

(a) 30 CFR 271.2, (m) and note;
(b) 30 CFR 271.8(c);
(c) 30 CFR 271.12;
(d) 30 CFR 271.16; and
(e) 30 CFR 271.17.

17. 30 CFR Part 290 is amended by removing the words "Geological Survey" and inserting in their place the words "Minerals Management Service" in the following places;

(a) 30 CFR Part 290.1;
(b) 30 CFR Part 290.2;
(c) 30 CFR Part 290.3;
(d) 30 CFR Part 290.4;
(e) 30 CFR Part 290.5;
(f) 30 CFR Part 290.6; and
(g) 30 CFR Part 290.7.

18. 30 CFR Chapter II is amended by removing the words "Conservation Manager" and inserting in their place the words "Minerals Manager" in the following places:

(a) 30 CFR 211.2 *Conservation Manager;*
(b) 30 CFR 211.3(a)(1);
(c) 30 CFR 225a.2(d);
(d) 30 CFR 226.2(l); and
(e) 30 CFR 226.2a.

19. 30 CFR Chapter II is amended by removing the words "Conservation Division" from the following places:

(a) 30 CFR 211.2 *Conservation Manager,* and *Mining Supervisor* and Note;
(b) 30 CFR 221.2(c) Note;
(c) 30 CFR 221.3;
(d) 30 CFR 223.2 Note;
(e) 30 CFR 225.2(c) Note;
(f) 30 CFR 225a.2(d) and Note;
(g) 30 CFR 226.2(m) and Note;
(h) 30 CFR 226.2a;
(i) 30 CFR 231.2(j);
(j) 30 CFR 231.3(b)(3) and (b)(4);
(k) 30 CFR 250.80–1(a)(1);
(l) 30 CFR 270.2(c) and Note, and (l);
(m) 30 CFR 271.2(m) and Note;
(n) 30 CFR 271.12: 2.1(h);
(o) 30 CFR 290.1; and
(p) 30 CFR 290.2.

20. 30 CFR Part 211.2, *General Coal Mining Order,* is amended by removing the words "Division Chief" and inserting in their place the word "Director."

21. 30 CFR 211.2 is amended by removing the *Division Chief* definition.

22. 30 CFR 211.3(a)(1) is amended by removing the words "Division Chief" from the first sentence.

23. 30 CFR Chapter II is amended by removing the words "Deputy Conservation Manager" and inserting in their place the words "Deputy Minerals Manager" in the following places:

(a) 30 CFR 211.2 *Mining Supervisor* Note;
(b) 30 CFR 221.2(c) Note;
(c) 30 CFR 221.20(a);
(d) 30 CFR 223.2 Note;
(e) 30 CFR 225.2(c) Note;
(f) 30 CFR 225a.2(d) Note;
(g) 30 CFR 226.2(m) Note;
(h) 30 CFR 270.2(c) Note; and
(i) 30 CFR 271.2(m) Note.

24. 30 CFR Chapter II is amended by removing the words "the Chief" in the following places:

(a) 30 CFR 221.2(c);
(b) 30 CFR 225a.2(d);
(c) 30 CFR 226.2(m);
(d) 30 CFR 270.2(c);
(e) 30 CFR 271.2(m); and
(f) 30 CFR 271.12: 2.1(h).

25. 30 CFR Chapter II is amended by removing the word "Chief" and inserting in its place the word "Director" in the following places:

(a) 30 CFR 221.3;
(b) 30 CFR 226.2a;
(c) 30 CFR 231.2(j);
(d) 30 CFR 231.3 (b)(3) and (b)(4); and
(e) 30 CFR 270.2(l).

26. 30 CFR Chapter II is amended by removing the words "through the Chief, Conservation Division" in the following places:

(a) 30 CFR 231.3(a); and
(b) 30 CFR 270.1.

27. 30 CFR Chapter II is amended by removing the words "Regional Conservation Manager" and inserting in their place the words "Minerals Manager" in the following places:

(a) 30 CFR 221.2(c);
(b) 30 CFR 221.3;
(c) 30 CFR 225.2(c);
(d) 30 CFR 231.3 (b)(3) and (b)(4);
(e) 30 CFR 270.2(c);
(f) 30 CFR 271.2(m); and
(g) 30 CFR 271.12: 2.1(h).

28. 30 CFR Chapter II is amended by revising the definition of *Director* to read "*Director* means Director of the Minerals Management Service or the Director's designee" in the following places:

(a) 30 CFR 221.2;
(b) 30 CFR 221.2(b);
(c) 30 CFR 225a.2(c);
(d) 30 CFR 226.2(l);
(e) 30 CFR 231.2(b);
(f) 30 CFR 270.2(b); and
(g) 30 CFR 271.2(l).

29. 30 CFR 231.2(c) is amended by removing the consecutive words "the Deputy Director for Minerals Management; the Chief, Onshore Minerals Management Division".

[FR Doc. 82-17728 Filed 6-29-82; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Parts 700, 726, 728, 734, 736, and 737

Nomenclature Changes and Miscellaneous Corrections

AGENCY: Department of the Navy, DoD.

ACTION: Final rule; corrections.

SUMMARY: This rule corrects miscellaneous technical errors appearing in 32 CFR Parts 700, 726, 728, 734, 736, and 737.

DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Lt. Lori B. Cohen, JAGC, U.S. Naval Reserve, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332, (202) 325–9860.

SUPPLEMENTARY INFORMATION:

PART 700—UNITED STATES NAVAL REGULATIONS

§ 700.733 Responsibility of a master of an in-service ship of the Military Sealift Command [Amended].

In the last sentence remove the reference to "Civil Service Commission" and replace with "Office of Personnel Management".

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

§ 726.4 Procedure for medical examinations [Amended].

(1) In paragraph (a)(2) remove "Department of Health, Education and Welfare" and replace with "Department of Health and Human Services".

(2) Amend paragraph (c)(3)(vi) to read:

* * * * *

(c) * * *
(3) * * *

(vi) *Public Health Service.* To the Chief, Office of Personnel, Public Health Service, Department of Health and Human Services, 5600 Fisher Lane, Rockville, MD 20857.

* * * * *

PART 728—MEDICAL CARE FOR ELIGIBLE PERSONS AT NAVAL MEDICAL FACILITIES

§ 728.53 Members of Canadian armed forces other than NATO and their dependents [Amended].

(1) Amend the address in paragraph (d) to read:

(d) * * * Canadian Defense Liaison Staff, 2450 Massachusetts Avenue, N.W., Washington, D.C. 20008. * * *

* * * * *

PART 734—GARNISHMENT OF PAY OF NAVAL MILITARY AND CIVILIAN PERSONNEL FOR COLLECTION OF CHILD SUPPORT AND ALIMONY

§ 734.2 Scope [Amended].

In the last sentence remove the reference to "Civil Service Commission" and replace with "Office of Personnel Management".

PART 736—DISPOSITION OF PROPERTY

§ 736.5 Disposition of real and personal property under special statutory authority [Amended].

(1) Remove the two references to the "Department of Health, Education, and Welfare" in paragraph (f)(1)(ii) and replace with "Department of Health and Human Services".

(2) Remove the reference to the "Department of Health, Education, and Welfare" in paragraph f(2) and replace with "Department of Health and Human Services".

PART 737—NAVY PROCUREMENT DIRECTIVES, 1974 EDITION

§ 737.1-109-52 Deviations involving patents, copyrights, and technical data [Amended].

Remove the reference to the "Atomic Energy Commission" in the penultimate sentence and replace with "Department of Energy".

Dated: June 25, 1982.

H. D. Campbell,

Captain, JAGC, U.S. Navy Alternate Federal Register Liaison Officer.

[FR Doc. 82-17698 Filed 6-29-82; 8:45 am]

BILLING CODE 3810-AE-M

VETERANS ADMINISTRATION

38 CFR Parts 6 and 8

United States Government Life Insurance and National Service Life Insurance; Payment to Decedent's Estate

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending regulations relating to payment of Government life insurance proceeds directly to the person or persons entitled to the decedent's personal property under the laws of the State of his or her domicile, where no legal represenative has been or will be appointed. The purpose of the amendments is to bring the regulations in line with State probate laws which have generally raised the amount which can be distributed to heirs without the expense for formal administration of decedents' estates. While the amendments involve no changes in basic entitlement to benefits, they will, in many cases, allow beneficaries to obtain the proceeds of Government life insurance faster and with less expense. These amendments will also reduce the manhours required to process these cases and result in savings of tax dollars.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Carey, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101 (215-951-5360).

SUPPLEMENTARY INFORMATION: On pages 56213 and 56214 of the **Federal Register** of November 16, 1981, there was published a notice of proposed regulatory development to amend regulations concerning payment to decedents' estates. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulation amendments. No written objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

The agency has determined that these final regulations are nonmajor in accordance with the requirements of Executive Order 12291 because they will not have any significant effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this final rule is exmpt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will affect only individual heirs to a decedent's estate. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

List of Subjects in 38 CFR Parts 6 and 8

Life insurance, Military personnel, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program number 64.103)

Approved: June 14, 1982.

Robert P. Nimmo,

Administrator.

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

Therefore, the Veterans Administration is amending 38 CFR Parts 6 and 8 as set forth below:

1. Section 6.128 is revised as follows:

§ 6.128 Payment to decedent's estate.

If no legal representative has been or will be appointed, United States Government Life Insurance benefits, including dividends and premium refunds which are payable to the estate of a deceased insured or beneficiary, may be paid direct to the person or persons [distributee or distributees] entitled to the decedent's personal property under the laws of the State of his or her domicile. [38 U.S.C. 750]

PART 8—NATIONAL SERVICE LIFE INSURANCE

2. Section 8.54 is revised as follows:

§ 8.54 Payment to decedent's estate.

If no legal representative has been or will be appointed, National Service Life Insurance benefits, including dividends and premium refunds which are payable to the estate of a deceased insured or beneficiary, may be paid direct to the person or persons [distributee or distributees] entitled to the decedent's personal property under the laws of the State of his or her domicile. [38 U.S.C. 717(d)]

§ 8.59 [Amended]

3. Section 8.59 is amended by removing the words "widow, widower" and inserting in their place "surviving spouse" in paragraph [a] and the first sentence of paragraph [d].

[FR Doc. 17599 Filed 6-29-82; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2133-3]

Approval and Promulgation of Implementation Plans; Massachusetts; Springfield and Boston Transportation Control Plans; Removal of Federally-Promulgated Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this document is to remove from the Massachusetts State Implementation Plan (SIP) and the Code of Federal Regulations certain transportation and stationary source air pollution control regulations promulgated by EPA in November, 1973 and June, 1975. The State has requested that these regulations be removed because they have been or are being adopted by the State, have been fulfilled or have been found to be infeasible. EPA agrees with these reasons and is therefore granting the State's request. It is expected that removal of the federally-promulgated regulations will allow the State more freedom in pursuing its own air quality initiatives, will allow for the removal of unnecessary or duplicative regulations and will not adversely affect air quality.

EFFECTIVE DATE: This action will be effective August 30, 1982, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Betsy Horne, Air Programs Section, Room 1903, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the Massachusetts submittal and EPA's Technical Support Document are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, MA. 02203 and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter St., Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Betsy Horne, (617) 223-5630.

SUPPLEMENTARY INFORMATION: On November 7, 1973 (38 FR 30829) and June 12, 1975 (40 FR 25152) EPA promulgated, as part of the Massachusetts State Implementation Plan (SIP), a number of Federal regulations for the control of air pollution from transportation and stationary sources in Springfield and Boston. These regulations are referred to as the Springfield and Boston Transportation Control Plans (TCPs). They include such regulations as incentives for reducing single passenger commuting (car and vanpool matching, preferential treatment for buses and carpools, and limiting on and off street parking); improving traffic flow; inspection and maintenance of automobiles; controls on industrial sources of hydrocarbons; and administrative requirements to implement these measures. At the time of promulgation of these regulations, EPA hoped that they would eventually be replaced by State programs.

Subsequently, on December 31, 1978; May 16, September 19, November 13 and December 7, 1979; and March 20 and April 7, 1980, in response to the requirements of Part D of the Clean Air Act, Massachusetts submitted revisions to its SIP for the entire State. These revisions contained a number of stationary and mobile source control strategies for attainment of the ozone and carbon monoxide National Ambient Air Quality Standards. EPA conditionally approved these revisions on September 16, 1980 (45 FR 61293).

In the September 19, 1979 submittal, the State requested that EPA rescind the federally-promulgated TCP regulations. Supplemental communications from the State, dated July 11, and November 13, 1980, and February 4 and December 21, 1981 amplify or amend the original requests.

Since EPA has conditionally approved the State's strategy for the attainment of the ozone and carbon monoxide standards and since the federally-promulgated TCP regulations have been or are being adopted by the State, have been fulfilled, or have been found to be infeasible most of the regulations are no longer necessary and can be removed from the Code of Federal Regulations. The Agency's analysis of these regulations is discussed in detail in a "Technical Support Document" available at the locations listed in the **"ADDRESSES"** section of this Notice.

A further compelling reason for rescinding certain of the federally-promulgated regulations is that industrial sources subject to them are faced with having to comply with two sets of control regulations, one federally promulgated and one adopted by the State. In some cases, compliance with the State adopted regulations will result in non-compliance with the federally-promulgated regulations. The removal from the Code of Federal Regulations of certain of the federally-promulgated rules will solve this problem. However, the regulation on organic solvent use, § 52.1145, which is causing this problem, is being only partially removed from the Code of Federal Regulations. It is no longer applicable to those industrial source categories for which the State has adopted reasonably available control technology (RACT) regulations and which have been approved in the federally adopted State Implementation Plan. The regulation remains in effect for categories where the State has not adopted (and EPA has not approved) regulations equivalent to RACT. Section 52.1147, federal compliance schedules, remains in the Code of Federal Regulations in so far as it pertains to the retained portions of § 52.1145.

Additionally, in the September 16, 1980 Final Rulemaking Notice EPA approved an extension until 1987 for the State to attain the ozone and carbon monoxide standards but neglected to remove another subsection which had established an earlier attainment date. In today's rulemaking EPA is removing that earlier subsection.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 30, 1982, unless, within 30 days from the date of this **Federal Register**, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 30, 1982.

Action: EPA is approving the removal from the Code of Federal Regulations of: 1. Sections 52.1148 through 52.1155, for Springfield (38 FR 30829), 2. Sections 52.1129, 1130, 1132, 1133, 1138–1140, 1144, 1145 (partial), 1146, 1147 (partial), 1156, 1157, 1160, 1161 (except subsections (a) and (b)(1)), and 1162–1164, for Boston (40 FR 25152) and 3. Section 52.1122 (b).

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 30, 1982. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2)).

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant

economic impact on a substantial number of small entities (46 FR 8709).

List of Subjects in 40 CFR Part 52

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

(Section 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)))

Dated: June 23, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart W—Massachusetts

§§ 52.1129, 52.1130, 52.1132, 52.1133, 52.1138—52.1140, 52.1144, 52.1146, 52.1148—52.1157, and 52.1160 [Removed]

1. The following sections are removed and reserved: Sections 52.1129, 52.1130, 52.1132, 52.1133, 52.1138 through 52.1140, 52.1144, 52.1146, 52.1148 through 52.1157, 52.1160.

2. Section 52.1161 is amended by removing and reserving paragraphs (b)(2)–(b)(8), (c) through (k). The introductory text of paragraph (b), (b)(1) and paragraph (a) are retained.

§ 52.1122 [Amended]

3. Section 52.1122 is amended by removing and reserving paragraph (b).

4. Section 52.1145 is amended by adding paragraph (j)(8) as follows:

§ 52.1145 [Amended]

(j) * * *

(8) Sources subject to the provisions of Massachusetts Regulation 310 CMR 7.18 which has been federally approved.

[FR Doc. 82-17641 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[ANR-FRL-2159-2]

Approval and Promulgation of Implementation Plans; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This notice corrects portions of 40 CFR Part 52. Most of the changes correct the designation of certain amendments, correct typographical errors, or withdraw amendments erroneously published twice.

EFFECTIVE DATE: June 24, 1982.

FOR FURTHER INFORMATION CONTACT: Cristina N. Griffin, Office of Air, Noise and Radiation, EPA. (202) 755–0570.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

EPA is withdrawing the following amendments to the CFR:

§ 52.1027 [Amended]

In § 52.1027(a)(2), published December 9, 1980 at 45 FR 81042, the amendment is being withdrawn because subparagraph (a)(2) was already removed in an earlier notice (45 FR 59314, published September 9, 1980).

§ 52.2451 [Amended]

Section 52.2451(c), published June 3, 1981 at 46 FR 29708, and § 52.2451(c), published June 15, 1981 at 46 FR 31262, are removed because the subparagraphs are superseded by § 52.2451(c), published on June 30, 1981 at 46 FR 33525.

EPA is correcting the designation of the following amendments to the CFR:

§ 52.131 [Amended]

Section 52.131, footnote (e), published September 14, 1981 at 46 FR 45607, is correctly designated as footnote (f).

§ 52.170 [Amended]

Section 52.170(c)(9), published August 6, 1981 at 46 FR 40006, is correctly designated as (c)(20).

§ 52.370 [Amended]

Section 52.370(c)(20), published February 17, 1982 at 47 FR 6828, is correctly designated as (c)(25).

§ 52.420 [Amended]

Section 52.420(c)(18), published September 30, 1981 at 46 FR 47779, is correctly designated as § 52.470(c)(18).

§ 52.470 [Amended]

Section 52.470(c)(9), published December 16, 1981 at 46 FR 61282, is correctly designated as (c)(10).

§ 52.1370 [Amended]

Section 52.1370(c)(8), published September 23, 1980 at 45 FR 62984, is correctly designated as (c)(10).

§ 52.1620 [Amended]

Section 52.1620 (c)(16), (c)(17), and (c)(18), published March 26, 1981 at 46 FR 18694, are correctly designated as (c)(17), (c)(18), and (c)(19), respectively. Section 52.1620(c)(16), published August 6, 1981 at 46 FR 40006, is correctly designated as (c)(20). Section 52.1620(c)(18), published August 19, 1981 at 46 FR 42065, is correctly designated as (c)(21). Section 52.1620(c)(20), published August 27, 1981 at 46 FR 43153, is correctly designated as (c)(22). Section 52.1620(c)(22), (c)(23), and (c)(24), published March 30, 1982 at 47 FR 13338, are correctly designated as (c)(23), (c)(24), and (c)(25), respectively. Section 52.1620(c)(25), published May 3, 1982 at 47 FR 18858, is correctly designated as (c)(26). Section 52.1620(c)(26), published May 5, 1982 at 47 FR 19334, is correctly designated as (c)(27). Section 52.1620(c)(27), published May 5, 1982 at 47 FR 19333, is correctly designated as (c)(28). Section 52.1620(c)(28), published April 16, 1982 at 47 FR 16331, is correctly designated as (c)(29).

§ 52.1881 [Amended]

Section 52.1881(b)(38)(ix), published March 19, 1981 at 46 FR 17555, is correctly designated as (b)(38)(x).

§ 52.1885 [Amended]

Section 52.1885 (b)(3) and (b)(4), published October 31, 1980 at 45 FR 72147, are correctly designated as (b)(5) and (b)(6), respectively.

§ 52.1920 [Amended]

Section 52.1920(c)(14), published May 26, 1981 at 46 FR 28159, is correctly designated as (c)(21). Section 52.1920(c)(15), published August 6, 1981 at 46 FR 40006, is correctly designated as (c)(22).

§ 52.2020 [Amended]

Section 52.2020(c)(17), published July 17, 1979 at 44 FR 42431, is correctly designated as (c)(19). Section 52.2020(c)(43), published June 9, 1982 at 47 FR 25009, is correctly designated as (c)(45).

§ 52.1320 [Amended]

Section 52.1320, published April 12, 1982 at 47 FR 15581, was incorrectly designated as upper case (C). It should have read lower case (c)(33).

EPA is futher corrrecting 40 CFR Part 52 as follows:

§ 52.1972 [Amended]

In § 52.1972, remove the first sentence in the paragraph, which reads as follows: "With the exceptions set forth in this subpart, the Administrator approves Oregon's plan for attainment and maintenance of the national standards." This sentence is being removed because the sentence is repeated.

§ 52.2370 [Amended]

In § 52.2370, published March 18, 1981 at 46 FR 17193, the authority citation which now reads 42 U.S.C. 7610 is corrected to read 42 U.S.C. 7601.

§ 52.2791 [Amended]

Section 52.2791, published August 6, 1980 at 45 FR 52148, is corrected to read § 52.2291

Dated: June 24, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-17677 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRL 2090-4]

Approval and Promulgation of Implementation Plans; Arizona, California, and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On May 28, 1980, February 12, 1981 and September 29, 1981, EPA proposed actions on revisions to the State Implementation Plans (SIPs) for Arizona, California, and Nevada. These revisions were submitted by the respective states in order to attain and maintain the National Ambient Air Quality Standard (NAAQS) for Lead. Today's notice takes final action under the Clean Air Act to approve these revisions.

EFFECTIVE DATE: This action is effective July 30, 1982.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 974-8222.

ADDRESS: A copy of today's revision to the Arizona, California, and Nevada State Implementation Plans (SIPs) is located at:

The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408

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

SUPPLEMENTARY INFORMATION:

Background

On April 1 and September 26, 1980, November 19, 1979, and June 24, 1980, the States of Arizona, California, and Nevada, respectively, submitted revisions to their SIPs for Lead. These revisions provide statewide plans for attainment/maintenance of the Lead NAAQS, except the Nevada submittal, which covers only Clark County.

On September 29, 1981, May 28, 1980, and February 12, 1981 (46 FR 47624, 45 FR 35839, and 46 FR 12020) EPA proposed the following actions on these revisions:

A. EPA proposed approval of the plans except for the following portions:

(1) Arizona New Source Review (NSR).

(2) California NSR.

(3) California control strategies for Los Angeles and Fresno.

B. EPA proposed to grant a two-year extension to the attainment date for the Fresno and Los Angeles areas in California.

Following proposed revisions to Arizona's rules, EPA proposed to approve the NSR portion of Arizona's Lead SIP on November 12, 1981 (46 FR 47624). Final action on NSR rules for Arizona will be taken in a separate notice.

Public Comments

Comments were received from the State of California regarding EPA's proposed disapproval of the State's NSR program for Lead and the Fresno and Los Angeles control strategies. The State commented that they would be working with the local districts in California to revise their NSR rules to meet the requirements for Lead.

The State submitted with their comments a preliminary modeling analysis showing that the Fresno area would attain the Standard by 1984. Further, the State commented that the State and the local agencies would perform further analysis of the Lead problem and submit a revised strategy which would provide for attainment of the Standard by October 31, 1984.

In response, EPA is approving the California Lead SIP, while deferring action on the NSR and control strategy portions which will be revised and submitted to EPA for approval.

EPA Actions

EPA is taking final action under section 110 of the Clean Air Act to approve the Arizona Lead SIP as proposed. No comments were received. Final action on NSR for Arizona will be taken in a separate notice.

EPA is also approving a portion of the California plan as proposed, including the two-year attainment date extension for the Fresno and Los Angeles areas. Final action on NSR and the control strategies for Fresno and Los Angeles will be taken following submittal by the State of California of the needed material.

Finally, EPA is approving the Lead SIP for Clark County, Nevada as proposed. No comments were received.

Regulatory Process

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 1982. This action may not be challenged later in proceedings to enforce its requirements.

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

(Secs. 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)))

List of Subjects in 40 CFR Part 52

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

Dated: June 23, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subparts D, F, and DD of Part 52 Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

Subpart D—Arizona

1. Section 52.120 is amended by adding paragraph (c) (43)(ii) and (48) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(43) * * *

(ii) Arizona Lead SIP Revision.

* * * * *

(48) Arizona Lead SIP Revision submitted by the State on September 26, 1980.

* * * * *

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(78)(ii) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(78) * * *

(ii) California Lead SIP.

* * * * *

3. Section 52.238 is amended by adding footnote j as follows:

§ 52.238 Attainment dates for national standards.

* * * * *

i. * * *

j. Extension granted for Fresno and Los Angeles areas until October 31, 1984 for attainment of the Lead NAAQS.

* * * * *

Subpart DD—Nevada

4. Section 52.1470 is amended by adding paragraph (c)(19)(iii) as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(19) * * *

(iii) Clark County, Nevada Lead SIP.

* * * * *

[FR Doc. 82-17640 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2128-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is today approving the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for Lucas County except for the emission limitations for the Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company.

The Ohio Environmental Protection Agency (Ohio EPA) has committed itself to adopt the existing federal emission limitations for the four sources mentioned above. EPA will, therefore, take final action on those limits when all State procedural requirements are satisfied and the regulatory and nonregulatory portions of that SIP revision are formally submitted to the Agency. EPA is today approving all other portions of the Ohio SO_2 plan for Lucas County.

EFFECTIVE DATE: This final rulemaking becomes effective on July 30, 1982.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

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, SW., Washington, D.C. 20460

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

Copies of the Docket #5A-80-3 are on file for copying and inspection during normal business hours at EPA, Region V and at EPA, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW, Washington, D.C. 20460. (It is recommended that you telephone the contact person below before visiting the Region V office).

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On January 13, 1982 (47 FR 1398), EPA proposed to approve the Ohio SO_2 plan for Lucas County. This proposal included the approval of Ohio's commitment to adopt the existing federal SO_2 emission limitations for the Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company, and Sun Oil Company. Since Ohio has not yet completed all State procedural requirements for revising these limits, EPA is withholding final approval for these four sources until all State procedural requirements are satisfied and the regulatory and nonregulatory portions of this SIP revision are formally submitted to the Agency. EPA, is however, approving all other portions of the Ohio SO_2 plan for Lucas County.

Public Comments

During the public comment period EPA received comments from the State of New York and a public interest group. The Agency's evaluation of them is summarized below.

Comment: EPA should have conducted an analysis of the effect of the meteorological condition known as lake shore fumigation on SO_2 concentrations in Lucas County.

Response: Currently available models of shoreline fumigation do not provide estimates of sufficient certainty to use in setting emission limitations. In addition, these models are not capable of determining the frequency distribution of ground-level concentrations, which is necessary to evaluate the short-term standards. Both of these factors prevent EPA from basing regulatory decisions on existing shoreline models.

Comment: EPA should have clearly set forth in the **Federal Register** notice and in the technical support document the reasons for the differences in the predictions generated by the two modeling studies done for Lucas County.

Response: Both the notice of proposed rulemaking and the technical support document explained the reasons for the differences between the two modeling studies. Specifically, the differences resulted from corrections to the emission inventory (e.g., stack locations, emission rates, stack exit velocity, and stack exit temperature).

Comment: EPA should review this revision for compliance with the interstate impact requirements of section 110(a)(2)(E) of the Clean Air Act.

Response: EPA has reviewed this action for potential interstate impacts pursuant to section 110(a)(2)(E). The discussion of this review, which was contained in the notice of proposed rulemaking, is reiterated below.

Present limitations on EPA's reference dispersion models restrict their application to points within 50 kilometers (km) of Lucas County, Ohio. Michigan is the only state within 50 km. There is a single prevention of significant deterioration (PSD) area in Michigan within modeling range. However, no PSD increment consumption can occur in that area as a result of this SIP revision since there will be no increase in baseline emissions. There are no nonattainment areas in Michigan within 50 km.

The largest source in Lucas County is Toledo Edison's Bayshore power plant located 4.5 km south of the Michigan state border. Modeling performed for a recent revision of the federal emission limits for this source showed that the plant's maximum impact (238 micrograms per cubic meter ($\mu g/m^3$)) closest to Michigan occurred at a receptor located 1 km to the north and approximately 3.5 km from the Michigan border. The Bayshore dominated receptor located closest to Michigan is 1.5 km from the border, and it showed a maximum air quality impact of 166 $\mu g/m^3$ in a 24-hour period. Because the pollutant concentrations decrease markedly close to the border and are well below the constraining 24-hour standard for SO_2 (365 $\mu g/m^3$) no violations are expected to occur in Michigan due to the Bayshore plant.

As for other sources in Lucas County, the effect of a corrected county emission inventory must be considered. The source closest to the state line is a Chevrolet plant in western Lucas County. The revised total concentrations near this source show a high second-

high concentration of 149 $\mu g/m^3$ at a receptor 1 km south of Michigan. The next group of receptors, located about 2 km south of Michigan and between the Chevrolet plant and all other Lucas County sources, show a high second-high concentration of 247 $\mu g/m^3$. Again, the maximum concentration closest to the state border is well below the SO_2 standard, and is significantly less than concentrations near the Lucas County sources. Consequently, Ohio's plan for Lucas County is expected to protect the National Ambient Air Quality Standards in Michigan.

Comment: EPA should use the most appropriate modeling tools available to assess long-range interstate impacts.

Response: EPA's interstate impact review was restricted to areas within 50 km of Lucas County. No reference techniques have been established to evaluate impacts beyond 50 km from a source. The "state-of-the-art" of long-range transport models is not sufficiently advanced to be used for regulatory purposes. Consequently, contrary to the commentor's claim, there are no EPA-approved regulatory tools currently available to assess long-range impacts.

Comment: EPA should review the cumulative impact of the Ohio SIP as a whole for compliance with the interstate impact requirements of section 110(a)(2)(E).

Response: On June 18 and 19, 1981, as a result of petitions filed by the States of New York and Pennsylvania under section 126 of the CAA, EPA held a hearing in Washington, D.C. to consider the possible interstate impact of a number of proposed and final SO_2 revisions for sources located in Indiana, Tennessee, Ohio, and West Virginia. (Docket No. A–81–9). To the extent that these comments on the Lucas County proposal relate to the same aggregate air quality impact issues as in the section 126 action, they will be addressed in the Agency's section 126 determination. EPA does not believe that it would be appropriate to withhold the Lucas County rulemaking until it acts on the section 126 petitions. EPA will, if necessary, reevaluate the adequacy of this SIP revision when the findings on section 126 petitions become available.

Comment: EPA should prepare an adequate record to make the determination under section 110(a)(2)(E).

Response: EPA had developed an adequate record on interstate impacts. Docket No. A–81–9 is available for public review at EPA, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. It is also available for review at the following regional offices: Regions I, II, III, IV, and V, and also at EPA's Research Triangle Park office in North Carolina.

Comment: EPA should determine whether Ohio SO_2 emissions adversely affect particulate and sulfate levels and/or cause significant deterioration of air quality in other states.

Response: With respect to the commentors' claim that EPA should have modeled the SO_2 emissions for their effect on the particulate matter levels in other states, EPA's current models are not capable of such an analysis. EPA models estimate ground-level SO_2 concentrations caused by a plant's SO_2 emissions. Similarly, EPA models estimate ground-level particulate concentrations caused by a source's particulate matter emissions. Although models capable of estimating the impact of SO_2 emissions on ground-level particulate matter concentrations have been developed by researchers, EPA is still evaluating their predictive accuracy as part of an overall revision to its Modeling Guidelines. Application of these models at this time, therefore, is premature. For the purposes of section 110(a)(2)(E), EPA notes that the commentor has not submitted any information which demonstrates that the SO_2 emissions from the Lucas County sources contribute or impact particulate pollution in other states.

Regarding the commentors' recommendation that EPA analyze the effect of the Ohio SO_2 plan on sulfate levels, EPA has not established a National Ambient Air Quality Standard for sulfates. The sulfate issue, however, is being evaluated as part of EPA's current review, under section 109(d)(1) of the CAA, 42 U.S.C. 7409(d)(1), of the criteria and national standards for sulfur oxides and particulate matter (see "Second External Review Draft Air Quality Criteria for Particulate Matter and Sulfur Oxides," and notice announcing comment period on draft, 46 FR 15569 (March 6, 1981)). At present, in the absence of a national standard for sulfates, EPA cannot consider the impact of the Ohio SO_2 plan on sulfate levels.

Comment: EPA should determine if the stack height credit granted to each plant is consistent with section 123 of the Clean Air Act.

Response: The modeling stack height credit was based on EPA's GEP stack height rules (proposed January 12, 1979, 44 FR 2610 and October 7, 1981, 46 FR 9414; finalized February 8, 1982, 47 FR 5864). Section 123 required EPA to promulgate regulations which define GEP stack height and which restrict the use of other dispersion techniques. Since the modeling stack height credit for this revision was based on these regulations, the action is consistent with section 123 of the Clean Air Act.

Final Determination

Based on EPA's review of the technical support data and the public comments received, EPA has determined that approval of the State of Ohio's emission limitations for Lucas County will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide nor violate section 110(a)(2)(E) of the Act. Therefore, EPA today takes final action to approve the emission limitations for Lucas County (except for the Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company).

No matter what rules the State now enforces, the existing federally-approved SIP regulations for any source will apply, and be fully enforceable, until the source complies with the new regulations which EPA is approving today. Further, the existing SIP will continue in force if there is any delay or lapse in the applicability of the new regulations. If, however, the existing and new regulations conflict, so that a source cannot comply with the existing SIP while moving toward compliance with the new regulations, the State may exempt the source from the existing SIP. EPA will review and act on any such exemption.

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 30, 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.

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.

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

Dated: June 23, 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 52.1881(a) (4) and (8) is revised as follows:

§ 52.1881 Control Strategy: Sulfur Dioxide.

(a) * * *

(4) Approval—USEPA approves the sulfur dioxide emission limits for the following counties: * * * Lucas County (except Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company) * * *

* * * * *

(8) No action—USEPA is neither approving nor disapproving the emission limitations for the following counties or sources pending further review: * * * Lucas County (Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company) * * *

[FR Doc. 82-17642 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 162

[PH-FRL 2113-5; OPP 30055]

Designation of Certain Antimicrobial Pesticide Ingredients as Inert Rather Than Active

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule.

SUMMARY: The EPA Office of Pesticide Programs is amending 40 CFR Part 162 to set forth a policy regarding the classification of ingredients used in antimicrobial pesticides as inert rather than as active ingredients. The registrant of an affected product will not be required to adhere to this policy until the product is required to be reregistered. Until that time, no action on the part of any registrant to revise a label ingredient statement will be required. Voluntary label changes in accordance with the notice are accepted. Applicants for new registrations will be required to label their products in accordance with this notice.

EFFECTIVE DATE: This rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. EPA will publish a notice of the effective date of this rule in a future **Federal Register** document. See Unit V for further information on effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Reto Engler, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3661).

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Pesticide formulations generally are composed of one or more pesticidally active ingredients and other substances such as diluents, emulsifiers, fillers, solvents and buffers. The latter substances are considered inert. Statutory definitions of "active ingredient" and "inert ingredient" are provided in sections 2(a) and 2(m) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 (a) and (m). Guidance for determining whether an ingredient should be considered pesticidally active is found in 40 CFR 162.6(b)(2)(i)(C). This section provides that the Agency will determine active ingredient status on the basis of factors such as: The ingredient's capability in and of itself to kill, destroy, repel, or mitigate pests; the presence of the ingredient in amounts sufficient to add materially to its effectiveness; and the ingredient's influence on the activity of the principal active ingredient.

In the past, particular ingredients have been classified as active in some products and as inert in other products. Often an ingredient was designated as active based upon the assertions of the applicant for registration, often with little or no data to support its "active" status. In addition, the term "active ingredient" has been interpreted and applied differently over the years by different EPA reviewers. As a result, there is a significant amount of inconsistency on labels of antimicrobial products with respect to classification of ingredients.

The classification of ingredients as "active" or "inert" has substantial importance to applicants for registration of pesticides. The EPA regulations and quidelines which specify the data required to support applications for registration normally require more testing of substances which are classified as pesticidally active. Pesticidally inert ingredients generally are not required to be tested unless there is particular concern about their properties. Ingredients which are pesticidally active, however, are meant to adversely affect some life forms, and so are subject to more extensive test requirements. Moreover, EPA's regulations which implement FIFRA section 3(c)(1)(D) (concerning data compensation and related matters) impose requirements with regard to data on "active" ingredients that do not apply to data on inert ingredients. Furthermore, these substances are not biologically active at the recommended use dilution.

Several pesticide companies and trade associations have petitioned EPA to treat certain chemical compounds as inert rather than as active ingredients for these very reasons. Because of this interest by pesticide producers and because these particular chemicals, when used in antimicrobial pesticides, generally do not have any pesticidal activity and in fact are inert, EPA has determined that certain chemical compounds should be regarded as inert rather than as active ingredients.

Accordingly, the Agency is announcing that it will be its policy to treat all the ingredients listed in this rule as "inert" when they appear in antimicrobial pesticide products, including sterilizer, disinfectant, sanitizer, and bacteriostatic formulation, unless the applicant or registrant presents evidence that such an ingredient is "active" under the criteria of 40 CFR 162.6(b)(2)(i)(C). If the Agency determines, based on substantial overall scientific evidence, that any listed chemical is active, it will further determine whether designation of the ingredient as active should be applicable to all products containing this chemical or to particular formulations. The listing may also be amended by adding percentages above which an ingredient will be deemed to be active.

The inclusion of a chemical on the "inert" list should not be interpreted to mean that the Agency has determined that the substance is toxicologically insignificant. In fact, certain listed ingredients (Methanol, Petroleum distillates) must still be identified on the label because these ingredients, when used in certain formulations, may be more hazardous then the active ingredient contained in the product. The toxicological properties of any substance in a pesticide formulation are evaluated individually when they either contribute significantly to the toxicity of the formulated product or are expected to produce particular adverse effects of their own. The identification of an ingredient as "active" in the ingredients statement pertains only to its pesticidal activity. The Agency may, on a case-by-

case basis, require additional data on the hazards of that ingredient if its chemical properties, expected exposure level, and other pertinent information indicate the need for such data.

The efficacy of a public health-related antimicrobial pesticide formulation normally is evaluated without specifically determining the interactions of active and inert ingredients. However, if such an interaction is of singular importance, the Agency may require an ingredient to be designated as an active ingredient in a particular product or group of products of similar composition.

II. Affected Products

A. Currently Registered Antimicrobial Pesticide Products

FIFRA and the implementing regulations require that in order for a product not to be considered "misbranded", active and inert ingredients must be separately listed on the product label, although inert ingredients need not be specifically identified. See FIFRA sections 2(n), 2(q), (2)(a), and 12(a)(1)(E); 40 CFR 162.10 (g)(1). Since the labels of a number of already registered antimicrobial products list as "active" some ingredients that are presumed "inert" under the rule promulgated today, a transition mechanism is in order.

Registrants whose labels currently indicate a listed substance as an active rather than inert ingredient will not be required to revise their labels in accordance with the rule until they are required to apply for reregistration of their products. However, if registrants wish at this time to amend their labels in accordance with this policy, they should follow the procedures discussed under Unit III of this rule.

B. New Antimicrobial Pesticides

Applicants for new registrations will be required to label their products in accordance with this rule under the following procedure:

1. The confidential statement of formula (EPA Form 8570–4) must correctly identify all ingredients and their purpose in the formulation. Unless data have been presented to demonstrate otherwise, the listed ingredients must be identified as inert ingredients.

2. Ingredients listed in this Rule are to be included under the heading "Inert Ingredients" and their quantity in the total percentage of inerts. Specific inerts may be named in the label ingredients statements as long as they appear under the "Inert Ingredients" heading.

C. Pending Applications for Registration

Applications for new registration now pending will be reviewed and applicants will be notified routinely what they must do to comply with this policy.

III. Applications for Amended Registrations

Although current registrants will not be required to amend their labels in accordance with this policy until reregistration, those registrants who wish to amend their labels before reregistration are asked to submit the following information:

1. An application for amended registration (EPA Form 8570–11).

2. A revised confidential statement of formula (EPA Form 8570–4).

3. Two copies of draft labeling revising the ingredient statement as required. Final printed labeling may be submitted directly, but the registrant must assume responsibility for corrections if found deficient.

Applications should be submitted to the appropriate product manager in the Registration Division at the following address:

Product Manager (PM) ——— (team number), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460.

Applications to amend registrations by redesignating ingredients as inert under this rule will be treated by EPA as exempt from the data compensation requirements of FIFRA section 3(c)(1)(D), in accordance with 40 CFR 162.9–1(b), since no consideration of data will be necessary.

IV. Procedural Matters and Required Regulatory Reviews

A. Exemption From Notice-and-Comment Procedures

The Administrative Procedure Act, 5 U.S.C. 553, provides that notice-and-comment procedures need not be employed in issuing rules which merely state agency policy, and do not purport to bind courts or administrative tribunals. The rule announced today is a statement of Agency registration and enforcement policy. Applicants and registrants will be free to contest the validity of this policy as it applies to particular products in denial or cancellation proceedings under FIFRA section 6 or in enforcement proceedings under FIFRA section 14. Accordingly, the notice-and-comment rulemaking procedure is not required, and EPA has chosen not to employ it because of the delay that it would cause in promulgating the rule.

B. Review Under Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because it will not likely result in:

(1) An annual effect on the ecomomy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291

C. Review Under FIFRA Section 25

In accordance with FIFRA sec. 25, a draft of this rule was submitted to the FIFRA Scientific Advisory Panel (SAP), and subsequently to the U.S. Department of Agriculture. Copies were also supplied to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

The Scientific Advisory Panel waived its review on the grounds that the rule was administrative-legal in nature and devoid of substantive scientific issues. The Department of Agriculture and the respective Congressional Committees have concurred with this rule without further comment.

V. Further Information on Effective Date of This Rule

On December 17, 1980, the Federal Insecticide, Fungicide, and Rodenticide Act Extension Bill (Pub. L. 96–539) became law. This bill amended several sections of FIFRA, including sec. 25 on rulemaking. Section 4 of the Extension Act adds a new paragraph, sec. 25(e), to FIFRA which requires EPA to submit final regulations to Congress for review before the regulation becomes effective. Copies of this rule have been transmitted to appropriate offices in both House of Congress.

Under sec. 4 of the 1980 FIFRA Extension Act, this rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. Since the actual length of this waiting period may be affected by Congressional action, it is not possible, at this time, to

specify a date on which this regulation will become effective. Therefore, at the appropriate time EPA will publish a notice announcing the end of the legislative review period and notify the public of the effective date of this regulation (sec. 3, as amended, Pub. L. 96–539 (7 U.S.C. 136)).

VI. List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practice and procedure.

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Therefore, 40 CFR Part 162, Subchapter E, is amended by adding the following new § 162.60:

§ 162.60 Designation of certain ingredients of antimicrobial products as active or inert.

(a) The Agency has concluded that the ingredients listed in this section normally have no independent pesticidal activity when included in antimicrobial products, and thus normally are properly classified as inert ingredients of such products for purposes of sections 2(n), 2(q)(2)(A), and 12(a)(1)(E) of the Act and § 162.10(g)(1).

(b) Depending upon the formulation, the Agency may determine that an ingredient on the list is active in a particular product.

(c) If an applicant or registrant submits data to the Agency which demonstrates to the Agency's satisfaction that any such ingredient is pesticidally active under the criteria of § 162.6(b)(2)(i)(C), the ingredient may be listed as active on the product's label and statement of formula.

(d) Unless designated as an active ingredient in accordance with paragraph (b) or (c) of this section, the following ingredients, when used in antimicrobial products, are considered inert within the meaning of FIFRA section 2(m). The percentage of such ingredients shall be included on the label in the total percentage of inert ingredients. The confidential statement of formula must identify the inert ingredient and state its percentage.

Substance	Uses
Acetone	Solvent.
Alkyl* amino betaine (46 percent C_{12}, 24 percent C_{14}, 10 percent C_{16}, 6 percent C_{18}, 7 percent C_8, 5 percent C_{10})	Corrosion Inhibitor/Surfactant.
Alkyl monoethanolamide	Emulsifier.
Aluminum chloride	Detergent.
Aluminum hydroxybenzenesulfate sulfonate	Emulsifer.
Aluminum powder	Filler.
Ammonium carbonate	Detergent.
Ammonium citrate	Sequesterant.
Ammonium lauryl sulfonate	Emulsifier.
Ammonium oleate	Detergent/Emulsifier.
Ammonium oxalate	Detergent.
Amyl acetate	Diluent.
Borax	Detergent.
Butyl alcohol, tertiary	Solvent/Odorant.
Carbon	Carrier/Absorbent.
Castor oil	Emulsifier.
Citric acid	Sequesterant.
Diethanolamine dodecylbenzene sulfonate	Detergent.
Dimethyl phthalate	Perfume.
Disodium monoethanolamine phosphate	Emulsifier
Dodecyl benzene sulfonic acid	Detergent.
Essential oils	Perfume.
Ethanol (ethyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Ethanolamine	Emulsifier.
Ethanolamine dodecylbenzene sulfonate	Detergent.
Ethoxylated lanolin	Ointment base.
Ethylenediamine	Emulsifier.
Ethylenediaminetetraacetic acid (including all salts and derivatives)	Sequesterant.
Fumaric acid	Sequesterant.
Gluconic acid	Buffer.
Isooctyl phenoxy polyethoxy ethanol	Surfactant.
Isopropanol (isopropyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Isopropyl myristate	Solvent.
Juniper tar	Odorant.
Lauryl alcohol	Detergent/Odorant.
Lauryl methacrylate	Emulsifier.
Limonene	Odorant/Perfume.
Magnesium chloride	Builder.
Magnesium lauryl sulfate	Detergent.
Magnesium silicate	Odor absorbent.
Menthol	Perfume.
Methanol (methyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Methyl ethyl ketone	Solvent.
Methyl salicylate	Perfume/Odorant.
Mineral oil, mineral seal oil, or white mineral oil	Lubricant.
Monoethanolamides of the fatty acids of coconut oil	Emulsifier.
Monosodium phosphate	Emulsifier/Buffer.
Morpholine	Corrosion inhibitor.
Nonylphenoxypolyethoxyethanol	Surfactant.
Octylphenol	Nonionic surfactant.
Oil of citronella	Perfume/Odorant.
Oil of eucalyptus	Perfume.
Oil of lemongrass	Perfume.
Oleic acid	Solvent.
Petroleum distillate, oils, hydrocarbons, also paraffinic hydrocarbons, aliphatic hydrocarbons, paraffinic oil	Lubricant/Solvent.
Polyoxyethylene sorbitol, mixed ether ester of	Emulsifier.
Polyvinylpyrrolidone	Emulsifier.
Potassium bisulfate	Builder.
Polyvinylpyrrolidone	Emulsifier.
Potassium bisulfate	Builder.
Potassium carbonate	Detergent.
Potassium dodecylbenzenesulfonate	Anionic detergent.
Potassium laurate	Emulsifier.
Potassium myrisate	Emulsifier.
Potassium *N*-(*s*-(nitroethyl) benzyl) ethylenediamine	Emulsifier.
Potassium phospate, tribasic	Sequesterant.
Potassium ricinoleate	Emulsifier.
Potassium toluene sulfonate	Detergent.
Potassium xylene sulfonate	Detergent.
Propanol (propyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Soap	Detergent.
Sodium acetate	Buffer.
Sodium alkyl (100 percent C_9)	Detergent.
Sodium bicarbonate	Detergent.
Sodium carbonate	Detergent.
Sodium chloride	Builder.
Sodium decylbenzene sulfonate	Detergent.
Sodium diacetate	Sequesterant.
Sodium dihydroxyethylglycine	Chelate/Buffer.
Sodium diisopropylnaphthalene sulfonate	Detergent.
Sodium di (monoethanolamine) phospate	Emulsifier.
Sodium dodecylbenzene sulfonate (May be active as a sanitizer in dishwashing formulations)	Detergent.
Sodium dodecyl diphenyl oxide sulfonate	Perfune.
Sodium glycolate	Sequesterant.
Sodium laurate	Detergent.
Sodium *N*-lauroylsarcosinate	Detergent.
Sodium lauryl sulfate	Detergent.
Sodium metasilicate	Detergent.
Sodium *N*-methyl-*N* oleoyltaurate	Emulsifier.
Sodium mono and dimethyl naphthalene sulfonate	Detergent.
Sodium oleate	Emulsifier.
Sodium phosphate	Emulsifier/Buffers.
Sodium salt of Turkey Red Oil	Emulsifier.
Sodium sesquicarbonate	Detergent.
Sodium silicate	Detergent.
Sodium sulfate	Detergent.
Sodium sulfonated oleic acid	Emulsifier.
Sodium thiosulfate	Builder.
Sodium toluene sulfonate	Detergent.
Sodium tripolyphosphate	Sequesterant.
Sodium xylene sulfonate	Detergent.
Tetrapotassium pyrophosphate	Sequesterant.
Tetrasodium pyrophosphate	Sequesterant.
Toluene sulfonic acid	Emulsifier.
1,1,1,-Trichloroethane	Diluent.
Triethanolamine	Emulsifier.
Triethanolamine dodecylbenzene sulfonate	Detergent.
Triethanolamine laurate	Emulsifier.
Triethanolamine lauryl sulfate	Emulsifier.
Triethanolamine myristate	Emulsifier.
Triisopropanolamine	Emulsifier.
Triisopropylamine	Emulsifier.
Trisodium phosphate	Detergent.
Turkey red oil	Emulsifier.
Undecylenic acid	Perfume.
Xylene	Solvent.
Zirconium oxide	Dye.

(e) This section shall apply to:

(1) Each application for registration of a new product which is approved on or after this section's effective date; and

(2) Each product already registered on the effective date of this section, except that no such product will be regarded by EPA as in violation of this section until reregistration.

(f) This section is a statement of Agency policy. It does not bind decision-makers in a formal adjudicatory proceeding under FIFRA section 3, 6, or

14. If this section becomes an issued in any such proceeding, the decision-makers in that proceeding will make an independent judgment whether to adhere to it or not.

[FR Doc. 82-17355 Filed 6-29-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2E2594/R454; PH-FRL-2157-5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide thiabendazole in or on avocados and mangos. This regulation to establish the maximum permissible level for residues of thiabendazole in or on these raw agricultural commodities was requested by Merck and Company, Inc.

EFFECTIVE DATE: Effective on June 30, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM)21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of January 13, 1982 (47 FR 1408) which announced that Merck and Company, Inc., PO Box 2000, Rahway, NJ 07065, had filed a pesticide petition (PP 2E2594) with EPA. This petition proposed that 40 CFR 180.242 be amended by establishing tolerances for residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on the raw agricultural commodities avocados and mangos at 10.0 parts per million (ppm). No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances included: An acute oral lethal dose (LD_{50}) rat study; an acute oral lethal dose (LD_{50}) mouse study; a 2-year rat feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day and with an negative oncogenic potential; a 2-year dog feeding study with a NOEL of 50 mg/kg/day; a mouse oncogenicity feeding study with a negative oncogenic potential; a rat teratology study that was negative at 80 mg/kg; a rabbit teratology study that was negative at 800 mg/kg; a mouse reproduction study with a NOEL of 150 mg/kg/day and a rat reproduction study with a NOEL of 20 mg/kg/day. Based on the 2-year rat feeding study, the (NOEL) is 10 mg/kg/day. Using a 100-fold safety factor, the allowable daily intake (ADI) is 0.10 mg/kg/day and the maximum permissible intake (MPI) is 6.0 mg/day for a 60-kg person. Presently established tolerances and these tolerances result in a maximum theoretical exposure of 1.658 mg/day for a 60-kg person and 27.63 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in or on a variety of raw agricultural commodities (40 CFR 180.242). There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing the tolerances. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrotometrical analysis, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of tolerances of the fungicide thiabendazole in or on the raw agricultural commodities avocados and mangos will protect the public health. Therefore, the regulation is established by amending 40 CFR 180.242, as set forth below.

Any person adversely affected by this regulation may, on or before July 30, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the gounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: June 30, 1982.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 17, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

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

Therefore, 40 CFR 180.242(a) is amended by adding and alphabetically inserting the raw agricultural commodities avocados and mangos to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Avocados	10
* * * * *	
Mangos	10
* * * * *	

[FR Doc. 82-17511 Filed 6-29-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP OF2357/R451; PH-FRL 2159-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 2-Chloro-N-Isopropylacetanilide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites in or on the raw agricultural commodities sorghum fodder and forage. This regulation to establish the maximum permissible level for residues of the herbicide in or on the

commodities was requested by the Monsanto Company.

EFFECTIVE DATE: June 30, 1982.

ADDRESS: Written objection may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs. Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of August 19, 1981 (45 FR 55268) which announced that the Monsanto Company, 1101 17th Street, NW., Washington, DC 20036, had filed a pesticide petition (OF2357) with EPA. This petition proposed increasing the tolerance for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites (calculated as 2-chloro-*N*-isopropylacetanilide) in or on the raw agricultural commodity sorghum forage from 3.0 parts per million (ppm) to 4.5 ppm.

The petition was subsequently amended by further increasing the tolerance level for sorghum forage to 5.0 ppm and adding the commodity sorghum fodder at 5.0 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included an acute oral LD_{50} study (rat) with an LD_{50} of 1.8 grams/kilograms (g/kg); a 90-day feeding study (rat) with a no-observed-effect level (NOEL) of 13.3 mg/kg; and a 90-day feeding study (dog) with a NOEL of 13.3 mg/kg.

Studies considered desirable but currently lacking include oncogenicity studies on two species, teratology studies on two species, a 3-generation reproduction study, a metabolism study, mutagenicity studies, and a subchronic (6 month or longer) non-rodent feeding study.

Tolerances have previously been established on a variety of commodities at levels ranging from 0.02 ppm for eggs, milk and meat to 3.0 ppm for sorghum forage. The increased tolerance on sorghum forage (5.0 ppm) and the tolerance on sorghum fodder (5.0 ppm) will not increase the current theoretical maximal residue contribution (TMRC) of 0.0196 mg/day (1.5 kg) or 4.92 percent of the allowable daily intake (ADI) The ADI is based on a NOEL of 13.3 mg/kg/day (90-day dog feeding study) and a 2000 fold safety factor.

There are no regulatory actions pending against the herbicide and no Rebuttable Presumption Against Registration (RPAR) criteria have been exceeded. The nature of the residues in plants and animals is adequately understood. An adequate analytical method, gas chromatography using an FID or nitrogen specific detector, is available for enforcement purposes. The existing tolerances will accommodate any residues in eggs, milk, meat, fat and meat byproducts of cattle, horses, hogs, sheep, goats, and poultry resulting from feeding of treated sorghum grain.

The herbicide is considered useful for the purpose for which the tolerances are sought and it is concluded that establishment of the tolerances will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before July 30, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: June 30, 1982.

(Sec. 408(d)(2), 68 Stat 512, (21 U.S.C. 346a(d)(2))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 22, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

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

Therefore, 40 CFR 180.211 is amended by increasing the tolerance level on sorghum forage and by adding and alphabetically inserting the commodity sorghum fodder to read as follows:

§ 180.211 2-Chloro-N-isopropylacetanilide; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Sorghum, fodder	5.0
Sorghum, forage	5.0
* * * * *	

[FR Doc. 82–17758 Filed 6–29–82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP–260044; PH–FRL No. 2156–3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Glyphosate; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: This notice amends EPA regulations on the herbicide glyphosate by restoring the tolerance for residues of the herbicide in or on the raw agricultural commodity stone fruit at 0.2 part per million, which was inadvertently omitted when § 180.364(a) was revised on October 1, 1981.

EFFECTIVE DATE: Effective on October 1, 1981.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS–788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202–382–3637).

SUPPLEMENTARY INFORMATION: EPA issued a final rule in the Federal Register of October 1, 1980 (45 FR 64911) which announced that tolerances had been established for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolites. The revised regulation established tolerances under

§ 180.364(a) for glyphosate and the metabolite aminomethylphosphonic acid resulting from the application of isopropylamine salt of glyphosate and under § 180.364(b) the metabolite aminomethylphosphonic acid resulting from application of glyphosate isopropylamine salt for herbicidal purposes and or the sodium sesqui salt for plant regulator purposes.

In the revision process, the commodity "stone fruit at 0.2 ppm" was inadvertently deleted from § 180.364(a). The tolerance for stone fruit is therefore restored by this amendment.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 16, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

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

Therefore, 40 CFR 180.364(a) is amended by adding and alphabetically inserting the raw agricultural commodity stone fruit to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(a) * * *

Commodities	Parts per million
* * * * *	
Stone fruit	0.2
* * * * *	

[FR Doc. 82-17666 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 712

[OPTS-82004H; TSH-FRL 2160-8]

Chemical Information Rules; Manufacturers Reporting—Preliminary Assessment Information; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA issued a final Preliminary Assessment Information rule requiring chemical manufacturers (including certain producers and importers) to submit information on approximately 250 chemicals. In FR Doc. 82-15956, published in the Federal Register of June 22, 1982 (47 FR 26992), two numbers were incorrect.

1. The telephone number for Outside the USA given under "For Further Information Contact" appearing in the first column on page 26992 is corrected to read "(Operator-202-554-1404)."

2. In § 712.25 (c)(2) appearing at page 27000 the reference to "45,000 kilograms" is corrected to read "45,400 kilograms."

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office, Office of Pesticides and Toxic Substances, Toll-free. (800) 424-9065, In Washington, D.C. (554-1404), Outside the U.S.A. (Operator-202-554-1404).

Dated: June 28, 1982.

John A. Todhunter,

Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 82-17937 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Public Land Order 6288

[CA-7824]

California; Revocation of Coal Land Withdrawal California No. 1

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew lands for coal classification. This action will restore 6,526.80 acres of land to full operation of the mining laws.

EFFECTIVE DATE: July 28, 1982.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hoefler, California State Office, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of October 12, 1910, as modified by Executive Orders dated April 16, 1914 and February 11, 1918, which withdrew lands for Coal Land Withdrawal—California No. 1 is hereby revoked in its entirety:

2. At 10 a.m. on July 28, 1982, subject to valid existing rights, the provisions of withdrawals, and the requirements of applicable law, the following lands will be open to nonmetalliferous mineral location under the United States mining laws:

Mount Diablo Meridian

T. 17 S., R. 10 E.,
Sec. 15, N½NE¼, SW¼NE¼, NW¼, E½SW¼;
Sec. 17, NW¼SW¼;
Sec. 18, N½ lot 5 and N½ lot 6, NE¼SE¼;
Sec. 22, N½NE¼, SE¼NE¼, NE¼NW¼, NW¼SW¼, NE¼SE¼.
T. 20 S., R. 12 E.,
Sec. 13, SW¼SW¼;
Sec. 14, SW¼NE¼, SE¼;
Sec. 23, NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 24, SE¼NE¼, W½NE¼, W½, NE¼SE¼, W½SE¼;
Sec. 25, W½E½, W½;
Sec. 26, NE¼, N½NW¼, SE¼NW¼.
T. 21 S., R. 13 E.,
Sec. 7, lot 4, S½NE¼, SE¼;
Sec. 8, S½NW¼, N½SW¼, SW¼SE¼;
Sec. 17, NE¼, W½NW¼, E½SE¼;
Sec. 18, lots 2, 3 and 4, E½NE¼, SW¼NE¼, S½SE¼;
Sec. 19, N½NE¼;
Sec. 20, N½N½;
Sec. 21, SW¼NE¼, NW¼, SE¼;
Sec. 22, SW¼;
Sec. 23, SE¼NW¼;
Sec. 25, NW¼SW¼, S½SW¼;
Sec. 26, NE¼, S½NW¼, S½;
Sec. 27, N½, N½SE¼, SE¼SE¼;
Sec. 28, NE¼NE¼;
Sec. 30, lot 3;
Sec. 35, E½, N½NW¼, SE¼NW¼, E½SW¼.
T. 22 S., R. 13 E.,
Sec. 1, lots 1, 2 and 3.

The areas described aggregate 6,526.80 acres in Fresno and Monterey Counties.

3. The lands described in paragraph two have been open to applications and offers under the mineral leasing laws and to metalliferous location under the United States mining laws. The public lands have been and will remain open to operation of the public land laws generally.

4. There are a number of tracts of land within the classified area which were patented without a reservation of locatable minerals to the United States. These lands are not described in paragraph 2 and are not subject to the effects of this restoration order.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

June 22, 1982.

[FR Doc. 82-17692 Filed 6-29-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6289

[U-14677]

Utah; Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial Orders as to 136,371.21 acres of lands withdrawn for the Dewey Unit, Colorado River Storage Project. This action will restore 55,086.60 acres of land to operation of the public land laws generally. The entire Dewey Unit area has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: July 28, 1982.

FOR FURTHER INFORMATION CONTACT: Deen Bowden, Utah State Office, 801–524–4245.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Orders of November 21, 1918, May 6, 1942, and July 13, 1943, which created the Reclamation Withdrawal for the Dewey Unit, Colorado River Storage Project, are hereby revoked as to the following described lands:

Salt Lake Meridian, Utah

T. 21 S., R. 22 E.,
Secs. 34 to 36 incl.
T. 22 S., R. 22 E.,
Sec. 1, lots 1 to 4, incl. S½N½, and S½;
Sec. 3, lots 1 to 4, incl., S½N½, and S½;
Secs. 11, to 14 incl., and 23 to 25 incl.
T. 21 S., R. 23 E.,
Sec. 4, lots 1 to 4, incl., S½N½, and S½;
Secs. 9 to 11 incl.;
Sec. 12, W½, and SE¼;
Sec. 13, S½NE¼ and NW¼;
Sec. 14, N½NE¼, NW¼, N½SW¼, NW¼SE¼, and E½SE¼;
Sec. 15 and 21;
Sec. 22, N½NE¼, and W½;
Sec. 23, W½NE¼, and NW¼;
Sec. 25;
Sec. 27, NW¼;
Sec. 28, NE¼, W½NW¼, and N½SE¼;
Sec. 29, N½, and SE¼;
Sec. 30, lots 1 to 4, incl., E½, and E½W½;
Sec. 31, lots 1 and 2, and E½NW¼;
Sec. 33, NE¼NE¼, NW¼NW¼, S½NW¼, and N½S½;
Sec. 34, NW¼NW¼;
Sec. 36, NW¼NE¼, S½NE¼, NW¼, N½SE¼, and SW¼SE¼.
T. 22 S., R. 23 E.,
Sec. 1, lots 1 and 4, incl., S½N½, and S½;
Sec. 3, lots 1 to 4, incl., S½N½, and S½;
Sec. 4, lots 1 to 4, incl., S½N½, and S½;
Sec. 5, lots 1 to 4, incl., S½N½, and S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, and SE¼;
Sec. 7, lots 1 to 4, incl., E½;
Secs. 8 to 17, incl.;
Sec. 18, lots 1 to 4, incl., and E½;
Sec. 19, lots 2, 3, 4, E½NE¼, SW¼NE¼, and SE¼;
Secs. 20 to 29 incl.;
Sec. 30, lots 1 to 4, incl., and E½;
Secs. 34 and 35;
Sec. 36, NE¼.
T. 23 S., R. 23 E.,
Sec. 1, lots 1 to 4, incl., S½N½, and S½;
Secs. 11 and 12;
Sec. 13, lots 1 to 8, incl., NE¼, E½NW¼, NW¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 14, lots 1 to 7, incl., N½NE¼, W½, and SE¼SE¼;
Sec. 23, lots 1 to 6, incl., SW¼NE¼, W½, and W½SE¼;
Sec. 24, lots 1 to 9, incl., S½N½, E½SW¼, and SE¼.
T. 20 S., R. 24 E.,
Sec. 24, lots 1 to 4, incl., W½E½, and W½.
Sec. 25, lots 1 to 4, incl., W½E½, and W½;
Sec. 26 and 29;
Sec. 31, lots 1 to 4, incl., E½, and E½W½;
Sec. 34;
Sec. 35, N½, and N½S½.
T. 21 S., R. 24 E.,
Sec. 3, lot 4;
Sec. 4, lots 1, 2, and 5 to 14, incl., S½NE¼, and E½SE¼;
Sec. 5, lots 3 to 13, incl., and SW¼NW¼;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, incl., NE¼, E½SW¼, SE¼SW¼, S½SE¼, and NE¼SE¼;
Sec. 8, E½, SW¼NW¼, and SW¼;
Sec. 9;
Sec. 10, N½NW¼, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 11, E½SW¼, and SE¼;
Sec. 12, NW¼NE¼, and S½;
Sec. 13;
Sec. 14, E½NE¼, NW¼NE¼, W½NW¼, and NE¼SE¼;
Sec. 15, lot 3, N½, W½SW¼, and NE¼SW¼;
Secs. 16 and 17;
Sec. 18, lots 1 to 3, incl., E½NE¼, NW¼NE¼, and E½NW¼;
Sec. 20, NE¼;
Sec. 21;
Sec. 22, NW¼NW¼, and SW¼SW¼;
Sec. 23, lots 1, and 8 to 12, incl., SW¼NE¼, NW¼, E½SW¼, and SE¼;
Sec. 24, lots 10 to 21, incl., NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 25, lot 2, S½NE¼, NW¼NE¼, W½, and SE¼;
Sec. 26, lots 10 to 15, NE¼, and E½SE¼;
Sec. 27, lot 6, W½NW¼, SE¼NW¼, SW¼, and W½SE¼;
Sec. 28;
Sec. 29, SE¼;
Sec. 30, lots 3, 4, and E½SW¼;
Sec. 31, lots 1 to 4, incl., E½, and E½W½;
Secs. 32, 33, and 34;
Sec. 35, lots 9 to 14, S½SW¼, NW¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 36, N½, and SW¼.
T. 22 S., R. 24 E.,
Sec. 1, lots 1 to 4, incl., S½N½, and S½;
Sec. 2, lots 1 to 6, incl., S½NE¼; SE¼NW¼, and S½;
Sec. 3, lot 11;
Sec. 4, lots 1 to 4, incl., S½N½, and S½;
Sec. 5, lots 1 to 4, incl., and S½N½, and S½
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, incl., E½, and E½W½;
Secs. 8 and 9;
Sec. 10, lots 2, and 5, W½NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 12, N½NE¼, W½, and S½SE¼;
Sec. 13;
Sec. 14, lot 1, NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 15, lots 1 to 11, incl., N½NW¼, SE¼SW¼, and SE¼;
Sec. 16 lot 1, SW¼, N½SE¼, and SW¼SE¼;
Sec. 17;
Sec. 18, lots 1 to 4, incl., E½, and E½W½;
Sec. 19, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 20, lots 1 to 4, incl., N½, and N½S½;
Sec. 21, lots 1 to 9, incl., NW¼NW¼, NW¼, and N½SW¼;
Sec. 22, lots 1, and 2, E½, E½NW¼, and SW¼;
Secs. 23, and 26;
Sec. 27, lots 1 to 4, incl., E½, and E½W½;
Sec. 28, lots 1, and 4 to 7, incl., SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 29, lots 3, and 5, N½N½, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 30, lots 1 to 4, incl., E½, and E½W½;
Sec. 31, lots 1 to 4, incl., E½, and E½W½;
Sec. 32, W½;
Sec. 33, E½, E½W½, and SW¼SW¼;
Secs. 34 and 35.
T. 23 S., R. 24 E.,
Sec. 1, lots 1 to 4, incl., S½N½, and S½;
Sec. 2, lots 5, 6, N½SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, and S½;
Sec. 4, lots 1 to 4, incl., S½N½, and S½;
Sec. 5, lots 1 to 11, incl., SE¼NE¼, SW¼NW¼, SW¼, and NE¼SE¼;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 3, incl., NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8, lots 1, 2, and 4, 5, and 10, NW¼, and N½SW¼;
Sec. 9, lots 1 to 12, incl., NE¼, and NE¼NW¼;
Sec. 10, lots 1 to 11, incl., N½NE¼, SW¼NE¼ NW¼, NE¼SW¼, and SE¼SE¼;
Sec. 11, lots 1 to 8, incl., S½NE¼, SE¼NW¼, and S½;
Sec. 12, lots 1 to 13, incl., N½NE¼, SW¼NW¼, and SW¼;
Sec. 13, lots 1 to 5, incl., W½E½, and W½;
Sec. 14;
Sec. 15, lots 1, 2, NE¼, E½NW¼, and S½;
Sec. 16, lots 1, 3, 5, 6, and 10 to 12, incl., NW¼SW¼, and S½SE¼;
Sec. 17, lots 1 to 4, incl., S½N½, and S½;
Sec. 18, lots 1 to 10, incl., S½NE¼, S½NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1 to 4, incl., E½, and E½W½;
Secs. 20, to 26, incl.
T. 19 S., R. 25 E.,
Sec. 24;
Sec. 25, NE¼NE¼, and W½W½;
Secs. 33 to 35, incl.
T. 20 S., R. 25 E.,
Sec. 3, lots 1 to 4 incl., S½N½, and S½;
Sec. 4, lots 1 to 4, incl., S½N½, and S½;
Sec. 5, lots 1 to 4, incl., S½N½, and S½;
Sec. 9;
Sec. 10, NW¼NE¼, NW¼ S½S½, and NE¼SE¼;
Sec. 11, NW¼NE¼, and N½NW¼;
Sec. 12, lots 12 to 15, incl.;
Sec. 13, lots 1, 2, and 5, E½NW¼, and NE¼SW¼;
Sec. 19, lots 1 to 4, incl., E½W½, and E½;
Sec. 22, lots 1, 2, and 4 to 8, incl., NW¼NE¼, and W½;
Sec. 23, lots 3 to 8, incl., E½NE¼, SW¼NE¼, S½NW¼, and S½S½;
Sec. 24, lots 1 to 4, incl., NE¼, S½NW¼, and S½S½;

Sec. 26, lots 1 to 5, incl., NW¼NW¼, and E½W½;
Sec. 27, lots 1 to 5, incl., SW¼NE¼, W½, and W½SE¼;
Sec. 30, lots 1 to 4, incl., E½, and E½W½;
Sec. 31, lots 1, 2, 3, and 5, 6, E½, E½NW¼, and NE¼SW¼;
Sec. 33, lots 3, 4, and W½SE¼;
Sec. 34, lots 1 to 8, incl., NW¼NE¼, N½NW¼, SW¼NW¼, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 35, lots 1, 2, E½NW¼, and SW¼NW¼.

T. 21 S., R. 25 E.,
Sec. 3, lots 1 to 4,, incl., W½SW¼, and all unsurveyed lands east of the Colorado River;
Sec. 4, lots 1 to 5, incl., SW¼NE¼, S½NW¼, and S½;
Sec. 5, lots 1 to 4, incl., S½N½, and S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, incl., E½, and E½W½;
Sec. 8;
Sec. 9, lots 1 to 15, incl., SE¼SW¼, and S½SE¼;
Sec. 10, lots 1 to 6, incl., E½NE¼, SW¼NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 16, lots 1 to 4, incl.;
Sec. 17, lots 1 to 12, incl., and SE¼;
Sec. 18, lots 1 to 4, incl., E½, and E½W½;
Sec. 19, lots 1 to 13, incl., NE¼SE¼, and S½SE¼;
Sec. 20, lots 1 to 3, incl., E½, E½W½, and W½SW¼;
Sec. 30, lots 1, 2, and E½NW¼;
Sec. 31, lots 1 to 4, incl., E½, and E½W½.

T. 22 S., R. 25 E.,
Sec. 5, lots 1 to 8, incl., S½N½, and S½;
Sec. 6, lots 1 to 16, incl., S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 8, incl., E½, and E½W½;
Secs. 8 and 17;
Sec. 18, lots 1 to 8, incl., E½, and E½W½.

T. 23 S., R. 25 E.,
Sec. 7, lots 1 to 4, incl., E½, and E½W½;
Sec. 9;
Sec. 16, SW¼;
Sec. 17, lots 1 to 5, incl., and 9, and N½;
Sec. 18, lots 1 to 9, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 19, lots 1, and 6 to 9, incl., SW¼NE¼, E½SW¼, and SE¼;
Sec. 20, lots 1, 2, and 6, S½NE¼, SE¼NW¼, and S½;
Sec. 21, lots 1 to 11, incl., E½NE¼, and SW¼;
Sec. 22, lots 1 to 7, incl., N½, and E½SE¼;
Sec. 25, lots 5 to 8, incl.;
Sec. 26, S½;
Sec. 27, lots 1 to 8, incl., E½NE¼, SW¼NE¼, W½W½, and SE¼;
Secs. 28 and 33;
Sec. 34, lots 1 to 8, incl., E½, SE¼NW¼, and E½SW¼;
Sec. 35;
Sec. 36, lots 1 to 8, incl.

T. 24 S., R. 25 E.,
Sec. 1, lots 1 to 8, incl., SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 3, lots 1 to 5, incl., SW¼NE¼, S½NW¼, and S½;
Sec. 10;
Sec. 11, lot 1, S½NE¼, NW¼NE¼, W½, and SE¼;
Sec. 12, lots 1 to 15, incl., NE¼NW¼, S½SW¼, SW¼SE¼.

T. 19 S., R. 26 E.,
Secs. 19, 20, and 28;
Sec. 29, lots 5 to 9, incl., N½, and N½SE¼;
Sec. 30, N½, and SW¼;
Sec. 31, SE¼NE¼, S½SE¼, and NE¼SE¼;
Sec. 33, lots 1 to 4, incl.

T. 20 S., R. 26 E.,
Sec. 6, lots 1, 2, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 7, E½, E½NW¼, and SW¼;
Sec. 18.

T. 23 S., R. 26 E.,
Sec. 31;
Sec. 33, lots 1 to 4, incl., and W½W½.

T. 24 S., R. 26 E.,
Sec. 4, lots 1 to 5, incl., SW¼NW¼, and W½SW¼;
Sec. 5, lots 1 to 4, incl., S½N½, and S½;
Sec. 6, lots 1 to 4, incl., S½N½, and S½;
Sec. 7.

The area described aggregates 136,371.21 acres in Grand County.

2. At 10 a.m. on July 28, 1982, the public lands described in this paragraph shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. July 28, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Salt Lake Meridian, Utah

T. 21 S., R. 22 E.,
Secs. 34 to 36, incl.

T. 22 S., R. 22 E.,
Sec. 3, lots 1 to 4 incl., S½N½ and S½;
Sec. 11, N½, SW¼, and S½SE¼;
Sec. 13, S½NE¼, NW¼, N½S½, and SW¼SW¼;
Secs. 14 and 23;
Sec. 24, SW¼NE¼, W½, and N½SE¼;
Sec. 25, S½NE¼, W½, and SE¼.

T. 21 S., R. 23 E.,
Sec. 4, lots 1 to 4, incl., S½N½, and S½;
Sec. 9, N½, W½SW¼, and NE¼SE¼;
Sec. 10, N½, N½S½, and S½SE¼;
Sec. 11;
Sec. 12, W½, and W½SE¼;
Sec. 13, SW¼NE¼, E½NW¼, and NW¼NW¼;
Sec. 14, NW¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 15, S½SW¼;
Sec. 21;
Sec. 22, N½NW¼, and SW¼SW¼;
Sec. 23, NW¼NE¼, and NE¼NW¼;
Sec. 27, NW¼;
Sec. 28, NE¼, and W½NW¼;
Sec. 29, N½, and SE¼;
Sec. 30, lots 1 to 4, incl., E½W½, and E½;
Sec. 31, lots 1, 2, and E½NW¼;
Sec. 33, NE¼NE¼, NW¼NW¼, and SE¼NW¼;
Sec. 34, NW¼NW¼.

T. 22 S., R. 23 E.,
Sec. 5, lot 3, and SE¼NW¼;
Sec. 18, lot 3, and N½SE¼;
Sec. 26, SW¼;
Sec. 27, S½N½, NW¼NW¼, and S½;
Sec. 28, E½, E½W½, and W½SW¼;
Sec. 29, S½;
Sec. 30, lots 2 to 4, incl., W½E½, and SE¼SE¼;
Sec. 34, W½NE¼, W½, and SE¼;
Sec. 35, SW¼, and S½SE¼.

T. 23 S., R. 23 E.,
Sec. 1, lots 1 to 4, incl., S½N½, and S½;
Sec. 11;
Sec. 12, N½NE¼, N½SW¼, and SW¼SW¼;
Sec. 13, SW¼NE¼, and NE¼NW¼;
Sec. 14, NE¼NW¼, and W½W½;
Sec. 23, W½W½, E½SW¼, and SW¼SE¼;
Sec. 24, SE¼.

T. 20 S., R. 24 E.,
Sec. 24, lots 1 to 3 incl., W½E½, and W½;
Sec. 25, lots 3 and 4, W½E½, and W½;
Secs. 26 and 29;
Sec. 31, lots 1 to 4, incl., E½W½, and E½;
Sec. 34, N½NE¼, NW¼, and NW¼SW¼;
Sec. 35, NW¼NE¼, and N½NW¼.

T. 21 S., R. 24 E.,
Sec. 4, lots 2, and 5 to 12, incl., and SW¼NE¼;
Sec. 5, lots 5, 9, 10, and 13;
Sec. 6, lots 3 to 7, incl., SE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 7, lot 1, NW¼NE¼, and NE¼NW¼;
Sec. 11, NE¼SE¼;
Sec. 12, NW¼SW¼;
Sec. 13, S½SE¼;
Sec. 24, NE¼, and NE¼SE¼ (outside ¼ mile from river);
Sec. 25, W½NE¼, SE¼NE¼, E½NW¼, N½SE¼, and SE¼SE¼ (outside ¼ mile from river).

T. 22 S., R. 24 E.,
Sec. 8, NE¼NE¼;
Sec. 9, W½NE¼, NW¼, N½SW¼, and SE¼;
Sec. 13, S½;
Sec. 14, E½SE¼;
Sec. 22, SE¼NE¼, and E½SE¼;
Sec. 23, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 26, E½, NW¼, and E½SW¼;
Sec. 27, E½NE¼;
Sec. 35, NE¼, E½W½, SW¼SW¼, N½SE¼, and SE¼SE¼.

T. 23 S., R. 24 E.,
Sec. 1, lots 1 to 4, incl., S½N½, and N½S½;
Sec. 3, lots 1 to 4, incl., SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 4, SE¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 6, lots 2 to 7, incl., SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 7, lot 1, NW¼NE¼, and NE¼NW¼;
Sec. 9, N½NE¼;
Sec. 13, S½NW¼, and SW¼;
Sec. 14, S½;
Sec. 15, E½SE¼, and SW¼SE¼;
Sec. 17, S½SW¼;
Sec. 19, E½SW¼, and SE¼;
Sec. 20, SW¼NE¼, W½, and SE¼;
Sec. 21, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, and SE¼;
Sec. 22, E½NE¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 23, N½NE¼, SW¼NE¼, and W½;
Sec. 24, NW¼NW¼, SE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 25;
Sec. 26, S½NE¼, W½, and SE¼.

T. 19 S., R. 25 E.,

Sec. 24, NE¼, W½, and E½SE¼;
Sec. 25, NE¼NE¼, and W½W½;
Sec. 33, N½, N½SW¼, and NW¼SE¼;
Sec. 34, E½, NW¼, and E½SW¼;
Sec. 35.

T. 20 S., R. 25 E.,
Sec. 3, lots 1 and 2, S½NE¼, SE¼SW¼, and NE¼SE¼;
Sec. 4, S½N½, and S½;
Sec. 5, lots 1 and 4, incl., S½N½, and S½;
Sec. 9;
Sec. 10, NW¼NW¼, and NE¼SE¼;
Sec. 11 NE¼NW¼;
Sec. 12, lot 15;
Sec. 19, lots 1 to 4, incl., E½, and E½W½;
Sec. 22, NW¼, and W½SW¼;
Sec. 23, lots 3 to 6, incl., S½NE¼, and S½S½;
Sec. 24, lots 1 to 4, incl., N½NE¼, S½N½, and S½S½;
Sec. 26, E½NW¼, NE¼SW¼;
Sec. 27, W½NW¼, SE¼NW¼, and SW¼;
Sec. 30, E½, and NE¼NW¼;
Sec. 31, lot 6, and E½;
Sec. 33, NW¼SE¼;
Sec. 34, N½NW¼, E½SE¼, and SW¼SE¼;
Sec. 35, E½NW¼, and SW¼NW¼.

T. 21 S., R. 25 E.,
Sec. 3, E½, (that part outside ¼ mile from river) unsurveyed;
Sec. 4, lots 2 to 4, incl., SW¼NE¼, S½NW¼, and S½;
Sec. 5, lots 1 to 4, incl., S½N½, and S½;
Sec. 6, lots 1 to 3, incl., SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 7, lot 4, E½, SE¼NW¼, and E½SW¼;
Sec. 8, N½NE¼, SW¼NE¼, NW¼, NW¼SW¼, and NW¼SE¼;
Sec. 9, lots 1 to 4, incl.;
Sec. 10, E½NE¼, SW¼NE¼, E½SW¼, SW¼SW¼, and SE¼;
Sec. 17, SE¼;
Sec. 18, lots 1 to 4, incl., NE¼, E½W½, and W½SE¼;
Sec. 19, lots 3 to 5, incl., and SE¼SE¼;
Sec. 20, E½, SE¼NW¼, and SW¼;
Sec. 30, lot 2, and E½NW¼;
Sec. 31, E½NE¼, NW¼NE¼, NE¼NW¼, and NE¼SE¼.

T. 22 S., R. 25 E.,
Sec. 5, lots 1 to 8, incl., S½N½, and S½;
Sec. 6, N½SE¼, and SE¼SE¼;
Sec. 7, NE¼NE¼, and SE¼SE¼;
Sec. 8, N½, E½SW¼, SW¼SW¼, and SE¼;
Sec. 17;
Sec. 18, lots 1 to 8, incl., E½, and E½W½.

T. 23 S., R. 25 E.,
Sec. 7, lots 1 and 2, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 9;
Sec. 17, lots 1 to 5, incl., and lot 9, and N½;
Sec. 18, lots 1, 2, and NE¼NE¼;
Sec. 19, lots 1, and 6 to 9, incl., SW¼NE¼, E½SW¼, and N½SE¼;
Sec. 20, lots 1 and 2, S½NE¼, SE¼NW¼, and S½;
Sec. 25, lots 5 to 8, incl.;
Sec. 26, S½;
Sec. 28, NW¼NW¼, S½NW¼, SW¼, and W½SE¼;
Sec. 33, W½;
Sec. 34, E½SE¼;
Sec. 35.

T. 24 S., R. 25 E.,
Sec. 1, lots 1 to 3, incl., and 5, and SW¼NE¼;
Sec. 3, SW¼NW¼, and SW¼;
Sec. 10, N½NW¼, and SW¼NW¼;
Sec. 11, S½NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼.

T. 19 S., R. 26 E.,
Secs. 19 and 20;
Sec. 29, NE¼, and N½NW¼;
Sec. 30, NW¼NE¼, NW¼, and NW¼SW¼.

T. 20 S., R. 26 E.,
Sec. 6, E½SE¼;
Sec. 7, E½, and SW¼;
Sec. 18, E½, E½W½, and W½SW¼.

T. 23 S., R. 26 E.,
Sec. 31, N½, and SW¼;
Sec. 33, lots 1 and 2, and W½NW¼.

T. 24 S., R. 26 E.,
Sec. 5, NW¼SW¼, and S½SW¼;
Sec. 6, lot 4, and SE¼SE¼;
Sec. 7, E½NE¼, and S½.

The area described aggregates 55,086.60 acres.

3. Because of underlying withdrawals the remaining lands will not be opened.

4. The lands have been open to applications and offers under the mineral leasing laws and to location under the United States mining laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

June 22, 1982.

[FR Doc. 82-17693 Filed 6-29-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Parts 73 and 74 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

DATE: Effective: July 7, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Steve Crane, (202) 632-5414, and John Reiser, (202) 632-9660, Broadcast Bureau.

SUPPLEMENTARY INFORMATION

List of Subjects

47 CFR Part 73

Radio broadcast, Television.

47 CFR Part 74

Television.

In the matter of oversight of the radio and TV broadcast rules.

Order

Adopted: June 16, 1982.

Released: June 23, 1982.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) Section 73.45, Antenna systems, is revised to clarify the requirement that licensees making changes in their AM antenna systems must not only file technical data with the FCC, but obtain prior authority to resume power determination by the direct method in conformance with § 73.54, Antenna resistance and reactance measurements. (Appendix para. 1)

(b) The text in § 73.51, Determining operating power, can be interpreted to imply, in paragraph (d), that AM station licensees, experiencing antenna damage or defects or making antenna changes *may*, on an optional basis, use the indirect method of power determination. Actually licensees *must* use the indirect method in such circumstances, and the rule is clarified to so state. (Appendix para. 2)

(c) The licenses issued to AM stations using directional antenna systems specify certain locations known as field monitoring points at which measurements are made to determine if the antenna is in correct adjustment. These points are usually located between 1 and 4 miles from the antenna site, in open areas free of overhead wiring and nearby structures that can distort the accuracy of the measurements. The station license describes these monitoring points by giving the route to the point, starting at the transmitter site, and by using distinctive, clearly identifiable landmarks. Frequently, however, both the roads used to locate the point and the descriptive landmarks change due to terrain modifications such as highway construction, subdivision and commercial developments, and deterioriation. Points used may no longer be satisfactory due to the new construction or inaccessibility. The present rules contain no guidance for

licensees on procedures to obtain a modification of the station license when the routing directions and landmarks must be modified or when replacement monitoring points must be selected. Since satisfactory monitoring points are necessary to insure against mutual interference between stations, a new § 73.158 titled "Monitoring point locations" is being added to Subpart A of the rules. This new rule imposes no additional requirements on licensees but will clarify the FCC's requirements and, by entering into the rules, will eliminate unnecessary correpondence and phone calls between the FCC and licensees. (Appendix para. 3)

(d) The headnote for § 73.181 reads "Introduction." This section introduces the rules' sections pertaining to AM broadcast technical standards in Subpart A of Part 73. For purposes of clarity, the section title is expanded to read "Introduction to AM technical standards." (Appendix para 4)

(e) The extent to which an FM station may duplicate the programming of an AM station, owned by the same licensee in the same local area, is governed by § 73.242, Duplication of AM and FM programming. Prior to adoption of the new "short form" renewal application the renewal applicant was required to make a showing, on former radio renewal Form 303–R, to verify compliance with the rule. This verification is not required by the new renewal Form 303–S. The rule is modified accordingly. (Appendix para. 5)

(f) The Commission, ever inclined to embrace rule modifications that reduce its administrative work load and that of broadcasters, herein relaxes its procedural requirements pertaining to program test authority (PTA).

On January 16, 1980, the Commission amended the procedures by which holders or broadcast construction permits could commence program service with new or modified facilities. *Order* 76 FCC 2d 40. Prior to the January 1980 rule amendments, the permittees were required to file a completed license application, request authority to commence program tests, and then wait for FCC authorization to begin program service. Under the amended procedures, permittees of stations with non-directional antennas could commence program service immediately upon completion of construction by simply notifying the FCC and filing the application for the station license within ten days of the beginning of the program tests. Permittees of stations with *directional antennas* are still required to file the license application with full engineering data on the antenna and wait for FCC authorization to commence program service. In reviewing our procedures for authorizing directional antennas, we find that the use of such antennas by *TV stations* is so minimally problematical, compared to radio directional antennas, that further relaxation to the rules can be made whereby TV permittees can also commence program tests without prior FCC approval. Directional TV antennas are not used to prevent mutual interference between stations, but are used to improve the efficiency of signal coverage. All technical data on a TV directional antenna required for FCC review is available on the Construction Permit application. Therefore, § 73.1620 is being amended so that all TV permittees may begin program service upon completion of construction. (Appendix para. 6)

On this same subject, in § 73.512, Special procedures applicable to Class D noncommercial educational stations, the sentence in paragraph (d) states that secondary Class D stations must cease operation when program tests for the TV or commercial FM are "authorized." Pursuant the change in the rule allowing program service to begin without the delaying request for "authority," the rule is changed to require cessation by the Class D where "program tests * * * are commenced." (Appendix para. 7)

(g) The Note following the last paragraph in § 73.1665, Main transmitters, states that after January 1, 1969, no new licenses will be issued nor will existing licenses be renewed for alternate main transmitters operating into a main antenna system. The Note also eliminates the practice of identifying, or station licenses, specific transmitters as type accepted for broadcast use. The Note can now be deleted because all 3 year licenses have expired since the effective date of the Note, January 1, 1979. (Appendix para. 8)

(h) In the Memorandum Opinion and Order in BC Docket 80–253, adopted September 30, 1981, the Commission amended § 73.3500 of the broadcast rules (Application and Report Forms) by adding new renewal application forms for commercial and noncommercial AM/FM/TV stations. Form 303–S was incorrectly titled "Standard Application for Renewal of License for Commercial Broadcast Stations." The form is used for renewal applications of noncommercial educational stations also, and correction is made herein to reflect that. Also the form title is corrected to drop the term "Standard renewal * * *" to read exactly as the title printed on the 303–S, "Application for Renewal of License for Commercial and Noncommercial Broadcast Stations." (Appendix para. 9)

(i) During the authorized construction of a new broadcast station or modification of an existing station, the permittee may find that it is either impossible or undesirable to conform to the terms of the authorization. An example would be where the original antenna site is no longer available. In such cases the permittee must file an application for modification of the construction permit. However, such modification application does not automatically extend the expiration date of the existing construction permit. The rule on applications for construction permits or for modification of an outstanding permit (Section 73.3533) is herein amended by adding a new paragraph advising permittees seeking modification that it is necessaray to request an extension of time if needed, in which to construct the station or make the authorized changes by filing FCC Form 701 (Application for Extension * * * Permit * * *). (Appendix para. 10)

(j) Section 73.3539, Application for renewal of license, is herein revised to conform to the changes in broadcast station renewal procedures and forms adopted in BC Docket No. 80–253. *Report and Order*, 46 FR 26236, May 11, 1981. The numbers and titles of forms eliminated in the rulemaking will be deleted and new forms data will be cross-referenced to § 73.3500, Application and Report Forms. The requirement to include a date and file number reference on the application, confirming filing of financial and contract reports, no longer pertains and is deleted. Also paragraph (d) of this section is inaccurately worded and is corrected herein. (Appendix para. 11)

(k) In March, 1977, the Commission reviewed its rules and policies concerning network programming on affiliated AM and FM stations and the agreements regarding these audio services. On March 23, 1977, the Commission released its Report, Statement of Policy, and Order in this matter, closing Docket 20721. The citations to it are herein added to the listing of FCC policies as § 73.4154, Network/AM, FM Station Affiliation Agreements. (Appendix para. 12)

(l) The regulations pertaining to sponsor identification and related requirements are found in § 73.1212. Commission interpretations and policy utterances in connection with these provisions are contained in the Public Notice dated September 3, 1975, and entitled "Applicability of Sponsorship Identification Rules." The citations to it

are herein added to the listing of FCC Policies as § 73.4242. (Appendix para. 13)

(m) Commission rules set forth the procedures for coordinating an application for a new broadcast station with the Field Operations Bureau when proposed construction is in the vicinity of an FCC monitoring station. For broadcast stations (AM, FM, TV and International), the technical requirements and pre-construction consultation directives are in § 73.1030. The same provisions also apply to stations authorized under Part 74 of the rules (in § 74.12). Unfortunately, this rule section, after establishing the requirements in the opening paragraph, via a cross reference to § 73.1030, includes this § 73.1030 rule text in paragraph (d) of § 74.12 as one of a list of *exceptions* to the rule. The considerable confusion caused by this apparent contradiction is removed by eliminating paragraph (d) in § 74.12 in its entirety and retaining the reference to § 73.1030. (Appendix para. 14)

(n) In the operation of broadcast remote pickup stations, news reporters may wish to use a small hand held or pack carried transmitter to obtain a better viewing position, to conduct interviews or achieve a greater degree of mobility than is possible with a transmitter installed in a vehicle. However these small transmitters may not have the necessary power for the transmissions to reach the broadcast station's base station receiver. These are, on occasion, located at a considerable distance from the site of the remote broadcast. The remote pickup station rules provide for the operation of a higher powered transmitter located in a vehicle positioned at the broadcast site as a relay between the hand held unit and the base station receiver. The operating requirements for mobile remote pickup stations, used for this relay function, can be confused with the separate operating requirements for mobile repeater stations, which are base stations at a fixed location used for extending the communication range of mobile units over a large area. Therefore, we are adding a new definition of *"Remote pickup mobile relay unit"* to the rules and clarifying the difference between such units and fixed repeater stations. The mobile relay units may be operated unattended and also be used to transmit talk-back information from the station's studio to the reporter with the hand-carried unit. When a mobile (vehicular) transmitter is operated on a second or additional frequency for this "talk-back" function, the talk-back transmissions are restricted to 2.5 watts because of the limited range that is necessary. The present wording of the rule covering these requirements has been misinterpreted by some licensees to mean that they must restrict the operating power of the mobile repeater station, on the frequency used to communicate with the studio, to 2.5 watts. Rule §§ 74.401 and 74.431 are clarified to remove the misunderstanding. (Appendix paragraphs 15 and 16)

(o) In § 74.602, Frequency assignment, the Commission established that certain frequency bands are shared between TV auxiliary stations and community antenna relay stations. Paragraph (a) of this Section is quite clear regarding shared use regulations. However, paragraph (f) does not reflect the conditions for shared use or the protection for stations authorized prior to the effective date of the rule. Therefore, paragraph (f) is corrected accordingly. (Appendix para. 17)

(p) An updated Alphabetical Index, with appropriate additions, is included herein as Appendix B.

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. The amendments are implemented by authority designated by the Commission to the Chief, Broadcast Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, that pursuant to sections 4(i), 3030(r) and 5(d)(1) of the Communications Act of 1934, as amended, and §§ 0.71 and 0.281 of the Commission's Rules, Parts 73 and 74 of Volume III of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective

6. For further information on this Order, contact Steve Crane, (202) 632-5414, or John Reiser, (202) 632-9660, Broadcast Bureau.

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

Appendix A

PART 73—RADIO BROADCAST SERVICES

1. Section 73.45 is amended by revising paragraph (c) to read as follows:

§ 73.45 Antenna systems.

* * * * *

(c) Should any changes be made or otherwise occur which would possibly alter the resistance of the antenna system, the licensee must commence the determination of the operating power by the indirect method. (If the changes are due to the construction of FM or TV transmitting facilities, see § 73.316 or § 73.658.) Upon completion of any necessary repairs or adjustments, or upon completion of authorized construction or modifications, the licensee must make a new determination of the antenna resistance using the procedures described in § 73.54, and an application must be filed requesting authority to resume power determination by the direct method. Use of the direct method of power determination may not be resumed until authorization is received from the FCC. Application to determine power by the direct method is filed with the FCC in Washington, D.C., as follows:

* * * * *

2. Section 73.51 is amended by revising paragraph (d) to read as follows:

§ 73.51 Determining operating power.

* * * * *

(d) When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power (see paragraphs (e) and (f) of this section) may be used on a temporary basis. Specific authority from the FCC is not required, however a notation must be made in the operating log for each day of using the indirect method of power determination. The indirect method must be used in the following situations:

* * * * *

3. New § 73.158 is added to Subpart A to read as follows:

§ 73.158 Directional antenna monitoring points.

(a) When a licensee of a station using a directional antenna system finds that a field monitoring point, as specified on the station authorization, is no longer

accessible for use or is unsuitable because of nearby construction or other disturbances to the measured field, an informal application to change the monitoring point location is to be promptly submitted to the FCC in Washington, D.C. The application must include the following information:

(1) A partial proof of performance conducted on the radial containing the monitoring point to be changed.

(2) A written description of the routing to the new selected monitoring point.

(3) A map showing the location and routing to the new selected monitoring point.

(4) A photograph showing the new monitoring point in relation to nearby permanent landmarks that can be used in locating the point accurately at all times throughout the year. Do not use seasonal or temporary features in either the written descriptions or photographs as landmarks for locating field points.

(b) When the descriptive routing to reach any of the monitoring points as shown on the station license is no longer correct due to road or building construction or other changes, the licensee must prepare and file with the FCC, in Washington, D.C., a request for a corrected station license showing the new routing description. A copy of the description is to be posted with the existing station license. The notification is to include the information specified in (2) and (3) of paragraph (a) above.

4. The section title of § 73.181 is amended to read as follows:

§ 73.181 Introduction to AM technical standards.

* * * * *

§ 73.242 [Amended]

5. In § 73.242 Duplication of AM and FM programming, paragraph (d), the final paragraph in the rule, is eliminated entirely.

6. In § 73.1620, paragraphs (a)(1) and (a)(2) are amended to read as follows:

§ 73.1620 Program tests.

(a) * * *

* * * * *

(1) The permittee of a nondirectional AM or FM station, or a nondirectional or directional TV station, may begin program tests upon notification to the FCC in Washington, D.C. and the Engineer in Charge of the station's radio district, provided that within 10 days thereafter, an application for a license is filed with the FCC in Washington, D.C.

(2) The permittee of an AM or FM station with a directional antenna system must file an application for license requesting program test authority with the FCC in Washington, D.C., at least 10 days prior to the date on which it desires to begin program tests. Also, an antenna proof of performance must be filed with the request by an AM station with a directional antenna.

* * * * *

7. Section 73.512, paragraph (d) is amended to read as follows:

§ 73.512 Special procedures applicable to Class D noncommercial educational stations.

* * * * *

(d) Class D noncommercial educational (secondary) stations (see § 73.506(a)(2)) will be permitted to continue to operate only so long as no interference (as defined in § 73.509) is caused to any TV or commercial FM broadcast stations. In the event that the Class D (secondary) station would cause interference to a TV or commercial FM broadcast station after that Class D (secondary) station is authorized, the Class D (secondary) station must cease operation when program tests for the TV or commercial FM broadcast station commence. The Class D (secondary) station may apply for a construction permit (see § 73.3533) to change to another frequency or antenna site where it would not cause interference (as defined in § 73.509). If the Class D (secondary) station must cease operation before the construction permit is granted, an application for temporary authorization (pursuant to § 73.3542) to operate with the proposed facilities may be submitted; where appropriate, such temporary authorization can be granted.

§ 73.1665 [Amended]

8. Section 73.1665, main transmitters, is amended by removing the note which follows paragraph (c) of this section.

§ 73.3500 [Amended]

9. Section 73.3500 is amended by correcting the Title of Form No. 303–S to read: Application for Renewal of License for Commercial and Noncommercial Educational AM, FM and TV Broadcast Stations.

10. In § 73.3533, the section heading and paragraph (a) are amended, and new paragraph (b) is added to read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

(a) Application for construction permit, or modification of a construction permit, for a new facility or change in an existing facility is to be made on the following forms:

* * * * *

(b) The filing of an application for modification of construction permit does not extend the expiration date of the construction permit. Extension of the expiration date must be applied for on FCC Form 701 in accordance with the provisions of § 73.3534.

11. Section 73.3539 is amended by revising paragraph (b) and introductory paragraph (d) to read as follows:

§ 73.3539 Application for renewal of license.

* * * * *

(b) No application for renewal of license of any broadcast station will be considered unless there is on file with the FCC the information currently required by §§ 73.3612–73.3615, inclusive, for the particular class of station.

* * * * *

(d) Renewal application forms titles and numbers are listed in § 73.3500, Application and Report Forms.

12. New § 73.4154 is added to Part 73, Volume III to read as follows:

§ 73.4154 Network/AM, FM station affiliation agreements.

See Report, Statement of Policy, and Order, Docket 20721, FCC 77–206, adopted March 10, 1977. 63 FCC 2d 674.

13. New § 73.4242 is added to Part 73, Volume III to read as follows:

§ 73.4242 Sponsorship Identification Rules, Applicability of.

See Public Notice dated September 3, 1975, 40 FR 41936, September 9, 1975.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

§ 74.12 [Amended]

14. Section 74.12 is amended by removing paragraph (d), the final paragraph in the rule, in its entirety.

15. In § 74.401, a new definition "Remote pickup mobile relay unit" is added in alphabetical sequence to read as follows:

§ 74.401 [Amended]

* * * * *

Remote pickup mobile relay unit. A vehicular receiver-transmitter repeater used to provide extended communications range for a low-power hand-carried or pack-carried transmitter.

* * * * *

16. In § 74.431, paragraph (c) and paragraph (c)(2) are amended, paragraph (c)(3) is redesignated as paragraph (c)(4), and new paragraph (c)(3) is added to read as follows:

§ 73.431 Special rules applicable to remote pickup stations.

* * * * *

(c) When a remote pickup mobile station is used as a vehicular repeater at the scene of an event to be broadcast and the operator-reporter wishes to leave the position of the mobile station in order to conduct interviews, obtain a better vantage point to view the scene or otherwise more effectively cover the event, the mobile station may be operated as an unattended remote pickup mobile relay unit, subject to the following conditions:

* * * * *

(2) The unattended vehicular repeater transmitter must be so equipped that it will only be activated by the carrier of the hand-carried or pack-carried transmitter.

(3) The unattended vehicular repeater may also be used to relay transmissions to the operator of the hand-carried or pack-carried unit. However, a transmitter operating on an additional frequency of this talk-back function may not exceed 2.5 watts.

* * * * *

17. In § 74.602, paragraph (f) is amended to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(f) Community antenna relay stations may be assigned channels in Band D between 12,700 and 13,200 MHz subject to the condition that no harmful interference is caused to TV broadcast STL and TV intercity relay stations authorized at the time of such grants. Similarly, new TV broadcast STL and TV intercity relay stations shall not cause harmful interference to community antenna relay stations authorized at the time of such grants.

(1) The use of channels between 12,700 and 13,200 MHz by TV pickup stations is subject to the condition that no harmful interference is caused to community antenna relay, TV broadcast STL and TV intercity relay stations.

(2) The band 13,150 and 13,200 MHz is reserved exclusively for the assignment of TV broadcast pickup and CARS pickup stations on a co-equal basis within a 50 km (approximately 31.1 miles) radius of each of the 100 television markets set forth in § 76.51 of the FCC rules. Fixed TV auxiliary stations licensed pursuant to applications accepted for filing before September 1, 1979, may continue operation on channels in the 13,150 to 13,200 MHz band subject to periodic license renewals.

* * * * *

Appendix B

The alphabetical index appearing at the beginning of Part 73 is revised and updated to read as follows:

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Thirty-ninth Revised Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Thirty-ninth Revised Service Order No. 1473.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 12:01 a.m., June 30, 1982, and continuing in effect until 11:59 p.m., September 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

Decided: June 24, 1982.

Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits

carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by adding at Item 21, the authority for the Kyle Railroad Company (KYLE) to extend its operations eastward from Belleville to Mahaska, Kansas, a distance of approximately 17 miles, and southward from Belleville to Clay Center, Kansas, a distance of approximately 47 miles. This authority was previously held by the Brandon Corporation (BRAN), however, that operation has been embargoed since January 11, 1982. The remaining authority held by BRAN at Item 16 remain in effect in the hope that service be resumed over that portion of the line as well.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B to this Order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good causes exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Service Order No. 1473.

(a) *Various railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(1) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

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

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., June 30, 1982.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1982, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and William F. Sibbald, Jr. J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (LA):*

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (PPU):*

A. All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.

B. Mossville, Illinois (milepost 148.23) to Peoria, Illinois (milepost 161.0) including the Keller Branch (milepost 1.55 to 6.15).

3. *Union Pacific Railroad Company (UP):*
A. Beatrice, Nebraska.
B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.
4. *Toledo, Peoria and Western Railroad Company (TPW):*
A. Peoria Terminal Company trackage from Hollis to Iowa Junctions, Illinois.
5. *Chicago and North Western Transportation Company (CNW):*
A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri.
B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).
C. from Inver Grove (milepost 344.7) to Northwood, Minnesota.
D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).
E. from East Des Moines, Iowa (milepost 350.8) to West Des Moines, Iowa (milepost 364.34).
F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).
G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)
H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).
I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).
J. from Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 206.9).
K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).
L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)
M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).
N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.
O. at Sibley, Iowa.
P. at Worthington, Minnesota.
Q. from Carlisle to Indianola, Iowa.
R. at Omaha, Nebraska, (between milepost 502 to milepost 504).
S. Peoria Terminal Company trackage from Iowa Junction (RI milepost 164.32/PTC milepost .91) through Hollis, Illinois to the Illinois River bridge (milepost 7.40).
6. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*
A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland.
B. at Washington, Iowa.
C. from Newport, Minnesota to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil refinery at St. Paul Park, Minnesota.
D. from Davenport (milepost 182.35) to Iowa City, Iowa (milepost 237.01).
E. at Davenport, Iowa.
7. *St. Louis Southwestern Railway Company (SSW):*
A. from Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.
B. at North Topeka and Topeka, Kansas.
8. *Little Rock & Western Railway Company (LRWN):*
A. from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2).
B. from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).
9. *Missouri Pacific Railroad Company (MP):*
A. from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5).
B. from Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0).
C. from Hot Springs Junction (milepost 0.0) to and including Rock Island (milepost 4.7).
D. from Wichita, Kansas (milepost 243.7) to Kechi, Kansas (milepost 235.9).
10. *Norfolk and Western Railway Company (NW):* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.
11. *Cadillac and Lake City Railway Company (CLK):*
A. from Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 2.7) all in the vicinity of Denver, Colorado, a distance of approximately 6.6 miles.
B. from Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado (milepost 602.8), all in the vicinity of Colorado Springs, Colorado, and eastward from Colorado Springs to Falcon, Colorado (milepost 590.3), a total distance of approximately 25.1 miles.
C. from Simla, Colorado (milepost 558.3) to Colby, Kansas (milepost 387.0), a distance of approximately 171.3 miles.
D. Rock Island trackage rights over Union Pacific Railroad company between Limon and Denver, Colorado, a distance of approximately 83.8 miles.
12. *Baltimore and Ohio Railroad Company (BO):*
A. from Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.
B. from Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.
13. *Keota Washington Transportation Company (KWTR):*
A. from Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.
B. at Vinton, Iowa (milepost 120.0 to 123.0).
C. from Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).d
14. *The La Salle and Bureau County Railroad Comany (LSBC):*
A. from Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.
B. from Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island, Illinois.
C. from Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.
D. from Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights only.
15. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*
A. at Alva, Oklahoma.
B. at St. Joseph, Missouri.
16. *The Brandon Corporation (BRAN):*
*A. from Clay Center, Kansas (milepost 178.37), to Manhattan, Kansas (milepost 143.0), a distance of approxmately 35 miles.
17. *Iowa Northern Railroad Company (IANR):*
A. from Cedar Rapids, Iowa (milepost 100.5), to Manly, Iowa, (milepost 225.1)
B. at Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.
18. *Iowa Railroad Company (IRRC):*
A. from Council Bluffs (milepost 490.15) to West Des Moines, Iowa (milepost 364.34) a distance of approximately 126.81 miles.
B. from Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.
C. from Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.
D. Overhead rights from West Des Moines, Iowa (milepost 364.34) to East Des Moines, Iowa (milepost 350.8) (This trackage is currently leased to the CNW, see Item, 5.E.)
E. from East Des Moines, Iowa (milepost 350.8) to Iowa City, Iowa (milepost 237.01) a distance 113.79 miles.
F. Overhead rights from Iowa City, Iowa (milepost 237.01) to Davenport, Iowa (milepost 182.35), including interchange with the Cedar Rapids and Iowa City Railway. (This trackage is currently leased to the MILW, see Item 6.D.)
G. from Bureau, Illinois (milepost 114.2) to Davenport, Iowa (milepost 182.35)
H. from Rock Island, Illinois through Milan, Illinois, to a point west of Milan sufficient to serve the Rock Island Industrial Complex.
I. at Rock Island, Illinois including 26th Street Yard.
J. from Altoona to Pella, Iowa.
19. *Missouri-Kansas-Texas Railroad Company (MKT):*
A. from Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.
20. *Chicago Short Line Railway Company (CSL):*
A. from Pullman Junction easterly for approximately 1000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.
B. from Rock Island Junction westerly for approximately 3000 feet to Irondale Wye.
21. *Kyle Railroad Company (Kyle):*

A. from Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles. Kyle will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.

+B. from Belleville (milepost 187.0) to Mahaska, Kansas (milepost 170.0) a distance of approximately 17 miles.

+C. from Belleville (milepost 225.34) to Clay Center, Kansas (milepost 178.37) a distance of approximately 47 miles.

22. *North Central Texas Railway, Inc (NCTR):*

A. from Chico, Texas (milepost 562) to Dallas (North Junction), Texas (milepost 643.8).

B. Joint right-of-way district between Dallas (North Junction) and Endot, Texas (milepost 646.4).

23. *Enid Central Railway, Inc. (ENIC):*

A. from Enid, Oklahoma (milepost 345.27) to Kremlin, Oklahoma (milepost 330.03), including operations on the Ponca City Branch line from milepost 0.02 to milepost 0.30.

B. from North Enid, Oklahoma (milepost 0.30) to Ponca City, Oklahoma (milepost 54.8).

24. *North Central Oklahoma Railway, Inc. (NCOR):*

A. from Mangum, Oklahoma (milepost 97.2) to Chickasha, Oklahoma (milepost 0.0).

B. from Richards Spur, Oklahoma (milepost 486.45) to Anadarko, Oklahoma (milepost 463.39).

C. from Chickasha, Oklahoma (milepost 434.69) to El Reno, Oklahoma (milepost 400.31).

D. from El Reno, Oklahoma (milepost 513.31) to Council, Oklahoma (milepost 494.5).

25. *South Central Arkansas Railway, Inc. (SCAR):*

A. from El Dorado, Arkansas (milepost 99) to Ruston, Louisiana (milepost 154.77).

26. *Burlington Northern Railroad Company (BN):*

A. at Burlington, Iowa (milepost 0 to milepost 2.06).

B. at Okeene, Oklahoma.

C. at Lawton, Oklahoma.

27. *Fort Worth and Denver Railway Company (FWD):*

A. from Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.

B. at North Fort Worth, Texas (mileposts 603.0 to 611.4).

C. from Amarillo, Texas (milepost 760.6) to Groom, Texas (milepost 718.9).

28. *Okarche Central Railway, Inc. (OCRI):*

A. from Enid, Oklahoma (milepost 345.27) to El Reno Junction, Oklahoma (milepost 405.21).

B. from El Reno, Oklahoma (milepost 514.32) to Council, Oklahoma (milepost 496.40).

C. at El Reno, Oklahoma (milepost 402.73) to (milepost 404.19).

Note.—Certain segments of the above operation are overlapping with the NCOR (see Item 24). In the interest of operational clarity and efficiency, OCRI will be the supervising carrier for operations and maintenance.

+Added.
*Changed.

[FR Doc. 82-17610 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-7A)]

Lease and Interchange of Vehicles (Leases Involving Carrier Agents)

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its leasing rules to clarify further which parties and leases are subject to them and which are not. One rule change will specifically exempt leases made between authorized carriers and their agents from the leasing regulations set forth at § 1057.12(e)-(1). A second will clarify that the obligation of an authorized carrier to ensure that the owner of the equipment receives all of the rights, benefits, and protections of the leasing regulations cannot be avoided simply by acting through an agent. This duty on the carrier's part will apply irrespective of whether the carrier leases the equipment directly from the equipment owner or indirectly through an intermediary third-party agent.

EFFECTIVE DATE: August 30, 1982.

FOR FURTHER INFORMATION CONTACT: Ombudsman's Office, (202) 275-7863; Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking published in the **Federal Register** on November 23, 1977, the Commission instituted a rulemaking proceeding in Ex Parte No. MC-43 (Sub-No. 7), *Lease and Interchange of Vehicles,* for the purpose of rewriting and revising its leasing rules. The major objectives of that proceeding were to: (1) Simplify existing and new regulations; (2) promote truth-in-leasing—full disclosure between carriers and owner-operators; (3) eliminate or reduce opportunities for skimming and other illegal or inequitable practices; and (4) promote the stability and economic welfare of the independent trucker segment of the motor carrier industry. Several Commission staff studies, independent trucker surveys, Congressional and Commission hearings, and public comments on the matter had preceded and precipitated the rulemaking. Information gathered from these various sources revealed that owner-operators—a significant factor in America's transportation system—were experiencing significant problems, some of which could be traced to certain leasing practices at 44 FR 4680, January 23, 1979.

The Commission issued final rules in January 1979 at 44 FR 4680, January 23, 1979. *Lease and Interchange of Vehicles,* 131 M.C.C. 141 (1979). Those rules were affirmed in *Global Van Lines, Inc.* v. *I.C.C.* 627 F.2d 546 (D.C. Cir. 1980). During the course of the rulemaking process, however, two minor issues remained unresolved: first, whether the new leasing rule requirements appearing at 49 CFR 1057.12(e)-(1) should apply to leases between motor carriers and their agents, and, second, whether authorized motor carriers could avoid their responsibility under the leasing regulations by using agents for dealing with owner-operators.

Two new proposed rules[1] designed to clarify these matters were published in the **Federal Register** at 45 FR 13159, February 28, 1980, and interested parties were invited to submit written comments on the proposals. Upon review of the comments we have decided to amend our leasing regulations as proposed and (i) to exempt leases made between authorized carriers and their agents, and (ii) to ensure that the duty of carriers under the leasing rules will be the same whether or not they employ an agent as an intermediary.

Principal Arguments of the Parties

The American Movers Conference and number of individual motor carriers of household goods support the Commission's proposal to exempt leases made between authorized carriers and their agents from the new leasing regulations. However, the van lines are opposed to the proposal which would make them responsible for ensuring that owner-operators receive all the rights and benefits of the rules in situations where intermediary agents are involved. The carriers' basic arguments are: (1) The Commission lacks jurisdiction to promulgate such a regulation; (2) holding a carrier responsible for a lease concluded between two parties not within the Commission's jurisdiction, and to which it is not a party, is a violation of contract law principles; (3) holding a principal liable for payment of compensation, et cetera, between an agent and an independent contractor, or not allowing the principal to limit the scope of its agency relationship, is a violation of agency law principles; (4) the administrative and other costs of ensuring such compliance—both to the

[1] Section 1057.12(n) *Carrier obligations to owner regardless of presence of agent,* and § 1057.26 *Exemption for leases between authorized carriers and their agents.*

van lines and to consumers—outweigh any possible public benefits that might stem from such a regulation; (5) promulgation of such a rule is likely to interfere with labor matters—an area clearly beyond the Commission's expertise and jurisdiction; (6) because van lines are not directly involved in arrangements between their agents and owner operators, policing and enforcement of such a regulation would be impractical if not impossible; and (7) there is insufficient support in the record to establish a need for such a regulation.

The Commission's's Office of Special Counsel (OSC) fully supports both proposals. Regarding § 1057.12(n), it believes that owner-operators need prompt payment regardless of the party with whom they contract for the lease of their equipment. In fact, OSC would favor explicit, standard language in the lease between the van line and its agent specifying the latter's agreement to comply with the new leasing regulations.

The primary concern of the National Independent Truckers Unity Council is that its members be paid within 15 days from the date of submission of proper paperwork to the carrier. Accordingly, it strongly supports holding carriers fully and ultimately responsible for ensuring that their agents timely pay their owner-operators.

A carrier which leases owner-operator equipment through agents argues that the rules should only be applied to household goods agency situations and no others. It claims that non-household goods agency arrangements are more complex and require additional processing of paperwork which would make compliance extremely difficult if not impossible.

Finally, a single agent contents that agents do, in fact, need the protections of the rules, because they cannot timely pay their owner-operators if they are not timely paid by the van lines.

Discussion and Conclusions

We now believe that the two new proposed rules should be adopted.

We believe, to begin with, that agreements between motor carriers and their agents should, in fact, be exempted from the new leasing rules. In our notice of proposed rulemaking [2] we stated:

> We cannot ignore the fact that not a single agent requested coverage under the new leasing rules. The record so far in this proceeding just does not demonstrate a sufficient need on the part of agents for the application of any of the new leasing rules to leases between authorized carriers and their agents.

The fact that only one agent filed comments in response to the proposed rule serves only to buttress that conclusion. Agents as a class simply have not demonstrated a need or desire for such protections as may be afforded by the new regulations. Moreover, we do not believe that subjecting the carrier-agent relationship to those rules is necessary to achieve our objectives in this proceeding. Therefore, the rule excluding carrier-agent leases from coverage by the new leasing rules will be adopted.

We also believe, despite opposition from van lines and their organizations, that motor carriers should not be exempt from responsibility for ensuring that owner-operators performing transportation services on their behalf receive all the rights, benefits, and protections of the new leasing rules simply because carrier agents are employed as intermediaries. Each of the various arguments advanced by parties in opposition to § 1057.12(n) has previously been carefully considered and rejected either in the interim and final decisions in the Sub-No. 7 proceeding or in the notice of proposed rulemaking in this proceeding. However, we will again briefly address the more significant objections.

With respect to the jurisdictional issue, at 129 M.C.C. 702 and 703 of the Sub-No. 7 interim decision we stated:

> The Supreme Court held in *American Trucking Associations, Inc.* v. *United States*, 344 U.S. 298 (1953), that the power to regulate equipment leasing lies within the broad provisions of the act even though such authority was not then explicitly set forth. The Court found that the Commission holds implied power under section 204(a)(6) of the act [49 U.S.C. 304(a)(6)] to issue rules that concern the leasing of vehicles for the transportation of passengers or property by motor carriers in interstate or foreign commerce * * * Of course, the power to issue regulations is not unlimited. Regulations must be consistent with the enabling-statute and must be reasonable * * * With these guidelines in mind, we believe that we hold the authority under the act to issue regulations aimed at acomplishing a fair measure of truth-in-leasing.

None of the jurisdictional arguments raised in the comments alters our belief that this Commission does, in fact, have jurisdiction to adopt the new substantive leasing rules at issue here, including § 1057.12(n). These rules merely regulate, in what we believe to be a reasonable manner, the way in which an authorized carrier may lease equipment—an undertaking clearly sanctioned by the *American Trucking Associations* case and, more recently, the *Global Van Lines* case, *supra*.

We reject the notion that our regulations may not be adopted because they purportedly conflict with conventional agency principles. Congress has given the Commission authority to regulate the surface transportation industry and our authority to adopt reasonable leasing regulations governing the relationship between carrier and lessor has been sustained. Our decision here is a modest modification of existing rules designed to ensure simply that carriers cannot avoid the rules through the establishment of an intermediary agent. We have no doubt of our authority in this area.[3]

We also reject the carriers' contention that compliance on their part will be too difficult and that ensuring compliance on the part of their agents will be impossible. Major obstacles cited by the carriers include unrealistic time frames, no incentive for agents to comply or means of assuring their cooperation, and the magnitude of the task. We believe that time frames concerning such areas as payment and refund of escrow accounts are reasonable.[4] We also believe that the significant leverage which carriers exert over their agents is sufficient incentive for compliance on the part of the latter. Moreover, carriers can both protect themselves and better assure their agents' cooperation by including appropriate provisions in agency agreements and leases concluded with their agents. However, we will not, as suggested by OSC, dictate the terms of those provisions. We believe that is a matter best left to the parties involved. Finally, it is our belief that selective policing by carriers of their agents' behavior—as in the household goods weight-bumping area—

[2] 45 FR 13159 (February 28, 1980).

[3] We mention, in this connection, our recent decision in *North American Van Lines, Inc.—Invest. & Revoc. Of Certifs.*, 132 M.C.C. 66 (1980), where we concluded that household goods carriers should be held accountable for the acts of their agents. At page 71 Division 2 stated: ". . . [T]he Interstate Commerce Act provides for regulation of the carrier, not of its individual employees, and clearly places the responsibility for compliance upon the carrier. A carrier cannot escape this responsibility by attributing violations to its employees or agents. The Duty which Congress has placed on the Commission to regulate motor carriers under the act can be effectively performed only by holding the carriers accountable.

[4] Carriers are reminded that they can petition to have time frames modified in light of later convincing concrete evidence to the effect that present compliance is impossible or inequitable. At this time we simply do not find that the carriers have established their inability to comply with the 15-day payment period or refund of escrow provisions. Carriers are also reminded that the 15-day payment period does not begin to run until all appropriate paperwork has been submitted to them.

is a reasonable alternative to carriers' fears that they will have to monitor each and very case involving owner-operators and should ensure a sufficient level of agent compliance.

Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-354, approved by the President on September 19, 1981, requires agencies to prepare a regulatory flexibility analysis outlining the effect of a proposal on small entities. The Act applies, in terms, however, only to proposals issued after January 1, 1981. Our action here, of course, is simply the final stage of proposals put forward long ago, and even our notice of proposed rulemaking dealing with the two minor items specifically at issue were published in the Federal Register over a year ago. As a consequence, the regulatory flexibility analysis portion of that Act is inapplicable.

The Act nevertheless requires periodic review of agency regulations which will have a significant economic impact upon a substantial number of small entities. The leasing regulations may well be a proper subject for overall reexamination.

Final Rules

The Commission is adopting two new leasing rules in final form. One will merely codify in the form of an exemption the Commission's previous decision that the new leasing rules appearing at 49 CFR 1057.12(e)-(1) do not apply to leasing arrangements between motor carriers of household goods and their agents. Moreover, because that decision was not totally clear as to whether the exemption was limited just to motor carriers of household goods, this final rule will clarify the point by extending the exemption to all authorized carriers.

A second rule will codify the responsibility of all motor carriers to ensure that owner-operators performing transportation on their behalf and pursuant to their authority receive all the rights, benefits, and protections of the new substantive leasing rules, irrespective of the presence of an agent. The second rule simply clarified the Commission's intent that motor carriers not be able to circumvent any of its leasing rules merely by leasing equipment from an intermediary third-party agent rather than directly from the equipment owner. The rule will further provide that this obligation must be specified in the written lease.

We find that these additions to the leasing rules are necessary so that all potential parties to leases may examine our leasing rules and determine what rights and duties thay have under these rules before entering into a lease.

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

It is ordered:

We adopt the rules set forth below:

1. In 49 CFR 1057.12 and a new paragraph (n) as follows:

§ 1057.12 Carrier obligation to owner regardless of presence of agent.

* * * * *

(n) This subsection applies to owners who are not agents but whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of that authorized carrier. In this situation, the authorized carrier is obligated to ensure that these owners receive all the rights and benefits due an owner under the leasing regulations, especially those set forth in paragraphs (e)-(1) of this section. This is true regardless of whether the lease for the equipment is directly between the authorized carrier and its agent rather than directly between the authorized carrier and each of these owners. The lease between an authorized carrier and its agent shall specify this obligation.

2. In 49 CFR add a new § 1057.26 as follows:

§ 1057.26 Exemption for leases between authorized carriers and their agents.

The leasing regulations set forth in § 1057.12(e)-(1) do not apply to leases between authorized carriers and their agents.

This decision does not affect significantly the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1057

Motor carriers.

(49 U.S.C. 10321 and 11107, and 5 U.S.C. 553)

Decided: June 22, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Andre concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Andre, concurring:

I concur in the result to extend the Commission's lease disclosure rules. However, as I did not participate in the origination of this program, I reserve final judgment on its merits pending outcome of the review which has apparently been promised in connection with our Regulatory Flexibility responsibilities.

[FR Doc. 82-17618 Filed 6-29-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 2622-113]

Atlantic Sea Scallop Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of emergency interim rule.

SUMMARY: An emergency interim rule is in effect through June 28, 1982, implementing the Fishery Management Plan for Atlantic Sea Scallops. NOAA extends the emergency interim rule from June 29, 1982, through August 12, 1982. The extension will continue the management program and its protection of the resource while public comments are considered in preparing final regulations for the fishery.

DATES: Emergency interim rule effective from June 29, 1982, through August 12, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Scallop Management Coordinator, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097; telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Sea Scallops (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on April 26, 1982. Emergency interim regulations implementing the FMP, with a request for public comments, were published on May 14, 1982 (47 FR 20776). The rulemaking stated that the regulations would be effective for 45 days and that they would be repromulgated for an additional 45 day period, if necessary, as authorized by section 305(e) of the Magnuson Fishery Conservation and Management Act. Comments were accepted through June 28, 1982.

The Assistant Administrator for Fisheries has determined that the emergency situation described in the initial rulemaking continues to exist. This action therefore extends those emergency regulations through August 12, 1982. During this period, public comments received during the initial rulemaking period will be considered in the preparation of final regulations, which should be issued on or before August 12, 1982.

Other Matters

The Administrator of NOAA determined on May 14, 1982 (47 FR 20776) that these regulations are non-major under Executive Order 12291, and at the same time that the emergency provisions of Section 8 of Executive Order 12291 apply to this rulemaking.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: June 24, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 82-17848 Filed 6-28-82; 1:56 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 126
Wednesday, June 30, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

Irish Potatoes Grown in Colorado—Area No. 3; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed continuing regulation would require fresh market shipments of potatoes grown in Colorado—Area No. 3 to be inspected and meet minimum grade, size and maturity requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

DATE: Comments due July 15, 1982.

ADDRESS: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Draft Impact Statement relating to this proposed rule is available upon request from Mr. Porter.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 948) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0111.

This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 3. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Colorado Area No. 3 Potato Committee, established under the order, is responsible for its local administration.

This proposed continuing handling regulation is based upon recommendations made by the committee at its public meeting in Greeley, Colorado, on June 10, 1982.

The grade, size, maturity and inspection requirements recommended herein are similar to those which have been issued during past seasons. They are necessary to prevent potatoes of poor quality or undersirable sizes from being distributed to fresh market outlets. The specific proposals, hereinafter set forth, would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Again the minimum quantity exemption is proposed to be 1,000 pounds. This should relieve the burden on handling noncommercial quantities of potatoes and allow direct marketing outlets to operate in greater freedom.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments would be permitted to certain special purpose outlets without regard to the grade, size, maturity and inspection requirements, provided that safeguards were met to prevent such potatoes from reaching unauthorized outlets. Certified seed would be exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed would likewise be exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments would be exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Potatoes for prepeeling would be handled without regard to maturity requirements since skinning of such potatoes would be of no consequence. Also, the maturity requirements terminate on December 31 because at that stage of the marketing season potatoes are generally mature with skins firmly set.

This regulation, designed to standardize shipments and increase marketing efficiency, would have no measurable effect on the quantity of potatoes shipped from Colorado Area No. 3, nor would there be a discernable effect on U.S. retail potato prices. This regulation should enable the Colorado Area No. 3 potato industry to better compete with other potato producing areas in the U.S. by ensuring the use of grades and sizes acceptable to buyers.

It is proposed that requirements contained in this proposed handling regulation, effective August 1, 1982, would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Interested persons are invited to comment through July 15, 1982 with regard to the proposed handling regulation. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The proposed change to issue regulations which would continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, the proposed action could result in a reduction in operational costs to the committee and the government. Although the final regulation would be effective for an indefinite period, the committee would continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season in accordance with § 948.20 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and

interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before July 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Colorado Area 3 potatoes would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

PART 948—IRISH POTATOES GROWN IN COLORADO

It is proposed that § 948.385 (46 FR 39118, July 31, 1981) be removed and a new § 948.387 be added as follows:

§ 948.387 Handling regulation.

On and after August 1, 1982, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a), (b) and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

a *Grade and size requirements—All varieties*—U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight. However, Size B may be handled If U.S. No. 1 grade.

(b) *Maturity (skinning) requirements—All varieties*—During the period beginning August 1 and ending December 31 each season, for U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "slightly skinned"; thereafter no maturity requirements.

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purpose of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspect certificate shall be valid for a period not to exceed five days following the date of inspect as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined; and

(iv) Certified seed potatoes (§ 948.6).

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(e) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (d) of this section shall:

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as required, including certification by the buyer or receiver on the use of such potatoes; and

(3) Bill each shipment directly to the applicable buyer or receiver.

(f) *Minimum quantity.* For purpose of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U. S. No. 1," "U. S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566) including the tolerance set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1, "Import regulations" (7 CFR 980.1), round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States during the period beginning August 1 and ending June 4 each season, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of this section.

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

Dated: June 25, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-17687 Filed 6-29-82; 8:45 am]

BILLING CODE 3410-02-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 15, 16, 18, 21, 32, 33, 145, 147, 155, 170 and 180

Domestic Exchange-Traded Commodity Options; Expansion of Pilot Program Provisions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts will be permitted to be traded on and through the facilities of domestic boards of trade designated by the Commission as contract markets for option trading. The Commission stated at that time that it intended to supplement those rules with rules authorizing the trading of options on physicals on domestic exchanges. The Commission is now proposing rules, principally consisting of amendments to existing rules, which would expand the pilot program regulations to permit and govern the trading of options on physicals on domestic exchanges. The proposed rules would allow any exchange, regardless of whether it is currently engaged in the trading of futures contracts or options on those contracts, to apply for contract market designation for an option on a physical. The Commission is also proposing rule amendments which would affect futures contracts and options on futures contracts.

DATE: Comments must be received on or before July 30, 1982.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Special Counsel, or Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, at the address listed above. Telephone: (202) 254–8955. For information concerning proposed amendments to 17 CFR Parts 15, 16, 18 and 21, contact: Lamont L. Reese, Associate Director, Division of Economics and Education, at the address listed above. Telephone: (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Introduction

On the same date that the Commission published regulations to govern a three-year pilot program under which options on certain commodity futures contracts will be permitted to be traded on and through the facilities of domestic boards of trade designated by the Commission as contract markets for option trading (46 FR 54500 (November 3, 1981)), the Commission also published a notice of proposed rulemaking in which it reaffirmed its intention to adopt rules which would permit the trading of options on physicals, and sought comments from interested persons as to the manner in which the pilot program rules should be amended or supplemented to permit such trading. 46 FR 54570 (November 3, 1981). The Commission received nineteen written comments in response to that notice. The commentators included two securities exchanges which list stock options for trading, a contract market, a board of trade not designated as a contract market, a trade association, and fourteen individuals not directly identified with any particular segment of the commodity industry. Only three of the commentators, however, made specific suggestions as to how the Commission's rules should be amended or supplemented to accommodate options on physicals; the Commission has incorporated certain suggestions of those commentators in the proposed rules.

One commentator suggested that the public should have an opportunity to comment on specific regulations for options on physicals. The Commission agrees with that commentator and is now publishing proposed rules for public comment. The Commission has determined that a thirty-day comment period is sufficient in light of the Commission's extensive history of rulemaking proceedings regarding options and due to the fact that many of the proposals contained herein are minor amendments to the existing option pilot program regulations and other Commission regulations affecting futures contracts. Comments received in response to the Commission's November 3, 1981 notice of proposed rulemaking, as well as comments concerning options on physicals which were received in response to the Commission's proposed option pilot program regulations,[1] will be considered in this rulemaking proceeding.

II. Commodity Option Transactions

The Commission is proposing a new definition for the term "physical." Proposed § 1.3(11). The proposed definition is intended to be coextensive with the Commission's jurisdiction with respect to commodity options. The definition of physical (and thus the scope of references to "an option on a physical") would therefore be limited only by a specific statutory or regulatory ban involving commodity options, such as the current ban contained in Sections 4c(a)(B) and 4c(b), of the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 6c(a)(B) and 6c(b)), which generally proscribes options involving the domestic agricultural commodities.[2] Any commodity option transactions which are in violation of the Act or the Commission's regulations would, of course, remain illegal.

The Commission is also proposing a minor change in the definition of the term "commodity option transaction" and "commodity option" to eliminate any reference to specific commodities. *See* proposed § 1.3(hh). The Commission believes that the definition of those terms does not depend upon and should not be defined in terms of any particular commodity. In its present form, § 1.3(hh) excludes from the definition of those terms any option involving a commodity specifically set forth in the definition of commodity in Section 2(a)(1) of the Act prior to 1974 and is intended to be consistent with the ban on certain option transactions referred to above. The Commission believes, however, that since that ban is contained in the statute, the inclusion of similar language in § 1.3(hh) is unnecessary.

When the Commission adopted rules to govern the option pilot program, it added a new Part 33 to its regulations to establish the necessary framework for the exchange trading of commodity options. Prior to the adoption of the pilot program regulations contained in Part 33, the Commission's Part 32 regulations governed all commodity option transactions. Thus, when it adopted regulations to permit the trading of commodity options on domestic exchanges the Commission specified in § 33.2(b) that "[t]he provisions of [Part 33, the pilot program regulations] apply to commodity option transactions except for transactions which are governed by Part 32 of this chapter." Because the Part 32 regulations do not contain a comparable provision which delineates their scope and applicability, the Commission is now proposing to adopt rules which would complement § 33.2(b) by specifying that the regulations in Part 32 generally do not apply to exchange-traded commodity options. Proposed §§ 32.1(a) and 32.11(b).

The Commission does not view the adoption of the pilot program regulations as affecting any obligation or responsibility established by the regulations contained in Part 32. Thus, a cease-and-desist order or injunction which prohibits the violation of the provisions of §§ 32.8 and 32.9 (which generally prohibit fraud, false statements, and the bucketing of an option customer's order) has not been affected by the Commission's adoption of regulations to govern the exchange trading of commodity options. However, because conduct which would violate the terms of such an order or injunction would, if it related to exchange-traded options, also violate the provisions of §§ 33.9 and 33.10,[3] the Commission is

[1] *See* 46 FR 54570, 54571 n.2 (November 3, 1981), referring to 46 FR 33293 (June 29, 1981).

[2] The Commission notes that, as part of the Commission's reauthorization process, Congress is considering legislation to repeal the ban on options on "enumerated" commodities contained in those sections of the Act. If the ban were to be repealed, the enumerated commodities would then be within the definition in proposed § 1.3(11), and the regulations governing options on physicals could be applied generally to commodity options involving such commodities. The Commission would, of course, consider carefully whether such regulations should be amended or supplemented before permitting the trading of options on agricultural commodities.

The Commission further notes that, as another part of the Commission's reauthorization process, Congress is considering legislation which could affect the Commission's jurisdiction with respect to options on physicals involving certain securities and financial instruments. If such legislation were to be enacted, those instruments would not be included within the proposed definition of the term physical, and the regulations relating to options on physicals would not apply to options involving such instruments.

[3] The provisions of §§ 32.8 and 32.9 are duplicated, without substantive change, in §§ 33.9 and 33.10. Section 33.9 also contains certain additional provisions which apply only to exchange-traded options.

proposing to amend § 32.1 to provide explicitly that the provisions of §§ 32.8 and 32.9 continue to apply to all commodity option transactions.[4]

Commission rule 33.2(a)(2) currently provides that the provisions of certain specified sections of the Act apply to the trading of commodity options on domestic exchanges "as though such provisions were set forth herein and included specific references to commodity option transactions." The Commission is proposing to amend that rule to substitute a reference to Section 4c(a) of the Act in lieu of the current reference to Section 4c(a) (A) and (C) and also to add a reference to Section 4k of the Act. These amendments are of a technical nature and are intended merely to eliminate any ambiguity regarding the applicability of those sections of the Act.

Section 1.3(jj) current specifies that, for purposes of § 33.3, the term "option customer" does not include the owner or holder of a proprietary account. Section 33.3, which establishes certain registration requirements for persons engaging in option transactions, does not, however, refer to "option customers." The Commission is accordingly proposing to amend § 33.3 to make explicit that the registration requirements of that section apply only to the solicitation or acceptance of orders from an "option customer" and, therefore, that a person soliciting or accepting orders for option transactions solely for a proprietary account need not register as a futures commission merchant or as an associated person.[5]

The majority of the proposed amendments to Part 33 appear in § 33.4, which concerns designation as a contract market for the trading of commodity options. Certain distinctions would be made to differentiate the treatment of applications for contract market designation for the trading of options on futures contracts from the treatment of applications for the trading of options on physicals. For example, § 33.4(d)(1) requires a board of trade applying for designation to trade options on futures contracts to justify the expiration date of the commodity option if that date is less than ten business days before the last trading day or first notice of day of the underlying futures contract. With respect to options on physicals, however, the Commission is proposing, as one of the commentators suggested, that the option expiration date be considered under § 33.4(a)(8)(iv) in all instances.

Although § 33.4(a)(8)(iv) would require a board of trade applying for contract market designation to trade options on physicals to include in its application an analysis and justification of any proposed option expiration date, the proposed regulations do not otherwise restrict when such an option may be exercised. Under this approach, options on physical could be exercised at any time prior to their expiration and the grantor of such an option would therefore be required to obtain (in the case of a call) or accept (in the case of a put) the underlying physical. This approach may limit the number of people willing to grant such an option. Therefore, the Commission is specifically requesting comments as to whether there should be a limited period (or a single date) for the exercise of options on physicals.

Section 33.4(a)(l)(ii) specifies that options on futures contracts may be exercised only by the establishment, by book entry in the clearing organization, of positions in the underlying futures contract. The Commission is not proposing a comparable restriction on the delivery mechanism for options on physicals and will, if these proposed regulations are adopted, consider applications for contract market designation which provide for cash settlement in lieu of actual delivery of underlying physical in the event of exercise of an option on a physical.

The Commission believes that cash settlement of options on physicals may be appropriate where the effect of cash settlement is to reduce the possibility of disruption of either the cash or futures markets or where cash settlement would facilitate and improve trading in the option itself. The Commission notes, however, that an applicant board of trade may be required to demonstrate that there is sufficient liquidity in the cash market for the underlying physical and that there exists an accurate and widely-disseminated price series for the underlying physical, irrespective of whether it proposes to require the actual delivery of the underlying physical upon exercise or instead to settle such options in cash.

The Commission is proposing to amend § 33.4(a)(3), which relates to demonstrations by applicant contract markets of continued compliance with the requirements for contract market designation, to make the requirements of that section applicable solely to options on futures. The Commission is proposing, however, to establish a comparable rule for those boards of trade which are already designated as contract market for futures contracts or options on futures contracts and which may receive contract market designation for options on physicals. Proposed § 33.4(a)(4). Although neither §§ 33.4(a)(3) or (a)(4) would apply to an applicant board of trade which is not yet designated as a contract market, such a board of trade would nonetheless be required to demonstrate compliance with the requirements of Sections 5 and 5a of the Act (7 U.S.C. 7, 7a) as part of its initial application. *See* § 33.2.[6]

Although a board of trade must first be designated as a contract market for the underlying futures contract before it may be designated as a contract market for options on that futures contract (§ 33.4(a)(3)), the Commission is now proposing, in § 33.4(a)(6), to allow any board of trade meeting the requirements of the Act and the Commssion's regulations to apply for designation to trade an option on a physical, irrespective of whether it has already received contract market designation for any futures contracts.[7]

Rule 33.4(a)(4) currently provides that a board of trade may not be designated for more than one option contract. The Commission is now proposing to broaden the scope of the pilot program to allow boards of trade to file applications for an option on a physical.[8] In proposing initially to allow only one option on a physical on each exchange, the Commission is cognizant of its responsibilities under Section 15 of the Act (17 U.S.C. 19). Section 15, however, does not require the Commission to subordinate the policies and purposes of the Act to those of the antitrust laws. Section 15 requires only that the Commission, in achieving the goals and policies of the Act, consider the public interest served by the

[4] The Commission is also proposing to redesignate, without change, the existing definitions in §§ 32.1(a)–(e) as §§ 32.1(b) (1)–(5).

[5] *Compare* Commission rule § 1.7 (17 CFR 1.7). Effective July 1, 1982, rule § 1.7 is superseded by Commission rule § 3.10(d) (17 CFR 3.10(d)).

[6] In addition, if such a board of trade were designated as a contract market for the trading of options on physicals, it would then be subject, as are all contract markets, to the requirements of Commission rule 1.50 (17 CFR 1.50).

[7] The Commission has previously requested comments as to whether it should restrict the trading of options on physicals to those boards of trade which are designated as a contract market for a futures contract which draws on the same deliverable supply as the proposed option on a physical. 46 FR 33293, 33295 (June 29, 1981); 46 FR 54570, 54571 (November 3, 1981). Although the Commission is not now proposing such a requirement, it is proposing to consider the effect upon the deliverable supply for existing futures contracts of any option on a physical. *See* § 33.4(a)(8)(iv). The Commission of course expresses no view at this time as to the merits of any such application.

[8] The Chicago Board of Trade has petitioned the Commission to repeal § 33.4(a)(4) so that boards of trade may be designated for more than one commodity option.

antitrust laws and endeavor to use the least anticompetitive means available. Moreover, Section 15 does not require the Commission to adopt the least anticompetitive course of action where the objectives, policies and purposes of the Commodity Exchange Act would be better served in some other way.[9]

In this regard, the Commission believes it essential that it proceed with due caution in expanding the pilot program. The absence of regulation of option trading in commodities not enumerated in the Act resulted in massive frauds in the offer and sale of such options in the late 1960s and early 1970s. Therefore, in enacting the Commodity Futures Trading Commission Act of 1974, Congress granted the Commission broad power to decide whether to prohibit or to permit option transactions in the previously unregulated commodities.[10] The Commission responded by adopting interim regulations, effective December 9, 1976, to govern off-exchange and foreign commodity option transactions. 17 CFR Part 32 (41 FR 51808). The Commission did not, however, have the essential assistance of self-regulatory organizations in the performance of its regulatory responsibilities during this period because options were not traded on organized domestic exchanges and, despite vigorous enforcement efforts by the Commission, fraudulent practices pervaded the offer and sale of commodity options. Thus, the Commission found it necessary to suspend the offer and sale of commodity options in the United States, effective June 1, 1978;[11] this suspension was codified by Congress when it enacted the Futures Trading Act of 1978.[12]

With this background in mind, the pilot program centers on the assumption of direct and primary regulatory responsbilities by the contract markets for the participation of their member firms. It is only by placing these regulatory responsibilities on the exchanges that the Commission believes it can presently assure that sufficient regulatory resources will be deployed to prevent a recurrence of the abuses which have characterized commodity options in the past. The Commission therefore believes that this limited expansion is appropriate in light of the self-regulatory duties and responsibilities which exchanges must bear under the pilot program.[13] The Commission further believes that the proposed expansion of the pilot program to allow each exchange to be designated as a contract market for one option on a physical strikes a proper balance between the competitive interests of the exchanges and the Commission's ability to fulfill its regulatory responsibilities. The Commission is nonetheless requesting comments as to what specific criteria the Commission should employ in evaluating whether and when to expand the option pilot program. In addition, the Commission is requesting comments as to whether the Commission should allow exchanges to trade any two option contracts, regardless of whether those option contracts would involve options on futures contracts, options on physicals, or one of each type.

The Commission is proposing a number of other amendments to § 33. 4. For example, before a board of trade can be designated as a contract market for the trading of options on futures contracts, it must, among other things, demonstrate that:

On such board of trade, the volume of trading in all contract months for future delivery of the commodity for which the option designation is sought has averaged at least 1,000 contracts per week for the 12 months preceding the date of application for the designation, or, alternatively, that there is sufficient liquidity in the cash and futures markets in the commodity underlying the operation for which designation is being sought to prevent disruption of those markets by the trading of options.

Section 33.4(a)(5)(iii). The Commission is proposing to limit that rule to options on futures contracts and to add a new § 33.4(a)(5)(iv), which would establish similar requirements for options on physicals. Specifically, § 33.4(a)(5)(iv)(A) would require a board of trade applying for contract market designation for the trading of options on physicals to demonstrate that the cash market for the underlying physical exhibits sufficient liquidity so that option grantors and purchasers can purchase or sell the underlying physical at its economic value in normal cash marketing channels. Proposed § 33.4(a)(5)(iv)(B) would require a demonstration by the board of trade of the existence of an accurate, widely-disseminated price series for the underlying physical, while proposed § 33.4(a)(5)(iv)(C) would require an applicant board of trade to demonstrate that the trading of such options will not be disruptive of either trading in the cash market for the underlying physical or of any futures contract.

The Commission is proposing these latter requirements because it wishes to consider the extent to which non-commercial traders would be able to buy or sell the physical underlying the option at its economic value without significant disadvantage relative to other traders. The Commission also believes that there must be an accurate and widely-disseminated price series for the underlying physical which is readily available to all market participants because the option's premium and the intrinsic value of the option will be derived from the current market value of the underlying, physical.

The Commission is also proposing to require a board of trade to adopt rules which establish appropriate criteria which are reasonably designed to secure performance of those option contracts which may be exercised by the purchasers of those options. Proposed § 33.4(b)(11). Although the rule would apply to both options on futures and options on physicals, the Commission is particularly concerned that the grantor of a call option on a physical have the ability to perform his obligation to make delivery of the physical underlying the option.

The Commission is proposing certain additional conditions and requirements in connection with designation of a board of trade as a contract market for the trading of options on physicals. The Commission believes, consistent with the views of one of the commentators on its November 3, 1981 proposal, that the conditions and requirements which are applicable to the designation of futures

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[9] *See* British American Commodity Options Corp. v. Bagley, Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part on other grounds*, 552 F.2d 482 (2d Cir.), *cert. denied*, 434 U.S. 938 (1977).

[10] Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93–463, § 402(c), 88 Stat. 1412–13 (codified at 7 U.S.C. 6c(b)). *see, e.g.*, 120 Cong. Rec. S34997 (daily ed. Oct. 10, 1974) (remarks of Senator Talmadge; Hearings on the Review of the Commodity Exhange Act Before the House Committee on Agriculture, 93rd Cong., 1st Sess. 11 (1973) (statement of Rep. Smith); H.R. Rep. No. 93–975, 93rd Cong., 2d Sess. 37–39, 48–50 (1974).

[11] 43 FR 16153 (April 17, 1978).

[12] Futures Trading Act of 1978, Pub. L. No. 95–405, § 3, 92 Stat. 867 (codified at 7 U.S.C. 6c(c)). *See, e.g.*, 124 Cong. Rec. S16527 (daily ed. Sept. 28, 1978) (remarks of Senator Leahy); 124 Cong. Rec. H7207 (daily ed. July 24, 1978) (remarks of Rep. Jones); 124 Cong. Rec. H7329 (daily ed. July 26, 1978) (remarks of Rep. Madigan); S. Rep. No. 95–850, 95th Cong., 2d Sess. 25 (1978).

[13] In proposing these regulations, the Commission has been cognizant not only of the history of abuse in the trading of commodity options, but also the serious regulatory problems with respect to trading in exchange-listed stock options which, for a period of time, caused the Securities and Exchange Commission to announce a moratorium on further expansion of its pilot program for such trading. *See* Securities Exchange Act Release No. 13760 (July 18, 1977), 42 FR 38035 (July 26, 1977); Securities Exchange Act Release No. 14056 (October 17, 1977), 42 FR 56726 (October 27, 1977). *see also* Report of the Special Study of the Option Markets to the Securities and Exchange Commission (Decemer 22, 1978), printed for the use of the House Committee on Interstate and Foreign Commerce, Comm. Print 96–IFC3, 96th Cong., 1st Sess. (1979).

contracts are also appropriate to the designation of options on physicals. *See* proposed § 33.4(a)(7), (8) and (9). These proposed conditions and requirements are therefore adapted from the requirements of Commission Guideline No. 1 (40 FR 25849 (June 19, 1975)) and would codify and adopt those latter requirements for the trading of options on physicals.[14]

The Commission is proposing one minor amendment to § 33.5(c). Section 33.5(c) currently provides, in pertinent part, that:

> Except as may be specifically authorized by the Commission, no board of trade which has been designated as a contract market fot the trading of commodity options may authorize or allow the trading of any commodity option: (1) Which will expire after the termination of the effective period of such designation; (2) where the delivery month of the futures contract underlying such option is later than the termination of the effective period of such designation; or (3) where the delivery month for the underlying futures contract has not been listed.

The Commission is proposing to apply only the first restriction to options on physicals.

The Commission is proposing to amend § 33.6(c) to include a reference to a commodity underlying an option on a physical. That provision, which concerns commercial use of an option contract, presently refers only to commodity underlying a futures contract upon which an option is traded. Similarly, the Commission is proposing to amend § 33.7, which prescribes the disclosures which an FCM must make before opening a commodity option account for an option customer. As is the case with several of the regulations which the Commission is proposing to amend, many of the changes merely involve the addition of references to the underlying physical.

The more significant changes to § 33.7 would be made in the language which appears in capital letters at the beginning of the disclosure statement and in that portion of the statement which describes some of the risks of option trading. Specifically, the Commission is proposing to add to the required statement language which would alert the option customer to be aware of whether the option transaction involves an option on a futures contract or an option on a physical, point out the differences which result from the exercise of an option on a futures contract and an option on a physical, and elaborate upon the potential risk associated with the trading of options. *See* proposed § 33.7(b), (b)(1).

As discussed elsewhere in this release, the Commission is also proposing to amend certain of its regulations governing the operations and activities of commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") including, in particular, the regulations governing the disclosure documents which must be furnished to prospective pool participants and trading program clients. *See* proposed §§ 4.21, 4.31.

A futures commission merchant's obligation to provide a disclosure document (§ 33.7) is, however, independent of a CPO's or CTA's separate duty to provide its prospective pool participants or clients with the disclosure documents required under §§ 4.21 and 4.31. In this regard, the Commission wishes to emphasize that § 33.7(a), which requires a futures commission merchant ("FCM") to furnish the required disclosure document to, and receive a signed and dated acknowledgment from, an option customer [15] is not satisfied by the receipt of an acknowlegment from a CTA who is directing trading in an option customer's account, irrespective of the form or scope of the agreement (*e.g.*, power of attorney) which authorizes the CTA to effect transactions in the account. Thus, FCMs which carry option customer accounts (other than on an omnibus basis for another FCM) must obtain the required acknowledgment from the option customer and not from an intermediary.[16]

III. Other Part 1 Regulations

The Commission wishes to reiterate that certain definitions have not been changed in connection with the trading of options on futures contracts and the Commission is proposing no changes in those definitions in contemplation of the trading of options on physicals. for example, the term "delivery month," as defined in § 1.3(1), refers only to futures contracts. Exchange-traded options have an expiration date, but since such options can be exercised at any time, there will be no specific delivery period as there is for futures contracts. The definition for the term "open contracts" in § 1.3(t) also was not changed, but option market participants should be aware that, for reporting purposes, § 15.00(k) provides that, as used in Parts 15 to 21 of the regulations, " 'open contracts' means 'open contracts' as defined in § 1.3(t) and commodity option positions held by any person on or subject to the rules of a contract market which have not expired, been exercised, or offset." (As used in § 15.00(k), the phrase "commodity option positions" will apply to both options on futures contracts and options on physicals.)

Another example of a definition which has not been changed for the options pilot program is the definition of "bona fide hedging transactions and positions" in § 1.3(z). The principal purpose of that latter definition is to set forth criteria and standards for exemptions from the speculative position limits which have been established by the Commission pursuant to Section 4a of the Act (7 U.S.C. 6a). *See* 17 CFR Part 150. Thus, § 1.3(z) would have no direct applicability to speculative position limits for options which have been established by the contract markets, subject to the Commission's approval, pursuant to § 1.61 (46 FR 50938 (October 16, 1981)). Section 1.61(b) provides, however, that these limits do not apply to "positions held by commercial interests in the underlying commodity which are determined by [the] contract market to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise * * *" 46 FR at 50945.

The Commission further notes that because the definition of bona fide heldging transactions refers only to transactions in futures contracts, the exemption from the provisions of § 1.46 (which generally involves the closing out and offet of open positions) provided by paragraph (d)(2) of that section would not apply to option transactions. The Commission is specifically requesting comments, however, as to whether and under what circumstances it should exempt commercial option traders from the requirements of § 1.46.[17]

The Commission is proposing three changes in the minimum financial rule for future commission merchants (§ 1.17). The most significant change would be made in § 1.17(c)(5)(ii)(A) regarding the safety factor charge, or "haircut," which an FCM must take against certain inventory in determining adjusted net capital. The Commission is proposing that if the FCM's inventory is currently registered as deliverable on a

[14] *See* 45 FR 73504 (November 5, 1980) (proposed codification of Guideline No. 1 as Commission rule 5.1).

[15] Section 1.3(jj) defines the term "option customer" to mean, with certain exceptions, any person who directly or indirectly purchases or grants or otherwise disposes of any interest in a commodity option for value.

[16] Where the option customer is a commodity pool, the requirements of § 33.7 are met by the delivery of the required disclosure statement to, and receipt of an acknowledgment from, the commodity pool operator.

[17] As discussed elsewhere in this release, the Commission is also proposing to delete § 1.46(d)(1), which provides an exemption for certain "cover" transactions.

contract market and is deliverable on an option on a physical, no safety factor charge would need to be applied against such inventory in determining adjusted net capital, consistent with the treatment accorded such inventory when the inventory is covered by an open futures contract.[18] Other minor changes of a clarifying nature are being proposed in paragraphs (c)(5)(x) and (c)(5)(x)(D) of § 1.17. In their present form, those two paragraphs refer to "grantor" commodity options. To clarify the Commission's intent with respect to those two paragraphs, the Commission is proposing to change "grantor" to "granted (sold)." The proposed amendments to paragraphs (c)(5)(x) and (c)(5)(x)(D) would make it clear that the safety factor charges referred to in those provisions apply to certain commodity options which have been (1) granted—*i.e.*, sold—by the owner or holder of a proprietary account, and (2) are being held in proprietary accounts carried by the FCM (or applicant for registration as an FCM).[19] Other proposed changes to § 1.17 involve the valuation of a commodity option which is not traded on a contract market (*e.g.*, a "dealer" option or an option traded overseas). Specifically, the Commission is proposing to amend §§ 1.17(c)(1)(iii) and (c)(5)(xi) to make clear that those provisions are consistent with the proposed definition of a physical and that they apply regardless of whether the option invovled is an option on a physical or an option on a futures contract.

Minor changes are also being proposed in certain other regulations contained in Part 1. Section 1.19 would be simplified by the use of the defined term "commodity option" (*see* proposed § 1.3(hh)), eliminating the need for repeating in § 1.19 the words which appear in the current § 1.3(hh). The concluding paragraph of § 1.35(e) would be amended by adding as cross-reference to "any transaction which is made non-competitively in accordance with the written rules of the contract market which have been submitted to and approved by the Commission in accordance with § 1.38" in lieu of the words "exchanges of futures for cash [and] transfer trades." Exchanges of futures for cash and transfer trades would be subsumed in the broader language being proposed. The intent of the Commission's proposed change to the concluding paragraph of § 1.35(e) is to make it consistent with § 1.38, since § 1.38 was amended when the option pilot program regulations were adopted to include references to commodity options. The amendment would ensure that appropriate records are maintained if the Commission were to approve any contract market rules allowing commodity option transactions to be made non-competitively. Of course, the Commission expresses no view as to any particular contract market rule proposal regarding the non-competitive execution of commodity option transactions and will consider any such proposal on a case-by-case basis.

Amendments are also being proposed to § 1.39 and to paragraphs (a)(3) and (a)(4) of § 1.46 regarding cross trades and the closing out of offsetting positions, respectively, so that transactions involving options on physicals would be treated in a manner which is similar to the treatment of futures transactions and transactions involving options on futures contracts under those regulations. The Commission is also proposing to delete § 1.46(d)(1), which was adopted as part of the option pilot program regulations. The Commission believes that the exception provided for by § 1.46(d)(1) is inappropriate because it refers to "cover" in the context of futures contracts versus options. The Commission has defined "cover" in § 1.17(j), however, to apply only in cases of physicals versus options or physicals versus futures contracts. Further, in a situation where § 1.46(d)(1) would apply as presently written, a portion of the overall market position involved would necessarily be "uncovered."

When it adopted rules establishing the option pilot program, the Commission made clear that it was instructing its staff to review carefully the applications for option contract market designation to ensure that each board of trade or its clearing organization, as applicable, will have in place a system to require the payment of margin by option grantors and, where applicable, their FCMs. The Commission is now proposing a clarifying amendment to § 1.41(a)(2) to include within the definition of "reviewable rule" proposed contract market rules or rule amendments relating to the payment or collection of commodity option margins.

The Commission is also proposing changes to §§ 1.42–1.44 of the regulations regarding deliveries and warehouses so that those regulations would refer to deliveries in satisfaction of options on physicals as well as deliveries on futures contracts. Because of the mechanism mandated by § 33.4(a)(1)(ii) for the exercise of options on futures contracts (establishment by a clearing organization of positions in the futures contract upon exercise of the option), no amendments were made to §§ 1.42 through 1.44 with respect to options on futures contracts.

Several of the other proposed changes to Part 1 of the Commission's regulations are basically technical in nature and would include, where appropriate, references to the underlying physical in various regulations which currently refer only to futures transactions or to options on futures contracts. *See* proposed amendments to §§ 1.3(aa), 1.3(kk), 1.33–1.35 and § 1.39(a)(4). The Commission is also proposing to amend § 1.33 to specify that FCMs must provide to their futures customers information relating to financial charges and credits to the customer's account during the preceding month. Proposed § 1.33(a)(1)(iv). The Commission understands that most FCMs already provide this information to their customers even though it is not required by regulation; in addition, this information must be provided for option transactions (§ 1.33(a)(2)(v)).

IV. Proposed Amendments to the Reporting Requirements

The Commission is proposing certain amendments to Parts 15, 16, 18 and 21 of the regulations concerning reporting by contract markets, members of contract markets, FCMs, foreign brokers and foreign traders to bring the regulation of options on physicals within the framework already established for the regulation of futures and options on futures. In addition, the Commission is proposing to amend its reporting requirements to further conform the regulations concerning options on futures and options on physicals and those governing futures.

A. Reporting Requirements for Options on Physicals

In order for the Commission adequately to perform market surveillance over options on physicals and to determine the commercial use of such instruments, the Commission is proposing that the reporting requirements already established for options on futures generally be applied to options on physicals. This would require exchanges designated to trade options on physicals to file information concerning:

[18] Because of the mechanism mandated by § 33.4(a)(1)(ii) for the exercise of options on futures contracts (establishment by a clearing organization of positions in the futures contract upon exercise of the option), there is no comparable provision relating to options on futures contracts.

[19] For purposes of § 1.17, the term "proprietary account" refers only to a commodity futures or commodity option account carried on the books of the FCM (or applicant therefor) for the firm itself, or for general partners of the firm. *See* § 1.17(b)(3).

1. Positions and transactions of clearing members as set forth in proposed § 16.00;

2. Volume, open interest, prices, options exercised and options that expired unexercised as set forth in proposed § 16.01;

3. The positions and identification of large option traders, as set forth in proposed § 16.02 and in existing § 16.03 if those positions exceed reporting levels established by the exchanges in accordance with proposed § 15.00(b)(2)(i);

4. The aggregate positions of commercials participating in the option markets as set forth in proposed § 16.04; and

5. The total composition of specified option markets as set forth in § 16.05.

Although, under Part 16 of the regulations, the contract markets will collect and provide the Commission with routine information on option traders (46 FR 54500, 54526–28 (November 3, 1981)), the Commission has retained, in Parts 18 and 21 of its regulations, the authority to make special calls on option traders and on contract markets, FMCs, members of contract markets, and foreign brokers for information on option positions.

There are two areas in which the Commission is proposing that the reports concerning large traders differ for options on futures and options on physicals. These areas involve the frequency with which such reports would be filed and the information which would be required to be reported. The Commission currently requires that reports on the positions of individual large traders in options on futures be filed on a weekly basis (or more frequently as the Commission may direct) for any trader who controls a reportable position in an expiring option. For reports on the positions of large traders in options on physicals, however, the Commission is proposing that reports on traders with positions in an expiring option be filed on a daily basis. Proposed § 16.02(a).

Reports from exchanges on the positions of individual large traders in options on futures are intended as a supplement to the Commission's own daily reporting system for monitoring the expiration of the future underlying the option. Positions in such options, if exercised, can directly affect the liquidation of an expiring futures contract.[20] Because the Commission maintains a daily large trader reporting system for futures, however, the Commission will be aware of substantial futures positions that result from option exercises and will be able to monitor these positions. Accordingly, the Commission has determined that, except under unusual circumstances, weekly reports from the exchanges concerning the positions of large traders in options on futures are sufficient for the purposes of market surveillance.

By comparison, the exercise of an option on a physical results in the transfer of ownership of the physical underlying the option which may, in turn, result in corners, squeezes or congestion in the futures market. In addition, concentrations of positions in options on physicals may result in option price distortions which could, in turn, affect the price of the underlying physical. Moreover, if the cash commodity underlying an option is the same as that deliverable on a futures contract, a large trader may influence the price of an expiring future as well as the premium of the option itself. In view of these considerations, the Commission is proposing that the exchanges file daily reports on the positions of traders in options on physicals who control reportable positions in an expiring option.[21]

For the same reasons as those cited above regarding the frequency of reports, the Commission also is proposing that traders who hold reportable positions in an expiring option on a physical report, in addition to position information, information concerning options which they have exercised. There is not similar requirement for options on futures.

B. Designation of an Agent for Service of Commission Communications

As noted above, the Commission is proposing other amendments to its reporting requirements to conform further the regulations concerning futures and options. These proposed amendments affect both options on futures and options on physical.

Under § 15.05, an FCM is designated as the agent of foreign brokers and foreign traders which have futures contract accounts with the FCM for purposes of accepting delivery and service of communications issued to those foreign brokers and traders by the Commission. The FCM is also designated as the agent of the customers of a foreign broker who have positions in accounts carried by the FCM in the name of the foreign broker. These requirements do not apply, however, where a foreign broker, its customer, or a foreign trader executes an agency agreement with any person domiciled in the United States and provides a copy of the agreement to an FCM effecting futures transactions for the foreign entity. Section 15.05(d). The FCM must file this agreement with the Commission. This rule permits the Commission to communicate expeditiously with foreign individuals and entities engaged in futures trading on United States commodity exchanges, thereby facilitating surveillance of those persons.

The Commission anticipates that special calls concerning options may be made on foreign entities, and believes that it should preclude, to the extent possible, the problems that it formerly experienced in making special calls on foreign entities for information relating to futures contracts.[22] Accordingly, the Commission is proposing to amend § 15.05 to make it applicable to option contracts as well as to future contracts. The Commission is also proposing to amend § 15.05 to make clear that the definition of "customer" contained in that rule will apply to any person for whose benefit a foreign broker makes or causes to be made any option contract as well as any futures contract. This is consistent with the definition of customer contained in § 15.00(j).

C. Reports by Exchanges Concerning Clearing Member Positions and Transactions

Exchanges are currently required under § 16.00 to provide information concerning the positions and transactions of clearing member firms for both futures and options on futures.

[20] The expiration of options on futures and the first notice day of the underlying future will generally be near the same time. Although exercise of such an option can occur at any time, most exercises are likely to occur when the option nears expiration because of the "time value" associated with the price of the option.

[21] For the same reasons that pertain to options on futures, the Commission expects that exercises of options on physicals will occur when the option nears expiration.

[22] In the Federal Register notice announcing the adoption of Rule 15.05, the Commission stated that "* * * [it] has experienced considerable difficulty in having delivered * * * communications on a timely basis to certain foreign participants in certain foreign countries. In the past, the Commission has attempted to send documents directly to foreign persons by registered mail or telex. The Commission has been informed that this procedure may offend certain nations which impose restrictions on the ability of a foreign government or agency to send communications directly to citizens or firms of that nation. Under the laws of these countries, the Commission, or any other foreign governmental entity, may be prohibited from sending any form of communication directly to firms or traders. Moreover, the Commission has been informed that certain communications necessary to meet the requirements of the Commodity Exchange Act and due process may be perceived as offensive by officials in other countries, and for this reason, would not be delivered to the traders or brokers." 45 FR 30426, 30427 (May 8, 1980).

In adopting these requirements for options, the Commission noted that although information concerning option positions and transactions must be provided separately for proprietary and customer accounts, there is no similar requirement for futures. 46 FR 54500, 54512 (November 3, 1981). The Commission announced at that time, however, that it would request public comment at a later date on proposals to require that futures information also be provided by proprietary and customer accounts.

At present, all but three exchanges provide the futures transactions and positions of clearing members by proprietary and customer accounts.[23] When provided in this manner, this data is an important information source for market surveillance and for determining potential problems concerning the financial exposure of various firms during periods of price volatility. Combining this data for proprietary and customer accounts severely limits the usefulness of the information, however. In such cases, the Commission must forego the benefits which the additional information would contain or invest considerable resources in attempting to determine any further breakdown of the data. In addition, it would appear that providing this information for futures contracts separately by proprietary and customer accounts would involve only minimal costs since the majority of the exchanges now provide futures information in this manner. In this connection, the Commission notes that the three exchanges which do not presently provide this information separately have all applied for designation as contract markets for the trading of options on futures contracts and, under the rules established for the option pilot program, must provide options data by proprietary and customer accounts. Section 16.00(a). The Commission is nonetheless seeking specific comments on what costs may be incurred by the exchanges if the Commission's proposal is adopted.

D. Trading Volume, Open Contracts and Prices

Rule 16.01 currently requires contract markets to provide to the news media and the general public on a daily basis information concerning market volume, open interest and prices for both futures and options on futures, deliveries on futures, exchanges of futures for physicals, the total number of options exercised, and the number of options that expired unexercised. (The Commission is now proposing similar requirements for options on physicals.) All of the above information concerning options, but only the price information concerning futures, is already required to be provided to the Commission in machine-readable form. The Commission is now proposing that all information specified in § 16.01 be provided to the Commission in machine-readable form.[24] The Commission believes that such a requirement would expedite the Commission's processing and analysis of such data with little additional cost to contract markets.

With respect to prices, the Commission also announced in the November 3, 1981 **Federal Register** that it might also propose amendments to Part 16 to require that contract markets make available in printed form at their offices a description of the manner in which discretion, if any, may be utilized to determine settlement prices and/or nominal premiums for opening and closing ranges when no trades occur during those periods for a particular option contract. 46 FR 54512.

The regulations currently require contract markets to disclose the methods by which both nominal prices and settlement prices for futures are established and, if discretion is used in determining the futures opening and closing ranges, the contract markets must disclose to the public the manner in which that discretion is employed. In proposing such rules for futures, the Commission recognized that, in certain instances, nominal prices represent opinions from knowledgeable sources and may, therefore, be useful to the trading public in arriving at a judgment concerning an appropriate price level when actual trading data is not available. 45 FR 39280, 39282 (June 10, 1980). Moreover, the Commission recognized that discretion employed by a contract market to discard aberrant trades, bids or offers would be useful in ensuring that meaningful data is provided to the Commission and the public as long as the manner in which such discretion was employed was also available to interested persons. *Id.* The Commission believes that this rationale is equally applicable to option premiums. In addition, settlement prices, which may involve the use of discretion, are of importance to the public's ability to monitor contract performance and price activity. The Commission therefore believes that contract markets should be required to disclose to the public the discretion, if any, which is employed in determining settlement prices. In view of the above, the Commission is proposing to amend § 16.01(c) to apply to options as well as futures and to amend § 16.01(c)(2) to apply to settlement prices as well as opening and closing ranges.

E. Reports by Large Traders

Rules 18.00 and 18.04 currently require traders who own or control reportable futures positions to make certain reports to the Commission. Specifically, § 18.00 requires large futures traders to provide on call by the Commission certain information concerning open positions and transactions while § 18.04 specifies that reportable futures traders must routinely provide certain identification information (including ownership and control of futures trading accounts, occupation and hedging use of the futures markets, corporate affiliations, and association with foreign governments). This information is essential to the Commission for market surveillance and for general determinations as to the composition of large traders in the marketplace.

In adopting regulations for options on futures, the Commission determined to rely on position information and trader identification information provided by contract markets and, when necessary, to obtain additional information on call under § 18.05. Unless a need is demonstrated for routine reporting of this information during the pilot program, the Commission continues to believe that position and identification information from traders should be provided only on call. In order to allow the Commission to make calls for such information more expeditiously,[25] the Commission believes that options traders should be subject to calls for the specific information already set forth in §§ 18.00 and 18.04.[26] Accordingly, the Commission is proposing to amend §§ 18.00 and 18.04 to make the information set forth in those rules applicable to options on futures and

[23] Of these three, one provides futures information by proprietary and customer accounts upon request and another routinely provides this information for futures during the delivery period.

[24] In the November 3, 1981 **Federal Register** release announcing the adoption of rules governing the option pilot program, the Commission noted this difference in treatment of options and futures data and indicated that it contemplated proposing rule changes which would conform the reporting of the data. 46 FR at 54514.

[25] For purposes of making a special call under §§ 18.00 and 18.04, the definition of "reportable option trader" which would be used is currently contained in § 18.05. The Commission is, however, also proposing technical amendments to §§ 15.00 and 15.01(c) to define this term in Part 15 rather than in § 18.05.

[26] If a large option trader also owns or controls a reportable futures position, the Commission will have a Form 40 on file (*see* § 18.04), which would substantially lessen the need for making a special call.

options on physicals as well as to futures and to require that this information from reportable option traders be provided within one business day of a call by the Commission or its designee.

The Commission is also proposing several technical amendments to §§ 18.00 and 18.01(d) to simplify those regulations and to decrease the number of forms which the Commission now maintains and distributes. Currently, § 18.00(a)–(h) specifies in detail how certain positions and transactions are to be reported while § 18.01(d) requires that a trader show on the first '03 report filed with the Commission and monthly thereafter a listing of the names and individual positions held by all controlled accounts. The Commission is proposing to delete §§ 18.00(d)–(h) and 18.01(d) and to further amend §§ 18.00 and 18.01 to require that the information currently set forth in § 18.00(a)–(c) be provided only as specified in a call by the Commission or its designee and to add a new § 18.00(d) which would require the reporting of exercised options.

With respect to particular reporting forms, the Commission currently maintains 23 separate series '03 forms for reporting different commodities. The Commission is proposing to delete references to the series '03 forms in § 15.02 and in Part 18 and, in their place, use only one form for the reporting of all commodities.[27]

F. Special Call Under Part 21

Rule 21.02 is currently structured in two parts. Section 21.02(a) pertains to information concerning futures accounts which must be provided on call, while § 21.02(b) pertains to option information. Since the information requested in both subsections is essentially the same, the Commission is proposing to consolidate the information required for futures and options.

V. Related Matters

A. Registration

The Commission is proposing to amend certain of its registration regulations[28] to include references, where appropriate, to commodity option transactions. In particular, the Commission is proposing to amend § 3.20 (delegation of authority to deny registration), § 3.33 (withdrawal from registration),[29] and the appendix to Part 3, which sets forth the Commission's interpretation of the "other good cause" provisions of Section 8a(2)(B)(ii) of the Act (7 U.S.C. 12a(2)(B)(ii)).

B. Commodity Pool Operators and Commodity Trading Advisors

In a situation where an individual is purchasing account management rather than participating directly in the commodity markets (*i.e.*, where a managed account or commodity pool is involved), the Commission believes that the customer should base his investment decision in the first instance on a general risk disclosure statement concerning the risks of commodity trading, together with the specific performance data concerning the applicable commodity pool operator ("CPO") or commodity trading advisor ("CTA"). For this reason, the Commission is not proposing to modify the "Risk Disclosure Statement" required to be included in the Disclosure Document for CPOs and CTAs other than to include language which makes clear that those Statements apply to any commodity interest which may be traded.[30] (*See* proposed §§ 4.21(a)(17)(i) and 4.31(a)(8)(i).) Instead, the Commission is proposing to require in each case that the CPO or CTA separately disclose which commodity interests will be traded, and, in particular, whether futures, options on futures, options on physicals, or leverage will be trades. (*See* proposed §§ 4.21(a)(19) and 4.31(a)(10), respectively.)

The Commission is also proposed to amend §§ 4.23(b)(1) and 4.32(b)(1) to require CPOs and CTAs to include certain additional details (*e.g.*, realized gains and losses on commodity interest transactions) in the itemized daily record of the trading activity of the CPO, CTA, or its principals. The other proposed amendments to Part 4 are minor and are intended to make clear that the provisions of Part 4 apply to all "commodity interest" transactions, whether they involve futures contracts, options, or leverage contracts.

C. Trading Standards

When the Commission first adopted floor broker trading standards for commodity futures trading, it required each contract market to adopt a set of rules to prevent abuses of the relationships between its floor broker members and the persons for whom such members execute futures transactions. The Commission stated that it "intended to prohibit a floor broker from abusing his relationship with his customers by taking advantage of or trading ahead of the orders of those customers. Simply stated, the newly adopted regulation (§ 155.2) is intended to require that under all circumstances the customer must come first." 41 FR 56134, 56136 (December 23, 1976).

This philosophy is equally applicable to transactions involving the various combinations of futures and options transactions. The Commission is therefore proposing to amend §155.2 to make it clear that an exchange's rules on a dual trading should prohibit a floor broker from executing an order for his own account or an account in which he has an interest, whether such execution would involve a purchase or sale of a future, put option, or call option, if the floor broker is holding an executable customer order (for the purchase or sale of a future or an option) in the same commodity and that customer's order would benefit from a market move in the same direction as the broker's trade for his own account or the account in which he has an interest. The Commission believes it would breach a floor broker's fiduciary responsibility to his customers if any exchange were to permit a floor broker to accord any different treatment to his customers' orders. The Commission wishes to make clear, however, that consistent with past practice, it does not intend to prevent a floor broker from trading for his own account or an account in which he has an interest (futures or options) while holding a customer order (futures or options) for the same commodity if the floor broker trades in the "opposite" direction of his customer. The Commission is also proposing to amend § 155.3, which establishes comparable requirements for futures commission merchants.

D. Registered Futures Associations; Arbitration

The Commission is proposing to add references to commodity options to its regulations relating to registered futures associations (17 CFR Part 170). Specifically, the Commission is

[27] The Commission is proposing to require that information submitted in response to a call under § 18.00 be prepared on the Commission's Large Trade Reporting Form, which would be denoted as Form 103. The Commission is also proposing amendments to its regulations under the Freedom on Information Act (5 U.S.C. 552) and the Government in the Sunshine Act (5 U.S.C. 552b) to provide for the general nonpublic treatment of, and the closing of Commission meetings (or portions thereof) which would be likely to disclose information contained in Form 103. *See* proposed §§ 145.5(d)(1)(vi) and 147.3(b)(4)(i)(F), respectively.

[28] The Commission's registration regulations have been revised and recodified at 17 CFR Part 3, effective July 1, 1982. 45 FR 80485 (December 5, 1980); 46 FR 24940 (May 4, 1981).

[29] 46 FR 48915 (October 5, 1981).

[30] Commission rule 4.10 defines the term "commodity interest" to include futures contracts, options, and leverage contracts.

proposing to amend § 170.5 to provide that a registered futures association must establish and maintain a program for the protection of both customers and option customers and monitor and enforce compliance with the customer and option customer rules.[31] The Commission is similarly proposing to amend §§ 170.8 and 180.1, both of which relate to the settlement of customers' claims and grievances, to include appropriate references to commodity option transactions.

E. Regulatory Flexibility Act

The Commission has previously determined that contract markets, registered futures commission merchants and commodity pool operators, and large traders are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). 47 FR 18618 (April 30, 1982). The requirements of the Regulatory Flexibility Act do not, therefore, apply to those entities. With regard to the regulations the Commission is now proposing which specifically affect commodity trading advisors, the Commission is merely proposing to amend § 4.30, which generally prohibits CTAs from accepting funds, securities, or other property in the name of the CTA to margin, guarantee, or secure a client's trades, and to amend the requirements governing the contents of the disclosure document which must be furnished by certain CTAs (proposed § 4.31) and the requirements governing the records of trading in a customer's or option customer's account (proposed § 4.32) to include, where appropriate, references to "commodity interests"[32] rather than references solely to futures trading. The Commission does not believe that, if adopted, §§ 4.30–4.32 will have a significant economic impact on commodity trading advisors.

Accordingly, and for the reasons set forth above, the Chairman, on behalfd of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that the rules proposed herein, if promulgated, will not have a significant economic impact on a substantial number of small enties.

[31] Rule 33.3(b)(1)(i) currently restricts participation in the pilot program to those futures commission merchants who are members of the contract market on which the option is traded or who are members of a registered futures association—such as the National Futures Association—which, among other things, "provide[s] for the regulation of the commodity option related activity of its members in a manner equivalent to that required of contract markets * * *"

[32] Section 4.10(a) defines the term "commodity interest" to include futures, options, and leverage transactions.

F. Lists of Subjects Affected

List of Subjects

17 CFR Part 1

Commodity exchanges, Financial requirements, commodity exchange designation procedures, Commodity exchange rules, Reporting requirements, Records, Customer protection, Definitions.

17 CFR Part 3

Withdrawal from registration, Denial of registration.

17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Disclosure documents, Records.

17 CFR Part 15

Reporting requirements, Foreign brokers, Foreign traders.

17 CFR Part 16

Commodity exchange reports, Reporting requirements.

17 CFR Part 18

Reporting requirements.

17 CFR Part 21

Reporting requirements, Special calls for information.

17 CFR Part 32

Commodity options, Fraud.

17 CFR Part 33

Commodity options, Commodity exchange designation procedures, Fraud, Risk disclosure statement.

17 CFR Part 145

Records, Freedom of information.

17 CFR Part 147

Commission meetings, Sunshine Act.

17 CFR Part 155

Commodity exchange trading standards; futures commission merchant trading standards.

17 CFR Part 170

Futures Association.

17 CFR Part 180

Arbitrations; claims.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4c(a), 4c(b), 4c(c), 4c(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17 thereof, 7 U.S.C. 2 and 4, 6c(a), 6c(b), 6c(c), 6c(d), 6d, 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21, and pursuant to the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by amending §§ 1.3, 1.17, 1.19, 1.22, 1.33–1.35, 1.39, 1.41–1.44, 1.46, 3.20, 3.33, Appendix A to Part 3, 4.13, and §§ 4.21–4.23, 4.30–4.32, 15.00–15.02, 15.05, 16.00–16.02, 16.04, 18.00, 18.01, 18.04, 18.05, 21.02, 32.1, 32.11, 33.2–33.7, 145.5, 147.3, 155.2, 155.3, 170.5, 170.8, and 180.1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.3 is proposed to be amended by revising paragraphs (aa), (hh) and (kk), and by adding a new paragraph (ll) to read as follows:

§ 1.3 Definitions.

* * * * *

(aa) *Associated person.* This term means any natural person who (as provided in Section 4k of the Act) is associated with a futures commission merchant or with an agent of a futures commission merchant as a partner, officer, or employee (or any person occupying a similar status or performing similar functions), in any capacity which involves (1) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity) or (2) the supervision or any person or persons so engaged.

* * * * *

(hh) *Commodity option transaction; commodity option.* These terms each mean any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "call," "put," "advance guaranty," or "decline guaranty," and which is subject to regulation under the Act and these regulations.

* * * * *

(kk) *Strike price.* This term means the price, per unit, at which a person may purchase or sell the contract of sale of a commodity for future delivery or the physical which is the subject of a commodity option: *Provided,* That for purposes of § 1.17, the term "strike price" means the total price at which a person may purchase or sell the contract of sale of a commodity for future delivery or the physical which is the subject of a commodity option (*i.e.,* price per unit times the number of units).

(ll) *Physical.* This term means any good, article, service, right or interest upon which a commodity option may be traded in accordance with the Act and these regulations.

2. Section 1.17 is proposed to be amended by revising paragraphs (c)(1)(iii), (c)(5)(ii)(A), (c)(5)(x), (c)(5)(x)(D) and (c)(5(xi) to read as follows:

§ 1.17 Minimum financial requirements—futures commission merchants.

* * * * *

(c) * * *

(1) * * *

(iii) The value attributed to any commodity option which is not traded on a contract market shall be the difference between the option's strike price and the market value for the physical or futures contract which is the subject of the option. In the case of a call commodity option which is not traded on a contract market, if the market value for the physical or futures contract which is the subject of the option is less than the strike price of the option, it shall be given no value. In the case of a put commodity option which is not traded on a contract market, if the market value for the physical or futures contract which is the subject of the option is more than the strike price of the option, it shall be given no value; and

* * * * *

(5) * * *

(ii) * * *

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical. – No charge.

* * * * *

(x) In the case of open futures contracts and granted (sold) commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a "changer trade" made in accordance with the rules of a contract market:

* * * * *

(D) For open contracts or granted (sold) commodity options for which there are no applicable maintenance margin requirements, 200 percent of the applicable initial margin requirement: *Provided,* the equity in any such proprietary account shall reduce the deduction required by this paragraph (c)(5)(x) if such equity is not otherwise includable in adjusted net capital;

(xi) In the case of an applicant or registrant which is a purchaser of a commodity option not traded on a contract market which has value and such value is used to increase adjusted net capital, ten percent of the market value of the physical or futures contract which is the subject of such option but in no event more than the value attributed to such option;

* * * * *

3. Section 1.19 is proposed to be revised to read as follows:

§ 1.19 Prohibited trading in certain options.

No futures commission merchant may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except for commodity options traded on or subject to the rules of a contract market in accordance with the requirements of Part 33 of this chapter.

4. Section 1.22 is proposed to be revised to read as follows:

§ 1.22 Use of customer funds restricted.

No futures commission merchant shall use, or permit the use of, the customer funds of one commodity and/or option customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer or option customer. Customer funds shall not be used to carry trades or positions of the same commodity and/or option customer other than in commodities or commodity options traded through the facilities of a contract market.

5. Section 1.33 is proposed to be amended by adding paragraph (a)(1)(iv), by revising paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(iv), (b)(2)(v), (b)(3), by removing and reserving paragraph (d)(2), and by revising paragraph (e) to read as follows:

§ 1.33 Monthly and confirmation statements.

(a) * * *

(1) * * *

(iv) A detailed accounting of all financial charges and credits to the commodity customer's account during the monthly reporting period, including all customer funds received from or disbursed to the commodity customer, commissions and fees, and realized profits and losses; and

(2) For each option customer—

(i) All commodity options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(ii) The open commodity option positions carried for the option customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

* * * * *

(b) * * *

(2) * * *

(iv) The underlying futures contract or underlying physical;

(v) The expiration date, and the final exercise date, if different, of the commodity option purchased or sold, and, if applicable, the final trading date on the contract for future delivery underlying the option; and

* * * * *

(3) To each option customer, upon the expiration or exercise of any commodity option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the futures or physical position which resulted therefrom.

* * * * *

(d) * * *

(2) [Reserved]

* * * * *

(e) *Recordkeeping.* Each futures commission merchant shall retain, in accordance with § 1.31, a copy of each monthly statement and confirmation required by this § 1.33.

6. Section 1.34 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.34 Monthly record, "point balance."

* * * * *

(b) Each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a listing in which all open commodity option positions carried for option customers are marked to the market. Such listing shall be prepared as of the last business day of each month, or as of any regular monthly date selected, and shall be by put or by call, by underlying contract for future delivery (by delivery month) or underlying physical (by option expiration date), and by strike price.

7. Section 1.35 is proposed to be amended by revising paragraphs (b)(2)(ii), (b)(3)(ii), (d) and (e) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(b) * * *

(2) * * *

(ii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchases price of the option, including premium, mark-up, commission and fees; and

(3) * * *

(ii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom such transaction was made.

* * * * *

(d) *Members of contract markets.* Each member of a contract market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or other record showing such purchase and sales. Such trading card or record shall show his own name, the name of the clearing member, transaction date, time period (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, and strike price. Such trading card or record shall also clearly identify the opposite floor broker or floor trader with whom such transaction was executed, and the opposite clearing member (if, in accordance with the rules or practice of the contract market, such opposite clearing member is made known to him).

(e) *Contract markets.* Each contract market shall maintain or cause to be maintained by its clearing organization a single record which shall show for each futures or option trade: the transaction date, time period (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer or option customer types. The customer and option customer type indicators shall show, with respect to each person executing the trade whether such person:

(1) Was trading for his own account;

(2) Was trading for his clearing member's house account;

(3) Was trading for another member present on the exchange floor, or an account controlled by such other member; or

(4) Was trading for any other type of customer or option customer.

The record required by this paragraph (e) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission in accordance with § 1.38, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (e) shall be maintained in format and coding structure approved by the Commission (i) in hard copy or on microfilm as specified in § 1.31 and (ii) for 60 days in computer-readable form on compatible magnetic tapes or discs.

* * * * *

8. Section 1.39 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.

(a) *Conditions and requirements.* A member of a contract market who shall have in hand at the same time both buying and selling orders of different principals for the same commodity for future delivery in the same delivery month or the same option (both puts or both calls, with the same underlying contract for future delivery or the same underlying physical, expiration date and strike price) may execute such orders for and directly between such principals at the market price, if in conformity with written rules of such contract market which have been approved by the Commission, and:

(1)(i) When trading is conducted in a trading pit or ring, such orders are first offered openly and competitively by open outcry in such trading pit or ring (A) by both bidding and offering at the same price, and neither such bid nor offer is accepted, or (B) by bidding and offering to a point where such offer is higher than such bid by not more than the minimum permissible price fluctuation applicable to such futures contract or commodity option on such contract market, and neither such bid nor offer is accepted; or

(ii) When in nonpit trading in contracts of sale for future delivery, bids and offers are posted on a board, such member (A) pursuant to such buying order posts a bid on the board and, incident to the execution of such selling order, accepts such bid and all other bids posted at prices equal to or higher than the bid posted by him, or (B) pursuant to such selling order posts an offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him;

(2) Such member executes such orders in the presence of an official representative of such contract market designated to observe such transactions and, by appropriate descriptive words or symbol, clearly identifies all such transactions on his trading card or other similar record, made at the time of execution, and notes thereon the exact time of execution and promptly presents said record to such official representative for verification and initialing;

(3) Such contract market keeps a record in permanent form of each such transaction showing the transaction date, by whom executed, the exact time of execution, quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, whether a put or a call, and strike price; and

(4) Neither the futures commission merchant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary.

* * * * *

9. Section 1.41 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§1.41 Contract market rules; submission of rules to Commission; exemption of temporary emergency rules and certain operational and administrative rules; emergencies.

(a) * * *

(2) The term "reviewable rule" of a contract market means any rule of a contract market which relates to terms and conditions of contracts of sale of a commodity for future delivery or of commodity option transactions to be executed on or subject to the rules of such contract market or relates to other trading requirements except those relating to the setting of levels of margin for contracts of sale of a commodity for future delivery: *Provided,* That any rule of a contract market relating to the payment or collection of commodity option margin or premiums shall be a reviewable rule.

* * * * *

10. Section 1.42 is proposed to be amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 1.42 Delivery notice; filing of copy.

(a) Each contract market shall furnish or cause to be furnished promptly to the Commission a copy of each notice of delivery issued by any member thereof covering the delivery of any commodity on a futures contract or on a commodity option made on or subject to the rules of such contract market, and shall also furnish or cause to be furnished promplty to the Commission a record of all endorsements of the original notice of delivery shown in the order in which such endorsements were made.

* * * * *

(c) For the purpose of this section, the term "delivery" includes the exercise of a commodity option on a physical.

11. Section 1.43 is proposed to be revised to read as follows:

§ 1.43 Information required concerning warehouses, depositories, and other similar entities.

Each contract market shall file with the Commission a list of all warehouses, depositories and other similar entities in which or out of which commodities are deliverable in satisfaction of futures contracts or options on physicals made on or subject to the rules of such contract market, which list shall show the name, location, and storage capacity of each such warehouse, depository or other similar entitly, together with the name and business address of the operator thereof. The Commission shall be kept currently advised of all changes affecting such information. Each contract market shall require the operator of such warehouse, depository or other similar entity to furnish, upon call by the Commission, a schedule of storage charges, handling charges, and the annual fire insurance rate applicable to such warehouse, depository or other similar entity.

12. Section 1.44 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.44 Records and reports of warehouses, depositories, and other similar entities; visitation of premises.

Each contract market shall require the operators of warehouses, depositories and other similar entities whose receipts are deliverable in satisfaction of commodity futures contracts or options on physicals made on or subject to the rules of such contract market:

(a) To keep records showing the stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market in store in such warehouses, depositories and other similar entities by kinds, by classes, and by grades, if stored under conditions requiring such designation or identification, and including also lots and parcels stored specially or separately or in specially leased space of the warehouse, depository or other similar entity;

(b) Upon call from the Commission, to report the stocks of commodities in such warehouses, depositories and other similar entities and to furnish information concerning stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market about, to be transferred or in the process of being transferred or otherwise moved into or out of such warehouses, depositories and other similar entities, as well as any other information concerning commodities stored in such warehouse, depositories and other similar entities and which are or may be available for delivery on futures contracts or options on physicals; and

* * * * *

13. Section 1.46 is proposed to be amended by revising paragraphs (a)(3), (a)(4) and the closing text of paragraph (a), and by removing and reserving paragraph (d)(1), to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) * * *

(3) Purchases a put or call option for the account of any option customer when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying futures contract or underlying physical, strike price, expiration date and contract market as that purchased; or

(4) Sells a put or call option for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or underlying physical, strike price, expiration date and contract market as that sold

shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall promptly furnish such customer or option customer a statement showing the financial result of the transactions involved.

* * * * *

(d) * * *

(1) [Reserved]

* * * * *

PART 3—REGISTRATION

14. The authority citation for Part 3 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p and 12a.

15. Section 3.20 is proposed to be amended by revising paragraphs (a)(1)(ii) and (a)(1)(iii) to read as follows:

§ 3.20 Delegation of authority to deny registration.

(a) * * *

(1) * * *

(ii) Within ten years preceding the filing of the application has been convicted of a misdemeanor which (A) involves any transaction or advice concerning any commodity, contract for future delivery of a commodity, commodity option, or security; (B) arises out of the conduct of the business of a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or employee or affiliated person of any of the foregoing; or (C) involves embezzlement, defalcation, fraudulent conversion, misappropriation of funds, securities or other property, forgery, counterfeiting, false pretenses, gambling, or similar crimes reflecting upon the ability of the applicant, if registered, faithfully to discharge the fiduciary duties imposed by the Act; or

(iii) At the time of the application, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or is prohibited by agreement or settlement with the Commission or the Securities and Exchange Commission, or any State agency or governmental body, (A) from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, securities broker or dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing, or (B) from engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities, contracts for future delivery of commodities, commodity options, or securities; or

* * * * *

16. Section 3.33 is proposed to be amended by revising paragraphs (b)(7)(i), (b)(7)(ii), (b)(7)(iii), and (b)(7)(v) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(b) * * *

(7) * * *

(i) That all customer or option customer agreements, if any, have been terminated;

(ii) That all customer or option customer positions, if any, have been transferred on behalf of customers or option customers or closed;

(iii) That all customer or option customer cash balances, securities, or other property, if any, have been transferred on behalf of customers or option customers or returned, and that there are no obligations to customers or option customers outstanding;

* * * * *

(v) The nature and extent of any pending customer, option customer or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer or commodity pool participant claims against the registrant.

* * * * *

17. Appendix A is proposed to be amended by revising paragraph (1), (3) and (4) to read as follows:

* * * * *

(1) The operations of such person disrupt or would tend to disrupt orderly market conditions, or cause or would tend to cause sudden or unreasonable fluctuations or unwarranted changes in the price of commodities or contracts for future delivery of commodities or commodity options.

* * * * *

(3) Such person has, within ten years preceding the filing of the application for registration, been convicted of a misdemeanor which (a) involves any transactions or advice concerning any commodity, contract for future delivery of a commodity, commodity option or security; or (b) arises out of conduct of the business of a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (c) involves embezzlement, defalcation, fraudulent conversion, misappropriation of funds, securities or other property, forgery, counterfeiting, false pretenses, gambling, or similar crimes indicating a lack of high ethical standards or unreliability in maintaining a fiduciary relationship.

(4) Such person is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or by agreement of settlement to which the Commission, the Securities and Exchange Commission, or any State agency or governmental body is a party, from (a) acting as a futures commission merchant, associated person, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company or employee or affiliated person of any of the foregoing or (b) engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities, contracts for future delivery of commodities, commodity options, or securities.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

18. Section 4.13 is proposed to be amended by revising paragraph (b)(2)(i)(B) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement; and

* * * * *

19. Section 4.21 is proposed to be amended by revising paragraphs (a)(1)(vi) and (a)(1)(vii), by adding a new paragraph (a)(1)(viii), and by revising paragraphs (a)(9)(ii), (a)(9)(iii) and (a)(17)(i) to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(1) * * *

(vi) The name of the person who will make the trading decisions for the pool;

(vii) If known, the name of the futures commission merchant through which the pool will execute its trades; and

(viii) The types of commodity interests the commodity pool operator intends that the pool will trade, which a description of any restrictions or limitations on such trading established by the commodity pool operator.

* * * * *

(9) * * *

(ii) The form in which pool funds not deposited as margin or paid as premiums will be held after the commencement of trading by the pool. If those funds will be held in assets other than cash, the pool operator must disclose:

* * * * *

(iii) If pool funds not deposited as margin or paid as premiums will be held outside of the United States, its territories or possessions, the pool operator must specify where those funds will be held.

* * * * *

(17)(i) The following Risk Disclosure Statement, to be prominently disclosed as, and the only language on, the first page of the Disclosure Document:

RISK DISCLSOURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. YOU MAY LOSE A SUBSTANTIAL PORTION OR EVEN ALL OF THE MONEY YOU PLACE IN THE POOL.

IN CONSIDERING WHETHER TO PARTICIPATE IN A COMMODITY POOL, YOU SHOULD BE AWARE THAT TRADING COMMODITIES CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSETS VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. ALSO, MARKET CONDITIONS MAY MAKE IT DIFFICULT OR IMPOSSIBLE FOR THE POOL TO LIQUIDATE A POSITION.

IN SOME CASES, COMMODITY POOLS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF PARTICIPATING IN A COMMODITY POOL. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU DECIDE TO PARTICIPATE IN A COMMODITY POOL.

* * * * *

20. Section 4.22 is proposed to be amended by revising paragraph (a)(1)(iii) to read as follows:

§ 4.22 Reporting to pool participants.

(a) * * *

(1) * * *

(iii) The total amount of net gain or loss from all other transactions in which the pool engaged during the reporting period, including interest and dividends earned on funds not paid as premiums or used to margin the pool's commodity interest positions;

* * * * *

21. Section 4.23 is proposed to be amended by revising paragraphs (a)(1), (a)(7), (b)(1) and (b)(2) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account, whether the interest was purchased, sold, exercised, or expired, and the gain or loss realized.

* * * * *

(7) Copies of each confirmation of a commodity interest transaction of the pool, each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account, whether the interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity pool operator relating to a personal account of the pool operator, and (ii) each principal of the pool operator relating to a personal account of such principal.

* * * * *

22. Section 4.30 is proposed to be revised as follows:

§ 4.30 Prohibited activities.

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a futures commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as commodity trading advisor under the Act.

23. Section 4.31 is proposed to be amended by revising paragraphs (a)(1)(iii) and (a)(1)(iv)(B), by adding a new paragraph (a)(1)(v), and by revising paragraph (a)(8)(i) to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(1) * * *

(iii) A description of the trading program;

(iv) * * *

(B) If the client is free to choose the futures commission merchant with which it will maintain its account, the trading advisor must make a statement to that effect; and

(v) The types of commodity interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the commodity trading advisor.

* * * * *

(8)(i) The following Risk Disclosure Statement to be prominently disclosed as, and the only language on, the first page of the Disclosure Document:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

(1) IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

(2) IF YOU PURCHASE OR SELL A COMMODITY FUTURE OR SELL A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUIRED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

(3) UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

(4) THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

(5) A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLY "LONG" OR "SHORT" POSITION.

(6) THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY TRADING BEFORE YOU TRADE.

* * * * *

24. Section 4.32 is proposed to be amend by revision paragraphs (a)(6) (b)(1) and (b)(2) to read as follows:

§ 4.32 Recordkeeping.

(a) * * *

(6) Copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account, whether the interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity trading advisor relating to a personal account of the trading advisor, and (ii) each principal of the trading

advisor relating to a personal account of such principal.

* * * * *

PART 15—REPORTS—GENERAL PROVISIONS

25. Section 15.00 is proposed to be amended by revising paragraph (b)(2) and redesignating paragraph (b)(2) as paragraph (b)(2)(i), by adding paragraph (b)(2)(ii), and by revising paragraphs (g) and (h) to read as follows:

§ 15.00 Definition of terms used in Parts 15 to 21 of this chapter.

* * * * *

(b) * * *

(2) For purposes of reports regarding commodity options—

(i) For reports specified in Part 16 and in § 17.01 of this chapter, any open contract position on any one contract market in the put option or separately in the call option of a specified option expiration date, which is carried on the books of any one futures commission merchant or foreign broker or which is held by a member of a contract market, and which, at the close of the market on any business day, equals or exceeds 25 options on futures contracts or 25 options on physicals, except as otherwise approved by the Commission.

(ii) For reports specified in §§ 18.00 and 18.04 of this chapter, and for recordkeeping requirements specified in § 1805 of this chapter, 25 or more open options on futures contracts or 25 or more open options on physicals on any one contract market in a put option or separately in a call option of a specified option expiration date.

* * * * *

(g) "Guided account program" means any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of commodity or a particular commodity option that is advised or recommended to the participant in the program.

(h) "Discretionary account" means a commodity futures or commodity option trading account for which buying and/or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

* * * * *

26. Section 15.01 is proposed to be amended by revising paragraph (c) to read as follows:

§ 15.01 Persons required to report.

* * * * *

(c) Traders who holds or control reportable positions as specified in Part 18 of this chapter.

* * * * *

27. Section 15.02 is proposed to be revised to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission. Forms to be used for the filing of reports are listed below and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40	Statement of Reporting Trader	18.04
102	Identification of Special Accounts	17.01
103	Large Trader Report	18.00
Series 04	Cash Positions of Traders in Specified Commodities.	19.00
	204—Grains (including Oilseeds)	
	304—Cotton	
	504—Eggs	
	604—Potatoes	
Series 01	Positions of Special Accounts on or Subject to the Rules of Specified Markets.	17.00
	01-60—Board of Trade of the City of Chicago.	
	01-61—Board of Trade of the City of Kansas City, Missouri, Inc.	
	01-62—Minneapolis Grain Exchange.	
	01-63—MidAmerica Commodity Exchange.	
	01-64—Chicago Mercantile Exchange.	
	01-65—New York Mercantile Exchange.	
	01-66—New York Cotton Exchange and Associates.	
	01-69—Commodity Exchange, Inc.	
	01-73—Coffee, Sugar and Cocoa Exchange.	
	01-74—International Monetary Market.	
	01-77—New York Futures Exchange.	
	01-78—New Orleans Commodity Exchange.	

28. Section 15.05 is proposed to be revised to read as follows:

§ 15.05 Designation of a futures commission merchant to be the agent of foreign brokers, customers of a foreign broker, and foreign traders.

(a) For purposes of this section, the term "futures contract" means any contract for the purchase or sale of any commodity for future delivery traded or executed on or subject to the rules of any contract market; the term "option contract" means any contract for the purchase or sale of a commodity option traded or executed on or subject to the rules of any contract market; the term "customer" means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term "communication" means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

(b) Any futures commission merchant who makes or causes to be made any futures contract or option contract for the account of any foreign broker or foreign trader shall thereupon be deemed to be the agent of the foreign broker or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker or the foreign trader with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. In the case of a futures commission merchant who makes or causes to be made any futures or option contract for the account of a foreign broker, the futures commission merchant shall also be the agent of the customers of the foreign broker (including any customer who is also a foreign broker and its customers) who have positions in the foreign broker's futures or option contract account carried by the futures commission merchant for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the customer with respect to any futures or option contracts which are or have been maintained in such accounts carried by the futures commission merchant. Service or delivery of any communication issued by or on behalf of the Commission to a futures commission merchant pursuant to such agency shall constitute valid and effective service or delivery upon the foreign broker, a customer of the foreign broker or the foreign trader. A futures commission merchant who has been served with, or to whom there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, a customer of the foreign broker or the foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, a customer of the foreign broker or the foreign trader.

(c) It shall be unlawful for any futures commission merchant to open a futures or options contract account for, or to effect transactions in futures contracts or option contracts for an existing account of, a foreign broker or foreign trader unless the futures commission merchant informs the foreign broker or foreign trader prior thereto, in any

reasonable manner which the futures commission merchant deems to be appropriate, of the requirements of this section.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to any account carried by a futures commission merchant if the foreign broker, customer of a foreign broker, or foreign trader for whose benefit such account is carried has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the futures commission merchant prior to the opening of an account, or placing orders for transactions in futures contracts or option contracts of an existing account, with the futures commission merchant. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker and customers of the foreign broker or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, customers of the foreign broker, or foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the futures commission merchant prior to opening an account for the foreign broker or foreign trader or effecting transactions in futures or option contracts for an existing account of a foreign broker or foreign trader. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at 2033 K Street, NW., Washington, D.C. 20581. A foreign broker, customer of a foreign broker, or foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked or is otherwise no longer in effect. If a futures commission merchant carrying an account for a foreign broker or foreign trader knows or should know that the agreement has expired, has been terminated or is otherwise no longer in effect, the futures commission merchant shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates or is not in effect, the futures commission merchant and the foreign broker, customers of the foreign broker or foreign trader are subject to the provisions of paragraphs (b) and (c) of this section.

PART 16—REPORTS BY CONTRACT MARKETS

29. Section 16.00 is proposed to be amended by revising paragraph (a) to read as follows:

§ 16.00 Clearing member reports.

(a) *Information to be provided.* Each contract market shall submit to the Commission, in accordance with paragraph (b) of this section, a report for each business day, showing for each clearing member, by proprietary and customer account, the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

* * * * *

30. Section 16.01 is proposed to be amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§16.01 Trading volume, open contracts and price.

(a) *Trading volume and open contracts.* Each contract market shall publish for each business day the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

* * * * *

(b) *Prices.* Each contract market shall make readily available to the new media and the general public no later than the business day following the day to which the information pertains, the following information separately for futures, by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

* * * * *

(c) *Additional information.* Each contract market shall make readily available to the public, in printed form at the office of the contract market, the following information with respect to transactions in commodity futures and commodity options on that contract market: (1) The method used by the contact market in determining nominal prices and settlement prices; and (2) if discretion is used by the contract market in determining the opening and closing ranges or the settlement prices, an explanation that certain discretion may be employed by the contract market and a description of the manner in which that discretion may be employed.

(d) *Reports to the Commission.* Unless otherwise approved by the Commission or its designee, the information specified in paragraphs (a) and (b) of this section shall be submitted to the Commission on compatible data processing punched cards, magnetic tapes or magnetic discs using a format and coding structure approved in writing by the Commission or its designee. Unless otherwise instructed by the Commission or its designee, such information shall be submitted the business day following the day to which the information pertains at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

31. Section 16.02 is proposed to be amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 16.02 Large option trader reports.

(a) *Information required.* When an option becomes the option which will expire next, and, in any case, at least six weeks prior to an option's expiration date, each contract market shall submit to the Commission a weekly report for options on futures and a daily report for options on physicals containing the following information for each option trader controlling a reportable option position in the option which will expire next or controlling a reportable option position in an option which will expire in six weeks or less:

(1)(i) For options on futures contracts, with respect to each put and call and each long and short controlled by the option trader, the following information shown separately by futures commission merchant or member of the contract market and combined for all futures commission merchants and members:

(A) All positions in the option which is next to expire, by strike price;

(B) All positions in any other options which expire within six weeks, by strike price;

(C) All positions in the next-deferred option expiration date, regardless of strike prices;

(D) All positions in all other more distant option expiration dates, regardless of strike prices; and

(E) The total position controlled by the option trader in all option expiration dates, regardless of strike prices.

(ii) For options on physicals, with respect to each put and call and each long and short controlled by the option trader, the following information shown separately by futures commission merchant or member of the contract market and combined for all futures commission merchants and members:

(A) All positions in the option which is next to expire, by strike price, and the number of contracts exercised;

(B) All positions in any other options which expire within six weeks, by strike price, and the number of contracts exercised;

(C) All positions in the next-deferred option expiration date, regardless of strike prices, and the number of contracts exercised;

(D) All positions in all other more distant option expiration dates, regardless of strike prices, and the number of contracts exercised; and

(E) The total position controlled by the option trader in all option expiration dates, regardless of strike prices, and the total number of contracts exercised.

(iii) Each contract market shall identify all option positions controlled by the same trader which are carried at the same futures commission merchant or held by a member of the contract market by use of the number which is assigned by the futures commission merchant or member in accordance with § 17.01(a) of this chapter.

* * * * *

(b) *Form and manner of reporting.* The information required by paragraph (a) of this section shall be submitted in hard copy form and on compatible data processing punched cards, magnetic tapes or magnetic discs, using a format and coding structure approved in writing by the Commission or its designee. For options on futures, such information shall be compiled weekly as of the close of business on Tuesday, or Monday if Tuesday is a holiday, or more frequently than weekly as the Commission's may direct. Unless otherwise instructed by the Commission or its designee, the information shall be submitted by the business day following that to which the information pertains at the Regional Office of the Commission's having local jurisdiction with respect to such contract market.

32. Section 16.04 is proposed to be amended by revising paragraph (a) to read as follows:

§ 16.04 Month-end reports.

(a) *Information to be provided.* Each contract market shall submit to the Commission, for each month, a report for options on futures contracts and separately a report for options on physicals showing long and short open option positions held at month-end in all accounts, reported separately by underlying futures contract or physical, for commercial and noncommercial option traders, by put, by call, by expiration date, by strike price and by clearing member.

* * * * *

PART 18—REPORTS BY TRADERS

33. Section 18.00 is proposed to be amended by revising the introductory paragraph, paragraphs (a), (b), (c) and (d) and by removing paragraphs (e), (f), (g) and (h) to read as follows:

§ 18.00 Information to be furnished by traders.

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position on a commodity shall within one business day after a special call upon such trader by the Commission's or its designee file reports to the Commission's concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position as instructed in the call. Each such report shall be prepared on the Commission's Large Trader Reporting Form (Form 103) on a separate sheet for each commodity or option, and shall show for the day covered by the report the following information, as specified in the call, separately for each future or option and for each contract market:

(a) Open contracts;

(b) Purchases and sales;

(c) Delivery notices issued and stopped; and

(d) Options exercised.

§ 18.01 [Amended]

34. Section 18.01 is proposed to be amended by removing paragraph (d).

35. Section 18.04 is proposed to be amended by revising the introductory paragraph, paragraphs (a)(2), (a)(5), (a)(9), (b)(3), (b)(4), (c)(3), (c)(4), (c)(5), (c)(6) and (d) to read as follows:

§ 18.04 Statement of reporting trader.

Every trader who holds or controls a reportable futures position shall file with the Commission a "Statement of Reporting Trader" on Form 40. Each trader shall file an initial Form 40 at such time as the Commission directs, but not later than the tenth business day following the date the trader assumes the reportable position. Subsequent filings shall be made at the time specified in paragraph (e) of this section. In addition, every trader who holds or controls a reportable option position, as set forth in § 15.00(b)(2)(ii) of this chapter, shall within one business day after a special call upon such trader by the Commission or its designee file a "Statement of Reporting Trader" with respect to such option positions. All traders shall complete Part A of the Form 40 and, in addition, shall complete:

Part B—If the trader is an individual, a partnership or a joint tenant.

Part C—If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

(a) * * *

(2) Principal business and occupation of the reporting trader and, in addition, whether transactions are made for, on behalf of, or in association with, a customer trading program of a futures commission merchant, a commodity pool, a producer cooperative, any business activities in which the trader is commercially engaged, or for personal use.

* * * * *

(5) The name and address of each person whose account is controlled by the reporting trader.

* * * *

(9) The following information concerning accounts which the reporting trader guarantees or in which the trader has a financial interest of ten percent or more if such accounts are in a name other than that of the reporting trader:

* * * * *

(b) * * *

(3) If the trader is self-employed and engaged in the marketing of a cash commodity or in a business activity which is hedged by use of the futures market, or the trader uses the option market in connection with such business, the cash commodity marketed or risk exposure covered, types of associated marketing activities, the option contract used or the futures contract used for hedging.

(4) The name, address, and type of any organization in which the reporting trader participates in the management if such organization holds another futures or option trading account.

* * * * *

(c) * * *

(3) Names and locations of all subsidiary firms that trade in commodity futures or options and whether or not the subsidiary firms are organized under the law of any state (including the District of Columbia) or territory or possession of the United States.

(4) Name, address, and business telephone number of person(s) actually controlling the trading and, if different persons are responsible for different commodities or options, the commodities or options for which each controller has responsibility.

(5) Name, office address and business telephone number of person or persons to contact regarding trading.

(6) If the firm is engaged in the marketing of a cash commodity or in a business activity which is hedged by using the futures markets, or the firm uses the option market in conjunction with such business, the cash commodity marketed or risked exposure covered, types of associated marketing activities, and the option contracts used or the futures contracts used for hedging.

(d) *Updating reports.* If at the time a trader holds or controls a reportable futures position and (1) the trader has not filed a Form 40 during the previous twelve months or (2) a Form 40 previously filed by the trader is no longer accurate because, since the previous filing, there has been a change in the information required under paragraph (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(8), (a)(9), (a)(10), (b) or (c) of this section, the trader shall file an updated Form 40 with the Commission not later than 10 calendar days after the expiration of such twelve month period or after such change occurs, as the case may be.

36. Section 18.05 is proposed to be revised to read as follows:

§ 18.05 Maintenance of books and records.

Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions for future delivery in the commodity on all contract markets, all positions and transactions in the commodity option, and all positions and transactions in the cash commodity, its products and byproducts and, in addition, commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable, and shall upon request furnish to the Commission any pertient information concerning such positions, transactions or activities.

PART 21—SPECIAL CALLS FOR INFORMATION FROM CONTRACT MARKETS, FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS, AND FOREIGN BROKERS

37. Section 21.02 is proposed to be revised to read as follows:

§ 21.02 Special calls for information on open contracts in accounts carried by futures commission merchants, members of contract markets, and foreign brokers.

Upon special call by the Commission for information relating to futures and/or option positions held on the dates specified in the call, each futures commission merchant, member of a contract market, or foreign broker, and, in addition, for options information, each contract market, shall furnish to the Commission the following information concerning accounts of traders owing or controlling such futures and/or options positions as may be specified in the call:

(a) The name and address of the person for whom each account is carried;

(b) The principal business or occupation of the person for whom each account is carried, as specified in the call;

(c) The type of each such account;

(d) The name, address and principal business or occupation of any person who controls the trading of each account;

(e) The name and address of any person having a financial interest of ten percent or more in each account;

(f) The number of open futures and/or option positions carried in each account as specified in the call; and

(g) As applicable, the following identifying information:

(1) Whether a trader who holds commodity options is classified as a commerical or as a noncommercial for each commodity option;

(2) Whether the open commodity futures contracts are classified as speculative, spreading (straddling), or hedging; and

(3) Whether any of the accounts in question are omnibus accounts and, is so, whether the originator of the omnibus account is another futures commission merchant or foreign broker.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

38. Section 32.1 is proposed to be revised to read as follows:

§ 32.1 Scope of Part 32; definitions.

(a) *Scope.* The provisions of this Part, except for the provisions of §§ 32.8 and 32.9 which shall in any event apply to all commodity option transactions, shall apply to all commodity option transactions except for commodity option transactions conducted or executed on or subject to the rules of a contract market pursuant to section 4c(c) of the Act and the regulations promulgated thereunder.

(b) *Definitions.* As used in this part:

(1) "Commodity option transaction" and "commodity option" each means any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "deline guaranty" involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Sloanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed, meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice;

(2) "Interstate commerce" shall be construed and have the same meaning as set forth in sections 2(a) and 2(b) of the Act;

(3) "Option customer" means any person who directly or indirectly, purchases or otherwise acquires for value any interest in a commodity option, but shall not include a person required to register as a futures commission merchant in accordance with this part;

(4) "Purchase price" means the total actual cost paid or to be paid, directly or indirectly, by an option customer for entering into and maintaining an interest in a commodity option transaction by whatever name called; and

(5) "Striking price" means the price at which an option customer may purchase or sell the commodity or the contract of sale of a commodity for future delivery which is the subject of a commodity option transaction.

39. Section 32.11 is proposed to be amended by revising paragraph (b) to read as follows:

§ 32.11 Suspension of commodity option transactions.

* * * * *

(b) The provisions of paragraph (a) of this section shall not apply to any commodity option transaction conducted in accordance with the provisions of § 32.4(a) or any commodity option transaction conducted on or subject to the rules of a contract market in accordance with the provisions of Section 4c(c) of the Act and the regulations promulgated thereunder.

* * * * *

PART 33— REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

40. Section 33.2 is proposed to be amended by revising paragraph (a) to read as follows:

§ 33.2 Applicability of Act and rules; scope of Part 33.

(a) Except as otherwise specified in this part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the

Commission as a contract market for the purpose of trading commodity options pursuant to this Part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of sections 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a, 5b, 6, 6a, 6b, 6c, 7, 8(a)–(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this Part as though such provisions were set forth herein and included specific references to commodity option transactions. Nothing contained in this section shall be construed to confer designation as a contract market absent issuance of an order of the Commission so designating an applicant board of trade.

* * * * *

41. Section 33.3 is proposed to be amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 33.3 Unlawful commodity option transactions.

* * * * *

(b) * * *

(1) Any person to solicit or accept orders from an option customer (other than in a clerical capacity) for any commodity option transaction, or to supervise any person or persons so engaged, unless such person is:

* * * * *

(2) Any person registered or required to be registered as a futures commission merchant under the Act to permit another person to become or remain associated with such person as a partner, officer, employee, agent or representative (or in any status or position involving similar functions) in any capacity involving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction or the supervision of any person or persons so engaged, if such person knows or should know that such other person is or was not registered as required by this Part or that such registration has expired, been suspended (and the period of suspension has not expired) or been revoked.

42. Section 33.4 is proposed to be amended by revising the introductory paragraph and paragraphs (a)(1)(ii) and (a)(3), by revising paragraph (a)(4) and redesignating paragraph (a)(4) as paragraph (a)(6), by adding a new paragraph (a)(4), by revising (a)(5)(iii) and by adding a new paragraph (a)(5)(iv), by adding new paragraphs (a)(7), (a)(8), and (a)(9), by revising paragraph (b)(1)(iii), by adding a new paragraph (b)(11), by revising paragraphs (c), (d), (d)(1), and (d)(3), and by revising paragraph (g), to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery or options on physicals when the applicant complies with and carries out the requirements of the Act (as provided in §33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) * * *

(1) * * *

(ii) With respect to options on futures contracts, may be exercised only by the establishment, by book entry, in the clearing organization of positions in the underlying futures contract.

* * * * *

(3) If designation for the trading of options on futures contracts is sought, is designated as a contract market for the underlying contract of sale for future delivery which is the subject of the option for which designation is sought, and submits, if so requested by the Commission, the information called for by § 1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for the specified futures contract underlying the option for which the designation is sought, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in Sections 5 and 5a of the Act and as set forth in these regulations.

(4) In the case of a contract market which is requesting designation for the trading of options on physicals for which it is designated as a contract market for contracts of sale for future delivery or for options on futures contracts, submits, if so requested by the Commission, the information called for by § 1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for that specified futures contract and/or options on that futures contract, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in sections 5 and 5a of the Act and as set forth in these regulations.

(5) * * *

(iii) If designation for the trading of options on futures contracts is sought, the volume of trading in all contract months for future delivery of the commodity for which the option designation is sought has averaged at least 1,000 contracts per week on such board of trade for the 12 months preceding the date of application for the designation, or, alternatively, that there is sufficient liquidity in the cash and futures markets in the commodity underlying the option for which designation is being sought to prevent disruption of those markets by the trading of options on a futures contract; and

(iv) If designation for the trading of options on physicals is sought:

(A) The cash market for the underlying physical exhibits sufficient liquidity such that the grantor and purchaser of the option have the opportunity to purchase or sell the underlying physical at its economic value in normal cash marketing channels;

(B) There exists an accurate and widely-disseminated price series for the underlying physical which is deliverable on the option contract; and

(C) Trading of such options will not be disruptive of trading in the cash market for the underlying physical or of any futures contract.

(6) If designation for the trading of options on a futures contract is sought, is not designated as a contract market for any other option on a futures contract, and if designation for the trading of options on a physical is sought, is not designated as a contract market for any other option on a physical.

(7) If designation for the trading of options on physicals is sought, and thereafter for the purpose of demonstrating continued compliance with the requirements of the Act and these regulations, provides to the Commission:

(i) A description of the cash market which is or will be the source of supply for the physical on which the option is based which must include statistical data, where applicable and available, which cover a period of time sufficient to reflect accurately historical patterns of production, consumption and exchange of the physical. At least five years of such data must be provided, unless a justification for providing data for a shorter period is furnised. If the

board of trade cannot through reasonable effort obtain sufficient data, interviews with or statements by persons knowledgeable concerning the cash market may be used to supplement or, if necessary, substitute for quantitative information. For purposes of paragraphs (a)(7) and (a)(8) of this section, the term "cash market" includes all aspects of the spot and forward markets in which the physical underlying the option is merchandised. The description of the cash market must also include the following information:

(A) Production and storage of the underlying physical, including, as appropriate, geographical locations and seasonal patterns;

(B) Consumption of the underlying physical, including, as appropriate, geographic locations and seasonal patterns of intermediate and ultimate consumption;

(C) The nature and structure of the cash marketing channels, including the nature and number of marketing institutions, the nature of the forward contracting market, and the manner in which the price of the physical is determined at various stages in its marketing. This information shall also include a description of the degree and nature of both vertical and horizontal integration within the industries in which the physical is produced and consumed; and

(D) As appropriate, the nature and structure of the transport, communication, storage, and financing sectors which support the physical underlying the proposed option.

(8) If designation for the trading of options on a physical is sought, the board of trade must include an analysis and justification of the individual terms and conditions of the option contract. In providing the information required by paragraphs (d)(8)(i) through (xii) of this section, the board of trade must include statistical data, where applicable and available, which covers a period of time sufficient to reflect accurately the historical pattern of conditions in the cash market. In the absense of a justification for providing data from a shorter period, at least 5 years of such data should be provided. If the board of trade cannot through reasonable effort obtain sufficient data, interviews with or statements by persons knowledgeable concerning the cash market may be used to supplement or, if necessary, substitute for quantitative information. The justification submitted by a board of trade concerning each option term or condition referred to in paragraphs (d)(8)(i) through (xii) of this section must include evidence of conformity with current commercial practices of the underlying cash market, and, as noted, the impact of the term or condition on deliverable supply. If the term or condition is not in conformity, the reason for variance and why the contract term or condition is necessary or appropriate for the option on a physical must be provided. Information concerning the following items must be included:

(i) The characteristics for par and non-par delivery of the underlying physical (such as grade, class and weight), including a description of the impact of those characteristics on deliverable supply, and the economic basis for the premiums and discounts on such deliveries;

(ii) All delivery points, including, where applicable, for each point:

(A) The nature of the cash market at the delivery point (e.g., auction market, buying station or export terminal);

(B) The number of major buyers and sellers;

(C) The normal commercial practice for establishing cash market values;

(D) The level of deliverable supplies normally available, including the seasonal distribution of such supplies;

(E) The impact of delivery months for futures contracts which draw on the same deliverable supply;

(F) The availability of published cash prices reflecting the value of the physical deliverable upon exercise of the option; and

(G) Any locational differentials for delivery points, and where applicable, the reasons for selecting the par point and the rationale for discounts or premiums applying to non-par delivery points, including any departure from commercial locational differentials prevailing in the cash market;

(iii) A description of the delivery facility, including:

(A) The type of delivery facility at each delivery point;

(B) The number and total capacity of facilities meeting contract requirements;

(C) The proportion of such capacity expected to be available for option grantors who may be required to make or take delivery as a result of exercise by the option purchaser; and

(D) The extent to which ownership and control of such facilities is dispersed or concentrated;

(iv) The option expiration date, including its relationship to the delivery months for existing futures contracts which draw on the same deliverable supply. In the case of seasonal commodities, the board of trade shall describe the relationship of each expiration date to seasonal variations in deliverable supplies, availability of warehouse space, transportation facilities, cash market activity, and any other factors which may affect the appropriateness of each such expiration data;

(v) The permissible delivery pack or composition of delivery units, including a description of any restrictions on the composition of the delivery unit and a description of the impact of the delivery pack specifications on deliverable supply;

(vi) The size of option contract unit, and, where relevant, information concerning the typical commercial unit of the underlying physical involved and the rational for any proposed deviation, the usual means of transportation for the physical, including the quantity of the physical customarily carried by such means, and, if a storable physical is involved, the size of the unit normally handled by commercial storage facilities;

(vii) The inspection and certification procedures for the verification of delivery eligibility and, for perishable commodities, the duration of the inspection certificate and any discounts applied to deliveries of a given age;

(viii) The delivery instrument (such as a warehouse receipt), and the conditions under which such instrument is negotiable;

(ix) The transportation terms at point of delivery (such as FOB, CIF, proportional rail billing or freight paid to another destination);

(x) The provisions for payment of costs in making and taking delivery, including a detailed description of costs (such as inspection, assay, certification, warehouse charges or rail charges);

(xi) The minimum option price change (minimum price fluctuation) and the manner in which prices for the underlying physical are normally quoted; and

(xii) Any restrictions on option price movements (maximum price fluctuations), including the effect of any such restrictions upon the option's risk management functions.

(9) If designation for the trading of options on physicals is sought, the board of trade shall provide evidence that the option terms and conditions will provide for a deliverable supply which will not be conducive to price manipulation or distortion.

(b) * * *

(1) * * *

(iii) The point, in terms of the price of the underlying future or of the underlying physical, at which a new strike price will be introduced in any option which is already trading;

* * * * *

(11) Establish appropriate criteria which are reasonably designed to secure performance, upon exercise, of the option contracts.

(c) Such board of trade establishes procedures and conducts sales practice audits of member futures commission merchants which engage in the offer or sale of option contracts regulated under this Part. These sales practice audits must be of sufficient scope to enforce the contract market's rules, including investigation for the improper handling of discretionary accounts, inadequate internal supervision, fraudulent or high-pressure sales communications, compliance with disclosure requirements, improper handling and dispostion of option customer complaints, and, where applicable, the futures commission merchant's offer or sale of deep-out-of-the-money options.

(d) A board of trade must submit an analysis and justification of the individual terms and conditions of the option contract. In determining whether to approve option contract terms and conditions, the Commission may consider the analysis and justification submitted for such terms and conditions, including, without limitation:

(1) The expiration date of the option on a futures contract if that date is less than ten business days before the earlier of the last trading day or the first notice day of any futures contract on the same or a related commodity;

* * * * *

(3) The nature of the clearing mechanism to be utilized for the commodity option, and the differences, if any, among the clearing mechanisms for options on futures contracts, options on physicals, and futures contracts;

* * * * *

(g) Such board of trade provides a comprehensive list of occupational or business categories of commercial users of the commodity underlying the option contract (either an option on a futures contract or an option on a physical) for which the board of trade is seeking designation.

43. Section 33.5 is proposed to be amended by revising paragraph (c) to read as follows:

§ 33.5 Application for designation as a contract market for the trading of commodity options.

* * * * *

(c) The effective period for designation as a contract market for a particular commodity option under this Part shall be for a period not to exceed three years from the effective date of the designation, or such shorter period as the Commission may specify at the time the designation is granted, and in any event shall be of no further force or effect should be Commission, by rule or regulation, repeal the provisions of this Part under which such designation is granted. Except as may be specifically authorized by the Commission, no board of trade which has been designated as a contact market for the trading of commodity options may authorize or allow the trading of any commodity option which will expire after the termination of the effective period of such designation, and, with respect to an option on a futures contract, where the delivery month of the futures contract underlying such option is later than the termination of the effective period of such designation or where the month for the underlying futures contract has not been listed.

44. Section 33.6 proposed to be amended by revising paragraph (c) to read as follows:

§ 33.6 Suspension or revocation of designation as a contract market for the trading of commodity options.

* * * * *

(c) The option market is not used on more than an occasional basis for other than speculative purposes by producers, processors, merchants or commercial users engaged in handling or utilizing the commodity (including the products, by-products or source commodity thereof) underlying an option on a physical or the contract of sale for future delivery on which an option on a futures contract is traded, in interstate commerce; or

* * * * *

45. Section 33.7 is proposed to be amended by revising portions of paragraph (b) (Options Disclosue Statement) as follows:

§ 37.7 Disclosure.

* * * * *

(b) The disclosure statement must read as follows:

OPTIONS DISCLOSURE STATEMENT

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE AND GRANTING OF COMMODITY OPTIONS INVOLVE A HIGH DEGREE OF RISK. COMMODITY OPTION TRANSACTIONS ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO HAVE READ AND UNDERSTOOD THIS DISCLOSURE STATEMENT AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS AND OF THE RISKS INVOLVED IN THE OPTION TRANSACTIONS COVERED BY THIS DISCLOSURE STATEMENT.

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW WHETHER THE PARTICULAR OPTION IN WHICH THEY CONTEMPLATE TRADING IS AN OPTION WHICH, IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN "OPTION ON A FUTURES CONTRACT") OR RESULTS IN THE MAKING OR TAKING OF DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION (AN "OPTION ON A PHYSICAL COMMODITY"). BOTH THE PURCHASER AND THE GRANTOR OF AN OPTION ON A PHYSICAL COMMODITY SHOULD BE AWARE THAT, IN CERTAIN CASES, THE DELIVERY OF THE ACTUAL COMMODITY UNDERLYING THE OPTION MAY NOT BE REQUIRED AND THAT, IF THE OPTION IS EXERCISED, THE OBLIGATIONS OF THE PURCHASER AND GRANTOR WILL BE SETTLED IN CASH.

A PERSON SHOULD NOT PURCHASE ANY COMMODITY OPTION UNLESS HE IS ABLE TO SUSTAIN A TOTAL LOSS OF THE PREMIUM AND TRANSACTION COSTS OF PURCHASING THE OPTION. A PERSON SHOULD NOT GRANT ANY COMMODITY OPTION UNLESS HE IS ABLE TO MEET ADDITIONAL CALLS FOR MARGIN WHEN THE MARKET MOVES AGAINST HIS POSITION AND, IN SUCH CIRCUMSTANCES, TO SUSTAIN A VERY LARGE FINANCIAL LOSS.

A PERSON WHO PURCHASES AN OPTION SHOULD BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM THE OPTION, IT WILL BE NECESSARY EITHER TO OFFSET OPTION POSITION OR TO EXERCISE THE OPTION. IF AN OPTION PURCHASER DOES NOT UNDERSTAND HOW TO OFFSET OR EXERCISE AN OPTION, THE PURCHASER SHOULD REQUEST AN EXPLANATION FROM THE FUTURES COMMISSION MERCHANT. CUSTOMERS SHOULD BE AWARE THAT IN A NUMBER OF CIRCUMSTANCES, SOME OF WHICH WILL BE DESCRIBED IN THIS DISCLOSURE STATEMENT, IT MAY BE DIFFICULT OR IMPOSSIBLE TO OFFSET AN EXISTING OPTION POSITION ON AN EXCHANGE.

THE COMMODITY FUTURES TRADING COMMISSION REQUIRES THAT ALL CUSTOMERS RECEIVE AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT BUT DOES NOT INTEND THIS STATEMENT AS A RECOMMENDATION OR ENDORSEMENT OF EXCHANGE-TRADED COMMODITY OPTIONS.

Contents of Disclosure Statement

1. Some of the risks of option trading
2. Description of commodity options
3. The mechanics of option trading
4. Margin requirements
5. Profit potential of an option position
6. Deep-out-of-the-money options
7. Glossary of terms

(1) *SOME OF THE RISKS OF OPTION TRADING.* THE GRANTOR OF AN OPTION SHOULD BE AWARE THAT A COMMODITY OPTION MAY BE EXERCISED AT ANY TIME FROM THE TIME IT IS GRANTED UNTIL IT EXPIRES.

THE PURCHASER OF A PUT OR A CALL IS SUBJECT TO THE RISK OF LOSING THE ENTIRE PURCHASE PRICE OF THE OPTION—THAT IS THE PREMIUM PAID

FOR THE OPTION PLUS ALL TRANSACTION COSTS.

Specific market movements of the underlying future or underlying physical Commodity cannot be predicted accurately.

The grantor of a call option who has a long position in the underlying futures contract or underlying physical commodity is subject to risk of loss should the price of the underlying futures contract or underlying physical commodity increase by a amount greater than the premium received for granting the call option.

The grantor of a call option who has a long position in the underlying futures contract or underlying physical commodity is subject to the full risk of a decline in price of the underlying position. In exchange for the premium received for granting a call option, the option grantor gives up all of the potential gain resulting from an increase in the price of the underlying futures contract or underlying physical commodity above the option strike price if the option is exercised against the grantor.

The grantor of a put option who does not have a short position in the underlying futures contract or underlying physical commodity (*e.g.*, commitment to sell the physical) is subject to risk of loss should the price of the underlying futures contract or underlying physical commodity decrease by an amount in excess of the premium received for granting the put option.

The grantor of a put option on a futures contract who has a short position in the underlying futures contract is subject to the full risk of a rise in the price in the underlying position. In exchange for the premium received for granting a put option on a futures contract, the option grantor gives up all of the potential gain resulting from a decrease in the price of the underlying futures contract below the option strike price if the option is exercised against the grantor. The grantor of a put option on a physical commodity who has a short position (*e.g.*, commitment to sell the physical) is subject to the full risk of a rise in the price of the commodity which must be obtained to fulfill the commitment. In exchange for the premium received for granting a put option on a physical commodity, the option grantor gives up all of the potential gain which, if the option is exercised against the grantor, would result from a decrease in the price of the commodity which must be obtained to fulfill the commitment below the option strike price.

(2) *DESCRIPTION OF COMMODITY OPTIONS.* Prior to entering into any transaction involving a commodity option, an individual should thoroughly understand the nature and type of option and the underlying futures contract or underlying physical commodity involved. The futures commission merchant is required to provide, and the individual contemplating an option transaction should obtain, a description of the following:

(i) The futures contract or the physical commodity which is the subject of the option;

(ii) The quantity of the underlying futures contract or underlying physical commodity which may be purchased or sold upon exercise of the option or, if applicable, whether exercise of the option will be settled in cash;

* * * * *

(v) A description of all costs in addition to the purchase price which may be incurred if the commodity option is exercised, including the amount of commissions (whether termed sales commissions or otherwise), storage, interest, and all similar fees and charges which may be incurred;

(vi) An explanation and understanding of an option grantor's initial margin requirement and obligation to provide additional margin in connection with such an option position, or a position in a futures contract, if applicable;

* * * * *

(viii) If applicable, the loss (or profit) that could be generated by the option position by a limit move (or a series of limit moves) in the underlying future, both in total dollars and as a percentage of the total cost of the option.

(3) *THE MECHANICS OF OPTION TRADING.* Before entering into any exchange-traded option transaction, an individual should obtain a description of how commodity options are traded.

Option customers should clearly understand that there is no guarantee that option positions may be offset by either a closing purchase or closing sale transaction on an exchange. In this circumstance, option grantors could be subject to the full risk of their positions until the option positions expire, and the purchaser of a profitable option might have to exercise the option to realize a profit.

For a option on a futures contract, an individual should clearly understand the relationship between exchange rules governing option transactions and exchange rules governing the underlying futurs contract. For example, an individual should understand what action, if any, the exchange will take in the option market if trading in the underlying futures market is restricted or the futures prices have made a "limit move."

* * * * *

(5) *PROFIT POTENTIAL OF AN OPTION POSITION.* An option customer should carefully calculate the price which the underlying futures contract or underlying physical commodity would have to reach for the option position to become profitable. This price would include the amount by which the underlying futures contract or underlying physical commodity would have to rise or fall below the strike price to cover the sum of the premium and all other costs incurred in entering into and exercising or closing (offsetting) the commodity option position.

(6) *DEEP-OUT-OF-THE-MONEY OPTIONS.* A person contemplating purchasing a deep-out-of-the-money option (that is, an option with a strike price significantly above, in the case of a call, or significantly below, in the case of a put, the current price of the underlying futures contract or underlying physical commodity) should be aware that the chance of such an option becoming profitable is ordinarily remote.

On the other hand, a potential grantor of a deep-out-of-the-money option should be aware that such options normally provide small premiums while exposing the grantor to all of the potential losses described in section (1) of this disclosure statement.

(7) *GLOSSARY OF TERMS.*

(i) *Contract market*—Any board of trade (exchange) located in the United States which has been designated by the Commodity Futures Trading Commission to list a futures contract or commodity option for trading.

(ii) *Exchange-traded option; put option; call option*—The options discussed in this disclosure statement are limited to those which may be traded on a contract market. These options (subject to certain exceptions) give an option purchaser the right to buy in the case of a call option, or to sell in the case of a put option, a futures contract or the physical commodity underlying the option at the stated strike price prior to the expiration date of the option. Each exchange-traded option is distinguished by the underlying futures contract or underlying physical commodity, strike price, expiration date, and whether the option is a put or a call.

(iii) *Underlying futures contract*—The futures contract which may be purchased or sold upon the exercise of an option on a futures contract.

(iv) *Underlying physical commodity*—The commodity of a specific grade (quality) and quantity which may be purchased or sold upon the exercise of an option on a physical commodity.

(v) *Class of options*—A put or a call covering the same underlying futures contract or underlying physical commodity.

(vi) *Series of options*—Options of the same class having the same strike price and expiration date.

(vii) *Exercise price—See* strike price.

(viii) *Expiration date*—The last day when an option may be exercised.

(ix) *Premium*—The amount agreed upon between the purchaser and seller for the purchase or sale of a commodity option.

(x) *Strike price*—The price at which a person may purchase or sell the underlying futures contract or underlying physical commodity upon exercise of a commodity option. This term has the same meaning as the term "exercise price."

(xi) *Short option position—See* opening sale transaction.

(xii) *Long option position—See* opening purchase transaction.

(xiii) *Types of options transactions*—

(A) *Opening purchase transaction*—A transaction in which an individual purchases an option and thereby obtains a long option position.

(B) *Opening sale transaction*—A transaction in which an individual grants an option and thereby obtains a short option position.

(C) *Closing purchase transaction*—A transaction in which an individual with a short position liquidates the position. This is accomplished by a closing purchase transaction for an option of the same series as the option previously granted. Such a transaction may be referred to as an offset transaction.

(D) *Closing sale transaction*—A transaction in which an individual with a long option position liquidates the position.

This is accomplished by a closing sale transaction for an option of the same series as the option previously purchased. Such a transaction may be referred to as an offset transaction.

(xiv) *Purchase price*—The total actual cost paid or to be paid, directly or indirectly, by a person to acquire a commodity option. This price includes all commissions and other fees, in addition to the option premium.

(xv) *Grantor, writer, seller*—An individual who sells an option. Such a person is said to have a short position.

(xvi) *Purchaser*—An individual who buys an option. Such a person is said to have a long position.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

46. Section 145.5 is proposed to be amended by revising paragraph (d)(1)(vi) to read as follows:

§ 145.5 Nonpublic matters.

* * * * *

(d) * * *

(1) * * *

(vi) Reports filed on forms in the '01, '03 and '04 series, and on Form 103, required to be filed pursuant to § 17.00, § 18.00 and Part 19 of this chapter; and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

47. Section 147.3 is proposed to be amended by revising paragraph (b)(4)(i)(F) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(F) Reports filed on forms in the '01, '03 and '04 series, and on Form 103, required to be filed pursuant to § 17.00, § 18.00 and Part 19 of this chapter; and

* * * * *

PART 155—TRADING STANDARDS

48. Section 155.2 is proposed to be amended by revising paragraphs (a), (b), and (i) to read as follows:

§ 155.2 Trading standards for floor brokers.

Each contract market shall adopt and submit to the Commission for approval pursuant to section 5a(12) of the Act and § 1.41 of this chapter, a set of rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:

(a) Prohibit such member from purchasing any commodity for future delivery, purchasing any call commodity option, or selling any put commodity option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) purchase of any future, (2) purchase of any call commodity option, or (3) sale of any put commodity option, in the same commodity which is executable at the market price or at the price at which such purchase or sale can be made for the member's own account or any account in which he has an interest.

(b) Prohibit such member from selling any commodity for future delivery, selling any call commodity option, or purchasing any put commodity option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) sale of any future, (2) sale of any call commodity option, or (3) purchase of any put commodity option, in the same commodity which is executable at the market price or at the price at which such sale or purchase can be made for the member's own account or any account in which he has an interest.

* * * * *

(i) Require that every execution of a transaction on the floor by such member be confirmed promptly with the opposite floor broker or floor trader; such confirmation shall identify price or premium, quantity, future or commodity option and respective clearing members. In the event a contract market cannot require prompt identification of respective clearing members without seriously disrupting the functions of its marketplace, the contract market may petition the Commission for exemption from this requirement. Such petition shall include:

* * * * *

49. Section 155.3 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 155.3 Trading standards for futures commission merchants.

(a) * * *

(1) Insure, to the extent possible, that each order received from a customer or from an option customer which is executable at or near the market price is transmitted to the floor of the appropriate contract market before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's or option customer's order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

* * * * *

PART 170—REGISTERED FUTURES ASSOCIATIONS

50. The authority citation for Part 170 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 6c, 12a, and 21.

51. Section 170.5 is proposed to be revised to read as follows:

§ 170.5 Prevention of fraudulent and manipulative practices (Section 17(b)(7) of the Act).

A futures association must establish and maintain a program for the protection of customers and option customers, including the adoption of rules to protect customers and option customers and customer funds and to promote fair dealing with the public. These rules shall set forth the ethical standards for members of the association in their business dealings with the public. An applicant association must also demonstrate its capability to foster a professional atmosphere among its members, including an acceptance of and adherence to the ethical standards, and to monitor and enforce compliance with the customer and option customer protection program and rules.

52. Section 170.8 is proposed to be revised to read as follows:

§ 170.8 Settlement of customer disputes (Section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair and equitable procedure, through arbitration or otherwise, for the voluntary settlement of a customer's or option customer's claim or grievance of less than $15,000 brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with Section 17(b)(10) of the Act and be consistent with Part 180 of the Commission's regulations governing contract market arbitration and dispute settlement procedures.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

53. Section 180.1 is proposed to be amended by revising paragraph (a) to read as follows:

§ 180.1 Definitions.

(a) The term "claim or grievance" as used in this Part shall mean any dispute which arises out of any transaction on or subject to the rules of a contract market, executed by or effected through a member of that contract market or employee thereof which dispute does not require for adjudication the presence of essential witnesses or third parties over whom the contract market does not have jurisdiction and who are not otherwise available. The term claim or grievance does not include disputes arising from cash market transactions which are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

* * * * *

Issued in Washington, D.C. on June 25, 1982 by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 82-17678 Filed 6-29-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 274, 284, 375 and 381

Fees Applicable to the Natural Gas Policy Act; Correction

June 23, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document makes corrections in a Notice of Proposed Rulemaking in Docket No. RM82-30-000 concerning fees applicable to the Natural Gas Policy Act that appeared in the **Federal Register** on June 8, 1982 (47 FR 24726). This action corrects certain data set forth in the preamble and adds to the Initial Regulatory Flexibility Analysis a line which was inadvertently omitted from the preamble.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Room 9310, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8400.

The following two corrections are made in F.R. Doc. 82-15523, beginning on page 24726 of the issue of June 8, 1982. First, the table summarizing the average number of work-months and average costs incurred in rendering the services for which the Commission proposes fees, shown at 47 FR 24731, is corrected (as indicated by italics) to read:

Service	Total WMs	Total completions	Average number WM's per completion	Average cost per completion
Adjustments under NGPA section 502(c) including exemptions from incremental pricing under NGPA section 206(d)	*238.4*	*65*	*3.668*	*$14,791.83*
Jurisdictional Agency Determination Reviews	850.5	52,303	.0163	[15]70.54
Initial Title III Filings	177	*464*	*0.381*	*1,536.45*
Extension Filings under Title III	19	100	0.190	*768.21*
Interpretation of the NGPA	*113.9*	63	*1.808*	*7,291.07*

The above corrections do not affect the fees proposed.

Second, in the Initial Regulatory Flexibility Analysis, the fourth and fifth sentences of the last paragraph, shown at 47 FR 24732, insert between the words "the" and "a" the words "costs incurred by the Commission. The proposal also contains", so that the sentences read:

The fees proposed for the categories that will have the most significant economic impact on producers (adjustments and interpretations) recover only a small proportion of the costs incurred by the Commission. The proposal also contains a provision for waiver or reduction of those fees to protect further any individuals subject to the fees from economic hardship.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-17603 Filed 6-29-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 154, 157, 375 and 381

Fees Applicable to Producer Matters Under the Natural Gas; Correction

June 23, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document makes corrections in a Notice of Proposed Rulemaking in Docket No. RM 82-25-000 concerning fees applicable to producer matters under the Natural Gas Act, that appeared in the **Federal Register** on May 13, 1982 (47 FR 20621). This action corrects certain data set forth in the preamble.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Room 9310, Federal Energy Regulatory Commission, Washington, D.C. 20426, (202) 357-8400.

The following correction is made in F.R. Doc. 82-13104, appearing on page 20621 of the issue of May 13, 1982. In Part III of the preamble, entitled Fees Proposed, shown at 47 FR 20624, the Average Cost Per Completion satistics for the three listed services are corrected to read: $1,617.10 (Review of Applications for Blanket Small Producer Certificates); $2,125.22 (Review of Applications for Producer Certificates); and $334.71 (Review of Producer Rate Schedule Filings).

This correction reflects the proper product of multiplying the average work-month cost by a 3-digit average number of work-months per completion. It does not affect the proposed fees.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-17602 Filed 6-29-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-118 (New York-2)]

High-Cost Gas Produced from Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions 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 formation. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New York that the Medina Group and Queenston Shale be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on July 26, 1982.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on July 9, 1982.

ADDRESS: Comments and requests for hearing must be file with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or John Roy Johnson, (202) 357–8731.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking by Director, OPPR

Issued June 24, 1982.

I. Background

On May 19, 1982, the State of New York, Department of Environmental Conservation (New York) submitted to the Commission a recomendation, in accordance with § 271.703 of the Commission's regulations 45 FR 56034, August 22, 1980), that the Medina Group and Queenston Shale located in Erie, Genesee, Wyoming, Allegany, Livingston, Ontario, Yates, Seneca, Cayuga, and Tompkins Counties, New York, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether New York's recommendation that the Medina Group and Queenston Shale be designated a tight formation should be adopted. New York's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

New York recommends that the Medina Group and Queenston Shale in Erie, Genesee, Wyoming, Allegany, Livingston, Ontario, Yates, Seneca, Cayuga, and Tompkins Counties, New York, be designated a tight formation. The recommended area encompasses approximately 3.6 million acres and does not include any Medina gas storage areas, including buffer zones, or any areas within Medina or Queenston "existing fields".[1]

The Medina Group (also known as the Albion Group) is of Early Silurian age and overlies the Queenston Shale (called the "red shale" by some drillers), which is of Late Ordovician age. The recommended Medina-Queenston interval is bounded above by the Thorold Formation or its time equivalent, the Kodak Sandstone, and bounded below by the Oswego Sandstone. The average depth to the top of the interval is 1,500 feet.

The Medina Group is a sequence of interbedded sandstones, siltstones, and shale which averages 100 feet in thickness and consists of (from base to top) the Whirlpool Sandstone (called "white Medina" by drillers), the Power Glen Shale (also known as the Cabot Head Shale), and the Grimsby Sandstone (called "red Medina" by drillers).

The Queenston Shale averages several hundred feet in thickness and consists of interbeded shales and sandstones.

III. Discussion of Recommendation

New York claims in its submssion that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New York further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New York that the Medina Group and Queenston Shale, as descirbed and delineated in New York's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 26, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–118 (New York–2), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than July 9, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight informations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New York's recommendation is adopted.

Kenneth A. Williams

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(120) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(120) *Medina Group and Queenston Shale in New York.* RM79–76–118 (New York–2).

(i) *Delineation of formation.* The Medina Group and Queenston Shale are found in Erie, Genesee, Wyoming, Allegany, Livingston, Ontario, Yates, Seneca, Cayuga, and Tompkins Counties, New York. Excluded from the delineated Medina-Queenston interval are any Medina gas storage areas, including buffer zones, or any areas within Medina or Queenston "existing fields" (as defined in Title 6, New York Code of Rules and Regulations, section 550.3(q)). The Medina Group (also known as the Albion Group) is of Early Silurian age and overlies the Upper Ordovician Queenston Shale (called the "red shale" by some drillers). The

[1] Title 6 of the New York Code of Rules and Regulations, § 550.3(q), defines an "existing field" as an area underlain by one or more existing pools which have been discovered, developed, and operated, or were in the process of being developed and operated on or prior to October 1, 1963.

vertical limits of the Medina-Queenston interval are the Thorold Formation or time equivalent Kodak Sandstone above and the Oswego Sandstone below. The Medina Group consists of (from base to top) the Whirlpool Sandstone (called "white Medina" by drillers), the Power Glen Shale (also known as the Cabot Head Shale), and the Grimsby Sandstone (called "red Medina" by drillers).

(ii) *Depth.* The average depth to the top of the delineated Medina-Queenston interval is 1,500 feet. The Medina Group averages 100 feet in thickness and the Queenston Shale averages several hundred feet in thickness.

[FR Doc. 82-17577 Filed 6-29-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-161-81]

Industrial Development Bonds for Residential Rental Housing; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to industrial development bonds the proceeds of which are used for residential rental housing.

DATES: The public hearing will be held on July 27, 1982, beginning at 10:00 a.m. Outlines of oral comments must be mailed or delivered by July 13, 1982.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-161-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 103(b)(4)(A) of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Wednesday, May 26, 1982 (47 FR 22966).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing indicating the time they wish to devote to each subject by July 13, 1982. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

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

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the Federal Register for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

Jason R. Felton,

Assistant Director, Legislation and Regulations Division.

[FR Doc. 82-17688 Filed 6-29-82; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 740, 741, 742, 743, 744 and 745

Federal Lands Program; Cancellation of Public Hearings on Proposed Rule To Amend 30 CFR Chapter VII, Subchapter D, the Federal Lands Program

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

ACTION: Cancellation of public hearing.

SUMMARY: The Office of Surface Mining (OSM) is announcing the cancellation of public hearings scheduled on the proposed rule relating to the Federal Lands Program because no requests were received to testify at such hearings within the specified time period June 25, 1982. See 47 FR 25092. The Director of the Office of Mining has determined that no hearings are necessary and, in the interest of cost savings, is hereby cancelling the hearings which were scheduled for July 1, 1982, in Denver, Colorado and July 2, 1982, in Washington, D.C.

This notice cancels the public hearings but does not alter the comment period during which interested persons may submit written comments on the proposed rule.

DATES: The following hearings are cancelled: The public hearings on the proposed rule amending 30 CFR Chapter VII, Subchapter D, scheduled for July 1, 1982, in Denver, Colorado and July 2, 1982, in Wahington, D.C.

Written comments must be received on or before 4:00 p.m., on July 23, 1982, to be considered.

ADDRESS: Written comments should be mailed or hand delivered to: H. Leonard Richeson, Federal Lands Specialist, Office of Surface Mining, U.S. Department of the Interior, Administrative Record (R&I-04), Room 5315, 1100 L Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: H. Leonard Richeson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5866.

SUPPLEMENTARY INFORMATION: On June 9, 1982, the Office of Surface Mining published a proposed rule in the Federal Register which would revise 30 CFR Chapter VII, Subchapter D, the Federal Lands Program. The proposed rule provided for two public hearings to be held to receive comments. It further provided that if no person indicated an intention to testify by 5 days before the appropriate hearing date, that hearing would be cancelled. As of 5 days before the scheduled hearings, no persons contacted OSM indicating that they wished to testify at either of the hearings. Therefore, in the interest of cost savings, the Director of OSM is cancelling the hearings. While there will be no public hearings, interested persons may still submit written comments on the proposed rule. Written comments must be received on or before 4:00 p.m., on July 23, 1982, to be considered.

Date: June 28, 1982.

William B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-17761 Filed 6-29-82; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL 2158-2]

Hazardous Waste Management System: Standards for Generators of Hazardous Waste; Standards for Transporters of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period for proposed rule.

SUMMARY: On March 4, 1982, the Environmental Protection Agency, in a joint rulemaking with the Department of Transportation, proposed a rule which would establish a uniform hazardous waste manifest form (47 FR 9336). Generators would be required to use this form for all shipments of hazardous waste. EPA, upon receiving several meritorious requests, extended the closing date for public comment on the proposed rule from May 3, to June 17, 1982, (47 FR 20008). The Association of State and Territorial Solid Waste Management Officials and the Hazardous Materials Advisory Council requested a further extension of the comment period. EPA has evaluated this request and concluded that a longer comment period is warranted. Accordingly, the Agency is extending the comment period until July 20, 1982.

DATE: Comments on the national manifest proposed March 4, 1982, must be received on or before July 20, 1982.

ADDRESS: Comments should be addressed to the Docket Clerk (3002—Manifest), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C., 20460, (202) 382-4487.

The public docket for this rulemaking is available in Room S-269, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C., 20460 and is available for viewing from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For technical information on the proposal or on the extension, contact Mary E. McCaffery, Environmental Protection Agency, Office of Solid Waste (WH-563), 401 M Street SW, Washington, D.C., 20460 or call (202) 382-4697. For additional assistance, call the RCRA Hotline at (800) 424-9346 (in Washington, D.C. call 382-3000).

SUPPLEMENTAL INFORMATION: On March 4, 1982, in a joint rulemaking effort, the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) published a draft Uniform Hazardous Waste Manifest from and proposed its required use by generators for the interstate and intrastate transportation of hazardous waste.

A manifest form is a control and transport document that travels with the waste from its point of generation to its point of disposal. EPA's Resource Conservation and Recovery Act regulations presently require generators who transport, or offer for transportation, hazardous waste for offsite treatment, storage or disposal to prepare a manifest which must accompany the waste. Although the regulations specify certain required information that must appear on the manifest, there are no requirements for a standard form to be used.

Since those regulations became effective, numerous States have developed their own manifest forms which meet Federal requirements but require additional State information. These differing manifest requirements among States have resulted in confusion and compliance difficulties for the transport of hazardous waste. EPA and DOT proposed to resolve these difficulties through a joint rulemaking effort. EPA, on March 34, 1982, proposed to amend its regulations to require the use of a specific manifest form. DOT, in a companion action, proposed to amend its Hazardous Materials Regulations to require that shippers and carriers of hazardous waste comply with EPA's proposed amendments and to clarify that, whether or not a State has interim or final authorization by EPA, any requirement of a State or political subdivision of a State specifying a different or additional manifest is inconsistent with the Hazardous Materials Regulations (47 FR 9346).

The Agency, upon request, extended the public comment deadline from May 3, to June 17, 1982, (47 FR 20008). Since that time EPA has received a request from the Association of State and Territorial Solid Waste Management Officials and Hazardous Materials Advisory Council to once again extend the comment period. This extension, the members of the State and industry associations reasoned, will enable them to resolve a few remaining complex issues and to present their joint recommendations for a uniform manifest to their respective Association boards for approval.

The Agency wants to encourage continued dialogue between the Hazardous Material Advisory Council and the State Association on the proposed rule. The comments and recommendations which should result from these talks will enable EPA and DOT to develop a manifest form which better accommodates the views of the regulated community and the States. The Agency is therefore extending the comment period until July 20, 1982.

The Department of Transportation has indicated that it does not intend to formally extend its comment period. However, DOT has stated that it does not intend to act on the matter before August. Therefore, late filed comments will be considered pursuant to 49 CFR 106.23.

Dated: June 21, 1982.

Rita Lavelle,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 82-17703 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 162

[OPP-250036; PH-FRL 2159-1]

Criteria for Initiation of RPAR Proceedings; Notification to the Secretary of Agriculture of Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule related notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation amending the criteria for initiation of the Rebuttable Presumption Against Registration (RPAR) Process. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

FOR FURTHER INFORMATION CONTACT: Arthur Donner, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Environmental Protection Agency, Room 728E, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703-557-8193).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA requires that the Administrator provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue in the **Federal Register,** with the proposed regulation, the comments of the

Secretary and the response of the Administrator. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the Federal Register anytime after the 30-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. This regulation was also submitted to the FIFRA Scientific Advisory Panel as required by section 25(d)

(Sec. 25, 92 Stat. 836 (Pub. L. 95-396); 89 Stat. 752 (Pub. L. 94-140); 7 U.S.C. 136 *et. seq.*)

List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practice and procedure.

Dated: June 24, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-17695 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 82-326; RM-3909; FCC 82-276]

Amendment of the Commission's Rules Regarding the Allocation and Assignment of Radio Frequency Channels for a Self Powered Vehicle Detector

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry responds to a petition for rule making submitted to the Commission by the Coast Guard requesting that rules be adopted to permit the use of a radio controlled traffic signal control system. Since the Commission could not determine from the limited response to the petition whether or not a new traffic signal control system is actually desired by the public safety agencies, it is issuing this Notice of Inquiry to elicit that information.

DATES: Comments are due by August 23, 1982 and replies by September 22, 1982.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur C. King, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Radio.

Notice of Inquiry

Adopted: June 15, 1982.

Released: June 18, 1982.

By the Commission.

1. The Commission has before it a petition (RM-3909) filed May 20, 1981 by the United States Coast Guard, an agency of the Department of Transportation. The petition asks that the Commission institute a new rulemaking proceeding looking toward amendment of Part 90 of the Rules and Regulations to make frequencies available for a traffic sensing device (Self Powered Vehicle Detecter (SPVD)) designed to enhance traffic safety.

2. In support of its request, the Coast Guard states that it has developed a vehicle detector which would be buried in a traffic lane at the approach to an intersection so that, as a vehicle passes over, it would sense the presence of the vehicle and transmit two 30 millisecond pulses to a nearby receiver which would then pass the information along via wireline or radio link to a central processor. The central processor would keep track of vehicles passing through the intersection and change the traffic signal in such a manner that the maximum amount of traffic could move through the intersection in the least possible time. According to the data supplied by the petitioner, the SPVD input power to its final stage is 200 mw. and the output power to the spiral-wrapped antenna is 100 mw. The antenna efficiency is calculated to be .015 percent from its underground location. At 45 MHz a signal of 31.62 μv/m was measured when field tests were made. The Coast Guard states that: the vehicle detector, as described, would be economical to buy, if purchased in large quantities; could be installed with little disruption to traffic, since installation consists of simply drilling a four and a half inch diameter hole 17 inches deep in the center of each traffic lane; and would have to be serviced only once every two years, barring component failure prior to that time. Presently used induction loop detectors require frequent servicing, especially during cold weather when shrinkage of paving material causes breakage. The same occurs in very hot weather when expansion causes buckling of the paving material. Additionally, loop detectors are expensive to install.

3. The Coast Guard petition goes on to state:

"When compared with conventional induction loop detectors, the SPVD equals the accuracy of vehicle volume, occupancy, and speed messurements. Five highway agencies have tested the SPVD in actual trafic control and surveillance applications and have reported sucessful results. The SPVD can provide vehicle movement information for computerized traffic signal systems, conventional signal systems, isolated signalized intersections, and remote highway locations.

"Unnecessary traffic congestion at intersections can be reduced when traffic signals are operated in response to actual vehicle movements. Unfortunately, many signalized intersections operate ineffectively because highway agencies either cannot afford to install vehicle detectors, or they cannot afford to maintain detectors that are installed. Because the SPVD is easy to install and maintain, it is expected that highway agencies will utilize this device at many signalized intersections to improve traffic operations and safety."

The Coast Guard proposed using frequencies in the 45 MHz range. They specifically mention the offset frequenies lying halfway between the interleaved Police Radio Service and Local Government Radio Service channels from 45.07 MHz to 45.85 MHz. These particular frequencies are not an absolute requirement, however, and other frequenceis in the 40 to 50 MHz range could be substituted.

4. Comments in response to the public notice of receipt of the petition were filed by Associated Public Safety Communications Officers, Inc. (APCO), Public Broadcasting Service (PBS), and Consumer Electronics Group of the Electronic Industries Association (EIA). The comments raised two subjects for discussion. First, mentioned by both PBS and EIA was the matter of possible interference to television. In its comments EIA said:

"EIA/CEG does not oppose the SPVD concept, but believes that the proponent of the rule making has not yet met its obligation to demonstrate that the SPVD would not interfere with existing services. Commission action on the proposed rule making should await a supplementary showing by the proponent on the interference issue."

In the same vein, PBS said: "PBS is concerned about the Coast Guard's proposed use of frequencies at or near the 45.75 MHz video carrier intermediate frequency (IF) of television receivers for

vehicle detectors. Given the power proposed, and the number of vehicle detectors contemplated, it appears that there is a substantial chance of interference to television reception. Thus while PBS has no objection *per se* to the concept of vehicle detectors, it believes that the Coast Guard should provide further information as to what steps will be taken to protect television reception before the Commission proceeds further with rule making.

5. APCO's concern dealt with the frequency range selected, but did not touch on the possibility of interference to television. It instead raised three points. The first was the selection of 45 MHz without justification when other frequencies could, in its view, have just as easily been selected. The second was the proposal to center the SPVD's between Police and Local Government Radio Service channels. In this connection APCO raised the possibility of interference to two services' channels instead of one. Additionally, APCO was concerned with the possibility of SPVD's being interfered with by Police transmitters, stating:

"If a highway patrol unit responded to the scene of an accident at an intersection controlled by the detecting device, would the traffic signal malfunction each time the highway patrol transmitter was keyed? Would nearby police or local government high powered base stations cause such traffic devices to malfunction?"

The third concern dealt with police use of frequencies under Section 90.19(g) which states in part:

"A licensee may use without specific authorization from the Commission any mobile service frequency between 40 MHz and 952 MHz listed in paragraph (d) of this section for communications in connection with physical surveillance, stakeouts, raids, and other such activities. . . ."

6. APCO further stated:

"Regardless of the nature of the Highway Administration's operations, whether primary or secondary, these devices should not cause or receive interference from the type of police operation permitted by this section of the rules. In addition, the use of radio direction finders in connection with police surveillance operations is often necessary. Direction finder accuracy could be seriously affected by transmissions of the type proposed by the Highway Administration, since the power of the surveillance transmitter is quite low."

APCO concluded its comments with the suggestion that the proposed operation be placed on the low-band channels of the Highway Maintenance Radio Service and be "subject to coordination by the Highway Maintenance Coordinator for the area."

7. In a supplemental submission, the Coast Guard submitted measurements that purport to show that there should be no danger of interference to television reception; however, the Coast Guard's supplemental submission did not specifically address the issues raised by EIA and PBS, nor were the issues raised by APCO specifically addressed either. Upon receipt of the supplemental petition, however, the Commission placed the Coast Guard petition and supplemental submission on public notice a second time but received no comments in response.

8. We cannot determine from the small number of comments that were received in response to the petition for rule making whether or not there is a substantial amount of interest in the SPVD. With only three parties submitting comments, and none of those indicating a desire to see such systems implemented, it is not possible for us to determine the degree of interest or to decide whether the public interest would be served by the denial of the rule making petition or by the adoption of a Notice of Proposed Rule Making. Accordingly, we are issuing this Notice of Inquiry so that a number of parties will have the opportunity to comment on the issues raised by this petition for rule making and indicate their degree of interest or their concerns. Questions we would like commenters to address include the following:

a. What are the requirements for a self powered vehicle detector (SPVD)?

b. Does the SPVD described herein appear to fulfill needed requirements?

c. Would the SPVD described be more reliable than existing vehicle detection methods?

d. Would the SPVD as described be more economical than existing detection methods?

e. Are any adverse impacts on existing instrumentation foreseen? In this respect, we would like specific documentation.

f. Would the SPVD be more appropriately authorized under Part 15 of the Commission's rules where specific licensing would not be required than under Part 90 where each jurisdiction's SPVD installations would have to have a specific license?

g. Would the proposed SPVD interfere with television reception by use of frequencies at or near 45.75 MHz, which is the standard intermediate frequency for video carriers of television receivers? What other frequencies are recommended if frequencies in the 45 MHz range are deemed inappropriate?

h. Would the proposed SPVD be compatible with existing operations in the Public Safety Radio Services? If so, how would it be integrated into existing structure?

i. Would the Highway Maintenance Radio Service be better suited for SPVD than the Police Radio Service?

Authority for this action is contained in Sections 4(i), 303(r) & 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) & 403.

9. Pursuant to procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before August 23, 1982, and reply comments on or before September 22, 1982. All relevant and timely comments will be considered by the Commission before action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that that fact of the Commission's reliance on such information is noted in the Report and Order.

10. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-17632 Filed 6-29-82; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1310

[Ex Parte No. MC.158]

Rates for a Named Shipper or Receiver

AGENCY: Interstate Commerce Commission

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing to eliminate the general prohibition, now contained in 49 CFR 1310.7(a)(5) against publishing rates restricted to named shippers, receivers, and locations. The existing rule is believed to prevent the lawfulness of such a tariff provision from being fully considered on the merits. Under this proposal, the existing rule would be modified specifically to authorize this form of rate filing.

DATE: Comments should be filed within 30 days following publication of this notice in the **Federal Register.**

ADDRESS: Send an original and, if possible, 15 copies of comments to: Interstate Commerce Commission, Office of Proceedings, Room 5354, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway (202) 275–7277.

SUPPLEMENTARY INFORMATION: The proof necessary to show unlawful discrimination under 49 U.S.C. 10741 is well settled. A complaining party must show disparity of rates, competitive injury, and common control by the carrier over the rates charged to both the preferred and prejudiced shippers. Such a prima facie showing can be rebutted if the defending carrier demonstrates that the differences in rates is justified by differing transportation conditions. See, for example, *Harborlite Corp.* v. *Southern Pacific Transp. Co.*, 364 I.C.C. 585 (1981).

49 CFR 1310.7(a)(5) conflicts with this established legal standard for judging unlawful discrimination. It provides that

> [r]ates may not be published to apply * * * from or to a named shipper or receiver (except for the purpose of identifying the site), or from or to a named site located within a city, town, or township unless the carrier's operating authority is so restricted in the same words.

The mechanical rejection of tariffs not in conformance with 49 CFR 1310.7(a)(5) establishes an irrebuttable presumption that a rate for a name shipper, receiver or location is unlawful. Thus, it improperly disregards the other necessary elements of a discrimination analysis required by case law. The rule may also have an improper chilling effect on new rate filings.

Accordingly, we believe the rule establishes an improper and unlawful bar to tariff publications of this type. The proper method of addressing issues under section 10741 is not the rejection process. Instead, issues of unlawful discrimination should be addressed on the merits (with reference to the four established criteria) through protests at the suspension stage and formal complaints. Before taking final action, we call for comments from interested persons on the proposed rule reproduced in the appendix.

While this action should not significantly affect the quality of the human environment or conservation of energy resources, comments on this issue are also invited. We do not believe that this proceeding is likely to have a significant impact on a substantial number of small entities, since any action will result in elimination of regulation—not an addition to it.

(49 U.S.C. 10762 and 5 U.S.C. 553).

The index terms covering 49 CFR 1310 are as follows: exports, freight, imports, intermodal transportation, maritime carriers, and motor carriers.

Dated: June 18, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Simmons concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Simmons, concurring:

I continue to believe that a broad public inquiry into discount rates would be beneficial to the Commission, to carriers, and to the shippers. *See Lawfulness of Vol. Discount Rates*, 365 I.C.C. 711 (1982). I nonetheless, support the Commission's effort to obtain public comment on the more limited, though still significant, issues raised in this notice.

Appendix

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATIONS OF MOTOR COMMON CARRIERS

We propose to revise 49 CFR 1310.7(a)(5), to read as follows:

§ 1310.7 [Amended]

(a) * * *

(5) Rates may be published to specifically named sites as well as for the accounts of specifically named shippers. When rates are published to apply from or to a named plant site construction site, or other site to comport with the carrier's operating authority, the location of the site must be identified as specifically as possible. For example, the "plant site of John Doe Manufacturing Company on U.S. Highway 10 approximately 23 miles east of A Town, Z State." The term "near" or "near or at" should be avoided, unless they contribute still more specificity.

[FR Doc. 82-17609 Filed 6-29-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Animals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Service has been directed to promulgate regulations for the humane and healthful transport of wild animals and birds into the United States pursuant to a mandate from Congress found in the Lacey Act Amendments of 1981. The Service is considering using currently existing regulations of the Department of Agriculture governing the humane transport of warm-blooded animals and the "Guidelines for Transport of Live Wild Animals and Plants" developed by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora as a framework for developing these regulations. The Service hereby solicits comments and suggestions on this approach. The Service also requests information on environmental and economic impacts, and effects on small entities as well as information on alternatives to the suggested framework.

DATE: Information and comments on this notice must be received on or before July 31, 1982, to be assured consideration.

ADDRESS: The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, persons may submit written comments, suggestions, or objections concerning this notice. Comments should be address to: Director (WPO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m. at 1000 N. Glebe Road, Room 621, Arlington, Virginia, both during and after the comment period.

FOR FURTHER INFORMATION CONTACT: Richard M. Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (Telephone: (703) 235–2418).

SUPPLEMENTARY INFORMATION: On November 16, 1982, the President signed into law the Lacey Act Amendments of

1981 (Pub. L. 97–79, 95 Stat. 1073). Section 9 of the amendments shifts authority for promulgating regulatory requirements for the humane and healthful transport of wild animals and birds from the Secretary of the Treasury to the Secretary of the Interior, any such regulations to be promulgated within 180 days of the effective date of the amendments.

By Federal Register notice of February 26, 1982, the Service announced that it would hold a public meeting to receive information and comments with regard to the development of the regulations (47 FR 8386). The meeting was held on March 25, 1982, in the Main Interior building and was attended by approximately 31 persons representing the zoo community, persons engaged in shipping and carrying live animals, organizations concerned with the humane treatment of wild animals and several concerned Federal agencies.

At the meeting, the following issues were raised and discussed:

1. Which elements of the chain of trade can/should be regulated? Regulatory authority extends only to transport of live wild animals and birds to the United States. Obviously, some of the persons engaged in transporting animals to the United States will be outside the scope of U.S. jurisdiction. Should "innocent" importers be held responsible in any way under the regulations? Which modes of transport should be subject to the regulations?

2. The Lacey Act authorizes the Secretary of the Interior to "* * * prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds * * *." Under what circumstances, if any, should the regulations include a permit requirement. The Service does not favor the addition of another tier of permits to the trade of wild animals, but there may be a need for some type of system in light of the importance of regulatory flexibility, given the international character of the activities regulated and the wide variety of shipping techniques and laws involved.

3. How will these regulations interrelate to other regulations, in particular the Animal Welfare Act regulations (9 CFR Parts 2 and 3)? The Animal Welfare Act ("AWA") regulations govern interstate transport of live warm-blooded animals, including birds, by certain persons. A shipment coming from abroad could be subject to the regulations contemplated by this notice and the AWA regulations during different time periods. The regulations should not have standards so different from AWA regulations as to cause unnecessary and possibly harmful delays in a shipment involving both foreign and interstate transport.

4. Labelling and Documentation: How much, if any, information relevant to the health and humane transport of animals should accompany the shipment taking into consideration the need for expeditious transport, the food, watering and health requirements of the animal and the need for security of the shipment? In addition to humane transport regulations, the Service is obligated to draft joint regulations with the Department of Commerce to carry out its mandate under section 7 of the amendments to promulgate specific regulations for the marking of containers or packages containing fish or wildlife, such regulations to be in accordance with existing commercial practices. The primary purpose of the Section 7 regulations would be to assist in the identification of fish and wildlife. Any additional requirements of the humane transport regulations should be designed to foster the humane and healthful transport of wild animals and birds. As such, the regulations may require more information than would be required under any "section 7" regulations.

5. Container Reuse: Should reuse of containers that can be sanitized and can meet containment and safety requirements be allowed?

6. Expeditious Clearance on Arrival: Should any time constraints or priorities be mandated for carriers to make live animals expeditiously available for pickup at the final destination?

7. Does the volume of traffic to the United States in certain species of animals justify the promulgation of regulations directed at them? Here the Service would appreciate receiving information on traffic volume and instances of inhumane and unhealthful conditions of transport of wild animals or birds to the United States.

8. Flexibility of Container Requirements: How detailed should the regulations be with regard to container materials and structural requirements in light of the wide variety of materials currently in use and the potential for the development of new materials and techniques.

9. Should the regulations use the Interagency Primate Steering Committee Guidelines for the Transportation of Nonhuman Primates, March 1981, as a framework for a section of the regulations covering transport of nonhuman primates? The AWA regulations contain a separate section dealing with nonhuman primates.

10. Compatibility: Under what circumstances, if any, could animals of different species be shipped in the same container?

11. What is the meaning of "wild animals and birds"? There were questions at the meeting as to whether the term included live eggs, or blood samples and how to define the term "wild". The Service has received advice from the Assistant Solicitor, Fish and Wildlife that this term includes non-domestic mammals, birds, reptiles, amphibians, fish, mollusks, crustaceans, arthropods, coelenterates and any other invertebrates.

These issues by no means exhaust the possiblities and the public is invited to provide comments with regard to any aspect of the regulations under consideration.

The Service is considering using the Animal Welfare Act regulations of the Department of Agriculture as a framework for developing that portion of the regulations governing tansport to the United States of warm-blooded animals. The advantage of this approach would be that many shipments coming into the United States which met the Service's regulations would more readily meet requirements of the Animal Welfare Act regulations which would control any portion of such shipments thereafter continuing in interstate commerce. This would appear to be in keeping with the intent of Congress as expressd in House of Representatives Report No. 97–276, in which the Committee on Merchant Marine and Fisheries stated that:

> The amendment is not intended to affect the regulation of the care, handling or transportation of animals by Federal agencies under laws other than the Lacey Act. The Committee is aware, for example, that humane handling and transportation regulations have been promulgated for certain mammals under the terms of the Animal Welfare Act by the Department of Agriculture. The Committee does not intend by this amendment to in any way affect those or other similar regulations issued under the Animal Welfare Act or other laws, or to authorize the Department of the Interior to promulgate regulations covering species and activities that are already the subject of human care and handling regulations pursuant to some other Federal statute.

It could also enable the Service and the Animal and Plant Health Inspection Service ("APHIS") of the Department of Agriculture to take advantage of each other's inspection and enforcement capabilities. This could be done in the form of joint regulations issued by the Service and APHIS or, due to the fact that the animals and persons to be regulated by the Service will probably vary somewhat from those regulated by the AWA regulations, the Service may issue separate regulations concerning

warm-blooded animals similar to the AWA regulations.

With regard to cold-blooded animals, the Service is considering using the "Guidelines for Transport of Live Wild Animals and Plants" developed by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") as a framework on which to develop the regulations. These guidelines may be purchased from: UNIPUB, 345 Park Avenue South, New York, New York 10010. Over 75 countries are party to CITES and the guidelines were designed primarily for use in determining whether a proposed export of live animals will be so shipped as to minimize the risk of injury or damage to health. The Parties have developed a system for amending the guidelines upon recommendation of a Party and approval by the biennial "Conference of the Parties". These guidelines were developed under instructions that they be broadly based on the "Live Animals Regulations" of the International Air Transport Association and that they cover all forms of transport.

It should be noted here that the Congressional deadline (May 16, 1982) for the promulgation of the regulations will not be met. This is in large part due to the scope and complexity of the task. The Service is proceeding with diligence in the preparations for the regulation. Consultations have begun with APHIS on the development of the regulations.

The purpose of this notice is to give interested persons an opportunity to submit comments and suggestions on the regulations as outlined above, before the issuance of any notice of proposed rulemaking. Also, the Service hereby requests information on environmental and economic impacts, as well as any effects on small entities (including small businesses, small organizations, and small governmental jurisdictions) that would result from the regulations outlined above. Similar information on possible alternatives to such regulations is also requested. This information will aid the Service in complying with the requirements of the National Environmental Policy Act, Executive Order 12291 on Federal Regulation, and the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 14

Exports, Fish, Imports, Labeling, Transportation, Wildlife.

This notice was prepared by Arthur Lazarowitz, Federal Wildlife Permit Office.

Dated: June 24, 1982.

G. Ray Arnett,

Assistant Secretary, Fish and Wildlife and Parks.

[FR. Doc. 82-17633 Filed 6-29-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 2517-97]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of approval and availability of a fishery management plan.

SUMMARY: The Assistant Administrator for Fisheries (Assistant Administrator), NOAA, has approved the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region (FMP). This action announces the availability of the FMP for public review and proposes regulations to implement the FMP. The FMP was prepared by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act. The intended effect of this action is to ensure orderly growth of the spiny lobster fishery in the western Pacific fishery conservation zone.

DATE: Comments are invited until August 16, 1982.

ADDRESSES: Comments should be addressed to Alan W. Ford, Regional Director, Sourtwest Region, National Marine Fisheries Service, 300 South Ferry Street, Room 2016, Terminal Island, CA 90731, or Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, P.O. Box 3830, Honolulu, HI 96812. Mark "Comments on Spiny Lobster Regulations" on the outside of the envelope. Copies of the FMP are available by writing to either of the above individuals or by writing to Svein Fougner, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1608, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Alan W. Ford, Regional Director, Southwest Region, 213-548-2575; Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, 808-955-8831; or Svein Fougner, Executive Director, Western Pacific Fishery Management Council, 808-523-1368.

SUPPLEMENTARY INFORMATION:

Background

Section 305(a) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), authorizes the Secretary of Commerce (Secretary) to promulgate regulations implementing approved fishery management plans prepared by regional fishery management councils for their geographic areas of concern. The Western Pacific Fishery Management Council (Council) developed the fishery management plan (FMP) for the spiny lobster fisheries in the fishery conservation zone (FCZ) off the coasts of America Samoa, Guam, and Hawaii. The FMP was prepared by a team of State and Federal fishery scientists with substantial guidance from the Council's Spiny Lobster Advisory Subpanel, Scientific and Statistical Committee and the concerned public.

The draft FMP was combined with a draft environmental impact statement (EIS), draft regulatory analysis, and draft regulations to reduce redundancy and enhance public participation in the early decision-making process. Public hearings were held in Honolulu, Pago Pago, American Samoa, and Agana, Guam.

The FMP was submitted for Secretarial review under Section 304 (a) and (b) of the Magnuson Act in early May, 1981. The review period was interrupted, however, while issues involving the size-limit management measure and protection for Hawaiian monk seals were resolved by revision of certain sections of the FMP. This was accomplished and the review period restarted on February 16, 1982. The FMP was approved by the Assistant Adminstrator on May 14, 1982.

Scope of Proposed Regulation

These regulations would govern all domestic commercial fishing for spiny lobsters (including the species *Panulirus marginatus, P. Penicillatus,* and incidental catches of slipper lobster and Kona crab of the families Scyllaridae and Raminidae respectively) in the FCZ surrounding American Samoa, Guam, and Hawaii. Since the only significant development potential for this fishery is in that part of the FCZ surrounding the Northwesten Hawaiian Islands (NWHI), most of the proposed regulations apply only to this area. For commercial lobster fishing in the NWHI area, the proposed regulations would restrict harvesting of lobsters to specific sizes, areas, and

reproductive condition. In addition, only specified gear could be used, permits and logbooks would be required, the catch would have to be available for inspection, and scientific observers would be carried when requested. Recreational catches would be exempted from permit and reporting requirements. Experimental fishing would be allowed by vessels carrying a scientific observer.

Need for the FMP

The NWHI lobster fishery began in 1976 on an experimental basis. While landings of NWHI lobsters have been sporadic, the fishery in recent years has increased; now a possible danger of overfishing exists. Hence, conservation of the NWHI lobster resource in the FCZ is the primary reason for implementing the FMP. A second and related need for the FMP is to promote economic stability in the fishery. If overfishing occurred, future productivity of the lobster resource could be severely limited until more restrictive regulations became effective, thus disrupting the economic vitality of the fishery.

A third need for the FMP is to prevent adverse impacts on endangered and threatened species. Particular concern has been expressed about protecting the endangered Hawaiian monk seal, endemic only to the NWHI, from adverse interactions with the fishery. The FMP contains such protective provisions, including special measures to investigate and prevent monk seal mortalities resulting from the spiny lobster fishery. These measures carry out recommendations contained in the biological opinion, prepared under Section 7 of the Endangered Species Act.

Finally, implementing the FMP will provide a means for monitoring the condition of the lobster resource through systematic collection of catch and fishing effort information. Because the fishery is relatively new and no Federal regulations currently apply to the NWHI lobster fishery in the FCZ, incomplete data exist on which to base future management decisions. The FMP is designed to provide basic information on the fishery so that future variations can be monitored and management changes made if necessary.

Management Strategy

The FMP selects a management regime designed to control development of the western Pacific spiny lobster fisheries so that domestic catches can increase while protecting the lobster stocks and endangered and threatened species. The management regime consists of measures in six basic categories.

Size and condition of lobsters. The FMP establishes a minimum harvestable size (carapace length) for whole lobsters of 7.7 cm, or 5.0 cm tail width for lobsters with the carapace removed. An allowance is provided such that no more than 15 percent of landed lobster tails may be between 4.9 cm and 4.5 cm in tail width at the first segment. Female lobsters carrying eggs must be released.

Gear. Lobster may be caught only with specified traps or by hand. Use of nets, spears, explosives, chemicals, poisons, or other means are not allowed by these regulations except as experimental fishing.

Data collection. Specified logbooks of fishing catch and effort will be required of all commercial fishermen taking lobsters. In addition, scientific observers may be placed on commercial fishing vessels at the discretion of the National Marine Fisheries Service (NMFS). NMFS will distribute logbooks to all permit holders.

Closed areas. No commercial lobster fishing will be permitted within 20 miles of Laysan Island or landward of water less than 10 fathoms in depth as marked on National Ocean Survey charts. These closures are designed to protect the monk seal population.

Monk seal protection. Certain emergency measures may be imposed if the investigation of the death of a monk seal demonstrates that it was related to the lobster fishery.

Compliance. Commercial fishing permits, specific for either the NWHI or other management areas, will be required. All commercial catches of lobster must be made available for inspection at the port of landing or at sea.

For areas covered by the FMP outside of the NWHI, the only requirements for commercial lobster fishing are permits, logbooks, observers at the discretion of the NMFS, and inspection of the catch.

The Council has determined that management of the NWHI lobster fishery according to these measures will achieve optimum yield (OY) from the fishery. Specifically, OY is defined as the catch of non-berried lobsters with a carapace length of 7.7 cm or larger that can be taken from the waters of the FCZ seaward of 10 fathoms throughout the NWHI and more than 20 miles from Laysan Island. The Council has estimated that the long-term average catch under provisions of the FMP will likely range from 168,000 to 420,000 lobsters per year. Since the average lobster with a 7.7 cm carapace weighs nearly one pound (14.1 ounces), approximately the same range could apply if the catch were expressed in pounds. This range is not intended to constitute a quota or a target harvest level. Instead, it is a first approximation of sustained annual yield against which future refinements to the FMP can be judged.

The domestic annual harvest (DAH) is estimated to be equivalent to OY, since domestic vessels already participating in the fishery have the capacity to harvest more than 420,000 lobsters per year. The total allowable level of foreign fishing (TALFF) is therefore zero. Most vessels currently harvesting lobsters in the NWHI to be marketed as frozen tails have the ability to process their catch on board. Lobsters sold alive are not processed prior to sale. Hence, the domestic annual processing (DAP) capability is fully used and the amount available for joint venture processing is zero.

Classification

The Assistant Administrator has determined that the FMP is necessary and appropriate for the conservation of the western Pacific spiny lobster resources. He has also determined that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Administrator of NOAA has determined that these regulations do not constitute a major rule under Executive Order 12291. A regulatory impact review (RIR) has been prepared. Based on the analysis in the RIR, the Office of General Counsel, Department of Commerce, has determined that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations are expected to affect only about six vessel owners.

The FMP provides an environment for orderly development of the western Pacific spiny lobster fisheries, and in particular the NWHI fishery. Without the FMP, the NWHI lobster resource is expected to show signs of overharvesting by 1983. With implementation of the FMP, overfishing could be prevented and an annual average harvest of about 450,000 pounds could be sustained over the ten-year period 1983–1992. NMFS estimates that between 1983 and 1992, the dockside value of increased catches under the FMP will be approximately $6 million (at 1982 ex-vessel prices, discounted at 10 percent). The comparable cost of Federal implementation and enforcement of the FMP over the next decade is about $21,000 per year.

Additional nonquantifiable benefits would be derived from implementing the FMP through protection of Hawaiian monk seals, economic stability in the fishery, and information on catch and effort.

The Council prepared a draft environmental impact statement (EIS) under Section 102(2)(C) of the National Environmental Policy Act of 1969. The combined EIS/FMP describes the affected marine, coastal, and human enivronments, and discusses the possible impacts of the preferred and alternative management measures considered by the Council. The draft EIS/FMP was filed with the Environmental Protection Agency (EPA) on November 17, 1980 (45 FR 75749), and reviewed by the public. The Assistant Administrator considered the analysis in the EIS/FMP, public comments, and alternative management measures before approving the FMP. The final EIS/FMP is being submitted to EPA with publication of these proposed regulations. A separate notice of availability for the EIS will be published soon.

The Administrator of NOAA has determined that these regulations are consistent with the approved coastal zone management programs of American Samoa, Guam, and Hawaiian. The State of Hawaii has not agreed with this determination, however. Discussions between State and Federal officials are underway to resolve this issue.

The Council requested a consultation and biological opinion under Section 7 of the Endangered Species Act (ESA). NMFS issued a biological opinion on February 18, 1981, stating that were was insufficient information to make a finding of jeopardy or no jeopardy. However, the opinion recommended that the FMP be implemented if it included two "reasonable and prudent alternatives." The Council included these alternatives in the data collection and monk seal protection management measures. Therefore, the FMP is consistent with the ESA.

The degree of conservation and management success resulting from the FMP over time will be determined mostly from the collection of two types of information. The first is a daily catch report or logbook. This logbook and a processing and sales trip report are required to be submitted to the NMFS Regional Director after each fishing trip is completed. The second type of information is an annual report from processors of lobster products during the preceding year. These surveys enable annual review of the state of the lobster fisheries and redetermination of OY, DAH, and DAP, as appropriate. Other Federal requests for information will be involved in application for fishing permits (OMB #648-0097). Because there are fewer than ten respondents anticipated for each type of information requested, clearance provisions of the Paperwork Reduction Act are not applicable to any of these requests.

List of Subjects in 50 CFR Part 681

Fish, Fisheries, Reporting requirements.

Dated: June 17, 1982.

William H. Stevenson,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, it is proposed to add a new part 681 to Title 50 of the CFR as follows:

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

Subpart A—General Provisions

Sec.

681.1 Purpose and scope.
681.2 Relation to State law.
681.3 Definitions.
681.4 Permits
681.5 Recordkeeping and reporting.
681.6 Vessel identification.
681.7 Prohibitions.
681.8 Enforcement.
681.9 Penalties.
681.10 Observers.

Subpart B—Management Measures for Permit Area 1 (the Northwestern Hawaiian Islands)

681.20 General.
681.21 Size restrictions.
681.22 Reproductive condition restriction.
681.23 Closed areas (refugia).
681.24 Gear restrictions.
681.25 Landing requirements.
681.26 Experimental fishing.
681.27 Monk seal protective measures.
681.28 Monk seal emergency protective measures.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 681.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific (FMP) developed by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

(b) These regulations govern commercial fishing for spiny lobsters by fishing vessels of the United States, within the U.S. fishery conservation zone (FCZ) seaward of American Samoa, Guam, and Hawaii. The management measures specified in Subpart B apply only in the FCZ seaward of the Northwestern Hawaiian Islands (Permit Area 1).

§ 681.2 Relation to State law.

Any State law which applies to vessels registered under the laws of that State and which is consistent with this Part (including any State landing law) continues in effect with respect to fishing activities covered by this Part.

§ 681.3 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Administrator means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

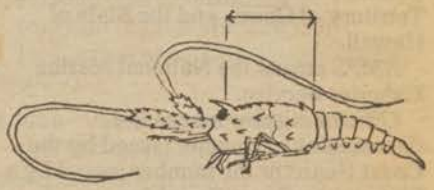
(b) Any certified enforcement or Special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal, State, or Territorial agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying, and acting under the direction of, any person described in paragraph (a) of this definition.

Caraspace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace (see figure 1).

FIGURE 1. METHOD OF MEASURING CARAPACE LENGTH



Closed area means an area of the FCZ that is closed to the harvest of spiny lobster.

Commercial fishing means fishing with the intent to sell all or part of the catch of spiny lobsters. All spiny lobster fishing in the Northwestern Hawaiin Islands (Permit Area 1) is considered commercial fishing.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line each point of which is

200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(d) Any operations at sea in support of or in preparation for any activity described in paragraphs (a) through (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing or for assisting or supporting a vessel engaged in fishing.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Western Pacific Fishery Management Council, holders of permits issued under this Part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in Sections 681.28 and 681.28 and who has specifically requested to be considered an "interested party."

Kona crab means a crustacean of the species *Ranina ranina.*

Land or Landing means bringing fish to shore or off-loading fish from a fishing vessel.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Management Area means the FCZ of the United States seaward of the Territory of American Samoa, the Territory of Guam, and the State of Hawaii.

NMFS means the National Marine Fisheries Service.

Official number means the documentation number issued by the Coast Guard or the number issued by a State or the Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

Permit Area 1 means the FCZ of the Hawaiian Islands Archipelago lying to the west of 161°00′ W. longitude, commonly known as the Northwestern Hawaiian Islands.

Permit Area 2 means the FCZ of the Hawaiian Islands Archipelago lying to the east of 161°00′ W. longitude, commonly known as the Main Hawaiian Island; the FCZ of the Territory of Guam; and the FCZ of the Territory of American Samoa.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processing means changing the form of a product through such methods as freezing, cleaning, or removing tails. It does not include the boxing or packaging of a product.

Regional Director means Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Secretary means the Secretary of Commerce of a designee.

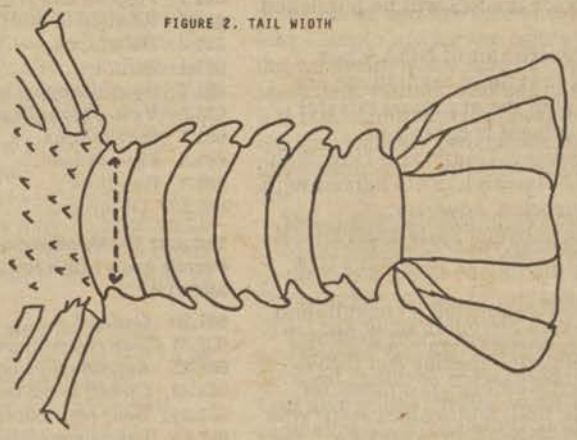
Slipper lobster means any crustacean of the genus *Scyllaridae.*

Spiny lobster means either of the following two species of crustaceans: *Panulirus marginatus* or *Panulirus penicillatus.*

State means the State of Hawaii, the Territory of American Samoa, and the Territory of Guam.

Tail width means the straight line distance between the lateral notches on the first tail segment (see Figure 2).

FIGURE 2. TAIL WIDTH



Trap means a box-like device used for catching and holding lobsters.

U.S.—harvested spiny lobster means spiny lobster caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented or numbered by the Coast Guard under U.S. law; or

(b) Any vessel, under five net tons, registered under the laws of any State.

§ 681.4 Permits.

(a) *General.* (1) Any vessel of the United States engaged in commercial fishing for spiny lobsters in the Management Area must have a permit issued under this section.

(2) Each permit is valid for fishing only in the area specified in the permit. Permit areas are defined in § 681.3.

(3) Only one permit issued under this Part is valid for one vessel at any one time.

(4) The holder of a permit allowing a vessel to fish one area may obtain a permit for that vessel to fish another area upon surrendering to the Regional Director any current permit issued for that vessel under this part.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Regional Director by the vessel owner or operator at least 15 days before the date on which the applicant desires to have the permit made effective.

(2) Each application must be submitted on an appropriate form which may be obtained from the Regional

Director. Each application must be signed by the vessel owner or operator and contain the following information:

(i) The applicant's name;

(ii) The owner's name, mailing address, and telephone number;

(iii) The operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The vessel's official number;

(vi) The radio call sign of the vessel;

(vii) The home port of the vessel;

(viii) The engine horsepower of the vessel;

(ix) The approximate fish-hold capacity of the vessel;

(x) The processing capacity of the vessel;

(xi) The type and quantity of lobster fishing gear used by the vessel;

(xii) The permit area in which the applicant proposes to fish;

(xiii) Whether the application is for a new permit or a renewal; and

(xiv) The number and expiration date of any prior permit for the vessel issued under this part.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director ten days before the effective date of the change.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or inproperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire on the June 30 following issuance of the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Regional Director in the same manner as described in paragraph (b) of this section.

(h) *Alteration.* Any permit that has been substantially altered, erased, or multilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other persons. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for spiny lobster in the FCZ. Any permit issued under this section must be displayed for inspection upon request of any Authorized Officer.

(l) *Sanctions.* 50 CFR §§ 621.51–56 govern the imposition of sanctions against a permit issued under this part. As specified in those regulations, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or this part; or if a civil penalty or criminal fine imposed under the Magnuson Act, and pertaining to such a vessel, is not paid.

§ 681.5 Recordkeeping and reporting.

(a) *Logbook.* The operator of any vessel engaged in commercial fishing for spiny lobster subject to this part shall:

(1) Maintain on board the fishing vessel, while fishing for spiny lobster, an accurate and complete NMFS spiny lobster fishery logbook, recording all information specified and paragraph (b) of this section;

(2) Make the fishing logbook available for inspection by an Authorized Officer or any employee of the National Marine Fisheries Service designated by the Regional Director to make such an inspection; and

(3) Within 72 hours of each landing of spiny lobster, submit to the Regional Director a copy of the log sheet(s) for that fishing trip.

(b) *Fishing information.* Fishing logbooks must contain the following information for all spiny lobster taken under this part:

(1) Vessel information:

(i) Name of vessel;

(ii) Call sign of vessel;

(iii) Permit number of vessel;

(iv) Size of crew; and

(v) Number of traps.

(2) Fishing information:

(i) Location of lobster catch by statistical area as depicted in the NMFS spiny lobster fishery logbook;

(ii) Date and time of trap deployment, and number of traps deployed;

(iii) Date and time of trap retrieval and number of traps retrieved;

(iv) Number and species of legal spiny lobsters per trap deployment;

(v) Number and species of sublegal spiny lobsters per trap deployment;

(vi) Number and species of berried female spiny lobsters per trap deployment; and

(vii) Number of slipper lobsters and kona crabs per trap deployment.

(3) Endangered species information:

(i) Whether monk seals or sea turtles are observed in the fishing area;

(ii) Whether monk seals or sea turtles are observed in the vicinity of the fishing gear;

(iii) Whether monk seals or sea turtles interfere with fishing operations;

(iv) Whether monk seals or sea turtles prey on released lobsters;

(v) Whether monk seals or sea turtles are entangled but released alive; and

(vi) Whether monk seals or sea turtles are entangled but released dead.

(4) Processing information:

(i) Weight of whole lobsters frozen at sea;

(ii) Weight of lobster tails frozen at sea;

(iii) Weight of whole lobsters to be frozen on land; and

(iv) Weight of lobster tails to be frozen on land.

(5) Sale information:

(i) Number, weight, and revenue from sale of live lobsters;

(ii) Number, weight, and revenue from sale of whole, frozen lobsters;

(iii) Number, weight, and revenue from sale of frozen tails; and

(iv) Weight and revenue from sale of lobster byproducts.

(c) *Processor information.* Processors of lobster products harvested in the Management Area shall submit an annual report to the Regional Director on a form which can be obtained from the Regional Director. This report must specify:

(1) Source (by FCZ surrounding each State) of lobsters processed;

(2) Poundage of lobsters processed by species;

(3) Number of individual lobsters processed by species;

(4) Method of Processing;

(5) Form of final product; and

(6) Current actual lobster-processing capacity.

§ 681.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches in height for fishing vessels of 65 feet in length or longer, and at least ten inches in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(c) *Duties of operator.* The operator of each fishing vessel subject to this part shall:

(1) Keep the displayed official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, it rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 681.7 Prohibitions.

(a) It is unlawful for any person to:

(1) Use any vessel to fish for spiny lobster in a permit area unless a permit has been issued for that vessel and area as specified in § 681.4, and that permit is aboard the vessel;

(2) Falsify or fail to make, keep, maintain, or submit any logbook or other record or report required by § 681.5;

(3) Fail to affix and maintain vessel markings, as required by § 681.6;

(4) Fail to comply immediately with enforcement and boarding procedures specified in § 681.8;

(5) Refuse to carry an observer when requested to do so by the Regional Director under § 681.10;

(6) Possess, have custody or control of, ship, transport, offer for sale, sell, import, export, or land any spiny lobster which was taken or retained in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act;

(7) Refuse to allow an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(8) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an Authorized Officer in the conduct of any search or inspection described in paragraph (a)(7) of this section;

(9) Resist a lawful arrest for any act prohibited by this part;

(10) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person by an Authorized Officer, knowing that such other person has committed any act prohibited by this part;

(11) Transfer directly or indirectly, or attempt to transfer, any U.S.-harvested spiny lobster to any foreign fishing vessel, while such foreign vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under Section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S.-harvested spiny lobster; or

(12) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(b) In Permit Area 1, in addition to the prohibitions in paragraph (a) of this section, it is unlawful for any person to:

(1) Fish for, take, or retain spiny lobsters:

(i) By methods other than lobster traps or by hand, as specified in § 681.24, or

(ii) From closed areas specified in § 681.23;

(2) Retain or possess on a fishing vessel any spiny lobster or tail which is less than the minimum size specified in § 681.21, except for the tail-width allowance of § 681.21(b);

(3) Possess on a fishing vessel any spiny lobster taken in Permit Area 1 in a condition such that neither its carapace length nor its tail width can be determined;

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing spiny lobster, as specified in § 681.22;

(5) Fail to report before landing, as specified in § 681.25; or

(6) Fail to comply with any protective measures promulgated under § 681.26 or 681.27.

§ 681.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, permit, and catch, for purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are those which may be used:

(1) "L" means "You should stop your vessel instantly;"

(2) "SQ3" Means "You should stop or heave to; I am going to board you;" and

(3) "AA AA AA etc," is the call to an unknown station, to which the signaled vessel should respond by illuminating the vessel identification required by § 681.6.

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop the vessel immediately and lay to or maneuver in such a way as to allow the Authorized Officer and the boarding party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and the boarding party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other action as required to ensure the safety of the Authorized Officer and the boarding party and to facilitate the boarding.

§ 681.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions of the Magnuson Act, and to 50 CFR Parts 620 and 621, 15 CFR Part 904, and other applicable law.

§ 681.10 Observers.

All fishing vessels subject to this part must carry an observer when requested to do so by the Regional Director.

Subpart B—Management Measures for Permit Area 1 (the Northwestern Hawaiian Islands)

§ 681.20 General.

The management measures specified in this subpart govern fishing for spiny lobster in the FCZ seaward of the Northwestern Hawaiian Islands (Permit Area 1).

§ 681.21 Size restrictions.

(a) *Whole lobsters.* Only spiny lobsters with a carapace length of 7.7 cm or greater may be retained.

(b) *Lobster tails.* If the carapace length cannot be determined, only lobsters with tails at least 5.0 cm wide may be retained, except for an allowance of up to 15 percent of the catch, by number, which may have tail widths between 4.5 and 4.9 cm.

§ 681.22 Reproductive condition restrictions.

A female spiny lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female spiny lobsters.

§ 681.23 Closed areas (refugia).

(a) Spiny lobster fishing is not allowed within 20 nautical miles of Laysan Island.

(b) Spiny lobster fishing is not allowed within the FCZ landward of the 10 fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 681.24 Gear restrictions.

(a) Spiny lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

(b) An entryway in a spiny lobster trap may measure no greater than 10½ inches in its greatest diagonal or diameter at the larger end, and no greater than 6½ inches in its greatest diagonal or diameter at the smaller end.

§ 681.25 Landing requirements.

The operator of a fishing vessel that has taken spiny lobsters in the FCZ off the Northwestern Hawaiian Islands shall contact, by radio or otherwise, an Authorized Officer (see § 681.3) at least 24 hours before landing, and report to this officer the port, the approximate date, and time at which the lobsters will be landed.

§ 681.26 Experimental fishing.

(a) *General.* The Secretary may authorize experimental fishing for spiny lobster which would otherwise be prohibited by this part. No experimental fishing may be conducted unless an NMFS sicentific observer is aboard the vessel.

(b) *Council review.* Before authorizing experimental fishing, the Secretary will submit to the Western Pacific Fishery Management Council a copy of the plan under which the experimental fishing will be conducted, and request the Council's comments.

(c) *Implementation.* After authorization by the Secretary, as demonstrated by the placement of an NMFS scientific observer on a vessel, the vessel may fish in accordance with the plan described in paragraph (b) of this section.

§ 681.27 Monk seal protective measures.

(a) *General.* This section establishes a procedure which will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the spiny lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the spiny lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. He will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* The Regional Director will investigate the incident reported and will attempt:

(1) To verify that the incident occurred:

(2) To determine the extent of the harm to the monk seal population;

(3) To determine the probability of the incident's recurring;

(4) To determine details of the incident such as: (i) The number of animals involved,

(ii) The cause of the mortality,

(iii) The age and sex of the dead animals,

(iv) The relationship of the incident to the reproductive cycle, e.g., breeding season (March–September), non-breeding season (October-February),

(v) The population estimates or counts of animals at the island where the incident occurred, and

(vi) Any other relevant information;

(5) To discover and evaluate any extenuating circumstances; and

(6) To evaluate any other relevant factors.

The Regional Director will make the results of his investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the spiny lobster fishery, the Regional Director will:

(1) Advise the interested parties of his conclusion and the facts upon which it is based; and

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions of appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific aras, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will:

(i) Prepare a document which describes the incident, the protective measures proposed, and the reasons for the protective measures;

(ii) Provide it to the interested parties; and

(iii) Request their comments.

(g) *Implementation.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director still thinks that protective measures are necessary and appropriate, he will recommend the protective measures to the Administrator and provide notice of this recommendation to the Chairman of the Western Pacific Fishery Management Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Administrator concurs with the Regional Director's recommendation, a notice will be published in the **Federal Register** which includes:

(i) The protective measures;

(ii) The reasons for the protective measures; and

(iii) A description of the incident that triggered the procedure described in this section.

(h) *Notification of "no action".* If at any point in the process described in this section, the Regional Director or Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the **Federal Register.**

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the Endangered Species Act;

(iii) Until the Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the **Federal Register** notice, not to exceed three months. The measures may be renewed for three months after again following procedures in paragraph (b) through (g) of this section.

(j) *Repeal.* (1) If the Administrator decides that protective measures may no longer be necessary for the protection of the monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Administrator will request advice on the proposed repeal of the protective measures.

(2) The Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Administrator decides to repeal the protective measures:

(i) Interested parties will be notified of the decision, and

(ii) The notice of repeal and the reasons for the repeal will be published in the **Federal Register.**

§ 681.28 Monk seal emergency protective measures.

(a) *Determination of emergency.* If at any time during the process described in § 681.27 the Regional Director determines that an emergency exists involving monk seal mortality related to the spiny lobster fishery and that measures are needed immediately to protect the monk seal population, he will:

(1) Notify the interested parties of this determination and request their immediate advice and comments; and

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Administrator.

(b) *Implementation of emergency provisions.* If the Administrator agrees with the recommendation for emergency action:

(1) He will determine the appropriate emergency protective measures;

(2) A notice of the emergency protective measures will be published in the **Federal Register**; and

(3) He will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area 1 will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a fisherman at 12:01 a.m. local time of the day following the day the fisherman receives actual notice of the measures.

(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days if necessary to allow the completion of the procedures set out in § 681.27.

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Notices

Federal Register
Vol. 47, No. 126
Wednesday, June 30, 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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1982 Tobacco Price Support Levels

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1982 Tobacco Price Support Levels.

SUMMARY: This notice sets forth the price support levels applicable to eligible kinds of 1982-crop tobacco. The support levels have been determined in accordance with Section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Stabilization and Conservation Service (ASCS), (202) 447–5187. Since there are no options associated with the determinations set forth in this notice, a Final Regulatory Impact Analysis has not been prepared. However, the impacts associated with these determinations are discussed under Supplementary Information.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program to which this notice applies are: Title: Commodity Loan and Purchases; Number: 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by Office of Management and Budget (OMB) Circular A–95 was not used to assure that units of local government are informed of this action.

Price support is required to be made available for each crop of tobacco at a level which is determined in accordance with a formula prescribed in Section 106 of the Agricultural Act of 1949, as amended. Under Section 106, the level of support for each kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index"), for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year. For the 1982-crop support calculation, the average parity indexes for the three previous years are: 1979=850; 1980=950; and 1981=1031, and the 3-year average is 944. The ratio of the 1979–81 average parity index (944) to the 1959 average parity index (298) is 3.17. Accordingly, the support level for the 1982 crop of each eligible kind of tobacco is 317 percent of the 1959 level as shown in the following table:

Kind and type of tobacco	Adjustment factor (number)	Support level (cents per pound)	
		1959	1982
Flue-cured, types 11–14	3.17	55.5	175.9
Burley, type 31	3.17	57.2	181.3
Virginia fire-cured, type 21	3.17	38.8	123.0
Kentucky-Tennessee fire-cured, types 22–23	3.17	38.8	123.0
Dark air-cured, types 35–36	3.17	34.5	109.4
Virginia sun-cured, type 37	3.17	34.5	109.4
Cigar binder, types 51–52	3.17	39.8	125.5
Cigar filler and binder tyeps 42–44, 53–55	3.17	28.6	90.7
Puerto Rican, type 46	3.17	29.7	94.1

Since the Secretary of Agriculture has no discretion in determining the levels of support for 1982 crops of tobacco and since the levels must be established in accordance with the formula prescribed by Section 106 of the 1949 Act, it has been determined that no further public rulemaking is required with respect to the determination of the price support levels specified herein.

Impacts

Price support is make available to producers for nine kinds of tobacco comprising 96 percent of the total U.S. production. Two kinds, flue-cured and burley, comprise about 95 percent of all tabacco pledged as collateral for a CCC price support loan. Most tobacco is sold at auction warehouses to the highest bidder. If the final bid for any particular lot of tobacco does not exceed the established price support loan rate for that grade, the entire lot is eligible for price support. The producer receives a price support advance from the warehouseman and the tobacco is consigned to a producer association which pledges the tobacco to CCC for a price support loan.

Price support for the 1982 crops of tobacco may require outlays for loans made by CCC to the associations in amounts sufficient to cover the price support advances which are made to producers, and the cost of processing and storing the loan tobacco in both fiscal years 1982 and 1983. Unlike most commodities, tobacco can be stored for several years without deterioration and then sold at a price with usually covers interest and storage costs, as well as price support advances paid to producers.

For fiscal year 1982, projected loan outlays will be exceeded by projected repayments of loans which are outstanding from previous crops to give net receipts of $60 million. In addition, assuming that there are no major shifts in the supply and use of tobacco, net outlays of $37 million are projected for fiscal year 1983.

Market prices for the various kinds of tobacco are projected to range between 7 cents and 18 cents per pound higher than last year's prices. The rise in support levels is expected to result in higher gross receipts to producers. A major impact of increased price supports will be higher leaf tobacco costs for both domestic manufacturers and exporters. If these increases are passed on to consumers in about two years (after the tobacco is aged), cigarette prices would increase about 1 percent and prices of other tobacco products would increase around 3 percent.

Determinations

Accordingly, it has been determined that the following support levels will be applicable for the following kinds of 1982-crop tobacco.

Kind and type of tobacco	Average price support level (cents per pound)
Flue-cured, types 11-14	175.9
Burley, type 31	181.3
Virginia fire-cured, type 21	123.0
Kentucky-Tennessee fire-cured, types 22-23	123.0
Dark air-cured, types 35-36	109.4
Virginia sun-cured, type 37	109.4
Cigar binder, types 51-52	125.5
Cigar filler and binder types 42-44, 53-55	90.7
Puerto Rican, type 46	94.1

(Sec. 4 and 5, 62 Stat. 1070 as amended (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, 74 Stat. 6 (7 U.S.C. 1441, 1445, 1421, 1423))

Signed At Washington, D.C., on June 25, 1982.

John R. Block,

Secretary.

[FR Doc. 82-17652 Filed 6-29-82; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Coconino National Forest Grazing Advisory Board; Meeting

The Coconino National Forest Grazing Advisory Board will hold its first meeting since the Charter was approved for renewal at 1:30 P.M., September 3, 1982, at the Coconino National Forest Supervisor's Office Conference Room, 2323 E. Greenlaw Lane, Flagstaff, Arizona.

The purpose of the meeting is to:

1. Review the minutes of the September 4, 1981, meeting.
2. Elect a Board Chairman.
3. Discuss and adopt the Operating By-laws.
4. Review the 1984-1985 and Proposed 1983 Work Plans involving Range Betterment Funds.
5. Review Allotment Management Plans that may come before the Board.

The meeting is open to the public.

Dated: June 22, 1982.

Neil R. Paulson,

Forest Supervisor.

[FR Doc. 82-17720 Filed 6-29-82; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Pub. L. 88-482, approved August 22, 1964, as amended by the Meat Import Act of 1979 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1982 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 24, 1981 (46 FR 62487), the estimated aggregate quantity of meat articles prescribed by Section 2(c) of the Act during the calendar year 1982 is 1,182 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate for 1982 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1982 is 1,225 million pounds.

Done at Washington, D.C., this 25th day of June 1982.

John R. Block,

Secretary.

[FR Doc. 82-17644 Filed 6-29-82; 8:45 am]

BILLING CODE 3410-01-M

Section 22 Import Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the third calendar quarter of 1982.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250, (202-447-6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4940, dated May 5, 1982, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the third calendar quarter of 1982 is 19.88 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter: (1) exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the third calendar quarter of 1982 has been calculated to be 16.4607 cents per pound. This results in a fee of 3.4193 cents per pound for item 956.15, the amount by which the 16.4607 cents adjusted average spot price is less than 19.88 cents. Accordingly, the fee for items 956.05 and 957.15 for the third calendar quarter of 1982 is 4.4193 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of headnote 4(c).

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the third calendar quarter of 1982 shall be as follows:

Item	Fee
956.05	4.4193 cents per pound.
956.15	3.4193 cents per pound.
958.15	4.4193 cents per pound.

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iv) of Headnote 4.

Signed at Washington, D.C., on June 25, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-17643 Filed 6-29-82; 8:45 am]

BILLING CODE 3410-10-M

COMMISSION ON CIVIL RIGHTS

New Mexico Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 8:00a and will end at 10:00 p, on July 22, 1982, and will convene at 8:00 a.m. and will end at 11:30 a.m., July 23, 1982, at the Hilton Inn, 100 Sandoval Street, Sante Fe, New Mexico, 87501. The purpose of this meeting is to conduct a Consultation and Workshop on Block Grants in the State of New Mexico.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Honorable Roberto A. Mondragon, Lieutenant Governor's Office, State Capitol, Room 425, Santa Fe, New Mexico, 87503, (505) 827-2513 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas, 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 24, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-17637 Filed 6-29-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Animal Glue and Inedible Gelatin From Yugoslavia; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on animal glue and inedible gelatin from Yugoslavia. The review covers the one known exporter of this merchandise to the United States, Kemija-Impex, and the period December 1, 1980 through November 30, 1981. There were no known shipments of this merchandise to the U.S. during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require a cash deposit of estimated antidumping duties on future entries equal to the calculated margin on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Betty H. Laxague or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3601).

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 25391-2) the final results of its first administrative review of the antidumping finding on animal glue and inedible gelatin from Yugoslavia and announced its intent to conduct the next administrative review by the end of December 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of animal glue and inedible gelatin, of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents, as an essential part of many compositions, and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of one Yugoslavian exporter of this merchandise to the United States, Kemija-Impex. The review covers this firm for the period December 1, 1980 through November 30, 1981.

Preliminary Results of the Review

As a result of our review we preliminarily determine that there were no known shipments to the U.S. during the period and there are no known unliquidated entries.

The Department received information from one of the Yugoslavian firms, HP Kolinska (Kemin), that it is no longer involved in the manufacture or marketing of animal glue and inedible gelatin. The Department preliminarily has decided not to include this firm in this section 751 review or in future reviews until it again ships Yugoslavian animal glue and inedible gelatin to the U.S.

Interested parties may submit written comments on these preliminary results on or before July 30, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication of this notice or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties

of 9.7 percent, based on the margin on the firm's last known shipments, shall be required on all shipments of Yugoslavian animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary, Import Administration.

June 21, 1982.

[FR Doc. 82-17681 Filed 6-29-82; 8:45 am]

BILLING CODE 3510-25-M

Clear Sheet Glass From Italy; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on clear sheet glass from Italy. The review covers the five known exporters of this merchandise to the United States and the period December 1, 1980, through November 30, 1981. There were no known shipments of this merchandise to the United States during the period.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the calculated margins on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Brian Kelly or David Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2923/2657).

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1982, the Department of Commerce ("the Department") published in the *Federal Register* (47 FR 992-3) the final results of its first administrative review of the antidumping finding on clear sheet glass from Italy and announced its intent to conduct the next administrative review by the end of November 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of clear sheet glass, currently classifiable under item numbers 542.3120 through 542.4835 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of five Italian exporters of clear sheet glass to the United States. The review covers the period December 1, 1980, through November 30, 1981 for all five firms.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that there were no shipments by the five firms during the review period and there are no known unliquidated entries.

Interested parties may submit written comments on these preliminary results on or before July 30, 1982 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after publication of this notice or the first working day thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent margin for each firm shall be required on all shipments of clear sheet glass from Italy by these firms entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results. The most recent margin calculated for each of the firms is listed below. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Exporter	Time period	Margin (percent)
Social Italiana Vetro	12/1/80-11/30/81	[1]19.62
Vernante Pennitalia	12/1/80-11/30/81	[1]44.56
Vetreria Italiana Balzaretti-Modigliani	12/1/80-11/30/81	[1]37.40
Vetreria Milanese Lucchini	12/1/80-11/30/81	[1]43.90
Vetrobel	12/1/80-11/30/81	[1]59.80

[1] No shipments during the review period.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

June 21, 1982.

[FR Doc. 82-17682 Filed 6-29-82; 8:45 am]

BILLING CODE 3510-25-M

DEC/ISAC Liaison Subcommittee of the President's Export Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The President's Export Council was initially established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade. The DEC/ISAC Liaison Subcommittee was formed by the Council to co-ordinate exchange of information among organizations concerned with U.S. exports.

TIME AND PLACE: July 15, 1982, from 9:30 a.m.-12:00 noon. The meeting will be held at the Department of Commerce, 14th and Constitution Avenue NW., Room 4830, Washington, D.C. 20230.

AGENDA:

9:30-9:40—Welcome and Opening Remarks
9:40-10:15—USG View of Industry Consultations Program
10:15-10:30—The Industry Policy Advisory Committee (IPAC): Its role and 1982 agenda
10:30-10:45—The Advisory Committee for Trade Negotiations: Its role and 1982 agenda
10:45-11:00—The Industry Sector Advisory Committees (ISACs): Their Role and 1982 agenda
11:00-11:15—The President's Export Council and its Liaison Subcommittee (PEC): Role and 1982 agenda
11:15-Noon—Discussion of Future Liaison and Mutual Support Activities

PUBLIC PARTICIPATION: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Norma Yost, Room 4823, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-2544.

Dated: June 25, 1982.

Henry Misisco,

Acting Director, Office of Policy and Coordination.

[FR Doc. 82-17679 Filed 6-29-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Solicitation for Public Key Cryptograhic Algorithms

Under the provisions of Pubic Law 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce (Secretary) is authorized to establish uniform Federal automatic data processing standards. This solicitation requests the submission of public Key Cryptographic Algorithms as candidates for consideration as a Federal Information Processing Standard. Public Key Cryptographic Algorithms make use of two distinct keys: one for encryption and one for decryption. Since the decryption key cannot be computed from the encryption key, the encryption key may be made public without compromising the secret decryption key. This permits several parties to send encrypted messages to the owner of the public encryption key without compromising the means of decoding the messages.

To be considered, submissions should include:

a. A completely defined Public Key Algorithm (PKA), including the specification of all parameters sufficient to implement and analyze the algorithm for security and efficiency.

b. A completely defined Key Generation Algorithm (KGA), including a description of the techniques to generate both the public and non-public keys, and a description for any restrictions on the keys.

c. A mathematical description of the PKA and KGA.

d. Flow charts for implementing the PKA and KGA.

e. Fortran programs (including all necessary subroutines) for implementing the PKA and KGA.

f. A statement of the advantages and disadvantages of the proposed PKA and KGA, including a quantitative statement of their security and efficiency.

g. A statement identifying the inventor(s) of the PKA and KGA, and anyone who refined the original algorithms in producing the submitted algorithms.

h. An agreement to release the PKA and KGA for publication in order to permit analyses of their security and efficiency.

i. An agreement to license, royalty free and on a nonexclusive basis, the PKA and KGA under any patent, issued or applied for, and any copyright, if the algorithm is selected as a Federal Information Processing Standard.

In order to ensure that all parties have an opportunity to present their submissions, the National Bureau of Standards (NBS) is soliciting candidate algorithms for the proposed standard. Interested parties may submit an algorithm in writing to the Director, Institute for Computer Sciences and Technology, Attn: Public Key Cryptographic Algorithms, Washington, D.C. 20234. To be considered, either a complete submission or a statement of intent to submit must be received on or before September 27, 1982.

Algorithms received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230. Persons desiring more information about this solicitation may contact Dennis K. Branstad or Miles E. Smid, (301) 921-3427.

Dated: June 24, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-17601 Filed 6-29-82; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Level for Certain Man-Made Fiber Apparel From Macau

June 25, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Adjusting the level of restraint established for woven blouses of man-made fibers in Category 641, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1982, by the deduction of 583 dozen in overshipments from 1981. The adjusted level for 1982 will be 73,866 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979 between the Governments of the United States and Portugal, the United States Government is adjusting the level of restraint for man-made fiber textile products in Category 641 for 1982 to account for 1981 overshipment amounting to 583 dozen.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 14, 1981 there was published in the **Federal Register** (46 FR 60872) a letter dated December 9, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain cotton, wool, and man-made fiber textile products, including Category 641, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1982. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to reduce the level of restraint for Category 641 to 73,866 dozen.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

June 25, 1982.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter amends, but does not cancel, the letter of December 9, 1981 which directed you to prohibit entry during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Macau.

Effective on July 1, 1982, the directive of December 9, 1981 is amended to reduce the level of restraint established for Category 641 to 73,866 dozen.[1]

The action taken with respect to the Government of Portugal and with respect to imports of man-made fiber textile products from Macau has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore,

[1] The level of restraint has not been adjusted to account for any imports after December 31, 1981.

these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-17680 Filed 6-29-82; 8:45 am]

BILLING CODE 3510-25-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT DOCKET NO. 82-2]

Use of Certain Copyrighted Works by Noncommercial Broadcasting

In accordance with 17 U.S.C. 118, notice is hereby given of the commencement by the Copyright Royalty Tribunal of proceedings concerning the determination of the royalty rates pertaining to use of certain copyrighted works in connection with noncommercial broadcasting.

Parties wishing to participate in this proceeding shall notify the Copyright Royalty Tribunal, 1111 20th Street, N.W., Washington, D.C. 20036 by July 30, 1982 of their intention.

Commissioner Frances Garcia,

Chairman.

June 15, 1982

[FR Doc. 82-17100 Filed 6-29-82; 8:45 am]

BILLING CODE 1410-01

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Services/or Supplies Provided by Civilian Hospitals (DA Form 1863-1).

The CHAMPUS Form 1863-1 is a claim for used by civilian hospitals to file for payment of health care services. Use of the form assures uniform compliance and efficient handling. The information is required to reimburse the provider and the beneficiary for authorized health care services rendered.

Civilian Hospitals and CAMPUS Beneficiaries; 850,000 responses; 425,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DoD Clearance Officer, OASD(C), IRMS, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697-1195.

A copy of the information collection proposal may be obtained from Fred E. Hammer, Chief, Information Systems Divisions, Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045, telephone (303) 361-8088.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 25, 1982.

[FR Doc. 82-17600 Filed 6-29-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electonic Devices (AGED) will meet in closed session on 29-30 July 1982 at the Palisades Institute for Research Services, Inc. 1925 North Lynn Street, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with 5 U.S.C. App 1, 10(d)(1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b)(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

June 25, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-17683 Filed 6-29-82; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Defense Department.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per diem Bulletin Number 113. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 113 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 25, 1982.

ADDRESS: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 113.

To the Heads of Executive Departments and Establishments.

Subject: Table of Maximum Per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaske, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States.

1. The bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretay of Defense, August 17, 1966, "Executive Order 11294, August 4, 1966 Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for

Government Civilian Personnel in Travel Status," in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 112 except in the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	89.00
Barrow	169.00
Bethel	114.00
College	97.00
*Cordova	109.00
Deadhorse	142.00
Dillingham	103.00
Dutch Harbor	82.00
Eielson AFB	97.00
Elmendorf	89.00
Fairbanks	97.00
Fort Richardson	89.00
Fort Wainwright	97.00
Juneau	97.00
Ketchikan	96.00
Kodiak	103.00
Kotzebue	109.00
Muphy Dome	97.00
Noatak	109.00
Nome	110.00
Noorvik	109.00
Petersburg	96.00
Point Hope	100.00
Prudhoe Bay	142.00
Shemya AFB [1]	11.00
Shungnak	109.00
Sitka—Mount Edgecombe	96.00
Skagway	96.00
Spruce Cape	103.00
Tanana	110.00
Valdez	93.00
Wainwright	79.00
Wrangell	96.00
All other localities	83.00
American Samoa	65.00
Guam M.I.	74.00
Hawaii:	
Oahu	91.00
All other localities	67.00
*Johnston Atoll [2]	19.10
Midway Islands [1]	12.60
Puerto Rico:	
Bayamon:	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
Carolina:	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
Fajardo (including Luquillo):	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
Fort Buchanan (including GSA Service Center, Guaynabo):	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
Ponce (including Fort Allen NCS)	70.00
Roosevelt Roads	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
Sabana Seca:	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
San Juan (including San Juan Coast Guard Units):	
Dec. 16 to May 15	119.00
May 16 to Dec. 15	88.00
All other localities	77.00
Virgin Islands of United States:	
Dec. 1 to Apr. 30	102.00
May 1 to Nov. 15	82.00
Wake Island [2]	15.00
All other localities	20.00

[1] Commercial facilities are not available. This per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

June 25, 1982.

[FR Doc. 82-17684 Filed 6-29-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 82-CERT-009]

Public Service Electric & Gas Co.; Recertification of Eligible Use of Natural Gas to Displace Fuel Oil

On May 17, 1982 Public Service Electric and Gas Company (Public Service), 80 Park Plaza, Newark, New Jersey 07101, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for recertification of an eligible use of up to 7.3 billion cubic feet of natural gas per year to displace approximately 1,102,000 barrels of No. 6 fuel oil (0.3 percent sulfur) and approximately 30,000 barrels of No. 2 fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year at eight of its electric generating stations located in New Jersey: Bergen in Ridgefield; Essex in Newark; Hudson in Jersey City; in Kearny; Linden Kearny in Linden; Sewaren in Sewaren; Edison in Edison; and Mercer in Trenton. The eligible seller of the natural gas is National Gas and Oil Corporation (National), 1500 Granville Road, Newark, Ohio 43055. The gas will be transported by Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001; Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77001; and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001. Notice of that application was published in the **Federal Register** (47 FR 25048, June 9, 1982) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On June 24, 1981, Public Service received a recertification (ERA Docket 81-CERT-008, effective June 25, 1981) of an eligible use of natural gas purchased from National for a period of one year expiring on June 24, 1982, for use in its electric generating stations in New Jersey.

The ERA has carefully reviewed Public Service's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Public Service's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual recertification is available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6144, RG-631, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday Friday, except Federal holidays.

Issued in Washington, D.C., on June 24, 1982.

F. Scott Bush,

Director, Oil and Gas Imports Division, Office of Fuel Programs, Economic Regulatory Administration.

[FR Doc. 82-17588 Filed 6-29-82; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-CERT-010]

Public Service Electric & Gas Co.; Recertification of Eligible Use of Natural Gas to Displace Fuel Oil

On May 17, 1982, Public Service Electric and Gas Company (Public Service), 80 Park Plaza, Newark, New Jersey 07101, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for recertification of an eligible use of up to 7.5 billion cubic feet of natural gas per year to displace approximately 1,158,000 barrells of No. 6 fuel oil (0.3 percent sulfur) and approximately 42,000 barrels of No. 2

fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year at eight of its electric generating stations located in New Jersey: Bergen in Ridgefield; Essex in Newark; Hudson in Jersey City; Kearny in Kearny, Linden in Linden; Sewaren in Sewaren; Edison in Edison; and Mercer in Trenton. The eligible seller of the natural gas is East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919. The gas will be transported by Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001; Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77001; and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001. Notice of that application was published in the **Federal Register** (47 FR 25047, June 9, 1982) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On June 24, 1981, Public Service received a recertification (ERA Docket 81–CERT–009, effective June 25, 1981) of an eligible use of natural gas purchased from East Tennessee for a period of one year expiring on June 24, 1982, for use in its electric generating stations in New Jersey.

The ERA has carefully reviewed Public Service's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Public Service's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual recertification is available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6144, RG–631, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on June 24, 1982.

F. Scott Bush,

Director, Oil and Gas Imports Division, Office of Fuel Programs, Economic Regulatory Administration.

[FR Doc. 82–17582 Filed 6–29–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of May 17 Through May 21, 1982

During the week of May 17 through May 21, 1981, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of a proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 23, 1982.

Nortru, Inc., 5/18/82; BEE–1682

Nortru, Inc., filed an Application for Exception from the provisions of 10 CFR 211.67(a)(5)(i)(H). The exception request, if granted, would permit the firm to receive entitlement benefits under the Petroleum Substitutes Entitlements Program retroactive to April 1, 1980. On May 18, 1982, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be denied.

[FR Doc. 82–17583 Filed 6–29–82; 8:45 am]

BILLING CODE 6450–01–M

Notice of Issuance of Proposed Decision and Order; Week of June 7 Through June 11, 1982

During the week of June 7 through June 11, 1982, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 23, 1982.

Dixon R–I Schools, Dixon, Missouri; BEE–1686

Dixon R–I Schools filed an Application for Exception from the provisions of 10 CFR Part 455. The exception request, if granted, would permit Dixon to take a credit designated for energy conservation measures at its elementary school building and use it to implement conservation measures in its other school buildings. On June 10, 1982, the Department of Energy issued a Proposed

Decision and Order which determined that the exception request be denied.

[FR Doc. 82-17584 Filed 6-29-82; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of June 4 Through June 11, 1982

During the week of June 4 through June 11, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 23, 1982.

List of Cases Received by the Office of Hearings and Appeals

[Week of June 4 through June 11, 1982]

Date	Name and location of applicant	Case No.	Type of submission
June 4, 1982	Economic Regulatory Administration/Marathon Oil Company, Washington, D.C.	HRD-0053, HRH-0024	Motion for Discovery and Motion for Evidentiary Hearing. If granted: Discovery would be granted to the Economic Regulatory Administration and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Marathon Oil Company in response to the Proposed Remedial Order issued to it (Case No. HRO-0024).
June 7, 1982	Gerald Holton, Boston, Mass	HFA-0060	Appeal of an Information Request Denial. If granted: The May 3, 1982, Information Request Denial issued by the Department of Energy would be rescinded and Gerald Holton would receive access to transcripts of interviews with German nuclear physicists made at the end of World War II.
Do	Petroleum Delivery Service, Inc., Atlanta, Ga.	HRD-0054, HRH-0054	Motion for Discovery and Motion for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Petroleum Delivery Service, Inc. in response to a Proposed Remedial Order issued to it (Case No. HRO-0040).
June 8, 1982	Atlantic Richfield Company, Los Angeles, Calif	HRD-0055, HRH-0055	Motion for Discovery and Motion for Evidentiary Hearing. If granted: An evidentiary hearing would be convened and discovery would be granted to Atlantic Richfield Company in connection with the Statement of Objections submitted in response to the November 27, 1981, Proposed Remedial Order issued to the firm (Case No. HRO-0027).
Do	Metropolitan Peteroleum Company, McLean, Va	HRD-0056	Motion for Discovery. If granted: Discovery would be granted to Metropolitan Petroleum Company in connection with the Statement of Objections submitted in response to the February 24, 1982, Proposed Remedial Order (Case No. HRO-0037) issued to the firm.
Do	System Fuels, Inc., New Orleans, La	HFX-0030	Supplemental Order. If granted: The Application for Refund filed by System Fuels, Inc., would be granted and the firm would receive a portion of the escrow fund provided by Pennzoil Company in Case No. RF7-29.
Do	University of Washington, Seattle, Wash	HFA-0061	Appeal of an Information Request Denial. If granted: The May 11, 1982, Information Request Denial issued by the Bonneville Power Administration would be rescinded, and the University of Washington would receive access to copies of legal opinions prepared by the Bonneville Power Administration's Office of General Counsel.
June 11, 1982	State of Maryland, Baltimore, Md	HEE-0031	Exception to the Energy Conservation Program. If granted: The State of Maryland would receive an exception from the provisions of 10 CFR 455, the Institutional Conservation Program, regarding the use of administrative grant funds under Cycle IV.
Do	State of New York, Albany, N.Y	HRD-0057	Motion for Discovery. If granted: Discovery would be granted to the State of New York in connection with the Statement of Objections submitted in response to the May 5, 1982, Proposed Remedial Order issued to Shell Oil Company (Case No. HRO-0021).

Refund Application Received

[Week of June 4 through June 11, 1982]

Date	Name of refund proceeding/refund applicant	Case No.
May 17, 1982	Pennzoil Company/Refrigerated Express	RF10-1.
Do	Pennzoil Company/B & L Motor Freight, Inc.	RF10-2.
May 24, 1982	Pennzoil Company/Saunders Cartage, Inc.	RF10-3.
Do	Pennzoil Company/Associated Truck Lines	RF10-4.
Do	Pennzoil Company/Lee Cartage Company	RF10-5.
May 26, 1982	Pennzoil Company/Venta, Inc.	RF10-6.
Do	Pennzoil Company/Elliott Oil Company	RF10-7.
Do	Pennzoil Company/Seaway Sand & Store, Inc.	RF10-8.
May 27, 1982	Pennzoil Company/Ney Oil Company	RF10-9.
May 28, 1982	Pennzoil Company/Bessemer & Lake Erie Railroad Company	RF10-10.
June 1, 1982	Pennzoil Company/Lillian A. Tomko	RF10-11.
Do	Pennzoil Company/Coastal Tank Lines, Inc.	RF10-12.
June 7, 1982	Pennzoil Company/Gillespie Oil Company	RF10-16.
Do	Pennzoil Company/Hubert Jones, Inc.	RF10-17.
Do	Pennzoil Company/Yellow Freight System, Inc.	RF10-18.
Do	Pennzoil Company/A. A. Rocco Trucking Company	RF10-19.
Do	Pennzoil Company/Pacific Intermountain Express	RF10-20.
Do	Pennzoil Company/W.L. Mead, Inc.	RF 10-21.
June 8, 1982	Pennzoil Company/Green Shingle Service & Restaurant, Inc.	RF10-22.
Do	Pennzoil Company/The Plain Dealer	RF10-23.
Do	Pennzoil Company/Slesnick Bros. Distributors	RF10-24.
Do	Tenneco Oil Company/Consumers Coal Company, Inc.	RF 7-82.
June 9, 1982	Pennzoil Company/Mt Eaton Transportation Company, Inc.	RF10-25.
Do	Pennzoil Company/Klasen Oil Company	RF10-26.
June 10, 1982	Pennzoil Company/System Fuels, Inc.	RF10-30.

REFUND APPLICATION RECEIVED—Continued

[Week of June 4 through June 11, 1982]

Date	Name of refund proceeding/refund applicant	Case No.
June 11, 1982	Pennzoil Company/United Parcel Service	RF10-27.
Do	Pennzoil Company/Herron Transfer	RF10-29.
Do	Pennzoil Company/Emery Oil Company, Inc.	RF10-28

NOTICES OF OBJECTION RECEIVED

[Week of June 4 through June 11, 1982]

Date	Name and location of applicant	Case No.
June 7, 1982	Nortru, Incorporated, Southfield, Michigan	BEE-1682.

[FR Doc. 82-17585 Filed 6-29-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of May 10 through May 14, 1982

During the week of May 10 through May 14, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

National Wildlife Federation, May 14, 1982; HFA-0049

The National Wildlife Federation filed an Appeal from a partial denial by the Bonneville Power Administration of a request for information which the firm had submitted under the Freedom of Information Act (FOIA). The National Wildlife Federation requested information regarding the environmental impacts of proposed Bonneville Power Administration policies. In considering the Appeal, the DOE found that the material was exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA. Important issues considered in the Decision and Order were (i) whether the determination letter adequately described the withheld material, (ii) whether the material consisted of predecisional and deliberative inter-agency or intra-agency memoranda, which are exempt from mandatory disclosure under Exemption 5, and (iii) whether the material contained any reasonably segregable factual portions.

Remedial Order

Energy Corporation of America, May 10, 1982; DRO-0238

Energy Corporation of America objected to a Proposed Remedial Order which the Southwest District Office of the Economic Regulatory Administration issued to the firm on May 25, 1979. In the Proposed Remedial Order, the ERA found that the firm charged unlawful prices for crude oil sold from two of its producing properties. First, the ERA found that Energy improperly counted a gas well as a producing well. The firm therefore miscalculated the average daily production of crude oil per well for purposes of determining the applicability of the stripper well lease exemption. Second, the ERA found that Energy improperly divided a single property into two separate properties by transferring an undivided working interest in one well. The firm treated the two remaining parcels as separate properties and determined that the stripper well lease exemption applied to one of them. The ERA found that they were in fact one property which did not qualify for stripper status. The DOE concluded that the Proposed Remedial Order should be issued as a final Order. The DOE found that Energy did not prove that the gas well produced gas condensate during the audit period, that Ruling 1974-28 was procedurally valid, and that the transfer of a working interest in one well does not create a new property under the DOE regulations.

Requests For Exception

A. O. Smith Corporation, May 12, 1982; HXE-0018

A. O. Smith Corporation requested an extension of exception relief granted by the Office of Hearings and Appeals in *A. O. Smith Corp.*, 7 DOE ¶ 81,213 (1981) which relived the firm of its testing obligations under 10 CFR Part 430 until January 15, 1982 or until the Consumer Product Efficiency Branch of the DOE and the National Bureau of Standards developed tests appropriate for testing the firm's finned copper tube boiler. The present OHA Decision grants the extension of exception relief through December 31, 1982 or until the testing procedures are revised, whichever is earlier. The OHA declined, however, to direct that the Test and Evaluation Branch of the Building Equipment Division of the DOE Office of Conservation commence a rulemaking proceeding within 30 days to modify test procedures.

Jones & Brown Enterprises, Inc., Exxon Company, U.S.A., Conoco, Inc., May 13, 1982; DEE-3274, DEA-0626, BEA-0601

Jones & Brown Enterprises, Inc. (J&B) filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought the assignment of new, lower-priced suppliers of motor gasoline to replace the higher-priced based period suppliers of the firm. In considering the request, the DOE found that J&B was threatened with serious financial injury as a result of its uncompetitively high acquisition cost for motor gasoline. Accordingly, on July 12, 1979, the DOE issued proposed and interim determinations that ordered the Economic Regulatory Administration (ERA) to select moderately-priced suppliers for J&B with respect to the months of July through September 1979. Pursuant to these determinations, the ERA issued assignment orders to Exxon Company, U.S.A (Exxon), Conoco. Inc. (Conoco), and three other firms.

In the final determination in this proceeding, the DOE considered Appeals of the ERA's Assignment Orders filed by Exxon and Conoco as well as Exxon's Statement of Objections to the July 12, 1979 proposed determination. In considering the two Appeals, the DOE found no basis for remanding the ERA assignment proceedings or taking any other specific action with respect to the orders issued to Exxon and Conoco. The DOE also considered Exxon's Statement of Objections and found no basis in that submission for altering the findings of the proposed exception decision. Accordingly, the Appeals were denied, and the preliminary findings on the J&B exception request were affirmed and issued as a final determination of the Department of Energy.

Special Refund Procedures

Office of Enforcement, Economic Regulatory Admnistration: In the Matters of Triton Oil and Gas Corporation, Perry Gas Processors, Inc., and Upham Gas and Oil Company, May 11, 1982; BEF-0038, BEF-0048, BEF-0051

The Office of Enforcement filed Petitions for the Implemenetation of Special Refund Procedures in connection with consent orders entered into with Triton Oil and Gas Corporation, Perry Gas Processors, Inc., and Upham Gas and Oil Company. The DOE issued a final Decision and Order setting forth procedures to be used in adjudicating claims to the settlement funds involved in those cases. The decision established a two-stage procedure. In the first stage, those firms that purchased natural gas liquids from the firms involved and who believed that they were entitled to a portion of the consent order funds could file Applications for

Refund. The final decision reaches no determination with regard to the disposition of any funds in the second stage of the proceeding, however, because the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of money that remains after the first stage of the proceeding. Instead, the final decision solicits further comments on the appropriate distribution of these funds.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Company Name and Case No.

Arizona Fuels Corp., Cities Service Co.—HEJ–0020

Dismissals

The following submissions were dismissed without prejudice:

Company Name and Case No.

A. Johnson & Co., Inc.—HEE–0020
Memphis Aero Corporation—HRR–0022
Mobile Oil Corporation/OSC—HRS–0006; HRS–0007; HRS–0008; HRS–0009; HRS–0011
Twin-Tech Oil Company—DEX–0212

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 23, 1932.

[FR Doc. 82–17586 Filed 6–29–82; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of May 31 through June 4, 1982

During the week of May 31 through June 4, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Marathon Oil Company, Shell Oil Company, 6/1/82; BEA–0619, BEA–0640, BEA–0657

Marathon Oil Company and Shell Oil Company filed Appeals of the November and December 1980 Entitlements Notices which were issued under the DOE Crude Oil Entitlements Program (10 CFR 212.67). In considering the Appeals, the DOE rejected the firms' claims that the entitlements notices were fatally flawed and that the issuance of such notices was arbitrary and capricious. Accordingly, the Appeals were denied.

Imperial Refineries Corporation, 6/2/82; BRO–0093

Imperial Refineries Corporation objected to a Proposed Remedial Order that the Central Enforcement District of the Economic Regulatory Administration issued to the firm on September 27, 1979. In the Proposed Remedial Order, the ERA found that during the period October 1, 1973, through June 30, 1974, the firm, a "reseller-retailer" of "covered products," had charged prices for gasoline, No. 1 heating oil, and propane in excess of the prices permitted by applicable regulations. After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should issue as a Remedial Order. The important issues discussed in the Decision and Order include separate inventory pricing, proper valuation of inventory, the definitions of "seller" and "firm," the equal application (deemed recovery) rule, recovery of non-product costs, proper pricing periods, the DOE's authority to assess interest, interest rates, and proper remedies for overcharges.

Requests For Exception

Colebrook School District, 6/4/82; BEE–1689

Colebrook School District filed an Application for Exception from the provisions of 10 CFR Part 455 in which the firm sought funds from the DOE to reimburse the School District for costs incurred at the Colebrook Academy. In considering the request, the DOE found that the School District failed to make every good faith effort to follow the grant procedures of Part 455. Accordingly, exception relief was denied.

Stoudnour Atlantic, Inc., 6/4/82; HEE–0014

Stoudnour Atlantic, Inc. (Stoudnour) filed an Application for Exception in which the firm sought to be relieved of the obligation to file Form EIA–9A, No. 2 Distillate Price Monitoring Report. In considering the request, the DOE found that the firm would not suffer an inordinate burden in fulfilling its filing requirement. Accordingly, exception relief was denied.

Motion For Discovery

True Oil Company, 6/3/82; HRD–0026

In a Decision and Order issued on June 12, 1981, the DOE had granted substantial portions of a Motion for Discovery filed by True Oil Company (True). *True Oil Company*, 8 DOE ¶ 82,580 (1981). The ERA subsequently released to True the documents that were responsive to the terms of the *True* Order, but withheld twelve documents on privilege grounds. In the present decision, the DOE reviewed each of the claims of executive privilege asserted by the ERA and determined that two of the documents should be submitted for an *in camera inspection. The DOE determined that the remaining documents at issue were properly withheld under the executive privilege.*

Supplemental Order

Twin Montana, Inc., 6/4/82; HCX–0004

The Federal Energy Regulatory Commission remanded in part a Remedial Order that the DOE issued to Twin Montana, Inc. on February 20, 1980. *Twin Montana, Inc.*, 5 DOE ¶83,008 (1980), *remanded*, 17 FERC ¶61,166 (1981). In the Order of remand, FERC directs that the DOE issue a supplemental Order in which it explains the proper application to Twin Montana of the new DOE policy with respect to the assessment of interest on outstanding overcharges in remedial order cases. Accordingly, an Order was issued pursuant to FERC's remand.

Dismissals

The following submissions were dismissed without prejudice:

Name and Case No.

S. H. Killingsworth, BRR–0141
Eubert H. Malone, Jr., HFA–0058

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th & Penn. Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 23, 1982.

[FR Doc. 82–17587 Filed 6–29–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–281; PH–FRL 2155–5]

Certain Companies; Pesticide and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF–281]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide (PP) and feed additive petitions (FAP) relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2683. FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180 by establishing tolerances for the combined residues of insecticide carbofuran (2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate, and the phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-diemthyl-3,7-benzofurandiol in or on the raw commodity sunflower seeds at 0.8 part per million (ppm), of which no more than 0.4 ppm is carbamates. Proposed analytical method for determining residues is gas chromatography. (Jay Ellenberger, PM 12, 703–557–2386).

FAP 2H5351. FMC Corp. Proposes amending 21 CFR 561.67 by establishing a regulation permitting residues of the insecticide carbofuran in or on sunflower seed hulls and meal at 1.2 ppm, of which no more than 0.5 ppm is carbamates. (Jay Ellenberger, PM 12, 703–557–2386).

PP 2F2684. Dow Chemical USA, P.O. Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.342 by establishing tolerances for the residues of insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the agricultural commodities sugar beets (roots) at 1 ppm and sugar beet (tops) at 8 ppm. Proposed analytical method for determining residues is gas chromatography. (Jay Ellenberger, PM 12, 703–557–2386).

PP 1E2542. Merck and Co., Inc., P.O. Box 2000, Rahway, NJ, 07065. Proposes amending 40 CFR 180.242 by establishing tolerances for the residues of fungicide thiabendazole (2-(4-thiazolyl) benzimidazole and its metabolite 5-hydroxythiabendazole in goat's milk at .4 ppm. Proposed analytical method for determining residues is spectrophotoflurometry analysis. (Henry Jacoby, PM 21, 703–557–1900).

PP 6F1748. EPA issued a notice published in the **Federal Register** of April 7, 1976, (41 FR 14924), which announced that E. I. du Pont De Nemours and Co., Wilmington, Delaware 19801, had submitted PP 6F1748 proposing to amend 40 CFR 180.294 by establishing tolerances for the combined residues of the fungicide benomyl [methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate] and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities barley grain and straw, oats grain and straw, rye grain and straw, and wheat grain at 0.2 ppm, and in or on wheat straw at 15 ppm.

Du Pont has amended the petition to propose tolerances for liver (cattle, goats, hogs, horses, and sheep) at 2.0 ppm. The proposed analytical method for determining residues is by cation exchange liquid chromatography. (Henry Jacoby, PM 21, 703–557–1900).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated June 16, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–17343 Filed 6–29–82; 8:45 am]

BILLING CODE 6560–50–M

[PF–279; PH–FRL 2155–6]

Certain Companies; Food and Feed Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received food and feed additive petitions proposing the establishment of regulations permitting the residues of certain pesticide chemicals in or certain food and feed commodities.

ADDRESS: Written comments to: Franklin D. R. Gee, Product Manager (PM–17), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF–279]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following food and feed additive petitions relating to the establishment of regulations permitting residues of certain pesticide chemicals in or on certain food and feed commodities in accordance with the Federal Food, Drug, and Cosmetic Act.

FAP 2H5346. Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. Proposes amending 21 CFR 561.97 by establishing a regulation permitting residues of insecticide cyano (3-phenoxyphenyl) methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the commodities sunflower hulls at 2.0 parts per million (ppm) and sugarcane bagasse at 20.0 ppm.

FAP 1H5283. Mclaughlin Gormley King Co., 8810 Tenth Ave. N., Minneapolis, MN 55427. Proposes amending 21 CFR 193 by establishing a regulation permitting residues of insecticide 3-phenoxybenzyl *d-cis* and *trans* 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate as an indirect food additive to be present in food from service establishments, food manufacturing and/or processing establishments, and food warehousing establishments as a consequence of the use, according to label directions, of Multicide Pressurized Spray, F–2269 to control flies and gnats in the establishments with a tolerance limitation of 0.1 ppm.

(Sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: June 16, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–17344 Filed 6–29–82; 8:45 am]

BILLING CODE 6560–50–M

[PF-284; PH-FRL 2155-7]

Certain Companies; Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food additive petitions relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Written, comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF-284]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide (PP) and food additive petitions (FAP) relating to the establishment and amendment of tolerances for residies of certain pesticide chemicals in or on certain raw commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2698. BFC Chemicals Inc., 4311 Lancaster Pike, P.O. Box 2867, Wilmington, DE 19805. Proposes amending 40 CFR 180.345 by establishing tolerances for the combined residues of herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the raw agricultural commodity grass, fresh at 10.0 parts per million (ppm). Proposed analytical method for determining residues is gas liquid chromatographic determination process using a flame photometric detector in the sulphur mode. (Richard Mountfort, PM 23, 703-557-1830).

FAP 2H5349. Sandoz, Inc., Crop Protection, 480 Camino Del Rio South, San Diego, CA 92108. Proposes amending 21 CFR 193 by establishing a regulation permitting residues of .01 ppm of [(e)-l-methylethyl 3-[[(ethylamino)methoxyphosphinothioyl]oxy]-2-butenoate] in or on food resulting from application of the insecticide in food handling establishments. (William Miller, PM 16, 703-557-2600).

PP 2F2695. Agricultural Division Ciba-Geigy Corp., P.O. Box 11422, Greenboro, NC 27409. Proposes amending 40 CFR 180 by establishing tolerances for the residues of fungicide metalaxyl [*N-2,6-(dimethylphenyl-N*-methoxyacetyl) alanine methyl ester] in or on the raw agricultural commodities forage grasses, forage legumes, grain crops, seed and pod vegetables, and peanuts at .1 ppm. Proposed analytical method for determining residues is gas chromatography. (Henry Jacoby, PM 21, 703-557-1900).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136)), (Sec. 409 (b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: June 16, 1982,

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-17345 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-283; PH-FRL-2156-1]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the agency. The comments are to be identified by the document control number "[PF-283]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions relating to establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2E2691. Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR 180.349 by the establishment of tolerances for the combined residues of the nematocide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities cocoa beans at 0.01 part per million (ppm) and garlic at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography with flame photometry using an electron capture detector. (PM-21, Henry Jacoby, 703-557-1900).

PP 2F2688. Mobay Chemical Corp. Proposes amending 40 CFR Part 180 by establishing a tolerance for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite *B*-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol in or on the raw agricultural commodity pineapple (fresh) at 3.0 ppm. The proposed analytical method for determining residues is gas chromatography and a nitrogen alkali-flame detector. (PM-21, Henry Jacoby, 703-557-1900).

PP 8E2047. Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804. In the **Federal Register** of March 16, 1978 (43 FR 10971), EPA announced that Chevron Co. submitted a pesticide petition (PP 8E2047) proposing to amend 40 CFR 180.267 by the establishment of a tolerance for residues of the fungicide captafol cis-*N*-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide in or on the raw agricultural commodity green coffee beans at 0.20 ppm.

Chevron Co. has amended the petition by increasing the proposed tolerance on green coffee beans from 0.20 ppm to 5.0 ppm. The proposed analytical method for determining residues is by electron capture gas chromatography. (PM-21, Henry Jacoby, 703-557-1900).

PP 2E2693. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. Proposes amending 40 CFR 180.381 by the establishment of

tolerances for residues of the herbicide oxyfluorefen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities banana (plantain) and coffee 0.05 ppm. The proposed analytical method for determining residues is gas chromatography using an electron capture detector. (PM–23, Richard Mountfort, 703–557–1830).

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136))

Dated: June 16, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–17347 Filed 6–29–82; 8:45 am]

BILLING CODE 6560–50–M

[PP 2G2619/T381; PH–FRL 2155–8]

Ethephon; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the plant growth regulator ethephon in or on the raw agricultural commodities wheat and barley grain and wheat and barley straw. These temporary tolerances were requested by Union Carbide Agricultural Products Co., Inc.

DATE: These temporary tolerances expire April 20, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709, has requested, in pesticide petition PP 2G2619, the establishment of temporary tolerances for residues of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodities wheat and barley grain at 2.0 parts per million (ppm), and wheat and barley straw at 10.0 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 264–EUP–62 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Agricultural Products Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 20, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96.534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 16, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–17346 Filed 6–29–82; 8:45 am]

BILLING CODE 6560–50–M

[PP 2G2593/T380; PH–FRL 2156–2]

Fenarimol; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the fungicide fenarimol in or on the raw agricultural commodities apples and grapes. These temporary tolerances were requested by Elanco Products Company.

DATE: These temporary tolerances expires March 18, 1983.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: Elanco Products Company, 740 South Alabama Street, Indianapolis, IN 46285, has requested, in pesticide petition PP 2G2593, the establishment of temporary tolerances for residues of the fungicide fenarimol [a-(2-chlorophenyl)-a-(4-chlorophenyl)-5-pyrimidine-methanol] in or on the raw agricultural commodities apples at 0.10 part per million (ppm), and grapes at 0.05 ppm as a result of preharvest applications.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 1471–EUP–75 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used on accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of

the EPA or the Food and Drug Administration.

These tolerances expires March 18, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346(j)))

Dated: June 16, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-17348 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30201A; PH-FRL 2156-6]

Nor-Am Products Inc.; Approval of Application to Conditionally Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has conditionally approved the application by Nor-Am Products Inc. to register the defoliant Dropp Cotton Defoliant containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency CM#2 Rm. 237, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of August 5, 1981 (46 FR 39893) that Nor-Am Agricultural Products, Inc. 350 West Shurman Blvd., Naperville, IL 60566, had submitted an application to register the defoliant Dropp Cotton Defoliant containing 50 percent of the active ingredient thidiazuron *N*-phenyl-*N'*-1,2,3-thiadiazol-5-ylurea, an ingredient not included in any previously registered product.

The application was approved on June 1, 1982 for general use in pesticide formulation. The product was assigned EPA registration No. 2139–122.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: June 17, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 82-17349 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

[OLCE-FRL 2158-7]

Shenango Incorporated; Steel Industry Compliance Extension Act of 1981

AGENCY: Environmental Protection Agency.

ACTION: Notice of withdrawal.

SUMMARY: EPA announces that Shenango Incorporated ("shenango") has withdrawn its application under the Steel Industry Compliance Extension Act of 1981.

DATES: Effective June 2, 1982.

FOR FURTHER INFORMATION CONTACT: Michael Alushin, Acting Deputy Associate Enforcement Counsel for Air, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D. C. 20460, (202) 382–2824.

SUPPLEMENTARY INFORMATION: On November 17, 1981, Shenango submitted an application to the Environmental Protection Agency under the Steel Industry Compliance Extension Act of 1981. On February 6, 1982, the Administrator of EPA gave notice at 47 FR 6484 (February 12, 1982) of her preliminary intention to exercise her statutory discretion by extending a certain compliance date to which Shenango is subject in its existing consent decree. (Civil Action No. 80–1172; *United States of America and County of Allegheny* v. *Shenango Incorporated,* W.D. Penn., entered October 16, 1980.) The extension was to be contingent upon the successful negotiation of amendments to the consent decree in accordance with the Administrator's findings.

By letter dated June 2, 1982, Shenango withdrew its application for extension from further consideration by EPA. EPA will not further process Shenango's application. As a result, pursuant to the preliminary findings of the Administrator, no extension of the compliance date in the original consent decree shall be granted.

The application and supplementary materials, excluding confidential information, is available for public inspection at the Centeral Docket Room, West Tower, U.S. EPA, 401 M Street S.W., Washington, D.C. 20460 (Docket No. EN–81–16–F).

Dated: June 21, 1982.

Robert M. Perry,

Associate Administrator for Legal and Emforcement Counsel.

[FR Doc. 82-17634 Filed 6-29-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee)

June 25, 1982.

Task Group A–1 of Working Group A: U.S. Requirements.

Chairman: W. Naleszkiewicz (301) 652–4660.

Meeting: Wednesday, August 11, 1982.

Time: 9:30 a.m.–1 p.m.

Location: Federal Communications Commission, 2025 M Street NW., Room 7327, Washington, D.C.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-17689 Filed 6-29-82; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It

June 24, 1982.

Task Groups C-1 and C-2 of Working Group C.

Date: Friday, July 30, 1982.

Time: 9:30 a.m.-4 p.m.

Location: Federal Communications Commission, 2025 M Street NW., Room 7327, Washington, D.C.

Contact: Perry G. Ackerman (213) 648-4134.

Agenda: (1) Approval of Agenda, (2) Introductions, (3) Approval of Minutes, (4) Status Report and Overview of Working Group A—W. Schnicke, (5) Status Report and Overview of Working Group B—R. Stowe, (6) Working Group C-1—M. Mitchell, Status and Document Review, (7) Working Group C-2—M. J. Manning Status and Document Review (8) Review of Other Documents (9) Other Business (10) Next Meeting Date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-17690 Filed 6-29-82; 8:45 am]

BILLING CODE 6712-01-M

Technical Subgroup of Radio Advisory Committee; Meeting

June 25, 1982.

As previously announced, the Technical Subgroup of the Advisory Committee on Radio Broadcasting will resume its continuing meeting on Wednesday, June 30, 1982 in Room 5119, 2025 M Street, N.W., Washington, D.C.

The hour of that meeting has been advanced to 9:30 am, in order to allow time, between 9:30 am and 10 am for the Subgroup's review of its report on FM receiver characteristics and their impact on FM allocations.

At 10 am, the Subgroup will commence its consideration of that portion of its agenda relating to preparations for bilateral discussions with Canada concerning AM broadcasting, as previously announced.

All meetings of the Subgroup are open for participation by all interested persons. For further information call the Committee chairman, Louis C. Stephens at FCC Headquarters, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-17691 Filed 6-29-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation No. P-219; Order of Revocation

Scandinavian World Cruises (Bahamas) Limited and Scandinavian Seaways (Bahamas) Ltd. Scandinavian World Cruises, 1080 Port Blvd., Port of Miami, Florida 33132, have never operated the passenger vessel SCANDINAVIAN STAR to or from United States ports.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Order, Commission Order No. 1 (Revised), Section 10.06 dated November 12, 1981;

It is ordered, that Certificate (Performance) No. P-219 issued to Scandinavian World Cruises (Bahamas) Limited and Scandinavian Seaways (Bahamas) Ltd. covering the SCANDINAVIAN STAR, be and is hereby revoked effective June 25, 1982.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served on the Certificants.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-17651 Filed 6-29-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writting and received by the appropriate Federal Reserve Bank not later than July 23, 1982.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Louisiana): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Baton Rouge, Louisiana and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Baton Rouge, Louisiana location. The new activities in which the Citicorp Person-to-Person Financial Center, Inc. office proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; and the sale of consumer oriented financial management courses. The proposed service area for the aforementioned proposed activities shall be comprised of the entire State of Louisiana. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes, the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) terms life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other

extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire State of Louisiana for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

2. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Florida): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center of Florida, Inc., located in Orlando, Florida, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Orlando, Florida location. The activities in which Citicorp Person-to-Person Financial Center of Florida, Inc. proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned activities shall be comprised of the entire state of Florida. In activities in which the *de novo* office of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit-related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; and the sale of consumer oriented financial management courses. The proposed service area for the *de novo* office shall be comprised of the entire State of Florida for all the aforementioned proposed activities. Credit-related life, accident and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicorp Homeowners, Inc.

3. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Ohio, Indiana and Kentucky): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Mortgage Corporation located in Springdale, Ohio and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Springdale, Ohio location. The new activities in which the office of Citicorp Person-to-Person Mortgage Corporation proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire States of Ohio, Indiana and Kentucky. The proposed expanded service area of the Citicorp Person-to-Person Mortgage Corporation office shall be the entire states of Ohio, Indiana and Kentucky for all of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; and the making of loans to individuals and businesses secured by second mortgage liens. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire States of Ohio, Indiana and Kentucky for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Mortgage Corporation and Citicorp Homeowners, Inc.

4. *Citicorp,* New York, New York (lease financing activities; Texas, Southwestern Oklahoma): To engage through a *de novo* office of Citicorp Industrial Credit, Inc. in leasing personal or real property or acting as agent, broker, or advisor in leasing such property and servicing such leases, subject to all of the qualifications specified in 12 CFR 225.4(a)(6) (a) and (b), where the leases serve as the functional equivalent of an extension of credit to the lessee of the property. Such activities would be conducted from an office in Dallas, Texas, serving the states identified in the caption above.

5. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Indiana): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Indianapolis, Indiana and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Indianapolis, Indiana location. The new activities in which the Citicorp Person-to-Person Financial Center, Inc. office proposes to engage *de novo* are: the making, acquiring, servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire State of Indiana. The proposed expanded service area of the Citicorp Person-to-Person Financial Center, Inc. office shall be the entire state of Indiana for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or

decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individual secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire State of Indiana for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

6. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Oklahoma): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Oklahoma City, Oklahoma and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Oklahoma City, Oklahoma location. The new activities in which the Citicorp Person-to-Person Financial Center, Inc. office proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire state of Oklahoma. The proposed expanded service area of the Citicorp Person-to-Person Financial Center, Inc. office shall be the entire State of Oklahoma for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire State of Oklahoma for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

7. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Oklahoma): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Tulsa, Oklahoma and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Tulsa, Oklahoma location. The new activities in which the Citicorp Person-to-Person Financial Center, Inc. office proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire State of Oklahoma. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire State of Oklahoma for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

Board of Governors of the Federal Reserve System, June 23, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-17593 Filed 6-29-82; 8:45 am]

BILLING CODE 6210-01-M

East Central Holding Co.; Formation of Bank Holding Co.

East Central Holding company, Cambridge, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 94.5 per cent or more of the voting shares of First State Bank of Isanti, Isanti, Minnesota. The factors that are considered in acting on the application are set forth in section (3)(c) of the Act (12 U.S.C. 1842(c)).

East Central Holding Company, Cambridge, Minnesota, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permision to acquire voting shares of Isnti Agency, Inc., Isanti, Minnesota.

Applicant states that the proposed subsidiary would engage in the activities conduct general insurance activities in a town of less than 5,000 population. These activities would be performed from offices of Applicant's

subsidiary in Isanti, and the geographic areas to be served are Isanti County and northern Chisago County, Minnesota. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minnesota.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than July 23, 1982.

Board of Governors of the Federal Reserve System, June 23, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-17594 Filed 6-29-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Conveyance of Public Land

June 22, 1982.

Notice is hereby given that pursuant to section 203 of the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), Waldemar Klimach and Marie Klimach, have purchased by noncompetitive sale public land in Mohave County, Arizona, described as:

Gila and Salt River Meridian, Arizona,

T. 20 N., R. 16 W.,
Sec. 12, Lot 1,
Containing 0.43 acres.

The purpose of this notice is to inform the public and interested State and local government officials of the issuance of the patent to the above-named persons.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-17721 Filed 6-29-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30498, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On Novermber 19, 1981, the plat representing the survey of omitted islands in T. 42 N., R. 1 W., Michigan Meridian, Michigan, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., September 28, 1982.

Michigan Meridian, Michigan

T. 42 N., R. 1 W.,
Tract Nos. 37, 38, 39, 40, 41, 42, 43, and 44.

2. The island tract number 37–44 were found to be separate and distinct in all respects to that of the adjacent surveyed lands. The tracts numbered 37, 38, 39, 41, 42, and 43 have a soil composition of stony loam over a formation of glacial-till. Tract 40 has a soil composition of organic material over a formation of glacial-till. Tract 44 has a soil composition of solid rock.

Elevations on the island Tract No. 37 range up to approximately 6 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, spruce, balsam fir, aspen, and birch. Borings showed trees to be up to 70 years old. Decomposed stumps and boulders 3 feet in diameter were found on the island.

Elevations on the island Tract No. 38 range up to approximately 5 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, spruce, tamarack, balsam fir, birch, and aspen. Borings showed trees to be up to 80 years old. Decomposed stumps and large boulders were found on the island.

Elevations on the island Tract No. 39 range up to approximately 5 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, spruce, tamarack, aspen, and birch. Boring showed several trees to be up to 80 years old. Decomposed stumps and large boulders were found on the island.

Elevations on the island Tract No. 40 range up to approximately 3 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, tamarack, aspen, and birch. A large boulders were found on the island.

Elevations on the island Tract No. 41 range up to approximately 4 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, spruce, tamarack, birch. Borings showed trees to be up to 95 years old. Large boulder were found on the island.

Elevations on the island Tract No. 42 range up to approximately 3 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, spruce, aspen and, birch. Borings showed trees to be up to 70 years old. Large boulders were found on the island.

Elevations on the island Tract No. 43 range up to approximately 3 feet above the ordinary high water mark of Lake Huron. Timber consists of cedar, spruce, aspen, and birch. Borings showed trees to be up to 90 years old. Large boulders were found on the island.

Elevations on the island Tract No. 44 range up to approximately 7 feet above the ordinary high water mark of Lake Huron.

3. Tracts 37–44 were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are therefore held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, selection, or any other type of appropriation under any public law, until a further order is issued.

5. All inquires relating to these islands should be sent to the Chief, Division of Lands and Minerals Operations, Bureau of Land Mangement, 350 South Pickett Street, Alexandria, Virginia 22304, September 28, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-17724 Filed 6-29-82; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Announcement of Areas of Critical Environmental Concern

Pursuant to the provisions of the Federal Land Policy and Management Act of October 21, 1976, the following listing of Areas of Critical Environmental Concern (ACEC) has been designated through the Bureau's land use planning process. These ACEC's are located in the Casper and Rock Springs Districts. Management of these areas, and their identified critical values, will be a priority item for funding. An annual update will be published in the **Federal Register** to add areas designated through subsequent land use plans.

Casper District

Red Wall—14,142 acres, located in T. 40 and 41 N., R. 83 and 84 W. A specific listing of sections involved may be

obtained from the Casper District Office. The Red Wall is a prominent escarpment of the Chugwater formation. Its size, color, and lack of manmade intrusions make it a high quality visual resource. Cultural resource sites and raptor habitat are other special features of this area.

Pteradactyl Tracks—1,120 acres, located in T. 29 and 30 N., R. 82 and 83 W. A specific listing of sections involved may be obtained from the Casper District Office. The Alcova Pteradactyl Track area is the largest of four known sites of this type in the world. Tracks of these prehistoric flying reptiles are preserved in stone at the site.

Jackson Canyon—4,500 acres, located in T. 32 N., R. 80 W. A specific listing of sections involved may be obtained from the Casper District Office. Jackson Canyon provides an essential night roosting area for approximately 60 bald eagles from December through March. Because the area is close to a principal population center in Wyoming, special measures must be taken to protect the eagles from human disturbance.

Salt Creek—74,880 acres, located in Converse, Natrona, and Johnson Counties along the Salt Creek Drainage. A specific listing of townships involved may be obtained from the Casper District Office. This area is an old oil field that still has production going on. The area contains hazards in the form of circulating wells, boggy areas, areas covered by oil and tar, contaminated water, and piles of oil field debris.

Whoop-up Canyon—240 acres, located in T. 43 and 44 N., R. 60 and 61 W., sixth principal meridian. This area contains a unique style of well preserved petroglyphs. These Indian writings include animal drawings, stick figures, and geometric designs. The Canyon appears to have been used by prehistoric people for several centuries. These prehistoric people were possibly ancestors of the historic tribes of the Northwestern Plains.

Rock Springs District

Rock Creek—5,264 acres, located in T. 27 N., R. 114 and 115 W. A specific listing of sections involved may be obtained from the Pinedale Resource Area Office. Rock Creek contains a population of Colorado River cutthroat trout which has been determined to be the best representative of a wholly pure strain of this species. This fish has been designated rare by the Wyoming Game and Fish Department and sensitive by the Wyoming BLM. This area also has one of the last remaining naturally wintering elk populations in the upper Green River Basin.

Raymond Mountain—13,530 acres, located in T. 26, 27, and 28 N., R. 119 W. A specific listing of the sections involved may be obtained from the Kemmerer Resource Area Office. This ACEC contains two drainages that are important to the continued existence of the Bear River Cutthroat trout. The Raymond Creek and Huff Creek drainages are a part of the larger Thomas Fork drainage which is crucial habitat for the continued existence of this fish subspecies. Crucial elk and deer winter range are included in this ACEC.

Recreation values in Raymond Canyon are exceptionally high due to the lush vegetation, variety of wildlife species, and outstanding recreational opportunities.

Oregon Buttes—3,520 acres, located in T. 26 N., R. 101 W. A specific listing of sections involved may be obtained from the Rock Springs District Office. The Oregon Buttes were a principal landmark for fur trappers, missionaries, Oregon settlers, Mormons, and California gold seekers traveling the Emigrant Trail. Journals of some early travelers speak of the psychological and spiritual lift inspired by the Oregon Buttes. The Buttes are also important raptor habitat and significant elk and deer winter range.

Greater Sand Dunes—38,480 acres, located in T. 23 and 24 N., R. 102, 103, 104, and 105 W. A specific listing of involved sections may be obtained from the Rock Springs District Office. The Greater Sand Dunes ACEC is a part of the larger Killpecker Dune field which is one of the largest active dune fields in North America. The ACEC contains important cultural evidence of occupation by Indian cultures dating back to 11,000 years. Plant and animal associations in the dunes have some unique characteristics due to the presence of dune ponds that qualify the area as a natural system suitable for scientific study. A unique desert elk herd also inhabits the area.

White Mountain Petroglyphs—20 acres, located in T. 22 N., R. 105 W., sections 11 and 12. The White Mountain Petroglyphs are Indian drawings of late prehistoric or early historic period. The petroglyphs are probably associated with the Fremont culture and the early ancestors of the present Shoshone tribe. Common drawings include elk, feather head dresses, and human stick figures. The petroglyphs and immediate area are intensively used by local schools for environmental education field trips.

Cedar Canyon—2,560 acres, located in T. 22 N., R. 103 W. Cedar Canyon contains an extensive rock art site that probably is related to the Plains Indian culture, specifically Shoshone. These petroglyphs probably date to the late prehistoric and White contact period. The panel of incised figures include stick figures and geometric designs which presumably have some symbolic meaning. Additionally, Cedar Canyon contains valuable raptor habitat and some key big game habitat.

Natural Corrals—1,116 acres, located in T. 21 N., R. 101 and 102 W. The area has cultural, geologic, and recreation values. Volcanic silicate monoliths jut above the Zerkel Mesa and contain many small sites similar to enclosures or corrals. These sites include a bison kill, a site having evidence of stone tools associated with mammoth remains, a site related to Indian/White contact, and unusual rock grottos attractive for exploring, climbing, and general outdoor recreation.

Pine Springs— 80 acres, located in T. 14 N., R. 109 W. This site is one of the most significant prehistoric campsites in southwest Wyoming. The site was continously occupied from about 8000 B.C. to 1200 A.D.

Red Creek Watershed—59,532 acres, located in T. 12 and 13 N., R. 103, 104, 105, and 106 W. The watershed was designated an ACEC because of the highly erodible soils and fragile watershed conditions. Red Creek is a major contributor of silt and salinity to the Green River. Special management is designed to address this problem. In addition, wildlife values associated with big game will be protected.

The above described areas aggregate approximately 218,984 acres.

Maxwell T. Lieurance,

State Director.

[FR Doc. 82-17713 Filed 6-29-82; 8:45 am]

BILLING CODE 4310-84-M

Motor Vehicles, Off-road, etc., Area Closures and Openings; California

AGENCY: Bureau of Land Management, Interior.

ACTION: California emergency closure of public land.

SUMMARY: Notice is hereby given of the emergency closure to off-road vehicles and overnight camping on the following public lands:

San Bernardino Base and Meridian

T. 7 N., R. 6 N.,
Sec. 6;
Secs. 7 and 8, those portions north of the main wash.
T. 8 N., R. 6 W.,
Secs. 31 and 32.
T. 8 N., R. 7 W.,
Secs. 18, 20, and 28.

The above aggregates 3,960 acres in San Bernardino County, California.

Mineral claiminants operating under an approved plan of operation and any other person using public lands under a valid BLM use authorization are exempt from these restrictions.

The reasons for implementing this closure are:

1. To protect health and safety of local residents and recreationists.

2. To protect the resources and private structures from wildfire.

The authority for this closure is 43 CFR Part 8364.

The closure will be in effect from 1:00 am Friday, July 2 to 12:00 midnight, Monday, July 5, 1982

FOR FURTHER INFORMATION CONTACT: Alden Sievers, Area Manager, Barstow Resource Area, 831 Barstow Road, Barstow, California 92311, or telephone (714) 256–3591.

Dated: June 25, 1982.

Bruce Ottenfeld,

Acting District Manager.

[FR Doc. 82–17900 Filed 6–29–82; 8:45 am]

BILLING CODE 4310–84–M

[W–80234]

Wyoming; Invitation for Coal Exploration License, Northwestern Resources Co.

June 4, 1982.

Correction

In FR Doc. 82–16387 appearing on page 26246 in the issue for Thursday June 17, 1982, make the following correction.

Or page 26243, second column, in the land description headed "Sixth Principal Meridian, Wyoming", line six, "98W.," should be corrected to read "99W.,"

BILLING CODE 1505–01–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Pennzoil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Pennzoil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3332, Block 337, 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 § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 22, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–17705 Filed 6–29–82; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 4, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 15, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

WASHINGTON

King County

Seattle, *Ballard Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* Spans Lake Washington Ship Canal

Seattle, *Fremont Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* Fremont Ave.

Seattle, *University Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* Eastlake Ave.

Mason County

Eldon vicinity, *North Hamma Hamma Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* Spans Hamma Hamma River

Eldon vicinity, *South Hamma Hamma Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* Spans Hamma Hamma River

Skagit County

Anacortes, *Canoe Pass Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* WA 20

Anacortes, *Deception Pass Bridge (Historic Bridges and Tunnels in Washington State Thematic Resources),* WA 20

[FR Doc. 82–17592 Filed 6–29–82; 8:45 am]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance

requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-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–79671. By decision of June 8, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to REBEL LEASING, INC., of Gladstone, MO, of Certificate Nos. MC–146671 (Sub-Nos. 5, 6, 7, 8, and 10), issued to PRODUCE SERVICE, INC., d/b/a PSI, of North Kansas City, MO, which authorize the transportation of (1) *charcoal, charcoal briquets, fireplace logs, wood chips, and lighter fluid* (except in bulk), (a) from Meta, MO, to point in Arizona, California, Colorado, Florida, Georgia, Kansas, Mississippi, Nebraska, New Mexico, Oklahoma, Ohio, South Dakota, Texas, Utah, and Washington, (b) from Dickinson, ND, to points in Minnesota, South Dakota, Iowa, Nebraska, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Montana, Idaho, Washington, Oregon, Wyoming, California, Nevada, Arizona, Colorado, Utah, and New Mexico, and (c) from Branson, MO to points in Arkansas, Louisiana, Mississippi, Indiana, Tennessee, Illinois, Ohio, Texas, Oklahoma, Kentucky, Nebraska, Iowa, West Virginia, Virginia, Pennsylvania, California, Colorado, Kansas, Utah, Alabama, and Nevada; (2) *foodstuffs* (except in bulk), from Booner Springs, KS, to points in Oklahoma, Texas, Missouri, Arkansas, Louisiana, New Mexico, and Arizona; and (3) *apple cider* (except in bulk), from Alton and Olney, IL, to points in Iowa, Missouri, Kansas, Nebraska, Oklahoma, Texas, Arkansas, and Colorado. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309.

Note.—Transferee is not a carrier.

MC–FC–79687 Correction. By decision of March 29, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Dakota Bake-N-Serv, Inc., of Jamestown, ND, of Permit No. MC–152915 issued May 26, 1981, MC–152915 (Sub-No. 1) issued May 26, 1981, and MC–152915 (Sub-No. 2) issued February 16, 1982,[1] to Sunnydale Distributing Corporation, of Jamestown, ND, authorizing: (1) *drugs, medicines, toilet preparations, chemicals, medical products and appliances, food, sweeteners, cleaning products, containers, store displays, adhesives* and (2) *materials, equipment, and supplies* used in the manufacture, processing, sale and distribution of the commodities in (1), between points in the U.S., under continuing contracts with (a) William H. Rorer, Inc., (b) Vicks Health Care Division and Vicks Toiletry Division of Richardson-Merrell, Inc., (c) Mallinckrodt, Inc., (d) W. F. Young, Inc., (e) The Upjohn Company, (f) ICI Americas, Inc., (g) Norwich-Eaton Pharmaceuticals, Division Morton-Norwich, (h) Noxell Corporation, (i) Johnson & Johnson Products, Inc., (j) Alberto-Culver Co., and (k) Warner-Lambert Company; *bakers yeast*, between points in the U.S., under continuing contract with Anheuser-Busch Companies, Inc., of St. Louis, MO; and *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contracts with (a) North Pacific Canners and Packers of Portland, OR, (b) Lamb-Weston, Inc., of Portland, OR, (c) The Gillette Company of Boston, MA, (d) The J. B. Williams Company, Inc., of Cranford, NJ; (e) Carter-Wallace, Inc., of Cranford, NJ, (f) Knouse Foods of Peach Glen, PA, (h) White Drug Enterprises, Inc., of Jamestown, ND, (i) Jovan, Inc., of Bensenville, IL (j) Helene Curtis Industries, Inc., of Chicago, IL, (k) PATCO Products of Kansas City, MO, and (l) Abbott Laboratories of North Chicago, IL. Representative: Daniel J. Sweeney, Attorney, 1750 Pennsylvania Avenue NW., Suite 1105, Washington, DC 20006, (202) 393–5710. TA lease is not sought. Transferee is not a carrier.

MC–FC–79822. By decision of June 15, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Fast Transportation Company, Inc., of Oklahoma City, OK of Certificate No. MC–89913 (Sub-Nos. 56 and 67X both in part) issued to Frisco Transportation Company of Denver, CO. authorizing the transportation of *general commodities*, with exceptions, over regular routes between certain named points in OK and TX. Representative: Mike Lennox, 531 North Portland, Oklahoma City, OK 73147. TA lease is sought. Transferee is not a carrier.

MC–FC–79857. By decision of June 15, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to GREENWAY TRANSPORTATION, INC., of Jamaica, NY, of Certificate No. MC–150443 issued to E & E TRANSPORTATION, INC., of Tenafly, NJ, authorizing passengers and their baggage, between New York, NY, on the one hand, and, on the other, points in the U.S. (with exceptions). Representative: Donald I. Shapss, 450 Seventh Ave., New York, NY 10123. TA lease is not sought. Transferee is not a carrier.

MC–FC–79860. By decision of June 15, 1982 issued under 49 U.S.C. 10924 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Festive Tours, Ltd. of East Providence, RI, of License No. MC–157102 issued to America Travel, Inc., of East Providence, RI authorizing *brokerage service* at East Providence and East Greenwich, RI, of *passengers and their baggage*, beginning and ending at points in Rhode Island and Bristol County, MA, and extending to points in the U.S. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transferee is not a carrier.

MC–FC–79966. By decision of 6/14/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to PERRY EXPRESS, INC. of Permit No. MC–151384 (Sub-No. 4) issued to G & J TRUCKING, INC. authorizing the transportation of *general commodities*, usual exceptions, between points in the United States (except AK and HI), under continuing contract(s) with (a) Colt Industries, Inc., Colt Industries Operating Corporation, Central Moloney, Inc., Crucible, Inc., and Garlock, Inc., all of New York, NY; (b) Menasco, Inc. of Burbank, CA; and (c) Stemco, Inc., Longview, TX. Representative: G. William Fowler, 115 West Fifth Street, Odessa, TX 79761.

Note (S):—(1) Transferee is a non-carrier. (2) An application for temporary authority had been filed. (3) This application was originally docketed MC–F–14866.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–17614 Filed 6–29–82; 8:45 am]

BILLING CODE 7035–01–M

[1] Corrected to show that transferor is selling all of its authority consisting of: MC–152915 issued May 26, 1981, MC–152915 (Sub-No. 1) issued May 26, 1981, and MC–152915 (Sub-No. 2) issued February 16, 1982.

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-181. The following applications were filed in Region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 112223 (Sub-4–10 TA), filed June 18, 1982. Applicant: QUICKIE TRANSPORT CO., 1700 New Brighton Blvd., Minneapolis, MN 55413. Representative: Earl Hacking, 1700 New Brighton Blvd., Minneapolis, MN 55413. *Polymeric Isocyanates and Polyurethane Resins in Bulk* between Minneapolis, MN; Baytown, TX; Baton Rouge, LA; Pell City, AL and River Falls, WI limited to the account of Foam Enterprises, Inc.

MC 138569 (Sub-4–4), filed June 18, 1982 Carrier: BRAITHWAITE TRUCKING, INC., 3819 Sunset Drive, Rapid City, SD 57701. Representative: Thomas J. Simmons, P.O. Box 480, Sioux Falls, SD 57101. *Contract,* irregular: *Coal and coke* from the facilities of C F & I, at or near Minnequa, CO, to Gering, Mitchell, Scotts Bluff, NE, Billings, MT, and Lovell, WY, under contract with The Great Western Sugar Company, for 270 days. An underlying ETA seeks 120 days. Supporting shipper: The Great Western Sugar Company, Box 5308, 1530 16th Street, Denver, CO 80217.

MC 155118 (Sub-4–10TA), filed June 17, 1982. Applicant: T.D.S. TRANSPORTATION, INC, 1700 South Wolf Road, Des Plaines, IL 60018. Representative: Julie L. Roper, 1700 South Wolf Road, Des Plaines, IL 60018. *Contract; irregular, General commodities (except classes A & B explosives, household goods and commodities in bulk), including* paper, greeting cards and gift boxes between Memphis, TN, on the one hand, to all points in the U.S. (except AK and HI), on the other hand. Supporting shipper: Cleo Wrap, Division of Gibson Greeting Cards, Inc., 4025 Viscount, Memphis, TN 38118.

MC 155118 (Sub-4–11TA), filed June 17, 1982. Applicant: T.D.S. TRANSPORTATION, INC, 1700 South Wolf Road, Des Plaines, IL 60018. Representative: Julie L. Roper, 1700 South Wolf Road, Des Plaines, IL 60018. *Contract; irregular, Yarn,* between Dalton, GA, on the one hand, to all points in the U.S. (except AK AND HI), on the other hand. Supporting shipper: Needlecraft Corporation of America, 1627 Abutment Road, Dalton, GA 30720.

MC 155242 (Sub-4–3TA), filed June 14, 1982. Applicant: ADVANCE POOL DISTRIBUTION, INC., 3700 Central Ave., Detroit, MI 48120. Representative: Alex J. Miller, 555 S. Woodward Ave., Suite 512, Birmingham, MI 48011. *Such commodities as are dealt in or used by retail stores,* between Grand Rapids, MI and its commercial zone on the one hand and on the other points in the Lower Peninsula of MI for K-Mart Corporation. Supporting Shipper: K-Mart Apparel Corp., 7373 West Side Avenue, North Bergen, NJ, 07047.

MC 158429 (Sub-4–2TA), filed June 18, 1982. Applicant: ARTHUR, PETER, PHILIP and HANSEL, MULDER d.b.a. ART MULDER AND SONS TRUCKING, A4406 M–40 South, Holland, MI 49423. Representative: Paul M. Ross, Attorney, 3104 S. Cedar St., Lansing, MI 48910. *Contract* Irregular: *Food and related products* between points east of the Mississippi River, including TX, on one hand, and on the other, between points in MI, IN, IL, OH, NC, SC, TX, FL, MO, WI, MS, and GA, under continuing contracts with Benco Pet Food, Inc., and Chef Pierre, Inc. Supporting shippers: Benco Pet Food, Inc., P.O. Box 270, Zanesville, OH and Chef Pierre, Inc., 2314 Sybrandt, Traverse City, MI.

MC 159040 (Sub-4–1TA), filed June 3, 1982. Applicant: K.I.S.S. EXPRESS CO., 4820 West Belmont Avenue, Chicago, IL 60641. Representative E. Stephen Heisley, 1919 Pennsylvania Ave., NW., Washington, DC 20006. *Contract;* irregular *General commodities* (except househod goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between point in the U.S. under continuing contract(s) with Schnadig Corporation, of Chicago, IL, Cole Sewell Corporation, of St. Paul, MN, Genie Toys, of St. Louis, MO, Pettibone-Chicago, Inc., Of Chicago, IL, St. Charles Manufacturing Company, of St. Charles, IL, Adams Foam Rubber Company, Inc., Of Chicago, IL, and Lee Rowan Company, of St. Louis, MO, for 270 days. Supporting shippers: There are 7 supporting shippers.

MC 161107 (Sub-4–1TA), filed June 17, 1982. Applicant: MILBANK FREIGHTWAYS, INC., 1860 East 28th Street, P.O. Box 9485, Minneapolis, MN 55440. Representative: Richard L. Gill, 1805 American National Bank Building, St. Paul, MN 55101. *Common*-Regular—*General commodities* (except household goods, commodities in bulk, and classes A and B explosives) between Minneapolis-St. Paul, MN and its commercial zone and Milbank, SD, restricted to movements originating at or destined to the facilities of Farwell, Ozmun, Kirk & Co.: From Minneapolis/St. Paul, MN over U.S. Highway 12 to Milbank, SD, and return; From Minneapolis/St. Paul, MN over U.S. Highway 212 to juncture U.S. Highway 75; thence over U.S. Highway 75 to Ortonville, MN thence over U.S. HIghway 12 to Milbank, SD and return. Supporting shipper: Farwell, Ozmun, Kirk & Co., 411 Farwell Avenue, South St. Paul, MN. Applicant intends to interline at Minneapolis-St. Paul, MN.

MC 162526 (Sub 4–1TA) filed June 16, 1982. Applicant: LEE F. PETERSON d.b.a. J & L ENTERPRISES, 5466 Norway Grove, School Road, De Forest, WI 53532. Representative: Charles E. Dye, Swan Lake Village Saddle Ridge No. 832, Portage, WI 53901. *Contract-*Irregular *General Commodities* (except classes A & B explosives, Household Goods and Commodities In Bulk) Between points in the U.S. (except AK and HI) under continuing contract with Trachte Building Systems of Madison,

WI. Supportin shipper; Trachte Building Systems, Madison, WI.

MC 162528 (Sub-4–1TA), filed June 17, 1982. Applicant: URBANA MOVING & TRANSFER CO., Rural Route No. 1, Box 53, Rantoul, IL 61866. Representatives: Edward D. McNamara, Jr., Leslieann G. Maxey, 907 South Fourth St., Springfield, IL 62703. *Foodstuffs* Between points in the states of MN, WI, IA, IN, KY, AL, & IL. Supporting shipper: J.M. Jones Company, 2611 N. Lincoln Ave., P.O. Box 8, Champaign, IL 61820.

MC 162548 (Sub-4–1TA), filed June 18, 1982. Applicant: STANLEY WOLKEN, R.R. No. 1, P.O. Box 81, Rantoul, Il 61866. Representatives: Edward D. McNamara, Jr., Leslieann G. Maxey, 907 South Fourth St., Springfield, IL 62703, *Liquid fertilizer* between Terre Haute, IN, on the one hand, and points in Douglas, Champaign, & Edgar Counties, IL, on the other hand. Supporting shipper: Illini FS Incorporated, 1509 E. University, Urbana, IL 61801.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St. Suite 501, San Francisco, CA 94105.

MC 162241 (Sub-6–1TA), filed June 15, 1982. Applicant: VIRGIL CLARK, d.b.a. V. CLARK TRANSPORTATION, P.O.B. 2341, Roseburg, OR 97470. Representative: Virgil Clark, C/O Gaylord Cudmore, 563 West Terrace Dr., San Dimas, CA 91773. (1) *Excercise and health equipment;* from CA to points in forty-eight (48) states; (2) *Plastic toys;* from CA to points in OR, WA, UT, and CO; (3) *New furniture and furniture parts;* to and from points in forty-eight (48) states; (4) *Pulp, paper and related products;* between points in CA, AZ, NV, OR, WA, UT, ID, NM, TX, and CO; (5) *Bath tubs, sheet steel, earthenware, and plumbers goods;* from Dallas, TX to points in thirty-seven (37) states excluding: MA, RI, VT, NH, NY, ME, CT, PA, NJ, and DE, 270 days. Supporting shipper's: There are five (5) shippers. Their statements may be examined at the Regional office listed.

MC 162517 (Sub-6–1TA), filed June 16, 1982. Applicant: DECKER BROS., INC., P.O.B. 635, Worland, WY 82401. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Oilfield production equipment, materials and supplies* (except oil field drilling rigs and liquid commodities), in hot-shot service, between Worland, WY on the one hand, and, on the other, ports of entry on the International Boundary Line between the U.S. and Canada located in MT, for 270 days. An underlying ETA seeks 120 days authority. Shipper: Kobe, Inc., Box 873, 1043 W. River Rd., Worland, WY 82401.

MC 150756 (Sub-6–10TA), filed June 15, 1982. Applicant: GUTHMILLER TRUCKING, INC., P.O.B. 206, Union City, CA 94587. Representative: Eldon M. Johnson, 650 California St. Suite 2808, San Francisco, CA 94108. *Filters,* from Santa Rosa, CA, to points in AZ, WA, OR, CO, NM, and UT, for 270 days. Supporting shipper: Environmental Filter Corporation, 460 Tesconi Circle, Santa Rosa, CA 95401.

MC 98713 (Sub-6–1TA), filed June 16, 1982. Applicant: ORANGE BELT STAGES, 525 East Acequia Street, Visalia, CA 93277. Representative: T. S. Haworth (same as applicant). *Common carrier,* regular route *passengers and their baggage and express and newspapers in the same vehicle with passengers,* (1) between Fresno, CA and Lemoore, CA: from Fresno over CA State Hwy 99 to junction CA State Hwy 43, then over CA State Hwy 43 to Hanford, then over CA State Hwy 198 to Lemoore and return over the same route, serving all intermediate points; (2) between Fresno, CA and the junction of CA State Hwy 41 and CA Hwy 46: from Fresno over CA State Hwy 41 to junction CA Hwy 46 and return over the same route, serving all intermediate points; (3) between Fresno, CA and Visalia, CA: from Fresno over Business CA Hwy 99 to Selma then over Unnumbered Hwys via Parlier, Reedley and Dinuba to junction CA State Hwy 63 at Orosi, then over CA State Hwy 63 to Visalia and return over the same route, serving all intermediate points for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to tack this authority it presently holds. Supporting Shippers: There are eight (8) shippers. Their statements may be examined at the Regional Office listed.

MC 152393 (Sub-6–4TA), filed June 11, 1982. Applicant: SCOTT B. WARN, d.b.a. OVERNITE EXPRESS, POB 24, Danville, CA 94526. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518. *Contract Carrier,* Irregular Routes: (1) *Expanded or foamed plastics,* from points in IN, MA, MD, MI, NC, NJ, NY, OH, and PA to points in CA, for the account of Wilshire Foam Products, and (2) *Plastic products, fabricated metal products, solder, soldering flux, chemicals or allied products,* from points in OH to points in CA, for the account of Oatey, Inc., for 270 days. Supporting shippers: (1) Wilshire Foam Products, 1240 E. 230th Street, Carson, CA 90745, and (2) Oatey, Inc., 1860 Dobbin Drive, San Jose, CA 95133.

MC 14311 (Sub-6–6TA), filed June 16, 1982. Applicant: QUALITY STEAKS TRANSPORTATION CO., INC., 5100 Race St., Denver, CO 80216. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203. *(1) Foodstuffs (except in bulk) and (2) alcoholic and non-alcoholic beverages (except in bulk)* from points in CA to the facilities of Mile-Hi Fruits & Vegetable Co., Inc. at or near Denver, CO for 270 days. Supporting shipper: Mile-Hi Fruit & Vegetable Co., Inc., 4701 E. 50th Street, Denver, CO 80216.

MC 142311 (Sub-6–7TA), filed June 16, 1982. Applicant: QUALITY STEAKS TRANSPORTATION, CO., INC., 5100 Race St., Denver, CO 80216. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203. *(1) Malt Beverages, (except in bulk); (2) wine, (except in bulk); and (3) other beverages, (except in bulk),* from points in San Joaquin and Napa Counties, CA, Thurston County, WA, Chautauqua County, NY, La Crosse, WI, and St. Louis, MO, and points in its commercial zone to the facilities of C & C Distributing, Inc. at or near Denver, CO for 270 days, Supporting shipper: C & C Distributing, Inc., 6275 East 39th Street, Denver, CO 80207.

MC 162509 (Sub-6–1TA), filed June 16, 1982. Applicant: THOMAS E. BROWN, d.b.a. TEBCO TRUCKING, 9155 Petit, POB 2373, Sepulveda, CA 91343. Representative: Milton W. Flack, 8484 Wilshire Blvd., 840 Beverly Hills, CA 90211. *Contract Carrier,* Irregular routes: *spas and bathtubs, and related materials, equipment and supplies,* from the facilities of Gerico Fiberglass Products, Inc., located at Huntington Beach, CA, and Hydro-Spa, Inc., located at Piru, CA, to points in the U.S. (except AK and HI), under continuing contract(s) with Gerico Fiberglass Products, Inc., of Huntington Beach, CA, and Hydro-Spa, Inc., of Piru, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Gerico Fiberglass Products, Inc., 5482 Argosy Dr., Huntington Beach, CA 92649; Hydro-Spa, Inc., 3741 E. Telegraph Road, Piru, CA 93040.

MC 129480 (Sub-6–6TA), filed June 15, 1982. Applicant: TRI-LINE EXPRESSWAYS, LTD., 9559 40th Street SE, Calgary, Alberta, CD T2H 2J1. Representative: David J. Lister, 6035 E. 51 Avenue, Commerce City, CO 80020. *General commodities,* except Classes A and B explosives, between points in AZ, CA, OR and WA, on the one hand, and, on the other points in AZ, CA, ID, MT, NV, OR, UT and WA, for 270 days. An underlying ETA seeks 120 days

authority. Supporting shipper(s): There are 22 supporting shippers. Their statements may be examined at the Regional Office listed above.

MC 162401 (Sub-6–1 TA), filed June 17, 1982. Applicant: BOISE TRUCK & EQUIPMENT, INC., 7920 Overland Rd., Boise, ID 83709. Representative: Craig Farmer (same as applicant). *Wrecked or disabled vehicles* between points in the U.S. (except AK and HI) for 270 days. Supporting shipper(s): Willis Shaw Frozen Express, P.O., 5693, Boise, ID 83705; Ida-Cal Freightlines, Inc., P.O. Drawer M, Nampa, ID 83651.

MC 162606 (Sub-6–1 TA), filed June 21, 1982. Applicant: DAN DAVIS & SONS TRUCKING, 31125 WCR 91, Briggsdale, CO 80611. Representative: Dan Davis (same as applicant). *Contract carrier;* Irregular Routes: *Metal products, machinery and commodities which because of size and weight require the use of special equipment* from Arapahoe and Denver Counties CO and from Carbon County WY to points in UT, CO, ND, NM, MT & WY for 270 days. Supporting Shipper(s): Energy Development Co., P.O. B 600, Hanna, WY 82327; Saf-Loc Systems, Inc., 2925 S. Tedon, Englewood, CO 80110.

MC 162211 (Sub-6–1 TA), filed June 17, 1982. Applicant: K.P.H. TRANSPORTATION CO., INC., 510 South Mathilda, Suite 7, Sunnyvale, CA 94086. Representative: James D. Keller (same as above). *General commodities* (except Classes A & B Explosives, Hazardous Materials, and Household Goods) between points in U.S. restricted to shippers and suppliers of U.S. Comex Corporation for 270 days. Underlying ETA seeks 120 day authority. Supporting shipper: U.S. Comex Corporation, P.O.B. 130, Geismar, LA 70734.

MC 162616 (Sub-6–1 TA), filed June 21, 1982. Applicant: LORNE E. HENNER, d.b.a. LEAL TRUCK LINES, P.O.B. 1132, Citrus Heights, CA 95610. Representative: Lorne E. Henner (same as applicant). *Contract Carrier:* Irregular Routes; *General Commodities* to and from rail ramps with CA and OR loading points for further transportation by rail under continuing contract with Pacific Rail Services for 270 days. Supporting shipper: Pacific Rail Services, 1900 Powell St., Suite 255, Emeryville, CA 94608.

MC 153758 (Sub-6–6 TA), filed June 21, 1982. Applicant: LAMPMAN BROKERAGE, INC., d.b.a. MASTRO ENTERPRISES, 4233 W. Sierra Madre, Fresno, CA 93711. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd, Madison, WI 53719. *Contract Carrier;* Irregular Routes: *Food and related products and materials, equipment used in the manufacture, sale and distribution of these commodities* from points in IL and WI to South San Francisco (County of San Mateo), CA, restricted to transportation performed under continuity contract with Monterey Cheese Company for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Monterey Cheese Company, 468 Littlefield Ave., Box 2487, S. San Francisco, CA 94080.

MC 157131 (Sub-6–2 TA), filed June 21, 1982. Applicant: REDWOOD COAST TRUCKING, INC, 2210 Samoa Road Arcata, CA 95521. Representative: Frank N. Blagen (same as applicant). *Contract carrier,* Irregular Route: *Lumber and Wood Products; Pulp, Paper, and Related Products; Metal Products; Building Materials, and Commodities used in the Manufacture of the Above,* between points in the U.S., for 270 days. Restricted to shipments moving for the account of Louisiana-Pacific Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Louisiana-Pacific Corporation, P.O. Box 158, Samoa, CA 95564.

MC 147978 (Sub-6–7 TA), filed June 18, 1982. Applicant: SYSTEM REFER SERVICE, INC., 4614 Lincoln Ave., Cypress, CA 90630. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract Carrier,* Irregular Routes: *Chemicals and plastics and related articles,* from points in Ohio to Santa Fe Springs, CA, including its commercial zone, for the account of Norton Company—Chemical Process Products Division and Specialty Plastics Division, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Notron Company—Chemical Process Products Division and Specialty Plastics Division, P.O.B. 350, Akron, OH 44309.

MC 144956 (Sub-6–4 TA), filed June 18, 1982. Applicant: TRANS-MUTUAL TRUCK LINES LTD., 4427A 72nd Ave., Calgary, Alberta, Canada T2C 2C1. Representative: Grant J. Merritt, 4444 IDS Center, 80 S. Eighth St., Minneapolis, MN 55402. *Lumber and wood products* between OR and WA on the one hand, and, on the other, ports of entry on the international boundary line between the U.S. and CD in WA, ID and MT for 270 days. Supporting shippers: Doubletree Forest Products, Ltd., 4649 E. Hastings St., Burnaby, British Columbia, CD V5C 2K6; R. S. Plant, Ltd., 475 W. Georgia St., Vancouver, British Columbia, CD V6B 3T2; Olympic Industries, Inc., Suite 802, Kapilano 100 Park Royal S., West Vancouver, British Columbia, CD V7V 3P5; Taiga Wood Products, Ltd., 4400 Dominion St., Burnaby, British Columbia, CD V5H 3X6.

MC 110325 (Sub-6–58 TA), filed June 18, 1982. Applicant: TRANSCON LINES, P.O.B. 92220, Los Angeles, CA 90009. Representative: Jerome Biniasz (same as applicant). *General Commodities* (except Classes A & B explosives, household goods, hazardous wastes and commodities in bulk) between points in the U.S. (except AK and HI) under continuing contract(s) with E.I. du Pont de Nemours & Company, Inc., and subsidiaries for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: E.I. du Pont de Nemours & Company Inc., 1007 Market St., Wilmington, DE 19898.

MC 162551 (Sub-6–1 TA), filed June 17, 1982. Applicant: WES–TRAN, INC., P.O.B. 1364, Boise, ID 83701. Representative: David E. Wishney, P.O.B. 837, Boise, ID 83701. *(1) Such commodities as are dealt in by office equipment and supply stores,* from points in CA and Portland, OR to Boise and Caldwell, ID; *(2) food and related products,* (a) from Ada County, ID, to points in CA, NV, OR and WA, and (b) from points in Weber County, VT to points in Ada County, ID; and *(3) chemicals and related products* (except in bulk), (a) from Portland, OR, Salt Lake City, UT and points in CA to Nampa, ID and (b) from points in CA to Salt Lake City, UT. Supporting shippers: There are 5 shippers their statements may be examined at the Regional office listed.

MC 112989 (Sub-6–22TA), filed: June 21, 1982. Applicant: WEST COAST TRUCK LINES, INC., 85647 Hwy. 99 So., Eugene, OR 97405. Representative: John T. Morgans (same as applicant). *Such commodities as are dealt in or used by dealers or manufacturers of agricultural equipment, industrial equipment and lawn care and leisure products,* between points AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, for 270 days. Supporting shippers: International Harvester Co., 401 N. Michigan Ave., Chicago, IL 60611; and J. I. Case Co., 700 State St., Racine, WI 53404.

MC 162617 (Sub-6–1TA), filed: June 21, 1982. Applicant: WIL–DOM INDUSTRIES, INC., 1200 N. Main St., Suite 530, Santa Ana, CA 92701. Representative: Roger Curtis Mckee, Millberg, Dickstein & McKee, 5030 Camino de la Siesta, #305, San Diego, CA 92108. *Passengers and their baggage* in the same vehicle beginning and ending in Ventura, Los Angeles, Orange, San Bernardino, Riverside and San Deigo counties of CA extending to Las Vegas, Reno, Lake Tahoe and Laughlin,

NV for 180 days. Supporting shippers: There are eleven (11) supporting shippers. Their statements may be examined at the Regional Office listed above.

MC 153628 (Sub-6–6TA), filed: June 21, 1982. Applicant: JIM LARSEN, d.b.a. WIND RIVER TRUCKING, 215 First Avenue., SW., Park City, MT 59063. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203. *Such commodities as are dealt in or used by manufacturers and distributors of metal and aluminum products* from Canton, OH and points in its commercial zone to the facilities of Mountain States Standards, Inc., at or near Berthoud, CO for 270 days. Supporting shipper: Mountain States Standards, Inc., P.O.B. 948, Berthoud, CO 80513.

MC 156882 (Sub-6–2TA), filed: June 17, 1982. Applicant: L. D. YOUNG, INC., P.O.B. 26855, Salt Lake City, UT 84104. Representative: Steven D. Crawley, Suite 880, 50 S Main St., Salt Lake City, UT 84144. *Contract Carrier;* Irregular Routes: *Processed salt in bags and in bulk* between points in UT, NV, CA, ID, OR, WA, MT, WY, CO, NM, and AZ for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Leslie Salt Co., 866 W. 2600 S., Salt Lake City, UT 84119.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–17617 Filed 6–29–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–107

Decided: June 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF–100 (Sub-3), filed June 10, 1982. Applicant: WESTERN RIVER FORWARDERS, INC., P.O. Box 1867, Pittsburgh, PA 15230. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281–9494. As a *freight forwarder,* in connection with the transportation of *general commodities* (except classes A and B explosives and household goods), between points in AR, IL, IA, KY, LA, MI, MN, MS, MO, OK, TN, TX, WV, WI, IN, AL, and those in NY on and west of U.S. Hwy 15.

MC 56640 (Sub-62), filed June 14, 1982. Applicant: DELTA LINES, INC., 333 Hegenberger Road, Oakland, CA 94604. Representative: Kirk Wm. Horton (same address as applicant), (415) 577–7000. Transporting *films, chemicals, paints, fibres and resins,* between points in the U.S., under continuing contract(s) with E. I. du Pont de Nemours & Company, Inc., of Wilmington, DE.

MC 65491 (Sub-21), filed June 11, 1982. Applicant: GEORGE W. BROWN, INC., P. O. Box 1208, Hightstown, NJ 08520. Representative: Irving Klein, Suite 7, 1205 Franklin Ave., Garden City, NY 11530, (516)–746–3050. Transporting *metal products,* between Chicago, IL, on the one hand, and, on the other, points in Lycoming County, PA.

MC 75471 (Sub-7), filed June 17, 1982. Applicant: ELSTON RICHARDS STORAGE COMPANY, 3739 Patterson SE, Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Meijer, Inc., of Grand Rapids, MI.

MC 112430 (Sub-2), filed June 14, 1982. Applicant: BIG BOY'S RIGGING SERVICE, INC., 4312 Pistorio Road, Baltimore, MD 21229. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101, (703) 893–4924. Transporting *machinery; metal products; building materials; transportation equipment; clay, concrete, glass or stone products;* and *those commodities which because of size or weight require the use of specialized handling or equipment,* between those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 128030 (Sub-133), filed June 11, 1982. Applicant: THE STOUT TRUCKING CO., PO Box 98, Urbana, IL 61801. Representative: James R. Madler, 120 W. Madison Street, Chicago, IL 60602, (312) 726–6525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 134781 (Sub-6), filed June 14, 1982. Applicant: FAST FREIGHT TRANSFER, INC., P.O. Box 2163, Hialeah, FL 33012. Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340 (404) 492–1696. Transporting (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with F. W. Woolworth Co., of New York, NY, and (2) *building materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Interstate Insulation, Inc., of Atlanta, GA.

MC 139130 (Sub-4), filed June 15, 1982. Applicant: G T S CARTAGE, INC., 11930 S. Western Avenue, Blue Island, IL 60406. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016 (312) 298–1094. Transporting (1) *electrical machinery, equipment, and supplies,* under continuing contract(s) with Samsung Electronics America, Inc., of Oakbrook, IL; (2) *chemicals and related products and petroleum or coal products,* under continuing contract(s) with Krex, Inc., of Highland Park, IL; (3) *clay, concrete, glass or stone products,* under continuing contract(s) with The Dri-Rite Co. of Blue Island, IL; (4) *florists' materials, supplies and equipment and hardgood flora commodities,* under continuing contract(s) with Vans Inc., of Alsip, IL; and (5) *food and related products,* under continuing contract(s) with Evans Food Products, of Chicago, IL, between points in the U.S. (except AK and HI).

MC 141091 (Sub-1), filed June 11, 1982. Applicant: VIRGINIA TANK LINES, INC., 814 Warrenton Rd., P.O. Box 5249, Fredericksburg, VA 32401. Representative: Calvin F. Major, 200 West Grace St., P.O. Box 5010, Richmond, VA 23220 (804)–649–7591. Transporting *petroleum products,* between points in MD, on the one hand, and, on the other, points in VA, under continuing contract(s) with Solv-X U.S.A., Inc., of McLean, VA.

MC 142011 (Sub-6), filed May 24, 1982. Applicant: LEISURE TIME TOURS, 4 Houvenkoph Road, Mahwah, NJ 07430. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123 (212) 239–4610. Over regular routes, transporting *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, (1) between points in Franklin Lakes, NJ, from junction Pulis Ave. and Campgaw Road over Pulis Ave. to junction Muncipial Drive, then over Municipal Drive to junction Bender Ct., then over Bender Ct. to junction Franklin Ave., and return over the same route, serving all intermediate points, (2) between junction Franklin Ave. and Wyckoff Ave., in Wyckoff, NJ, and junction NJ Hwy 4 and NJ Hwy 17 in Paramus, NJ, from junction Wyckoff Ave. and Franklin Ave. over Wyckoff Ave. to junction Goffle Rd., the over Goffle Rd. to junction NJ Hwy 208 in Hawthorne, NJ, then over NJ Hwy 208 to junction NJ Hwy 4 in Fair Lawn, NJ, then over NJ Hwy 4 to junction access roads, then over access roads to NJ Hwy 17 in Paramus, NJ, and return over the same route except using access roads provided for use in the reverse direction leading from NJ Hwy 17 to NJ Hwy 4 in Paramus and returning from NJ Hwy 4 to NJ Hwy 208 in Fair Lawn, NJ, serving all intermediate points and serving the junction of NJ Hwy 17 and NJ Hwy 4 for the purpose of joinder only, (3) between junction NJ Hwy 4 and NJ Hwy 17 in Paramus, NJ, and New York, NY, from junction NJ Hwy 4 and NJ Hwy 17 over NJ Hwy 4 to junction access roads, then over access roads to junction Garden State Parkway, then over Garden State Parkway to junction access roads, then over access roads to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction access roads, then over access roads to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction access roads, then over access roads to junction Interstate Hwy 495, then over Interstate Hwy 495 to the Lincoln Tunnel, then through the Lincoln Tunnel to New York, NY, and return over the same route, serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing authorized regular-route operations.

MC 143341 (Sub-1), filed June 14, 1982. Applicant: ABBEY TRANSPORTATION SYSTEM, INC., 4588 W. Shaw, Fresno, CA 93711. Representative: Jack L. Sawl (same address as applicant), (209) 486–2330. Transporting *passengers and their baggage,* in the same vehicle with passengers in charter and special operations, beginning and ending at points in Fresno, Kings, Madera, Mariposa, Merced, and Tulare Counties, CA, and extending to points in the U.S. (excluding AK and HI).

MC 144370 (Sub-12), filed June 11, 1982. Applicant: DON NASS TRUCKING, INC., 210 Front St., Clinton, WI 53525. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, (608)–238–3119. Transporting *food and related products,* between points in IL, IN, IA, KY, MI, MN, MO, OH, TN, and WI.

MC 145731 (Sub-4), filed June 14, 1982. Applicant: BREADNER TRANSPORTS LTD., ¿26 Highway Meaford, Ontario, Canada NOH 1YO. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202, (716) 853-0200. Transporting (1) *lumber and wood products,* between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in IL, IN, KY, MI, NC, NY, OH, PA, SC, TN, VA, and WV, (2) *metal products,* between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in IL, MI, NY, OH, CA, and FL, (3) *such commodities* as are dealt in or used by a distributor of fireplaces, between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in MO, IN, OH, and WI, (4) *food and related products,* between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in FL, NY, MI, OH, and PA, (5) *Machinery,* between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in IL, and (6) *Clay, concrete, glass or stone products,* between ports of entry on the international boundary line between the U.S. and Canada, and on the one hand, and, on the other, points in MI.

MC 149301 (Sub-4), filed June 17, 1982. Applicant: FRANKLIN J. DAVIS, d.b.a. DAVIS TRUCK LINE, 705 Park St., Box 304. Stanhope, IA 50246. Representative: Franklin J. Davis (same address as applicant), (515) 826–3299. Transporting *metal products,* between points in IL, IN, IA, MN, MO, NE, ND, SD, UT, WI, and WY.

MC 151090 (Sub-2), filed June 10, 1982. Applicant: R. L. GARRETT, INC., 1709 Kemper Avenue, Muscatine, IA 52761. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting *commodities in bulk,* between points in IL, IA, and MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151401 (Sub-3), filed June 11, 1982. Applicant: TRI-SERVICE, INC., P.O. Box 1419, West Chester, PA 19380. Representative: Daniel B. Johnson, 4304 East-West Hwy., Bethesda, MD 20814, (301) 654–2240. Transporting *textile mill products,* between points in Campbell County, TN, on the one hand, and, on the other, points in FL, GA, NC, SC, VA, WV, MD, DE, PA, NJ, NY, CT, RI, MA, VT, NH, and ME.

MC 153441 (Sub-2), filed June 11, 1982. Applicant: JOHNSON'S BUS SERVICE, INC., P.O. Box 245, Mt. Joy, PA 17552. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233–5731. Transporting *passengers and their baggage,* in the same vehicle with passengers, in roundtrip charter and special operations, between points in Bucks, Chester, Dauphin, Delaware, Lancaster, Lebanon, Montgomery, Philadelphia and York Counties, PA, New Castle County, DE, and Camden County, NJ, on the one hand, and, on the other, points in the U.S.

MC 154461 (Sub-1), filed June 14, 1982. Applicant: VILLAGE CHARTERS, INC. OF WICHITA, KANSAS, 2024 Amidon, Wichita, KS 67203. Representative: Michael D. Gragert, Suite 920, Century Plaza Bldg., 111 West Douglas, Wichita, KS 67202, (316) 265–9480. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in KS and Kay, Grant, Noble, Garfield, and Pawnee Counties, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154640 (Sub-2), filed June 15, 1982. Applicant: THE SMITHFIELD PACKING COMPANY, INCORPORATED, P.O. Box 447, Smithfield, VA 23430. Representative: Blair P. Wakefield, Suite 1001, First and Merchants National Bank Bldg., Norfolk, VA 23510, (804) 627–0070. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in MD, NC, and VA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC.

MC 155021 (Sub-2), filed June 10, 1982. Applicant: ECONEXPRESS INCORPORATED, 618 South West Street, Wheaton, IL 60187. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603, (312) 236–0548. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 155550 (Sub-1), filed June 17, 1982. Applicant: CENTRAL TRUCKING, INC., P.O. Box 168, Columbus, IN 47201. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240 (317) 846–6655. Transporting *chemicals and related products, and plastics,* between points in the U.S. (except AK and HI), under continuing contracts(s) with CIBA-GEIGY Corporation, of Glen Falls, NY.

MC 160161 (Sub-1), filed June 10, 1982. Applicant: COASTMASTER TRANSPORT, 4904 Lacey Blvd. S.E., Lacey, WA 98503. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421 (206) 383–3998. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Durametal Corporation, of Tualatin, OR, and Uni-Bond, Inc., of Ferndale, MI.

MC 160201, filed June 11, 1982. Applicant: MOUNTAIN EXPIRE SECURITY SERVICES INC., d.b.a. MOUNTAIN EMPIRE DELIVERY SERVICES, P.O. Box 516, 100 N. Ridge Road, Pound, VA 24279. Representative: Dan Mullins (same address as applicant) (703) 796–4606. Transporting *mining machinery, equipment and parts,* between points in Wise County, VA, on the one hand, and, on the other, points in WV, PA, TN, and KY, under continuing contract(s) with Lee-Norse Company, of Pittsburgh, PA.

MC 161541, filed June 15, 1982. Applicant: J.H.M. TRANSPORTATION COMPANY, 68 Ferry St., South Hadley, MA 01075. Representative: James H. Moynahan (same address as applicant) (413) 533–7617. Transporting *paper and paper products, rubber and plastic products,* between points in MA, on the one hand, and, on the other, points in CT, NY, PA, NJ, DE, MD, OH, IN, IL, MI, WI, VA, NC, SC, WV, TN, KY, GA, AL, MS, and DC.

MC 162431, filed June 10, 1982. Applicant: TRIPLE L. TRANSPORT, INC., 7149 S. Hall Dr., E. West Jordan, UT 84084. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111 (801)–531–1300. Transporting (1) *metal products;* and (2) *building materials,* between points in AZ, CA, CO, ID, MT, NV, NM, OK, OR, TX, WA and WY.

MC 162470, filed June 14, 1982. Applicant: WORLD WIDE MOVERS OF WASHINGTON, INC., 8240 South 19th St., Kent, WA 98031. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Burroughs Corporation, of Detroit, MI, and Wastington-Oregon Shippers Cooperative Association, Inc., of Seattle, WA.

MC 162491, filed June 15, 1982. Applicant: NOI TRANSFER, INC., P.O. Box 325, Jenkintown, PA 19046. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AL, CT, DE, FL, GA, IL, IN, MD, NJ, NY, NC, OH, PA, SC, VA, WV, and DC.

MC 162510, filed June 16, 1982. Applicant: G. E. SMITH, d.b.a. G. E. SMITH TRUCKING CO., P.O. Box 286, Madison, VA 22727. Representative: William F. King, Suite 304, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312, (703) 750–1112. Transporting *building materials, lumber and wood products, plastic products, and non-metallic minerals,* between points in Culpeper and Madison Counties, VA, on the one hand, and, on the other, points in CT, DE, FL, GA, ME, MA, MD, NH, NJ, NY, NC, OH, PA, RI, SC, VT, WV, and DC.

Volume No. OP2–133

Decided: June 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF 602, filed May 27, 1982. Applicant: RAIL ROLL, INC., FORWARDING, 4075 E. 15th Place, Gary, IN 46403. Representative: Eugene LeBoeuf (same address as applicant), 219–938–8050. *As a freight forwarder,* in connection with the transportation of *iron and steel and iron and steel products,* between points in the U.S. (except AK and HI).

MC 16513 (Sub-38), filed June 1, 1982. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Avenue, Pennsauken, NJ 08110. Representative: L. C. Major, Jr., P.O. Box 11278, Alexandria, VA 22312, (703) 750–1112. 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).

MC 16513 (Sub-39), filed June 14, 1982. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Ave., Pennsauken, NJ 08110. Representative: Russell R. Sage, Suite 304—Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312, 703–750–1112. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Kennecott Minerals Company, Division of Kennecott Corporation, of Salt Lake City, UT.

MC 17592 (Sub-1), filed June 10, 1982. Applicant: LEONARD TROGOLO, d.b.a. TROGOLO TRANSFER, P.O. Box 640, Jeannette, PA 15644. Representative: Kevin W. Walsh, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Westmoreland, Fayette and Allegheny Counties, PA, on the one hand, and, on the other, points in PA, OH, WV, VA, NY, NJ, MI, MD and CT.

MC 45262 (Sub-1), filed June 1, 1982. Applicant: M. H. HEATON, INC., 92 Main St., Salem, NJ 03079. Representative: Frank M. Cushman, 36 South Main St., Sharon, MA 02067, 617–784–6041. Transporting *motorcycles, parts and accessories,* between points in Albany County, NY, and NJ, on the one hand, and, on the other, points in ME, MA, NH and VT.

MC 69043 (Sub-5), filed May 28, 1982. Applicant: RICH'S SOUTH SHORE EXPRESS, INC., Webster St., Hanover, MA 02339. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, 413–781–8205. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between points in MA, and (2) between points in CT, ME, MA, NH, NJ, NY, VT, and RI. Condition: Prior or coincidental cancellation of Certificate of Registration MC–69043, issued November 20, 1975.

Note.—(Part (1) of this application seeks to convert applicant's Certificate of Registration to a Certificate of Public Convenience and Necessity.

MC 106702 (Sub-1), filed June 10, 1982. Applicant: RODGERS BROTHERS EXPRESS INCORPORATED, 102 Maryland Ave., Paterson, NJ 07503. Representative: Nathaniel Rodgers (same address as applicant), 201–278–8148. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, DE, MD, MA, NJ, NY, PA, RI, VA, WV, and DC.

MC 107012 (Sub-771), filed May 28, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), (219) 429–2110. Transporting *household goods,* between points in the U.S., under continuing contract(s) with American Airlines, Inc., of Dallas, TX.

MC 107403 (Sub-1351), filed June 7, 1982. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Allen H. Knouft (same address as applicant), 215–259–9800. Transporting *food and related products,* between points in Dauphin County, PA., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111432 (Sub-25), filed June 7, 1982. Applicant: FRANK J. SIBR & SONS, INC., 2122 York Road, Oak Brook, IL 60521. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703, (217) 753–3925. Transporting *commodities in bulk* between points in the U.S., under continuing contract(s) with Thomas Solvent Company, of Battle Creek, MI.

MC 135753 (Sub-6), filed June 4, 1982. Applicant: WILLIAMS TRANSPORT Co., INC., P.O. Box 11, Richmond, VA 22044. Representative: Dennis Dean Kirk, Suite 929, Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *those commodities which because of their size or weight require the use of special handling or equipment, machinery, metal products, and lumber products,* between those points in the U.S., in and east of WI, IL, KY, TN, and MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141652 (Sub-51), filed June 3, 1982. Applicant: ZIP TRUCKING, INC., P.O. Box 6126, Jackson, MS 39208. Representative: K. Edward Wolcott, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree St. NE, Atlanta, GA 30303, 404–522–2322. Transporting *such commodities* as are dealt in or used by wholesale and retail food business houses, between New Orleans, LA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142463 (Sub-8), filed June 3, 1982. Applicant: SPECIALIZED HAULING, INC., 1500 Omaha St., Sioux City, IA 51102. Representative: Jack H. Blanshan, 205 W. Toughy Ave., Suite 200–A, Park Ridge, IL 60068. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IA, IL, MN, NE, and SD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143183 (Sub-15), filed June 7, 1982. Applicant: D & L TRUCKING, INC., P.O. Box 1741, Wilmington, NC 28402. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415 (212) 263–2078. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Hercules, Inc., of Wilmington, DE.

MC 144693 (Sub-15), filed June 7, 1982. Applicant: GLENN'S TRUCK SERVICE, INC., 3812 N. 21st, St. Louis, MO 63107. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309 (515) 244–2329. Transporting *food and related products,* between Bloomington, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147913 (Sub-6), filed June 15, 1982. Applicant: T–LINE, INC., 350 1st St., SW, New Brighton, MN 55112. Representative: Robert L. Cope, 1730 M St. NW., Suite 501, Washington, D.C. 20036 (202) 296–2900. 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).

MC 148143 (Sub-17), filed June 11, 1982. Applicant: MID–AMERICA FARM LINES, INC., M.P.O. Box 71, Springfield, MO 65801. Representative: John M. Ringenberg (same address as applicant), (417) 862–7468. Transporting *furniture and fixtures,* between points in Culpeper County, VA, and Harrison County, IN, on the one hand, and on the other, points in the U.S. (except AK and HI).

MC 151203 (Sub-2), filed June 14, 1982. Applicant: AZTEC TRUCKING, INC., 6516 Colleyville Blvd., Colleyville, TX 76034. Representative: E. Larry Wells, P. O. Box 45538, Dallas, TX 75245 (214) 358–3341. Transporting *construction machinery* and *equipment,* between points in the U.S. (except AK and HI).

MC 152232 (Sub-3), filed June 10, 1982. Applicant: TYLER TRANSPORTATION, INC., 2020 Old State Rd., 31–E, Jeffersonville, IN 47130. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202 (202) 589–5400. Transporting (1) *food and related products,* between points in MN, IA, NE, MO, MS, IL, OK, TX, AL, FL, SC, KY, IN, and VA, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (2) *chemicals and related products* and *such commodities* as are dealt in or used by manufacturers and distributors of automotive equipment, materials, and supplies, between points in KY, WV, OH, IN, PA, NY, and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159852, filed June 14, 1982. Applicant: TODD HAULING, INC., P.O. Box 312, Chapel Hill, TN 37034. Representative: Roland M. Lowell, 5th Floor, 501 Union St., Nashville, TN 37219 (615) 255–0540. Transporting *such commodities* as are dealt in or used by retail grocery chains and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with The Kroger Co., of Cincinnati, OH.

MC 160722, filed June 14, 1982. Applicant: LARRY SWIHART, d.b.a. SWIHART TRUCKING, Route 2, Silver Lake, IN 46982. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 So. Second St., Elkhart, IN 46516 (219) 293–3597. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nexus Marketing Group, of Wabash, IN.

MC 161173 (Sub-2), filed June 14, 1982. Applicant: BESTWAY SYSTEMS, INC., P.O. Box 597, Lilburn, GA 30247. Representative: David P. Clark (same address as applicant) 404–921–2378. Transporting *rubber and plastic products, metal products, machinery, and building materials,* between points in the U.S. (except AK and HI).

MC 162282, filed June 1, 1982. Applicant: DONOVAN TRAVEL, INC., 5932 Glenway Ave., Cincinnati, OH 45238. Representative: Timothy O. Donovan, 6660 Woodcrest Dr., Cincinnati, OH 45238 (513) 451–4155. As a *broker,* at Cincinnati, OH, in arranging for the transportation, by motor vehicle, of *passengers and their baggage, in the same vehicle with passengers,* in chartered and special operations, beginning and ending at Cincinnati, OH, and extending to points in the U.S. (including AK but excluding HI).

MC 162342, filed June 4, 1982. Applicant: BROOKS TRUCKING, INC., 942 Escambia St., Jacksonville, FL 32208. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Patio Wire Products, Inc., dba Florida Metals, of Jacksonville, FL.

MC 162362, filed June 7, 1982. Applicant: MUNTZ TRUCKING, INC., A–433 St. Rt. 109, Rt. 3, Leipsic, OH 45856. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215, (614) 228–1541. Transporting *meat, meat products, meat by-products and articles and supplies used by meat-packing houses* between points in MI, on the one hand, and, on the other, points in OH, under continuing contract(s) with Glendale Foods, Inc., of Detroit, MI.

MC 162432 filed June 11, 1982. Applicant: C. S. & J. TRUCKING, INC., 84 Lisa terrace, Somerville, NJ 08520. Representative: Irving Klein, Suite 7, 1205 Franklin Ave., Garden City, NY 11530, (516) 746–3050. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk) between points in NJ, on the one hand, and, on the other, MA, CT, RI, NY, NJ, PA, DE, MD, and DC.

MC 16245 filed June 11, 1982. Applicant: THORNTON ASKEW, INC., RT. 3, Box 234–F, Ahoskie, NC 27910. Representative: Thornton Askew, Jr. (same address as applicant) 919–332–5991. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in NC and VA.

MC 162453, filed June 14, 1982. Applicant: HES TRANSPORT, INC., 5303 North Santa Fe, Oklahoma City, OK 73118. Representative: Daniel C. Sullivan, 180 North Michigan Ave., Suite 1700, Chicago, IL 60601 (312) 263–1600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Jamison Bedding, Inc., of Franklin, TN.

MC 162512, filed June 16, 1982. Applicant: TRANS-FLORIDA FREIGHTWAYS, INC., 1240 SE 10th Court, Hialeah, FL 33011. Representative: Ronald N. Cobert, 1730 M St. NW., Suite 501, Washington, DC 20036, 202–296–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in FL, AL, and GA.

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Decided: June 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

FF 332 Sub 1, filed June 14, 1982. Applicant: FRITZ TRANSPORTATION INTERNATIONAL, 735 Market St., San Francisco, CA 94103. Representative: Patrick H. Smyth, 105 West Madison St., Suite 1008, Chicago, IL 60602 (312) 263–2397. As a *freight forwarder,* in connection with the transportation of *general commodities* (except used household goods and used automobiles), between points in the U.S.

FF 603, filed June 2, 1982. Applicant: AJAX INTERNATIONAL, INC., 112 E. Woodbridge Lane, Kansas City, MO 64165. Representative: Alan F. Wohlstetter, 1700 K St., N.W., Washington, D.C. 20006 (202) 833–8884. As a *freight forwarder* in connection with the transportation of *used household goods, unaccompanied baggage and used automobiles* between points in the U.S. (except AK and HI).

MC 682 (Sub–34), filed June 15, 1982. Applicant: BURNHAM VAN SERVICE, INC., 5000 Burnham Blvd., Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Ave., NW, Suite 1113, Washington, DC 20036–5391 (202) 887–5868. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Gulf Forwarding, Inc., of Biloxi, MS.

MC 15643 (Sub-14), filed June 1, 1982. Applicant: FOUR WINDS VAN LINES, INC., 7035 Convoy Court, San Diego, CA 92138. Representative: Robert J. Gallagher, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Xerox Corp., of Rochester, NY.

MC 56853 (Sub-11), filed May 13, 1982. Applicant; B AND B LINES, INC., 1002 North Owasso Ave., Tulsa, OK 71406. Representative: Martin E. Wyatt, P.O. Box 771, Tulsa, OK 74101, (1–918) 744–0306. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between Joplin, MO, and Wichita, KS, over U.S. Hwy 71 to junction U.S. Hwy. 54, then over U.S. Hwy 54 to Wichita KS (2) between Joplin, MO, an junction Interstate Hwy 35, over U.S. Hwy 166, (3) between Miami, OK, and Junction U.S. Hwy 54, over U.S. Hwy 59, (4) between Pittsburg, KS, and U.S. Hwy 54, over U.S. 69, (5) between U.S. Hwy. 71 and U.S. Hwy. 169, over U.S. Hwy. 160, (6) between junction U.S. Hwy 169 and Kansas Hwy 96, over U.S. Hwy 169 to its junction with U.S. Hwy 54, (7) between junction U.S. Hwy 75 and junction with U.S. Hwy 54, over Kansas Hwy. 96, (8) between junction U.S. Hwy 69 and Kansas Hwy 96, over Kansas Hwy 39, (9) between junction Kansas Hwy 96 and U.S. Hwy 54, over U.S. Hwy 75, (10) between Vinita, OK, and Dallas, TX, over U.S. Hwy 69 to its junction with U.S. Hwy 75, thence over U.S. Hwy 75 to Dallas, TX (11) between Ardmore, OK, and Dallas, TX, via Interstate Hwy 35, (12) between junction Interstate Hwy. 40 and U.S. Hwy 69, over Indian Nations Turnpike, (13) between Duncan, OK, and Ft. Worth, TX, over U.S. Hwy 81, (14) between junction U.S. Hwy 64 and U.S. Hwy 177 and Interstate Hwy 35, over Cimarron Turnpike, (15) between junction U.S. Hwy 66 and U.S. Hwy 169,

over U.S. Hwy 60, (16) between junction U.S. Hwy 177 and Interstate Hwy 35, over Okla. Hwy 51, (17) between Tulsa, OK, and Joplin, MO, over Interstate Hwy 44, serving all intermediate points in (1) through (17) above, and serving points in TX and OK as offroute points.

Note.—Applicant may tack this authority with its existing authority.

MC 108223 (Sub-48), filed June 1, 1982. Applicant: CENTURY MOTOR FREIGHT, INC., 2160 Mustang Dr., P.O. Box 43050, St. Paul, MN 55164. Representative: Robert S. Lee, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting, over regular routes, *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between Des Moines, IA and San Francisco, CA, over Interstate Hwy 80, serving all off-route points in NE, WY, UT, NV, and CA, (2) between Dickinson, ND and Denver, CO: from Dickinson over Interstate Hwy 94 to junction U.S. Hwy 85, then over U.S. Hwy 85 to Denver, and return over the same route, serving all off-route points in SD and CO, (3) between Oklahoma City, OK and Los Angeles, CA: from Oklahoma City over U.S. Hwy 66 (Interstate Hwy 40) to junction Interstate Hwy 15, then over Interstate Hwy 15 to junction Interstate Hwy 10, then over Interstate Hwy 10 to Los Angeles, and return over the same route, serving all off-routes points in OK, TX, NM, and AZ, (4) between St. Louis, MO and Boston, MA: from St. Louis over Interstate Hwy 70 to junction Interstate Hwy 79, then over Interstate Hwy 79 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Boston, and return over the same route, serving all off-route points in IN, MO, OH, PA, NY, and MA, (5) between Cleveland, OH and Atlanta, GA: from Cleveland over Interstate Hwy 71 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Atlanta, and return over the same route, serving all off-route points in KY, TN, and GA, (6) between St. Louis, MO and New Orleans, LA; from St. Louis over Interstate Hwy 55 to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same route, serving all off-route points in AR, MS, and LA, (7) between Cleveland, OH and Boston, MA; from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 93, then over Interstate Hwy 93 to Boston, and return over the same route, serving all off-route points in NJ, CT, and RI, (8) between Chicago, IL and Cleveland, OH: from Chicago over Interstate Hwy 80 to junction Interstate Hwy 94, then over Interstate Hwy 94 to junction Interstate Hwy 75, at Detroit, MI, then over Interstate Hwy 75 to junction Interstate Hwy 280, then over Interstate Hwy 280 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Cleveland, and return over the same route, serving all off-route points in MI, and (9) in connection with routes (1) through (8) above, serving all intermediate points.

Note.—Applicant may tack this authority with its existing authority.

MC 123272 (Sub-56), filed June 1, 1982. Applicant: FAST FREIGHT, INC., 9651 S. Ewing Ave., Chicago, IL 60617. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, 312–236–5944. Transporting *general commodities* (except classes A and B explosives, household goods and commodites in bulk), between points in the U.S. (except AK and HI).

MC 127922 (Sub-2), filed June 11, 1982. Applicant: NELLO PISTORESSI & SON, INC., P.O. Box 432, Toppenish, WA 98948. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Benton, WA 98055, (206) 228–3807. Transporting *feed and feed ingredients and food and related products,* between points in WA, OR, CA, ID, MT, UT, CO, AZ, NV, and WY.

MC 129732 (Sub-9), filed June 15, 1982. Applicant: EMPIRE TRANSFER CO., P.O.B. 126, Coos Bay, OR 97420. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, 503–226–6491. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Coos, Curry, and Douglas Counties, OR, on the one hand, and, on the other, points in CA, OR, and WA.

MC 140763 (Sub-12), filed June 15, 1982. Applicant: ONEIDA-COLUMBUS EXPRESS COMPANY, P.O. Box 356, Oneida, TN 37841. Representative: Marshall Kragen, 1919 Pennsylvania Ave., NW., Suite 300, Washington, DC 20006, 202–466–3778. Transporting *general commodities* (except classes A and B explosives, household goods and commodites in bulk), between points in the U.S., under a continuing contract(s) with Formall Plastics, Inc., of Knoxville, TN.

MC 143433 (Sub-20), filed June 14, 1982. Applicant: B. L. GILBERT, d.b.a. GILBERT TRUCKING COMPANY, 310 South 1st Ave., Stroud, OK 74079. Representative: Greg E. Summy, 208 Century Center Plaza, 100 West Main St., Oklahoma City, OK 73102, (405) 235–3661. Transporting *food and related products* (1) between those points in the U.S., in and east of MN, CO, NE, SD and ND, and (2) between points in OH, on the one hand, and, on the other, points in WA, OR, ID, CA, AZ, NV, UT, MT and WY.

MC 143702 (Sub-22), filed June 14, 1982. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th St., Kansas City, KS 66105. Representative: Donald J. Quinn, Commerce Bank Bldg., 8901 State Line, Suite 232, Kansas City, MO 64114, (816) 444–747. Transporting *foodstuffs,* between points in the U.S., under continuing contract(s) with Inland Center, a Division of Beatrice Foods Co., of Kansas City, KS.

MC 143732 (Sub-3), filed June 1, 1982. Applicant: PICK-A-TREAT, INC., 3820 West Wisconsin Ave., Milwaukee, WI 53208. Representative: Lawrence P. Kahn, 633 West Wisconsin Ave., Milwaukee, WI 53203, (414) 276–2260. Transporting *dated publications and printed matter,* between points in NE, KS, MO, OK, AR, AL, LA, MS, GA, FL, NC, SC, TN, and KY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146703 (Sub-34), filed May 28, 1982. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: John P. Zumwalt, 4240 Blue Ridge Tower, Suite 820, Kansas City, MO 64133, (816) 356–3212. 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).

MC 148073 (Sub-1), filed June 3, 1982. Applicant: AMOCO OIL COMPANY, 200 East Randolph Dr., Chicago, IL 60601. Representatives: Richard D. Fortin, 914 Washington Bldg., 15th St. and New York Ave. NW., Washington, D.C. 20005, 202–783–1215. 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).

MC 148522 (Sub-11), filed June 15, 1982. Applicant: PAUL E. ACE TRUCKING, INC., 930 Clay Ave., Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, 717–344–8030. Transporting *food and related products,* between points in GA, PA, and NJ, on the one hand, and, on the other, points in NY, NJ, MD, DE, OH, NC, SC, GA, VA, and DC.

MC 150783 (Sub-25), filed June 1, 1982. Applicant: SCHEDULED TRUCKWAYS, INC., P.O. BOX 757, Rogers, AR 72756. Representative: James H. Berry, P.O. Box 32, Wesley, AR 72773, (501) 456–

2453. Transporting *shoes, handbags, hosiery, polish and fixtures,* between Brockton and Canton, MA on the one hand, and, on the other, points in AZ and CA.

MC 158103 (Sub-1), filed June 2, 1982. Applicant: WILLIS TRANSPORTATION, INC., 102 12th St., S.E., Ft. Payne, AL 35967. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210, 703–525–4050. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of textile mill products, between points in the U.S. (except AK and HI), under continuing contract(s) with Amoco Fabrics Company, of Hazelhurst, GA.

MC 159033 (Sub-1), filed June 14, 1982. Applicant: ROBERT D. FANSLER, d.b.a. CUMBERLAND LIMOUSINE SERVICE, P.O. Box 1477, 1501 Ford Ave., Cumberland, MD 21502. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, 703–525–4050. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, limited to the transportation of not more than 14 passengers in any one vehicle (excluding the driver), between Washington, Garrett and Allegany Counties, MD, on the one hand, and, on the other, points in PA, WV, VA, MD, ME, VT, NH, MA, RI, CT, NY, NJ, DE, OH, KY, TN, NC, SC, GA, FL, and DC.

MC 160543, filed June 4, 1982. Applicant: PICKETT TRUCKING, R.R. Box 50, Tijeras, NM 87059. Representative: Larry Pickett (same address as applicant), (505) 281–1976. Transporting *tires, shocks, wheels, batteries, petroleum products, and related products, animals and pet feeds,* between points in the U.S., under continuing contract(s) with (a) New Mexico Tire & Battery Co., of Albuquerque, NM, (b) Yearwood & House, W. Tex Duke City Dist. Co., of Albuquerque, NM, and (c) Millers Feeds, of Albuquerque, NM.

MC 159782, filed June 10, 1982. Applicant: ANZAC CALIFORNIA TOURS & LIMOUSINE SERVICE, INC., 6861 La Tijera Blvd., Los Angeles, CA 90045. Representative: Richard A. Lintz, (same address as applicant), (213) 776–3977. Transporting *passengers and their baggage, in the same vehicle with passengers,* in special and charter operations, between points in CA on the one hand, and, on the other, points in AZ, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 160572, filed June 1, 1982. Applicant: APEX SERVICES, INC., 121 Bremen, St. Louis, MO 63147. Representative: Glen A. Coverdell (same address as applicant), 314–231–5151. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with ITOFCA, Inc., of Downers Grove, IL.

MC 160643, filed June 1, 1982. Applicant: RONALD LEE SHAFFER AND SHARON LOUISE SHAFFER, d.b.a. R. L. SHAFFER AND SON TRUCKING, 331 South 4th St., P.O. Box 532, LaSalle, CO 80645. Representative: Ronald Lee Shaffer (same as address as applicant), 303–284–6237. Transporting *clay, concrete, glass, or stone products,* between points in McPherson and Franklin Counties, KS on the one hand, and, on the other, points in Weld, Larimer, Boulder, Denver, Adams, Jefferson, Logan, Arraphoe, and Morgan Counties, CO and Laramie County, WY.

MC 160753 (Sub-1), filed June 1, 1982. Applicant: ROLAND ACOSTA, d.b.a. ACOSTA FRUIT & VEGETABLE CO., 1903 South Closner St., Edinburg, TX 78539. Representative: James R. Boyd, 1000 Perry Brooks Bldg., Austin, TX 78701, 512–476–8066. Transporting *pulp, paper, and related products,* between points in LA, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, FL, GA, ID, IL, IN, KS, KY, MO, MS, NE, NM, OK, TN and TX, under continuing contract(s) with Crown Zellerbach Corporation, of Bogalusa, LA.

MC 161023, filed June 11, 1982. Applicant: BOWDEN TRUCKING, INC., Rte 1, Box 275, Clayton, AL 36016. Representative: Charles Bowden (same as applicant), (205) 775–8650. Transporting *lumber and wood products,* and *such commodities* as are dealt in or used in the manufacture, production and sale of lumber and wood products (except commodities in bulk), between points in AL, on the one hand, and, on the other, points in GA, FL, MS, LA, AR, TX, TN, NC, SC, VA, OH, IN, IL, and KY.

MC 161583, filed June 2, 1982. Applicant: RESOURCE RECYCLING TECHNOLOGIES, INC., P.O. Box 356, Portland, TN 37148. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., N.W., Suite 500, Washington, D.C. 20006, 202–828–5015. Transporting *hazardous materials, hazardous wastes and industrial waste material,* between points in the U.S. under continuing contract(s) with Stauffer Chemical Company, of Westport, CT.

MC 162092, filed June 1, 1982. Applicant: RAY'S TRUCKING COMPANY, P.O. Box 2808, Bryan, TX 77801. Representative: Nelson M. Davidson, Jr., P.O. Box 1148, Austin, TX 78767, 512–472–8800. Transporting *mercer commodities,* between points in CO, LA, NM, OK, WY, KS, and MS, on the one hand, and, on the other, points in TX.

MC 162212, filed June 8, 1982. Applicant: URIAS R. MAYS, d.b.a. MAYS DELIVERY SERVICE, 1817 W. 77th St., Los Angeles, CA 90047. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., Ste. 1800, Los Angeles, CA 90017, (213) 627–8471. Transporting *prepared animal feed* between points in IL, MO, and OH, on the one hand, and, on the other, points in Los Angeles, Orange, Riverside, and San Bernadino Counties, CA.

MC 162243, filed June 15, 1982. Applicant: DALE H. WILLIAMS, 7309 So. 78th St., Omaha, NE 68128. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, 402–397–9900. Transporting *food and related products,* between Chicago, IL, Omaha, NE, points in Macon County, IL, Lancaster County, NE, and Linn and Lee Counties, IA, on the one hand, and, on the other, points in AZ, CA, ID, NV, OR, and UT.

MC 162322, filed June 1, 1982. Applicant: SHARON TRANSPORTATION, INC., 105 Vance, Taylor, TX 76574. Representative: Robert J. Birnbaum, 3636 Executive Center Dr., Suite 151, Austin, TX 78731, 512–346–4800. Transporting *mercer commodities,* between points in TX, MS, CO, LA, OK, NM, WY, and UT.

MC 162403, filed June 9, 1982. Applicant: VOYAGEUR TRANSPORT, INC., 11420 Voyageur Way, Richmond, BC Canada V6X 3E1. Representative: Henry C. Winters, 12600 S. E. 38th St., Ste. 200, Bellevue, WA 98006, (206) 644–2100. Transporting *lumber and wood products, and metal and metal products,* between ports of entry on the international boundary line between United States and Canada, at points in WA, on the one hand, and, on the other, points in OR and WA.

MC 162482, filed June 11, 1982. Applicant: RUEL BROTHER LTD., 795 Trans-Canada Highway, Levis, Quebec G6V 6R8. Representative: Raymond Ruel (same address as applicant), 418–833–3657. Transporting *lumber* between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. under continuing contract(s) with Empire Wholesale Lumber Company, of Akron, OH.

MC 162513, filed June 17, 1982. Applicant: NOVA TRANSPORTATION,

INC., 294 Kimberly Ave., New Haven, CT 06519. Representative: Palmer S. McGee, Jr., One Constitution Plaza, Hartford, CT 06103, 203–278–1330. Transporting *general commodities* (except classes A and B explosives household goods and commoditiies in bulk), between points in CT, MA, RI, NY and NJ and points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada.

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Decided: June 22, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 529 (Sub-8), filed June 14, 1982. Applicant: WINFIELD BUS SERVICE, INC., 1421 Olive St., Winfield, KS 67156. Representative: Eugene W. Hiatt, 207 Casson Blvd., 603 Topeka Blvd., Topeka, KS 66603, 913–232–7263. Transporting *passangers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in MO and OK, and extending to points in the U.S. (including AK but excluding HI.)

MC 12779 (Sub-1), filed June 14, 1982. Applicant: TRAVELOGUE, INC., 420 West Superior St., Duluth, MN 55802. Representative: David A. Bailly, 500 Park National Band Bldg., 5353 Wayzata Blvd., Minneapolis, MN 55416, (612) 544–6116. Transporting *passengers and their baggage* in same vehicle with passengers, in special and charter operations, beginning and ending at Duluth, MN, and extending to points in the U.S.

MC 72069 (Sub-145), filed June 14, 1982. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW, Washington, DC 20005, (202) 296–3555. Transporting *rubber and plastic products* between points in the U.S. (except AK and HI).

MC 78039 (Sub-13), filed June 11, 1982. Applicant: B & R MOTOR EXPRESS, INC., P.O. Box 4085, Utica, NY 13504. Representative: Murray J. S. Kirshtein, 118 Bleecker St., Utica, NY 13501, (315) 797–1970. Transporting *machinery* between points in Oneida County, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 79658 (Sub-21), filed June 14, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Road, P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), (812) 424–2222. Transporting *general commodities* (except classes A and B explosives) between points in the U.S. (except AK and HI) under continuing contract(s) with Auto-Trol Technology Corporation, of Denver, CO.

MC 79658 (Sub-22), filed June 14, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as applicant), (812) 424–2222. Transporting *household goods* between points in the U.S. (except AK and HI), under continuing contract(s) with Gulf & Western Manufacturing Co., of Southfield, MI.

MC 112989 (Sub-160), filed June 14, 1982. Applicant: WEST COAST TRUCK LINES, INC., 85647 Hwy. 99 So., Eugene, OR 97405. Representative: John T. Morgans (same address as applicant), (503) 747–1283. Transporting *clay and related products* between points in WY, on the one hand, and, on the other, points in CA, CO, IL, IA, KS, LA, MI, MO, MT, NE, NM, ND, OH, OK, SD, TX, and UT.

MC 128449 Sub 13, filed March 10, 1982 (Previously published in (republication) **Federal Register** on March 30, 1982). Applicant: JIMMIE TUCKER TRUCKING, INC., Box 428, Broken Bow, OK 74728. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3301. Transporting *metal products and machinery* between points in Lancaster County, PA, McLean County, IL, Butts County, GA, and McCurtain County, OK on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, of certificate issued May 28, 1982 in MC 128449 Sub 13.

Note:—This republication corrects County in PA and IL.

MC 138569 (Sub-3), filed March 15, 1982. Initially published in the **Federal Register** on March 30, 1982. Applicant: BRAITHWAITE TRUCKING, INC., 3819 Sunset Drive, Rapid City, SD 57701. Representative: David J. Stanton, 2040 West Main, Suite 202, Rapid City, SD 57701, (605) 348–7746. Transporting *coal, sand, gravel, haydite, and crushed rock,* between points in Pennington County, SD, on the one hand, and, on the other, points in Campbell County, WY. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation of the certificate in MC 138569 (Sub-3) issued on May 28, 1982.

Note.—This application is republished to show Campbell County, WY, in lieu of Campbell County, KY.

MC 142368 (Sub-38), filed June 8, 1982. Applicant: DANNY HERMAN TRUCKING, INC., P.O. Box 55, Mountain City, TN 37683. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745. Transporting *clay, concrete, glass or stone products* between points in Kane County, IL, Kalamazoo County, MI, and Stark County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146438 (Sub-16), filed May 10, 1982. Initially published in the **Federal Register** on May 27, 1982. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226, (313) 962–6492. Transporting *frozen food* between Montgomery, AL, Atlanta, GA, Chicago, IL, Dallas, TX, Denver, CO, Kansas City, KS, Los Angeles, CA, Portland, OR, Syracuse, NY, and points in Berrien County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This application is republished to include all ten origins.

MC 147178 (Sub-1), filed June 15, 1982. Applicant: INFLATION FIGHTERS TRANSPORT, INC., 101 State St., Springfield, MA 01103. Representative: David M. Marshall, 101 State St., Suite 304, (413) 732–1136. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Northeast Distributing and Warehousing, Inc., of Three Rivers, MA.

MC 148069 (Sub-2), filed June 14, 1982. Applicant: SUSQUEHANNA TRANSIT COMPANY, P.O. Box U, Avis, PA 17721. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107, (215) 735–3090. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Centre, Montour, Northumberland, Snyder, Tioga, and Union Counties, PA, and extending to points in the U.S.

MC 148938 (Sub-2), filed June 14, 1982. Applicant: RPT, INC., d.b.a. RELIABLE PRODUCT TRANSPORT, 121 Maresco Drive, NE, Dalton, GA 30720. Representative: Paul P. Watkins, P.O. Box 76358, Atlanta, GA 30358, (404) 255–0688. Transporting *general commodities*

(except classes A and B explosives, household goods, and commodities in bulk), between points in Whitfield County, GA, on the one hand, and, on the other, points in GA, IL, IN, KY, MI, NY, OH, PA, TN, and WV, under continuing contract(s) with Carpet Shippers' Association, Inc., of Dalton, GA.

MC 148978 (Sub-5), filed June 14, 1982. Applicant: OHIO SWIFTWAY, INC., 105 Jamison Ave., Cadiz, OH 43907. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219, 412–471–1800. Transporting (1) *building materials*, (2) *metal products*, and (3) *lumber and wood products* (except building materials), between those points in the U.S. in and east of WI, IL, KY, TN, AR, and LA.

MC 151178 (Sub-1), filed June 15, 1982. Applicant: KENNETH DIXON and NITA JO DIXON, d.b.a., DIXON FARM SUPPLY, 102 S.W. A St., Stigler, OK 74462. Representative: Kenneth Dixon (same address as applicant), 918–967–4618. Transporting (1) *coal*, (a) between points in Haskell, Le Flore and Muskogee Counties, OK, on the one hand, and, on the other, points in Le Flore County, OK and points in AR, and (b) between points in Haskell, Le Flore and Muskogee Counties, OK, on the one hand, and, on the other, points in AR, TX, and MO, and (2) *nonmetallic minerals except fuels*, between points in OK, on the one hand, and, on the other, points in AR, TX, MO, and NM.

MC 156029 (Sub-1), filed June 14, 1982. Applicant: TRANSPORT ENTERPRISES, INC., 400 Broadway, Freehold, NJ 07728. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, 201–992–2200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Carter-Wallace, Inc. of Cranbury, NJ.

MC 158579, filed February 2, 1982. Initially published in the **Federal Register** on February 19, 1982. Applicant: MD ASSOCIATES-NORTHEAST, One Ararat Boulevard, Harrisburg, PA 17110. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233–5731. Transporting (1) *malt beverages* and (2) *such commodities* as are dealt in or used by producers and distributors of beverages, between Milwaukee, WI, points in Peoria County, IL, and Merrimack County, NH, and points in NJ, NY, PA, MD, MI, OH, GA, NC, and VA, on the one hand, and, on the other, points in NH, MA, MD, ME, VT, NY, NJ, MI, CT, RI, PA, DE, OH, VA, WV, GA, NC, SC, and DC.

Note.—This application is republished to include part (2) of the requested authority.

MC 159778, filed May 28, 1982. Applicant: MOHEGAN CONTRACTOR CORP., 20 Leary Lane, Nesconset, NY 11767. Representative: William J. Augello, 120 Main St., Huntington, NY 11743, (516) 427–0100. Transporting *building materials*, between points in the U.S., under continuing contract(s) with Pacific Wood Products Company, of Pennsauken, NJ, Athenica Mason Supply, Inc., of Clifton, NJ, Abbey Hart Company, of Verona, NJ, Atlantic Brick Corp., of Saddle Brook, NJ, and Ply-Gen Industries, Inc., of New York, NY.

MC 159878, filed June 14, 1982. Applicant: J. B. TOWN CARS, INC., 10 Linden St., Norwalk, CT 06851. Representative: Warren D. Kealey, 71 East Ave., Norwalk, CT 06851, 203–838–7140. Transporting *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, limited to the transportation of not more than 6 passengers in the vehicle including the driver, between points in Fairfield County, CT on the one hand, and, on the other, John F. Kennedy International, Westchester County and LaGuardia Airports, all in NY.

MC 160268, filed June 11, 1982. Applicant: TOMBSTONE PIZZA CORPORATION, 940 South Whelen Ave., Medford, WI 54451. Representative: Linda Heller Kamm, 1775 Pennsylvania Ave., N.W., Washington, DC 20006, 202–862–5330. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA, IA, IL, IN, KS, KY, MN, MO, MT, ND, NE, NJ, NY, OH, SD, and WI.

MC 162109, filed June 11, 1982. Applicant: MAYPOLE PACKER SALES & RENTAL, INC., 1203 West Dunnam, Hobbs, NM 88240. Representative: Alan W. Ralston, P.O. Box 1672, Hobbs, NM 88240, 505–397–3554. Transporting *Mercer commodities*, between points in NM, TX, and OK.

MC 162278, filed June 1, 1982. Applicant: STERLING WESTERN, INC., P.O. Box 68019, Oak Grove, OR 97268. Representative: Grafton L. Sterling (same address as applicant), (503) 253–9972. Transporting *rough iron castings*, between points in CA, on the one hand, and, on the other, points in WA and OR.

MC 162389, filed June 7, 1982. Applicant: DANNY ROY CORUM, 746 Ireland Road, Winston, OR 97496. Representative: Danny Roy Corum (same address as applicant), (503) 679–4637. Transporting (1) *metal products* and *machinery*, between points in Douglas County, OR, on the one hand, and, on the other, points in WA, OR, CA, NV, and ID; and (2) *lumber, building materials* (except lumber) and *steel products* between points in Douglas County, OR, on the one hand, and, on the other, points in CA, NV, AZ, NM, CO, WY, MT, ND, SD, NE, KS, OK, and TX.

MC 162469, filed June 14, 1982. Applicant: JAMES L. MORGAN, WILMA R. MORGAN, JEANETTE D. TYHURST AND JOHN A. MORGAN, d.b.a. MORGAN TRUCKING, RR #2, Martinsville, IL 62442. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *general commodities* (except household goods, classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Stephen's Binns & Buildings, Inc., of Martinsville, IL.

MC 162499, filed June 15, 1982. Applicant: SCHNUCKS TRANSPORTATION COMPANY, INC., 12991 Enterprise Way, Bridgeton, MO 63044. Representative: William H. Borghesani, Jr., 1150 17th St., NW, Suite 1000, Washington, DC 20036, (202) 457–1122. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in St. Louis and Clay Counties, MO, and Clay and St. Clair Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-17616 Filed 6-29-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request

and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-108

Decided: June 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 142831 (Sub-23), filed June 11, 1982. Applicant: HAMRIC TRANSPORTATION, INC., PO Box 1124, Grand Prairie, TX 75051. Representative: James K. Hamric, 3318 E. Jefferson Street, Grand Prairie, TX 75051, (214) 262-5134. Transporting *Shipments weigning 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 162440, filed June 8, 1982. Applicant: DAVID R. GREEN, d.b.a. BOBBY'S, 1415 Richmond Rd., Lakeland, FL 33801. Representative: David R. Green (same address as applicant), (813)-665-4618. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP2-130

Decided: June 21, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 162193, filed May 25, 1982. Applicant: DICK'S TRANSPORT, 2012 So. 146th, Seattle, WA 98168. Representative: Kennety R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421, (206) 383-3998. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used households goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162223, filed May 27, 1982. Applicant: SCHIESHER TRUCKING, INC., 11722 Mill St., Huntley, IL 60142. Representative: Donald L. Schiesher (same address as applicant), (312) 669-5065. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162382, filed June 7, 1982. Applicant: INTER-CON TRANSPORTATION SERVICES, INC., 22982 La Cadena Drive—Suite 1, Laguna Hills, CA 92653. Representative: William T. Martin, 21676 Superior Lane, Lake Forest, CA 92630, 714-951-0730. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP2-134

Decided: June 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

Mc-138772 (Sub-13), filed June 11, 1982. Applicant: ALL WAYS FREIGHT LINE, INC., P.O Box 2426, Kansas City, KS 66110. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601, (913) 234-0565. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Morrowville, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 162163, filed May 24, 1982. Applicant: WILLIAM H. HALVORSEN, d.b.a. HALVORSEN TRUCKING, 2323 Knobcone, Anderson, CA 96007. Representative: William H. Halvorsen (same address as applicant) 916-365-8632. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162303, filed June 1, 1982. Applicant: LeROY A. WIMER, d.b.a. WIMER TRUCKING, Route 1, Box 185, Little Falls, MN 56345. Representative: William L. Libby, 5200 Willson Rd., Suite 307, Edina, MN 55424, 612-927-8855. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162393, filed June 8, 1982. Applicant: ENOS N. WEAVER, JR., R.D. 2, New Holland, PA 17557. Representative: Enos N. Weaver, Jr. (same as applicant) (717) 354-0689. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *Agricultrual limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162402, filed June 9, 1982. Applicant: HOWARD GRAHAM AND GARY GRAHAM d.b.a. GRAHAM

TRUCKING, Lakeview, Route, Valentine, NE 69201. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502 (710) 223–5300. Transporting (1) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI), and (2) Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, commodities in bulk, classes A and B explosives, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162483, filed June 11, 1982. Applicant: TECHNOLOGY EXPRESS CORP., P.O. Box 8258, Northfield, IL 60093. Representative: Neal A. Jackson, 1156 15th St., NW., Washington, D.C. 20005 202–223–6680. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds between points in the U.S. (except AK and HI).

MC 162492, filed June 15, 1982. Applicant: DON L. HORNE d.b.a. CAMEL TRUCKING CO., 6416 SE 80 Pl., Portland, OR 97206. Representative: Don L. Horne (same address as applicant), 503–775–5328. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP4–227

Decided: June 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 145107 (Sub 37, filed June 11, 1982. Applicant: WILMINGTON DELIVERY SERVICE, INC., 806 Seville Ave., Wilmington, DE 19809. Representative: Bayard Marin, 1112 King St., Wilmington, DE 19801, (302) 658–4000. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 162427, filed June 10, 1982. Applicant: PANALPINA AIRFREIGHT, INC., 1310 Parairie, Suite 614, Houston, TX 77002. Representative: Anthony R. Piazza (same address as applicant), (713) 225–5371. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162467, filed June 11, 1982. Applicant: LITTLE ROCK TRANSPORTATION SERVICES, INC., d.b.a. BEAR TRUCKING COMPANY, 4255 LBJ Freeway, Suite No. 148, Dallas, TX 75234. Representative: Charles E. Munson, 500 W. Sixteenth St., Austin, TX 78767, (214) 239–3095. As a *broker of general commodities* (except household goods) between points in the U.S. (except AK and HI).

Volume No. OP4–229

Decided June 23, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 151866 (Sub-4), filed November 18, 1980. Applicant: R. L. JONES & SONS DELIVERY SERVICE, 4900 East 12th St., Kansas City, MO 64127. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068, (816) 781–6000. Transporting *general commodities* (except classes A and B explosives, and household goods), between Excelsior Springs, Altamont, and Marysville, MO; Arriba, Burlington, Calhan, Flagler, Limon, Roman, Simla, and Stratton, CO; and Smith Center, Belleville, Mankato, Cuba, Norton, and Colby, KS; on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, D.C. 20423.

MC 162436, filed June 11, 1982. Applicant: LEROY M. JESKE, Rural Route 1, Sobieski, WI 54171. Representative: Nancy J. Johnson, 103 E. Washington St., Box 218, Crandon, WI 54520, (715) 478–3341. Transporting (1) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, and (2) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162496, filed June 11, 1982. Applicant: PERTH ENTERPRISES, INC., 4919 Bartlett St., Greensboro, NC 27407. Representative: Paul Carrano, 4008 Shiland Drive, Greensboro, NC 27406, (919) 674–3312. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162506, filed June 11, 1982. Applicant: LEONARD F. STACER, JR. and CAROLE S. STACER, d.b.a. STACER BROKERAGE, 1100 Old Bristol Pike, Morrisville, PA 19067. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101, (703) 893–4924. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–137

Decided: June 22, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 154629 (Sub-3), filed June 14, 1982. Applicant: GLOBAL DISTRIBUTORS, INC., P.O. Box 335—Riverside Dr., Fultonville, NY 12072. Representative: Vincent Gramuglia (same address as applicant), 518–853–3476. Transporting for or on behalf of the United States Government *general commodities* (except used household goods, hazardous secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 158729 (Sub-1), filed June 14, 1982. Applicant: SHIPPERS EXPRESS TRUCK LINES, INC., 2901 South Lamar, Dallas, TX 75215. Representative: Sam Hallman, 4555 First National Bank Bldg., Dallas, TX 75202, 214–741–6263. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162128, filed May 20, 1982. Applicant: SAM HOUSTON AND MARTHA S. GRONROOS d.b.a. M.A.T.T.S. TRANSPORT, 9210 S.W. 28th Ave., Portland, OR 97202. Representative: Sam Houston and Martha S. Gronroos (same address as applicant), (503) 232–2525. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162368, filed June 7, 1982. Applicant: HERMAN HEDIGER, JR., d.b.a. CHRISTIE MILK TRANSPORT, Route 3, Neillsville, WI 54456. Representative: Nancy J. Johnson, 103 East Washington St., Box 218, Crandon, WI 54520, (715) 478–3341. (1) Transporting *food and other edible products and byproducts intended for*

human consumption (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI), and (2) transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162468, filed June 14, 1982. Applicant: EUGENE O. ABLES, d.b.a., GENE ABLES TRUCKING CO., 1200 Silver Lake Rd., Topeka, KS 66608. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, 816–842–8600. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-17615 Filed 6-29-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 273]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision

Decided: June 24, 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 Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 35980 (Sub-6)X, filed March 11, 1981, previously published in **Federal Register** of March 27, 1981, certificate served May 7, 1981, republished as follows: Applicant: M–B TRANSPORT, INC., 1941 Land Rd., Jamison, PA 18929. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Broaden in lead: (1) "between points in Pennsylvania and New Jersey within 30 miles of Alpha, NJ, including Alpha" to "between points in Berks, Bucks, Carbon, Montgomery, Northampton, Philadelphia, Lehigh, Monroe, and Schuylkill Counties PA, and Hunterdon, Mercer, Morris, Somerset, Sussex, and Warren Counties, NJ," and (2) "from points in Pennsylvania within 45 miles of Alpha, NJ, other than those within 30 miles of Alpha, to Stanhope, NJ," between points in Philadelphia, Chester, Delaware, Lackawanna, Montgomery, Berks Lehigh, Schuylkill, Carbon, Monroe, and Luzerne Counties, PA, on the hand, and, on the other, points in Morris, Sussex, and Warren Counties, NJ."

MC 87103 (Sub-1)X, filed June 14, 1982. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Sub 95 (1) broaden from general commodities (with the usual exceptions) to "general commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)", and (b) delete the exception against service at Richmond, WI.

MC 112924 (Sub-9)X, filed June 7, 1982. Applicant: THREE G MOTOR LINES, INC., 2115 69th St., North Bergen, NJ 07047. Representative: H. Neil Garson, 3251 Old Lee Highway, Fairfax VA 22030. Lead: (1) Delete the exception of commodities of unusual value in its general commodities authority; (2) broaden general commodities (with the usual exceptions and livestock, alcoholic beverages and tobacco) to "general commodities (except household goods, commodities in bulk and classes A & B explosives)" in Sheet Nos. 1 and 3, paragraphs a, b, and c; (3) broaden steel to "metal products"; (4) delete restrictions: (a) Limiting service to shipments moving on through bills of lading of freight forwarders; (b) limiting service to that which is auxiliary to, or supplemental of, rail service of the Central Railroad Company of New Jersey, hereafter called the railroad; (c) limiting service to stations on a rail line of the railroad; (d) limiting service to that moving under a through bill of lading covering, in addition to movement by motor vehicle, an immediately prior or immediately subsequent movement by rail; (e) requiring all contractual arrangements between carrier and the railroad, to be reported to the ICC; (5) authorize service to all intermediate points. Applicant is not a rail-affiliated carrier.

MC 134972 (Sub-1)X, filed June 11, 1982. Applicant: MICHIGAN TOWING SERVICE, INC., 307 East Grand River, Howell, MI 48843. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684. Lead (1) broaden wrecked, disabled or repossessed motor vehicles and replacement vehicles to "transportation equipment," (2) remove the restriction (a) to truckaway service and (b) against the transportation of trailers designed to be drawn by passenger automobiles; and (3) expand port of entry at Sault Ste. Marie, MI to allow service to all ports of entry in MI.

MC 146536 (Sub-15)X, filed June 7, 1982. Applicant: WALTER SHORT AGENCY, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Martin J. Leavitt, P.O. Box 400, Northville, MI 48167. Subs 3, 4, 6, 8, 9, 10, and 11: (1) Broaden to "machinery and supplies and transportation equipment" from tractors (except truck tractors), Sub 3; iron rotary blowers and gear and speed increasing and reducing machines and parts for all the foregoing commodities, Subs 8 and 10 and tractors, tractor parts and tractor implements, Sub 11; to "lumber and wood products" from lumber, Sub 4 and from lumber and lumber products, timbers and fence posts, Sub 9; to "machinery and supplies" from air

pollution control devices, Sub 6; (2) remove (a) facilities limitation, and (b) originating at/destined to restriction in various Subs, (3) broaden Romeo, MI to Macomb County; Orangeburg, SC to Orangeburg County; Hamilton, AL to Marion County; Owosso, MI to Shiawassee County; Dearborn, MI to Wayne County; Augusta, GA to Richmond County, and (4) to radial authority.

[FR Doc. 82-17611 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-305N)]

Rail Carriers; Conrail Abandonment Between Minerva and Pekin, OH; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Minerva (milepost 2.7) and Pekin (milepost 4.5) in the County of Columbiana, OH, a total distance of 1.8 miles effective on March 11, 1982.

The net liquidation value of this line is $24,016. If within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-17606 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-341N)]

Rail Carriers; Conrail Abandonment Between Minerva and Hopedale, OH; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 2 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Minerva (milepost 43.5) and Hopedale (milepost 77.5) in the Counties of Carroll, Jefferson and Harrison, OH, a total distance of 34 miles effective on March 11, 1982.

The net liquidation value of this line is $523,532. If within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-17607 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-361N)]

Rail Carriers; Conrail Abandonment Between Oneida Castle and Canastota, NY; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Oneida Castle and Canastota in the Counties of Oneida and Madison, NY, a total distance of 0.9 miles effective on March 12, 1982.

The net liquidation value of this line is $46,514. If within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-17608 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 299N)]

Rail Carriers; Conrail Abaondoment in Knox, Delaware, Franklin and Licking Counties, OH; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its (1) rail line between mileposts 89.9 and 100.1; (2) Millwood Sand Industrial track between mileposts 0.0 and 4.2; and (3) rail line between mileposts 100.8 and 141.4, a total distance of 55.0 miles, effective on March 12, 1982.

The net liquidation value of (1) the line between mileposts 89.9 and 100.1 and (2) the mile 4.2 mile Millwood Sand Industrial Track is $849,478. The net liquidation value of the line between mileposts 100.8 and 141.4 is $3,274,800. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of these lines it shall sell such lines and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-17612 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 442N)]

Rail Carriers; Conrail Abandonment Between Kepler's Mills and Belfast Junction, PA; Notice of Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between (1) milepost 82.8 and milepost 86.6 and (2) between milepost 87.0 and milepost 88.2 in the County of Northampton, PA, a total distance of 5.0 miles, effective on March 12, 1982. In a May 28, 1982 decision the Commission decided that the portion of the line between mileposts 86.5 and 86.6 was necessary for a proposed subsidy operation. Accordingly, that segment will not be considered in the setting of the net liquidation value.

The net liquidation value of (1) the segment between mileposts 82.8 and 86.5 is $107,483; and (2) the segment between mileposts 87.0 and 88.2 is $33,940. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of these lines, it shall sell such lines and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc 82-17613 Filed 6-29-82; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Delegation of Authority; Africa Bureau Field Posts

[Africa Delegation of Authority No. 140, Revised (Amendment No. 1)]

Section 1. Africa Bureau Delegation of Authority No. 140, Revised, is hereby amended, as follows:

A. Sections 4.A(3) and 4.B(3) are each revised to read as follows: "(3) The authority to approve extensions of the life of a project for a cumulative period not to exceed three years, provided that the extension does not result in a total life of project (from point of initial obligation to revised PACD) of more than ten years.".

Section 2. This amendment is effective immediately.

Dated: June 21, 1982.

Alexander R. Love,

Acting Assistant Administrator for Africa.

[FR Doc. 82-17719 Filed 6-29-82; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-105]

Certain Coin-Operated Audiovisual Games and Components Thereof (viz, Rally-X and Pac-Man); Issuance of Temporary Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has replaced the 18 temporary cease and desist orders previously issued in this investigation with a temporary exclusion order.

SUMMARY: A motion (Motion No. 105-41c) was filed with the Commission to vacate 18 temporary cease and desist orders previously issued in this investigation and replace them with an order excluding from entry into the United States all coin-operated audiovisual games and components thereof which infringe complainant Midway Manufacturing Co.'s PAC-MAN copyright or PAC-MAN trademark during the pendency of this investigation. The articles in question may enter the United States under bond in the amount of 54 percent of the entered value during the period of temporary relief.

The Commission's decision to issue temporary cease and desist orders was made in light of advice from the U.S. Customs Service to the effect that a temporary exclusion order would be unenforceable. When the Customs Service later indicated that a temporary exclusion order would be enforceable if complainant provided certain assistance, the Commission granted the motion of complainant and replaced the temporary cease and desist orders with a temporary exclusion order.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain coin-operated audiovisual games and components thereof which allegedly infringe certain of complainant's copyrights and trademarks.

In conformity with section 211.57 of the Commission's Rules of Practice and Procedure (46 FR 17533, Mar. 18, 1981), the aforementioned motion was served on each party to the investigation. A notice was published on June 9, 1982, in the **Federal Register** (47 FR 25077) requesting comment within 7 days on the proposed modification of temporary relief. The 7-day period expired and no comment was received.

Copies of the motion in question and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Scott M. Daniels, Esq., Office of the General Counsel, telephone 202-523-0074.

By order of the Commission.

Issued: June 23, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-17654 Filed 6-29-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-112]

Certain Cube Puzzles; Hearing

Notice is hereby given that the hearing in this case, which was adjourned to July 13, 1982, will resume at 9 a.m. on July 14, 1982, in the Waterfront Center, Room 201, 1010 Wisconsin Avenue NW., Washington, D.C.

The Secretary shall publish this notice in the **Federal Register.**

Issued: June 23, 1982.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 82-17655 Filed 6-29-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-116]

Certain Drill Point Screws for Drywall Construction; Amendment of Notice of Investigation To Add Two Respondents and To Correct the Name of Another Respondent

AGENCY: International Trade Commission.

ACTION: Amendment of the notice of investigation in the above-captioned case to add two new respondents and to correct the name of another respondent pursuant to §§ 210.20(d) and 210.22(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.20(d) and 210.22(a)).

SUMMARY: On June 23, 1982, the Commission determined to amend the notice of investigation in this investigation to add J. Robert Agencies, Ltd. and Yama-Fas, Inc., as party respondents, and to correct the identification of respondent Gyplok to "Kabushi Kaisha Yamashina Seikosho d/b/a Gyplok."

SUPPLEMENTARY INFORMATION: On April 16, 1982, complainant Illinois Tool Works, Inc., moved (Motion No. 116-1) for leave to file an amended complaint which adds as respondents J. Robert Agencies, Ltd. and Yama-Fas, Inc., and changes the identity of respondent "Gyplok" to "Yamashina d/b/a Gyplok". Complainant learned through discovery that "Gyplok" was not the name of a company, but was merely a trademark for screws manufactured and sold by respondent Kabushi Kaisha Yamashina Seikosho. Complainant also learned through discovery, of the existence of J. Robert Agencies, Ltd. and Yama-Fas, Inc., and complainant now alleges these two firms are engaged in unfair methods of competition and unfair acts in the importation and sale of drill point screws that infringe a U.S. patent owned by complainant.

On May 5, 1982, the administrative law judge (ALJ) issued a recommendation that the Commission amend the complaint and notice of investigation to reflect the proposed amendments (Order No. 5). After consideration of Motion No. 116-1 and the ALJ's recommended determination, the Commission determined to amend its notice of investigation to add J. Robert Agencies, Ltd., 403-873 Beatty St., Vancouver, B.C. V6B 2M6, Canada and Yama-Fas, Inc., P.O. Box 2811, South San Francisco, California 94080 as respondents and to change the idnetity of respondent Gyplok to "Kabushi Kaisha Yamashina Seikosho d/b/a Gyplok."

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, telephone (202) 523–0499.

By order of the Commission.

Issued: June 25, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–17653 Filed 6–29–82– 8:45 am]

BILLING CODE 7020–02–M

[332–143)

Economic Impact of Foreign Export Credit Subsidies on the U.S. Commuter Aircraft Industry

AGENCY: International Trade Commission.

ACTION: Following receipt on May 27, 1982, of a request from the Committee on Finance of the U.S. Senate, the Commission instituted investigation No. 332–143 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on the impact of export credit subsidies by foreign governments on the competitive position of U.S. producers of commuter aircraft. The study will present information on (1) the current structure of the U.S. commuter aircraft industry and that of major foreign competitors; (2) the current U.S. market for these aircraft; (3) the factors of competition in the market; (4) foreign government export credit policies relating to these aircraft and their impact on the competitive position of the U.S. industry; and (5) the likely future trends in the U.S. market.

EFFECTIVE DATE: June 16, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Ladomirak or Mr. Aaron Chesser, Machinery and Equipment Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–0131 or 202–523–0353, respectively.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.d.t., on September 28, 1982, to be continued on September 29, 1982, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, September 21, 1982.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than October 6, 1982. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

By order of the Commission.

Issued: June 21, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–17656 Filed 6–29–82; 8:45 am]

BILLING CODE 7020–02–M

[332–144]

Economic Impact of Foreign Export Credit Subsidies on Certain U.S. Industries

AGENCY: International Trade Commission.

ACTION: Following receipt on May 27, 1982, of a request from the United States Trade Representative, the Commission instituted investigation No. 332–144 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on the impact of export credit subsidies by foreign governments on the competitive position of U.S. producers of civil transport aircraft, commuter size and larger; heavy electrical equipment; and self-propelled railcars. For each of the three domestic industries, the study will present information on the following: (1) current industry structure, including major foreign competitors, and the current U.S. market; (2) factors of competition in the U.S. market and foreign trade; (3) comparison of sales and terms of sale of imported and domestically produced products; and (4) assessment of the impact of actual and lost sales and foreign offers for sales resulting from foreign export credit subsidies on the competitive position of the U.S. industry.

EFFECTIVE DATE: June 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. DeMarines or Mr. Aaron Chesser, Machinery and Equipment Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–0259 or 202–523–0353, respectively.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.d.t., on September 28, 1982, to be continued on September 29, 1982, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, September 21, 1982.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than October 6, 1982. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

By order of the Commission.

Issued: June 21, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–17657 Filed 6–29–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701-TA-179 through 181 (Preliminary)]

Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-179 through 181 (Preliminary) to determine, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of hot-rolled stainless steel bar, provided for in item 606.9005 of the Tariff Schedules of the United States Annotated (TSUSA), cold-formed stainless steel bar, provided for in TSUSA item 606.9010, and stainless steel wire rod, provided for in TSUSA items 607.2600 and 607.4300 upon which bounties and grants are alleged to be paid.

EFFECTIVE DATE: June 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Vastagh, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0283.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted following receipt of a petition filed on June 16, 1982, by counsel for Al Tech Specialty Steel Corp., Carpenter Technology Corp., Colt Industries, Inc., Cyclops Corp., Guterl Special Steel Corp., Joslyn Stainless Steels, and Republic Steel Corp.

The Commission must make its determinations in the investigations within 45 days after the date on which it received the petition, or by August 2, 1982 (19 CFR 207.17). The investigations will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982)), and particularly subpart B thereof.

The record in *Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain*, Inv. Nos. 701-TA-176 through 178 (Preliminary) is hereby incorporated into the record of proceeding.

Written submissions. —Any person may submit to the Commission on or before July 16, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and fourteen copies of such statements must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection".

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data".

All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with the investigations for 10:00 a.m., e.d.t., on July 13, 1982, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. John MacHatton, telephone 202-523-0439, not later than July 9, 1982, to arrange for their appearance. Parites in support of the imposition of countervailing duties inthese investigations and parties in opposition to the imposition of such duties will each be collectivley allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of the invetsigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR 207 (1981), as amended by 47 FR 6190 (Feb. 10, 1982) and by 47 FR 12792 (Mar. 25, 1982)), and Part 201, subparts A through E (19 CFR 201 (1981), as amended by 47 FR 6188 (Feb. 10, 1982) and by 47 FR 13791 (Apr. 1, 1982)). Further information concerning the conduct of the conference will be provided by Mr. MacHatton.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12 (1981)).

By order of the Commission.

Issued: June 23, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-17659 Filed 6-29-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-170 Through 173 (Preliminary)]

Certain Steel Products From the Republic of Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, [2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured [3] by reason of imports of the following products which are alleged to be subsidized by the Government of the Republic of Korea:

Hot-rolled carbon steel plate [4] (investigation No. 701-TA-170 (Preliminary));

Hot-rolled carbon steel sheet [5] (investigation No. 701-TA-171 (Preliminary)); and

Galvanized carbon steel sheet [6] (investigation No. 701-TA-173 (Preliminary)); [7]

The Commission determines [2] [8] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of cold-rolled carbon steel sheet (investigation No. 701-TA-172 (Preliminary)) [9] which are alleged to

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Alberger not participating.

[3] Vice Chairman Calhoun and Commissioner Stern determine tha there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[4] For purposes of these investigations, hot-rolled carbon steel plate is provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (TSUSA).

[5] For purposes of these investigations, hot-rolled carbon steel sheet is provided for in items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400 of the TSUSA.

[6] For purposes of these investigations, galvanized carbon steel sheet is provided for in items 608.0730 and 608.1300 of the TSUSA.

[7] Vice Chairman Calhoun and Commissioner Stern dissenting.

[8] Commission Frank dissenting.

[9] For purposes of these investigations, cold-rolled carbon steel sheet is provided for in items 607.8320 and 607.8344 of the TSUSA.

be subsidized by the government of the Republic of Korea.

Background

On May 7, 1982, petitions were filed with the Commission and the Department of Commerce by counsel for United States Steel Corp. alleging that producers, manufacturers, or exporters in the Republic of Korea of certain steel products receive bounties or grants within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671). Accordingly, effective May 7, 1982, the Commission, pursuant to section 703(a) of the Act (19 U.S.C. 1671b(a)), instituted preliminary countervailing duty investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of the subject merchandise.

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington D.C., and by publishing the notice in the **Federal Register** of May 19, 1982 (47 FR 21640). The conference was held in Washington, D.C., on June 1, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

I. Introduction

The following constitute our views on the four countervailing duty investigations involving certain carbon steel products from the Republic of Korea. We first summarize the standards for our determinations, and then define the appropriate domestic industry against which the impact of the imports under investigation is to be assessed. Finally, in each investigation, we examine the condition of the industry and evaluate the causal relationship between the allegedly subsidized imports and this condition.

Standards for Determinations

In preliminary countervailing duty investigations, the Commission must determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded,[10] by reason of imports of the merchandise that is the subject of the investigation.[11] "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant."[12] In making determinations, the Commission must consider, among other factors, (1) the volume of imports of the merchandise which is the subject of the investigation, (2) the effect of imports of that merchandise on prices in the United States for like products, and (3) the impact of imports of such merchandise on domestic producers of like products.[13]

In making a determination as to whether there is a threat of material injury, the Commission considers, among other factors, (1) the rate of increase of subsidized imports into the U.S. market, (2) the capacity in the exporting country to generate exports, (3) the availability of other export markets, and (4) such information as may be presented to it by the Department of Commerce as to the nature of the subsidy provided by a foreign country and the effects likely to be caused by the subsidy.[14] Findings of a reasonable indication of threat of material injury must be based on a showing that the likelihood of harm is real and imminent, and not on mere supposition, speculation, or conjecture.[15]

Definition of the Domestic Industries

The domestic industry is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[16] "Like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation * * *."[17]

The four steel products that are the subjects of these investigations were among the nine products covered by the recent preliminary investigations involving certain steel products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, Spain, the United Kingdom, and West Germany.[18] For the reasons stated by the Commission in those investigations, we adopt the appropriate industry definitions used there for the products included in the scope of these investigations.[19]

Cumulation

Our determinations in these investigations have been made on a case-by-case basis, without aggregation of import data for each product category with the import data derived in earlier investigations regarding the same products imported from other countries.[20] [21] In the event that final investigations are conducted in these cases, however, we do not rule out cumulation if the record developed demonstrates it is appropriate.[22]

II. Hot-Rolled Carbon Steel Plate

With respect o hot-rolled carbon steel plate from the Republic of Dorea, we find that there is a reasonable indication of material injury to the affected

[10] Material retardation of an industry is not an issue in these investigations.

[11] 19 U.S.C. 1671b, 1673b.

[12] 19 U.S.C. 1677(7)(A).

[13] 19 U.S.C. 1677(7)(B).

[14] 19 CFR 207.26(d).

[15] S. Rep. No. 96-249, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

[16] 19 U.S.C. 1677(4)(A).

[17] 19 U.S.C. 1677(10).

[18] Investigations Nos. 701-TA-86 to 144, 701-TA-146, and 701-TA-147 (Preliminary), and Investigations Nos. 731-TA-53 to 86 (Preliminary), USITC Pubs. 1221 and 1226 (1982), and Investigations Nos. 701-TA-155 to 163 (Preliminary), USITC Pub. 1255 (1982). Specific descriptions of the products, their characteristics and uses, and methods of manufacture may be obtained by reference to the Commission's Views and the Report in those investigations.

[19] Commissioners Stern and Haggart emphasize that the definitions of the industries at this preliminary stage are based on information now available; they do not preclude the possibility of defining the domestic industries differently in any final investigation if the record developed supports a revision of the definitions of the industries. See also Commissioner Frank's additional views.

[20] See additional views of Vice Chairman Calhoun in Certain Steel Products from Spain, Invs. Nos. 701-TA-155 to 163 (Preliminary), USITC Pub. 1255 (1982).

[21] Commissioner Frank has cumulated. See his additional views and his discussion on cumulation in Certain Carbon Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, Invs. Nos. 701-TA-86 to 144, 701-TA-146, and 701-TA-147 (Preliminary), and Invs. Nos. 731-TA-53 to 86 (Preliminary), USITC Pubs. 1221 and 1226 (1982), at 127-129.

[22] Commissioner Stern refers readers to her discussion of the practice of cumulation in Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom, Invs. Nos. 731-TA-18-24 (Preliminary), USITC Pub. 1064 (1980), at 64-67.

See also her joint views with Chairman Alberger in Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, Invs. Nos. 701-TA-86 to 144, 701-TA-146, and 701-TA-147 (Preliminary), and Invs. Nos. 731-TA-53 to 86 (Preliminary), USITC Pubs. 1221 and 1226 (1982).

Finally, see her joint views with Chairman Alberger in Prestressed Concrete Steel Wire Strand From Brazil, France, and the United Kingdom, Invs. Nos. 701-TA-152 and 153 (Preliminary), and Inv. No. 731-TA-89, USITC Pub. 1240 (1982), at 3; Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Invs. Nos. 701-TA-148 to 150 (Preliminary), and Inv. No. 731-TA-88 (Preliminary), USITC Pub. 1230 (1982).

domestic industry by the subject imports.[23] We base this determination principally upon information demonstrating the depressed condition of the U.S. industry, the significant presence of Korean imports of this product, and confirmed instances of sales lost by the domestic industry to the imports.

Condition of the Domestic Industry

The information developed in this investigation regarding the condition of the domestic industry is the same as that discussed in our views in the recent investigation on hot-rolled carbon steel plate fromSpain.[24] In that case, we found that the domestic industry had suffered serious declines in production, capacity utilization, employment, and profitability in recent years.

Reasonable Indication of Material Injury by Reason of Imports From the Republic of Korea

Korean imports maintained a significant presence in the domestic market throughout the period of this investigation, while overall U.S. demand declined. Although absolute levels of imports declined in 1981 from earlier levels and further declined in the first quarter of 1982, Korean imports accounted for 1.5 percent of domestic consumption in 1979, 2.8 percent in 1980, and 1.5 percent in 1981. Korean import penetration was 1.4 percent in the first quarter of 1982.[25]

Five instances of sales lost by domestic producers to Korean imports were confirmed, accounting for aproximately 2,686 tons of plate products. In four of the five cases the lower price of the imports was given as the reason for the purchase, since the quality of the imported and domestic products was considered comparable by purchasers.[26]

Reasonable Indication of Threat of Material Injury by Reason of Imports from the Republic of Korea

Vice Chairman Calhoun and Commissioner Stern base their finding on the above factors as well as on the following information. U.S. importers' inventories of carbon steel plate are at very high levels.[27] In addition, the United States is a major export market for these Korean products and is likely to remain so because of restrictions placed on Korean imports by other countries.[28]

III. Hot-Rolled Carbon Steel Sheet

We find that there is a reasonable indication that imports of hot-rolled carbon steel sheet from the Republic of Korea have caused material injury to the domestic industry.[29] In making this determination we have relied on information regarding the condition of the industry, significant and increasing volumes of Korean imports, several confirmed instances of sales lost by the U.S. industry to imports on the basis of price, and several confirmed instances indicating that domestic prices have been lowered to meet Korean import competition.

Condition of the Domestic Industry

The information developed in this investigation regarding the condition of the domestic industry is the same as that discussed in our views in the recent investigation on hot-rolled carbon steel sheet from Spain.[30] In that case, we found that the domestic industry had experienced serious difficulties during the period under investigation, including declines in production, capacity utilization, employment, and profitability.

Reasonable Indication of Material Injury by Reason of Imports From the Republic of Korea

Imports of this product from the Republic of Korea have shown a pronounced growth in market penetration toward the end of the period studied in this investigation. Import volumes were 28,000 tons in 1979, 34,000 tons in 1980, and 72,000 tons in 1981. The sharp rise continued in the first quarter of 1982, with 41,000 tons entered as compared to only 12,000 tone in the same quarter of 1981.[31] The 1981 volume of imports accounted for a share of the U.S. market of 0.5 percent, with the share in the last quarter of the year increasing to 0.9 percent. This rise in import penetration continued in 1982, with a market share of 1.5 percent being recorded in the first quarter.[32]

The Commission was able to verify four allegations of sales of hot-rolled carbon steel sheet lost by a domestic firm to Korean imports, accounting for a significant portion of those imports during the period from 1980 to the first quarter of 1982. In all four instances lower price was cited as the primary motivation for the purchase, although in two instances the purchaser also noted that the imports were generally of better quality and that the importers offered better service and purchasing terms.[33] Five of six alleged instances involving lowering of domestic prices to meet import price competition were confirmed, resulting in significant lost revenues.[34]

Reasonable Indication of Threat of Material Injury by Reason of Imports From the Republic of Korea

Vice Chairman Calhoun and Commissioner Stern base their finding on the above factors as well as on the following information. The Republic of Korea has greatly increased its capacity in the last two years to produce these products.[35] Coincident with this increased capacity was an increase in production, total exports, and exports to the U.S. Exports to the U.S. have been at significant levels throughout 1979–81.[36] Moreover, inventories of Korean imports held by U.S. importers in the first quarter of 1982 were double the level of December 1981.[37]

IV. Cold-Rolled Carbon Steel Sheet

We find that there is no reasonable indication of material injury or threat thereof to the domestic industry producing cold-rolled carbon steel sheet by reason of imports from the Republic of Korea.[38] The reasons for our finding are the decreasing levels of Korean imports of this product, the absence of allegations of lost sales, and the lack of persuasive indications of significant price suppression or depression caused by these imports.

Condition of the Industry

The information developed in this investigation regarding the condition of the domestic industry is the same as that discussed in our views in the recent investigation on cold-rolled carbon steel sheet from Spain.[39] In that case, we

[23] Chairman Alberger did not participate. Vice Chairman Calhoun and Commissioner Stern determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[24] Investigations Nos. 701–TA–155 to 163 (Preliminary), USITC Pub. 1255 (1982).

[25] Report at A–22.

[26] *Id.* at A–37.

[27] *Id.* at A–17.

[28] *Id.* at A–18.

[29] Chairman Alberger did not participate. Vice Chairman Calhoun and Commissioner Stern determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[30] Investigations Nos. 701–TA–155 to 163 (Preliminary), USITC Pub. 1255 (1982).

[31] Report at A–21.

[32] *Id.* at A–22 and A–23.

[33] *Id.* at A–38.

[34] *Id.* at A–38 and A–39.

[35] *Id.* at A–19.

[36] *Id.*

[37] *Id.* at A–17.

[38] Chairman Alberger did not participate. Commissioner Frank dissents. See his additional views.

[39] Investigations Nos. 701–TA–155 to 163 (Preliminary), USITC Pub. 1255 (1982).

found that the performance of the domestic industry, judged by such factors as production, capacity utilization, employment, and profitability, had declined during the period under investigation.

No Reasonable Indication of Material Injury by Reason of Imports From the Republic of Korea

Imports from the Republic of Korea have fallen during the same period that the industry has experienced its difficulties. Imports dropped from 179,000 tons in 1979 to 104,000 tons in 1980 and 101,000 tons in 1981. The import decline appears to be continuing into the present year; imports in the first quarter were 16,000 tons, down from 20,000 tons in the first quarter of 1981.[40] In terms of penetration of the U.S. market, Korean imports have declined consistently from a 1 percent market share in 1979 to 0.7 percent in both 1980 and 1981. Penetration was down to 0.5 percent in the first quarter of 1982.[41]

No allegations of actual lost sales involving cold-rolled carbon steel sheet from Korea were received by the Commission.[42] Only one allegation of a domestic price reduction caused by price competition from Korean imports was confirmed, involing only a small quantity of cold-rolled carbon steel sheet.[43]

No Reasonable Indication of Threat of Material Injury by Reason of Imports From the Republic of Korea

We also find no reasonable indication that Korean imports of this product pose a threat of material injury. Capacity in the Republic of Korea to produce cold-rolled carbon steel sheet has been greatly diminished for at least the immediate future by the bankruptcy of a major Korean producer in 1981.[44] In addition, U.S. importers' end-of-period inventories of the product have been steadily declining since 1979.[45]

V. Galvanized Carbon Steel Sheet

Views of Commissioners Alfred Eckes, Eugene Frank, and Veronica Haggart

With regard to galvanized carbon steel sheet from the Republic of Korea, we find a reasonable indication that imports are a cause of material injury to the U.S. industry.[46]

[40] Report at A-21.
[41] *Id.* at A-22.
[42] *Id.* at A-38.
[43] *Id.* at A-39.
[44] *Id.* at A-19.
[45] *Id.* at A-17.
[46] See also the additional views of Commissioner Frank.

Condition of the domestic industry

The information developed in this investigation regarding the condition of the domestic industry is the same as that discussed in our views in the recent investigation on galvanized carbon steel sheet from Spain.[47] In that case, we found that the performance of the domestic industry had been in a state of decline since 1979, including declines in production, capacity utilization, employment, and profitability.

Reasonable Indication of Material Injury by Reason of Imports From the Republic of Korea

During the period covered by this investigation—with the exception of one year—imports have been at substantial levels and have been increasing during recent periods. Significantly, imports in 1981 were concentrated in the later quarters of the year. Further, the import penetration ratio reached 1.5 percent during the fourth quarter of 1981, and the penetration rate of 0.8 percent in the first quarter of 1982 indicates a continuation of this trend. The recent increases in imports coincide with the difficulties being encountered by the domestic industry.

Other information provides important data in support of a reasonable indication of material injury as well. Two instances of sales lost to Korean imports, representing a large portion of such imports during 1982, were confirmed, and lower price was cited as a factor in both cases.[48] Additionaly, confidential information provided an indication of price suppression.[49]

V. Galvanized Carbon Steel Sheet

Views of Vice Chairman Michael J. Calhoun and Commissioner Paula Stern

As our colleagues in the majority have indicated, the domestic industry producing galvanized carbon steel sheet is undergoing serious difficulties. Our review of the available information, however, demenstrates no reasonable indication that imports from the Republic of Korea are a cause of either material injury or threat of material injury to the domestic industry. In prior investigations regarding galvanized carbon steel sheet, we noted that the present state of this industry is attributable to factors other than imports, including declining domestic consumption, low labor productivity, and high labor costs.[50]

[47] Investigations Nos. 701-TS-155 to 163 (Preliminary), USITC Pub. 1255 (1982).
[48] Report at A-38.
[49] *Id.* at A-39.
[50] Investigations Nos. 701-TA-155 to 163 (Preliminary), USTTIC Pob. 1255, at 19 (1982);

Although most major indicators of the economic health of this industry have declined during the period under investigation, imports from the Republic of Korea also declined substantially from the levels of 1978. In fact, such imports fell from 0.9 percent of domestic consumption in 1978 to 0.5 percent in 1979 and a mere 0.1 percent in 1980. The increases in imports since 1980 still leave both the absolute volume of Korean imports and market penetration ratios at levels below those of 1978. There appears to be not correlation between the fluctuations in Korean imports and the rise or fall of the industry's condition. Moreover, Korean imports constitute only an insignificant portion of the total market share held by all imports. The overall four-and-a-quarter-year trend in Korean imports, viewed together with the general economic recession and depressed consumption of this product, convince us that the short-term increase in Korean imports has neither produced material injury nor foreshadowed a threat of future injury.

Additional Views of Commissioner Eugene J. Frank

I. *Introduction*

These views are to be considered in conjunction with my views with respect to the 92 carbon and alloy steel product preliminary investigations before the Commission in January 1982[51] and made an integral part of this opinion.

For these preliminary investigations, I cumulated impact of alleged unfairly traded imports of comparable articles on the domestic industry from countries whose preliminary cases have been continued (including South Africa, not a signatory to the Subsidies Code) consistent with my approach and postion or cumulation.[52] In this respect, I depart from the approach taken by some of my colleagues who have approached these preliminary investigations on a case-by-case basis.

I would reiterate here my oft-stated position that the statute and legislative history in Title VII investigations require the Commission in its preliminary investigations to exercise only a low-

Investigations Nos. 701-TA-86 to 144, 701-TA-146, and 701-TA-147 (Preliminary), and Investigations Nos. 731-TA-53 to 86 (Preliminary), USITC Pubs. 1221 and 1226, at 54-57 (1982).

[51] Investigation Nos. 701-TA-86 to 144, 701-TA-146, and 701-TA-147 (Prel.), and Investigation Nos. 731-TA-53 to 86 (Prel.), USITC Pubs. 1221 and 1226, February 1982, *Certain Steel Products from Belgium Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany*, Views of Commissioner Eugene J. Frank, pp. 121-185.

[52] *Id.* pp. 127-129.

threshold test based upon the best information available that the facts reasonably indicate that an industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[53]

Since the January 1982 preliminary steel cases referred to herein above, the condition of the U.S. steel industry has suffered further significant deterioration by all recognized indicia of economic distress, some mention of which I refer the reader to my separate views in the recent Spanish carbon and alloy steel preliminary countervailing duty investigations.[54]

Finally, although statutory considerations prescribe a like product and definition of industry approach as set forth by my colleagues for these cases, it is appropriate to reiterate my position in this regard stated in my views in the January cases where I stated therein: "I believe, in ascertaining injury to the domestic industry affected in the conduct of these investigations it is appropriate to consider as a relevant factor in all these investigations the basic, commonsense economic reality of the impact of such imports on the domestic steel industry in general." [55]

The following represent my determinations on those preliminary investigations, stating, where applicable, points of departure from my colleagues in analyses and dissent.[56]

II. *Hot-Rolled Carbon Steel Plate*

I find that there is a reasonable indication of material injury to the affected domestic industry by subject imports, and do not reach the issue of threat. While otherwise concurring in general with my colleagues, I cumulated the impact on the pertinent domestic industry of subject imports from Korea along with Belgium, The United Kingdom, West Germany, Brazil, Romania, Spain, and South Africa, which indicates a general substantial increase in aggregate levels of such imports in the period since 1979 to 1981, reaching significant market penetration with respect to domestic consumption in 1981 of 16.9 percent. Although January-March 1982 levels were down somewhat from the comparable 1981 quarter, market penetration was still significant and represented a comparative period increase from 13.6 percent to 14.1 percent in these two quarters.

III. *Hot-Rolled Carbon Steel Sheet*

I find that there is a reasonable indication of material injury to the affected domestic industry by subject imports, and do not reach the issue of threat. While otherwise concurring in general with my colleagues, I cumulated the impact on the pertinent domestic industry of subject imports from Korea along with Belgium, France, Italy, Netherlands, West Germany, and South Africa, which since 1979 indicates a general substantial increase in aggregate levels of such imports with market penetration relative to domestic consumption likewise trending upward to significant levels in excess of 10 percent for the January–March 1982 quarter compared to 2.9 percent the comparable 1981 quarter.

IV. *Cold-Rolled Carbon Steel Sheet*

I find that there is a reasonable indication of material injury to the affected domestic industry by subject imports, and do not reach the issue of threat. I therefore dissent from my colleagues in this determination and certain analyses therein. It is clear that the condition of this industry based on information developed in the Commission's recent investigation on cold-rolled carbon steel sheet from Spain,[57] incorporated in this case, had declined during the period under investigation, as my colleagues acknowledge, judged by relevant industry indicators such as production, capacity utilization, employment and profitability. However, in cumulating the impact of subject imports from Korea on the pertinent domestic industry along with imports from France, Italy, Netherlands, West Germany, Spain, and South Africa, it is apparent that such imports have increased significantly from 1980 levels, attaining an aggregate market penetration of 6.3 percent with respect to domestic consumption in 1981, increasing even more markedly the January–March 1982 quarter to 7.9 percent compared with 2.3 percent the comparable 1981 quarter. Although I am cognizant of the paucity of information relative to pricing and lost sales data for this product, I would anticipate more thorough collection and scrutiny of pricing data and lost sales information in a final investigation should the Commission be called upon to conduct one.

V. *Galvanized Carbon Steel Sheet*

I find that there is a reasonable indication of material injury to the affected domestic industry by subject imports, and do not reach the issue of threat. Although I generally concur with the observations of Commissioners Eckes and Haggart in their views on the case, I cumulated the impact on the pertinent domestic industry of subject imports from Korea with those from Spain and South Africa. While such aggregated imports declined in overall levels since 1978 to 1981, they nevertheless remained at significant levels and in fact increased markedly January–March 1982 and attained a 3.2 percent market penetration with respect to domestic comsumption that quarter compared with 0.6 percent the comparable 1981 period and 1.3 percent for 1981.

By Order of the Commission.

Issued: June 21, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-17658 Filed 6-29-82; 8:45 am]

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[53] H.R Report No. 96-317, 96th Cong., 1st Sess., p. 52 (1979).

[54] *Certain Steel Products from Spain*, investigation Nos. 701-TA-155 through 163 (Prel.), USITC pub. 1255, June 1982, Separate Views of Commissioner Eugene J. Frank, pp. 36-42.

[55] *Certain Steel Products from Belgium* * * * Views of Commissioner Eugene J. Frank, p. 136.

[56] All data are derived from the accompanying Report and set of four tables of imports of these four products covered by these investigations circulated with the draft Staff Report, unless otherwise indicated.

[57] Investigation Nos. 701-TA-155 to 163 (Prel.), USITC pub. 1255 (1982).

[Investigation No. 337-TA-37]

Certain Skateboards and Platforms Therefor; Request for Public Comment on Possible Dissolution of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has decided to consider on its own initiative the question of whether to set aside the exclusion order issued in connection with the above-captioned investigation. In conformity with § 211.57 of the Commission's Rules of Practice and Procedure (46 FR 17533, Mar. 18, 1981), this notice will be published in the **Federal Register** and served on each former party to the investigation.

DATES: Within 30 days of the service of this notice upon each former party, such party may file written comments on the question of whether the Commission's exclusion order should be set aside. Within 30 days of the publication of this notice in the **Federal Register**, interested Government agencies, and members of the public may file written comments on the same question. All comments should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR § 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade

Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: On October 9, 1980, the Commission issued an order excluding the importation into the United States of skateboards and platforms therefor which infringe claims 1, 2, 7, or 8 of U.S. Letters Patent 3,565,454 (hereinafter the '454 patent) for the remaining term of the patent except under license. That order is now in force.

On July 27, 1981, the United States Court of Appeals for the Ninth Circuit affirmed a lower court decision holding the '454 patent invalid as obvious under 35 U.S.C. 103. *Stevenson v. Grentec, Inc.*, 652 F. 2d 20 (9th Cir. 1981). On April 26, 1982, the U.S. Supreme Court denied a petition for review of the Grentec decision. *Stevenson v. Grentec, Inc.*, No. 81–1185, cert. denied April 26, 1982 (50 U.S.L.W. 3854, Apr. 27, 1982).

The Commission seeks written comments from former parties to the above-captioned investigation, interested Government agencies, and interested members of the public on the question of whether the Commission's exclusion order should be set aside in light of the invalidity within the United States of the '454 patent.

FOR FURTHER INFORMATION CONTACT: N. Tim Yaworski, Assistant General Counsel, Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0311.

Issued: June 23, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–17680 Filed 6–29–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–95 (Preliminary)]

Stainless steel Sheet and Strip From France

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that a industry in the United States is materially injured or threated with material injury by reason of imports from France of stainless steel sheet and strip, provided for in items 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the Tariff Schedules of the United States Annotated, which are alleged to be sold, or likely to be sold, in the United States at less than fair value (LTFV).[2]

Background

On May 10, 1982, petitions were filed with the Commission and the Department of Commerce by members of the Tool and Stainless Steel Industry Committee [3] and the United Steelworkers of America alleging that imports of stainless steel sheet and strip from France are being, or are likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, effective May 10, 1982, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from France.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of May 19, 1982 (47 FR 21642). The conference was held in Washington, D.C., on June 7, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of The Commission

Introduction

After considering the record in this investigation, we determine, pursuant to section 733(a) of the Tariff Act of 1930, that there is a resonable indication that an industry in the United States is materially injured or threatened with material injury [4] by reason of imports of stainless steel sheet and strip from France which are allegedly being sold or are likely to be sold at less than fair value. Our determination is based primarily upon the deteriorating condition of the domestic industry, the growing market share of imports of sheet and strip from France, and the preliminary indications of underselling and lost sales caused by these imports.[5]

In the following analysis, we first define the domestic industry, then examine the state of the domestic industry in terms of the relevant economic indicators. Finally, we consider the causal relationship between the state of the domestic industry and the allegedly dumped imports from France.

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[6] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with" the article under investigation.[7]

The products being imported are stainless steel[8] sheet and strip. These are flat-rolled stainless steel products produced by passing slabs or sheet bars through a series of reducing rolls on continuous or hand mills. They are principally used in applications requiring resistance to oxidation and/or corrosion and are produced with a wide range of tolerances and finishes, depending on application. Stainless sheet and strip are generally considered to be finished products.

Stainless steel sheet and strip products imported from France and domestic products of the same grades and specifications are essentially identical in metallurgical composition, sizes, and quality.[9] There are generally

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Frank and Haggart determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports.

[3] Member firms included Allegheny Ludlum Steel Corp., Armco Inc., Carpenter Technology Corp., Colt Industries, Inc. (Crucible Materials Group), Eastern Stainless Steel Co., Guterl Special Steel Corp., Jessop Steel Co., Jones & Laughlin Steel, Inc., Republic Steel Corp., Universal-Cyclops Specialty Steel Division, Cyclops Corp., and Washington Steel Corp.

[4] Commissioners Frank and Haggart, having found material injury, do not reach the issue of threat of material injury.

[5] Commissioner Frank notes that the statute and legislative history require the Commission in its preliminary determinations in both antidumping the contervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination that the facts reasonably indicate that an industry in the United States could possibly be suffering injury, threat thereof or material retardation. H.R. Rep. No. 96–917, 96th Cong., 1st Sess., 52 (1979).

[6] 19 U.S.C. 1677(4)(A).

[7] 19 U.S.C. 1677(10).

[8] Stainless steel is an alloy steel containing by weight less than 1 percent of carbon and over 11.5 percent of chromium. Although the alloy mix generally includes nickel, molybdenum, and manganese, which improves its performance under chemical or temperature stress, it is primarily the addition of chromium which makes the product corrosion resistant.

[9] Respondents argue that the quality of grades 430 and 434—which constitute the bulk of imports of sheet and strip from France—is better than that

no stainless steel products that are imported from France that are not produced by domestic producers. Nor generally are there stainless steel products that are imported from France that are not produced in sufficient quantity by domestic producers to satisfy consumer demand within the United States.[10]

Stainless steel sheet is often fabricated into food processing equipment, chemcial fertilizer tanks, liquid gas storage tanks, hospital equipment, and military equipment. Stainless steel strip is used in automobiles, appliances, industrial equipment and military equipment.[11]

Sheet and strip[12] are metallurgically identical, and both are under 0.1875 of an inch in thickness. The only difference between sheet and strip is width. Sheet is 24 inches or wider, whereas strip is less than 24 inches in width.[13]

Strip is often produced by "slitting," or slicing sheet at one of the last stages in the production process. Although certain producers manufacture both sheet and strip on the same mill equipment,[14] other mills produce only strip. Many service center customers purchase sheet which they themselves slit into strip. Most of the petitioners produce both sheet and strip.[15]

Sheet and strip can be further differentiated. Both can be produced as hot-rolled or cold-rolled products. Hot-rolled sheet and strip are primarily intermediate products that are used to produce cold-rolled sheet and strip. Cold-rolled sheet or strip is hot-rolled sheet or strip that is subjected to the additional steps of pickling, high pressure rolling, and annealing to attain more uniform dimensions and a smoother surface.

Stainless steel sheet and strip are predominantly cold-rolled.[16] Hot-rolled stainless steel sheet and strip as a finished product accounts for only approximately 5 percent of total domestic production of stainless steel sheet and strip and approximately 2 percent of imports from France.[17] In addition, the information currently available to the Commission indicates that much of the hot-rolled product which is sold as a finished product is purchased for subsequent cold-rolling,[18] and that the uses for hot-rolled and cold-rolled sheet and strip overlap.[19]

Based on the data presently available, no meaningful distinctions are evident between the characteristics and uses of the finished hot-rolled product and the cold-rolled product.[20] Therefore, for the purposes of this preliminary determination, we determine that the like product is all stainless steel sheet and strip, whether hot-rolled or cold-rolled, and that the domestic industry is composed of the producers of stainless steel sheet and strip.[21]

Reasonable Indication of Material Injury

Section 733(a) of the Tariff Act of 1930 provides that the Commission shall make a determination as to whether there is a reasonable indication of material injury based on the best information available to it. Section 771(7) directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) the effect of imports of that merchandise on prices in the United States for like products, and (3) the impact of imports of such merchandise on domestic producers of like products.

Condition of the Domestic Industry[22]

The domestic stainless steel sheet and strip industry is experiencing difficulties. The industry's production, shipments, capacity utilization, and employment have declined since 1979. Financial indicators for sheet and strip production also present a negative trend. Gross profits, operating profits, net profit before taxes, the ratio of operating profits to net sales, and cash flow all declined steadily—if not precipitously—between 1979 and 1981.

Volume of Imports[23]

As the condition of the domestic industry deteriorated and its share of the U.S. market declined during the period under investigation, the volume of imports of stainless steel sheet and strip from France rose, both in absolute and relative terms. In 1981, France was the third largest foreign supplier of stainless steel sheet and strip to the U.S.

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supplied by domestic producers. The best information available at this time is inconclusive on the issue of quality. *See* Report at A-38 (Purchaser 1) and Report at A-39 (Purchaser 5). However, there are indications that price, not quality, is the key factor in purchasing decisions. Report at A-37, Report at A-39 (Purchaser 2).

[10] The respondents allege that a U.S. purchaser has not been able to obtain a sufficient domestic supply of an alleged "modified" grade 434 product. We have obtained indications to the contrary. This issue will be further explored in any final investigation if appropriate.

[11] Staff Report at A-7.

[12] Hereinafter, the terms "sheet" or "strip" refer to stainless steel sheet or strip.

[13] This is the American Iron and Steel Institute (AISI) standard. The TSUSA defines sheet as having a minimum width over 12 inches, and strip as having a maximum width under 12 inches.

[14] The term "mill" refers to one piece of equipment or series of pieces of equipment that produce a certain product. Within one stainless steel plant, there may be several mills, each producing a different product or products.

[15] Report at 1-10. Guteral Specialty Steel Corp. and Jessop Steel Co. produce sheet but not strip. Carpenter Technology Corp. produces strip but not sheet. Petition at 5-6.

[16] Report at A-7.

[17] *Id.*

[18] Petitioners' post conference brief at 2; Conference Transcript at 65. The hot-rolled product sold for this purpose is referred to in the industry as "reroller". Conference Transcript in inv. No. 731-TA-92 (West Germany) at 50.

[19] Conference Transcript in inv. No. 731-TA-92 (West Germany) at 50.

[20] In the carbon steel investigations, hot-rolled and cold-rolled sheet and strip were treated for the purposes of our preliminary determinations as two industries. (Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West Germany, inv. Nos. 701-TA-86 through 144, 146, and 147 and 731-TA-53 through 86 (Preliminary) (USITC Publications 1221 and 1226) (February 1982). For the reasons mentioned above, in this stainless steel investigation such a differentiation does not appear to be appropriate.

[21] We emphasize that the definition of the domestic industry in this preliminary investigation is based on the information now available. Based on the recorded developed in any final investigation, a different definition of the domestic industry is not precluded.

[22] Our views regarding the condition of this industry are contained in the Commission's recent opinion, Stainless Steel Sheet and Strip from West Germany, 731-TA-92 (USITC Publication 1252) (June, 1982) at 10-11.

[23] Chairman Eckes and Commissioners Stern and Haggart have found a reasonable indication of material injury or threat of material injury on the basis of imports of sheet and strip from France alone. In the event that final investigations are conducted on this case and any other cases on stainless steel sheet and strip, they do not rule out cumulation if the record developed demonstrates that it is appropriate.

Commissioner Calhoun's views on cumulation are set forth in certain Steel Products from Spain, inv. Nos. 701-TA-155 through 163 (Preliminary) (June, 1982) at 33-35.

Commissioner Frank believes that the factors and conditions of trade affecting the pertinent domestic industry would warrant cumulation of imports of stainless steel sheet and strip subject to this investigation with imports of stainless steel sheet and strip from West Germany subject to the recently concluded Commission's preliminary investigation No. 731-TA-92. However, in analyzing the data in the record developed in this investigation, he found a reasonable indication of material injury on the basis of imports of sheet and strip from France alone, and did not believe it necessary to cumulate at this time. In the event that final investigations are conducted in this case and any other cases for stainless steel sheet and strip, he does not preclude cumulation at that time of such imports if the record developed demonstrates that it is appropriate to do so. See his views on cumulation in the carbon steel investigations, Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom and West Germany, inv. Nos. 701-TA-86 through 144, 146 and 147 and 731-TA-53 through 86 (Preliminary) (USITC Publications 1221 and 1227) (February, 1982) at 127-29.

The respective views of Commissioners Calhoun, Stern and Frank on the issue of cumulation of imports subject to an investigation under section 301 of the Trade Act of 1930 are set forth in Stainless Steel Sheet and Strip from West Germany, inv. No. 731-TA-92 (Pub. No. 1252) (June, 1982) at 9-10 and 7, note 17.

market.[24] In the first quarter of 1982, it surpassed Japan to become the second largest foreign supplier after West Germany.[25]

Imports from France declined slightly from 7,676 tons in 1979 to 6,187 tons in 1980, then more than doubled to 13,805 tons in 1981.[26] Imports in January-March 1982 amounted to 6,194 tons as compared with 2,427 tons for the first quarter of 1981.[27] The ratio of imports from France to apparent U.S. consumption also rose from 0.9 percent in 1979 and in 1980 to 1.8 percent in 1981, and 3.6 percent in the first quarter of 1982, as compared with 1.2 percent in the first quarter of 1981.[28]

Effect of Imports on Prices

Although the data base is limited, there are indications that imports from France have been underselling the domestic product. The Commission investigation revealed significant margins of underselling for two product specifications of imports from France during the period under investigation. The margins for one specification ranged from 16 to 26 percent.[29] Also, contacts with purchasers indicate that the imported products undersell domestic products by 5 to 30 percent.[30]

There are also indications of sales lost by domestic producers to imports from France. It was confirmed that two sales totalling 550 tons of sheet or strip were lost to imports from France on the basis of price.[31]

Reasonable Indication of a Threat of Material Injury[32]

The issue of whether there is a reasonable indication of a threat of material injury turns on the "likelihood of a particular situation developing into actual material injury."[33] The threat must be real and the injury imminent, not a mere possibility based on supposition and conjecture.[34] In examining threat of material injury, the Commission looks for, among other factors, demonstrable trends in the following areas: (1) the rate of increase of the allegedly dumped exports to the U.S. market; (2) importers' inventories; (3) capacity in the exporting country to generate exports; and (4) the likelihood that such exports will be directed to the U.S. market taking into account the availability of other export markets.[35]

The steadily increasing rate of imports from France, both in absolute terms and in terms of the ratio of imports from France to domestic consumption, has already been noted. This is seen even more clearly in an examination of quarterly import penetration data for 1981 and 1982. In nearly every quarter, import penetration by the alleged LTFV imports has increased.[36]

Importers' inventories of stainless steel sheet and strip imported from France in December 1981 were more than double those in December, 1980.[37] In addition, inventories reported in March 1982 were significantly greater than those reported in December 1981, and more than three times greater than those reported in March 1981.[38]

Conclusion

Therefore, on the basis of the best available information, we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury[39] by reason of imports of stainless steel sheet and strip from France, which are allegedly being sold or are likely to be sold at less than fair value.

By Order Of The Commission.

Issued: June 24, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-17662 Filed 6-29-82; 8:45 am]

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[24] Report at A-28.

[25] *Id.*

[26] *Id.* at A-27 (Table 15).

[27] *Id.*

[28] *Id.* at A-27 (Table 15).

[29] *Id.* at A-36. The exact margins of underselling on the second specification are confidential information.

[30] *Id.* at A-38 (Purchaser 1) and A-39 (Purchasers 2 and 4).

[31] *Id.* at A-38-39 (Purchasers 1 and 3).

[32] See note 1 at 3.

[33] H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 47 (1979).

[34] S. Rep. No. 96-249, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

[35] Should this case return for a final investigation, we expect to obtain information concerning French capacity to generate exports and the likelihood that such exports will be directed to the United States. In particular, petitioners argue that the government of France has targeted the specialty steel sector as one from which greater export performance will be encouraged in the next few years. Petitioners further argue that an EC minimum price policy which was instituted in October, 1981, has stifled competition among EC producers within the EC, and has thereby provided a significant incentive to compete via price in non-EC markets such as the United States in order to capture greater market shares. Conference Transcript at 26-28. We do not have sufficient information to evaluate these claims at this time. However, we invite fuller discussion of these issues should this case return for a final investigation.

[36] Report at A-28.

[37] *Id.* at A-22.

[38] *Id.*

[39] See note 1 at 3.

[1] The "record" is defined in section 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[Investigations Nos. 701-TA-165 through 169 (Preliminary)]

Welded Carbon Steel Pipes and Tubes From Brazil, France, Italy, Republic of Korea, and West Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be subsidized by the Governments of Brazil, France, Republic of Korea, and West Germany:

Small diameter carbon steel welded pipes and tubes [3] from: Brazil (investigation No. 701-TA-165 (Preliminary)),[4 5] and Republic of Korea (investigation No. 701-TA-168 (Preliminary));[4] and

Large diameter carbon steel welded pipes and tubes [6] from: France (investigation No. 701-TA-166 (Preliminary)),[5 7] and West Germany (investigation No. 701-TA-169 (Preliminary)),[5 7].

The Commission determines [2] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be subsidized by the Government of Italy (investigation No. 701-TA-167 (Preliminary)): Small diameter carbon steel welded pipes and tubes,[3 8], and Large diameter carbon steel welded pipes and tubes.[6 9]

[2] Chairman Alberger not participating.

[3] For purposes of these investigations, small diameter carbon steel welded pipes and tubes are those, other than oil country goods, provided for in items 610.3206, 610.3209, 610.3231, 610.3232, 610.3241, 610.3244, and 610.3247 of the Tariff Schedules of the United States Annotated (TSUSA).

[4] Commissioners Eckes, Frank, and Haggart determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports.

[5] Commissioner Stern dissenting.

[6] For purposes of these investigations, large diameter carbon steel welded pipes and tubes are those, other than oil country goods, provided for in items 610.3211 and 610.3251 of the TSUSA.

[7] Commissioners Eckes and Haggart determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports.

[8] Vice Chairman Calhoun and Commissioner Frank dissenting.

[9] Commissioner Frank dissenting.

Background

On May 7, 1982, U.S. Steel Corp. filed petitions with the U.S. International Trade Commission and with the U.S. Department of Commerce alleging that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Brazil, France, Italy, Republic of Korea, and West Germany of welded carbon steel pipes and tubes, upon which bounties or grants are alleged to be paid. Accordingly, the Commission instituted preliminary investigations under section 701 of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of May 19, 1982 (47 FR 21643). The conference was held in Washington, D.C., on June 2, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Vice Chairman Michael J. Calhoun, Commissioners Paula Stern, Alfred E. Eckes, and Veronica A. Haggart

The Domestic Industry

In any preliminary countervailing duty investigation, the Commission must determine whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly subsidized imports. The industry is defined by the statute as the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.[10] Like product is defined as a product which is like or, in the absence of like, most similar in characteristics and uses with the article under investigation.[11]

In these investigations, the allegedly subsidized products being imported consist of small diameter (not over 16") standard, structural, and line welded carbon steel pipes and tubes (small diameter pipes) from the Republic of Korea (Korea), Brazil, and Italy, and large diameter (over 16") standard and line welded carbon steel pipes and tubes (large diameter pipes) from West Germany, France, and Italy.

Large diameter pipes differ from small diameter pipes principally in terms of size, use, and production process. Large diameter pipes are used almost exclusively for pipelines, while small diameter pipes are often used for other purposes as well.[12] Small diameter pipes are generally an off-the-shelf item, whereas large diameter pipes are usually sold through contract for a specific project.[13] Small and large diameter pipes are made in separate facilities. Large diameter pipes generally are made using the submerged arc or spiral weld process while small diameter pipes generally are made using the continuous weld or resistance weld process.

The petitioner, U.S. Steel Corporation, maintains that there are two industries producing products like the imported products listed above: one producing small diameter standard, structural, and line welded carbon steel pipes and tubes (the small diameter pipe industry) and one producting large diameter standard and line welded carbon steel pipes and tubes (the large diameter pipe industry). U.S. argues that any distinctions among standard, structural and line pipes and tubes are blurred in industry practice, as there is considerable substitution.[14]

Other parties allege that U.S., Steel's definitions are too narrow and that production of mechanical, pressure, or oil country pipes and tubes also should be included in the industry definition. Testimony at the conference indicated, however, that mechanical and pressure pipes and tubes are not substitutable for structural, standard, and line pipe.[15] Oil country tubular goods with "upset" ends (i.e., turned up at the ends in a way suitable for threading) are not like standard, structural, and line pipes. The oil country tubular goods with upset ends are designed specifically for use in oil well drilling and are threaded or screwed together rather than being welded. The added expense for upset ends makes it unlikely that these goods will be substituted for other standard, structural or line pipes. However, several of the respondents in these investigations have argued that line pipe is often substituted for the type of oil country pipe that does not have upset ends when drilling close to the surface or in shallow wells. If these investigations return for a final determination, we will explore more fully the question of the substitutability of mechanical, pressure, and oil country pipes and tubes with standard, structural, and line pipes and tubes.

We believe that the best information available at this time indicates that there are two like products, small diameter standard, structural, and line welded carbon steel pipes and tubes and large diameter structural and line welded carbon steel pipes and tubes. There are separate domestic industries producing each of the two like products. If these investigations return for a final determination, we may reconsider these industry definitions.

Cumulation

Our determinations in these investigations have been made on a case-by-case basis, without aggregation of import data for each product category with import data regarding the same products from other countries.[16] In the event that final investigations are conducted in these cases, however, we do not rule out cumulation if the record developed demonstrates it is appropriate.[17]

Standards for Determination

Section 771(7) of the Tarriff Act of 1930 directs the Commission to consider in making its determination, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on price, and (3) the consequent impact of the imports on the domestic industry.[18] In assessing the impact on the domestic industry, we are further directed by section 771(4)(c)(iii) to evaluate all relevant economic factors

[10] 19 U.S.C. 1677(4)(A).

[11] 19 U.S.C. 1677(10).

[12] Report, p. A-4.

[13] Transcript, pp. 10-11.

[14] See, e.g., Petition for South Korea, pp. 5-6.

[15] Transcript, pp. 26-30.

[16] *See* additional views of Vice Chairman Calhoun.

[17] Commissioner Stern refers readers to her discussion of the practice of cumulation in Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom, Invs. Nos. 731-TA-18 through 24 (Preliminary), USITC Pub. 1064 (1980), at 64-67.

See also her joint views with Chairman Alberger in Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, Invs. Nos. 701-TA-86 to 144, 701-TA-146, and 701-TA-147 (Preliminary), and Invs. Nos. 731-TA-53 to 86 (Preliminary), USITC Pubs. 1221 and 1226 (1982).

Finally, see her joint views with Chairman Alberger in Prestressed Concrete Steel Wire Strand from Brazil, France, and the United Kingdom, Invs. Nos. 701-TA-152 and 153 (Preliminary), and Inv. No. 731-TA-89, USITC Pub. 1240 (1982), at 3; Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Invs. Nos. 701-TA-148 to 150 (Preliminary), and INV. No. 731-TA-88 (Preliminary), USITC Pub. 1230 (1982).

[18] 19 U.S.C. 1677(7).

which have a bearing on the state of the industry, including, but not limited to: production, sales, market share, profits, productivity, return on investments, capacity utilization, cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.[19]

In these investigations, we have been able to obtain limited data on some of the economic factors listed above. For other factors, the data collected are based on allocations that limit their utility. In particular, the information submitted to the Commission by domestic producers concerning capacity and capacity utilization of the small diameter pipe industry may not be reliable because of the reported ability of producers to shift easily from making the like product to making other small diameter pipe products on the same equipment. Similar limitations exist with respect to data concerning investment, return on investment, and employment.

The reported profit-and-loss data are limited in their use as an absolute measure of profitability.[20] In addition, with the exception of the Korean products, we were unable to obtain adequate price data from U.S. producers and importers on the sales of comparable products. For any final determination, we would hope to obtain better price data.

The Small Diameter Pipe and Tube Industry

Condition of the Industry

The small diameter standard, structural, and line welded carbon steel pipe industry is currently experiencing problems.[21] Domestic production and shipments of small diameter pipes fell in the first quarter of 1982 by 29 percent and 26 percent, respectively, from the comparable quarter in 1981.[22] The U.S. industry showed net operating losses of $13 million in 1980 compared to a slight profit of $6 million in 1979. Although there were profits of $40 million in 1981, the domestic small diameter pipe industry was only able to attain a ratio of operating profit to sales of 3.0 percent in 1981, a particularly good year for sales in the industry. Of the 23 firms reporting profit and loss data, 8 stated in their questionnaires that they were experiencing losses in 1981 compared to 5 firms in 1979.

Imports From Korea

The United States is the largest market for welded carbon steel pipes and tubes produced in Korea. Exports from Korea to the United States increased from 32 percent of Korean production in 1979 to 55 percent in 1981.[23] Imports of Korean small diameter pipes rose from 369,000 short tons in 1979 to an estimated 559,000 short tons in 1981. This is an increase from slightly over 10 percent of U.S. consumption to approximately 13 percent.[24] Imports from Korea accounted for 34 percent of all imports of small diameter pipes to the United States in 1981.

There is evidence that some Korean producers are underselling the domestic producers by 15 percent or more, and the magnitude of underselling has increased since the fourth quarter of 1981.[25] Eight firms confirmed that they purchased Korean products at prices less than those for comparable domestic items.[26] Based on the foregoing, we conclude that there is a reasonable indication that the domestic small diameter pipe industry is materially injured by reason of imports from Korea.

Imports From Brazil

U.S. imports of the Brazilian product remained relatively stable during 1979 to 1981. However, the level of imports increased from the first quarter of 1981 to the first quarter of 1982, at the same time as U.S. consumption dropped by 17 percent. Import penetration therefore, increased in the first quarter of 1982. There is some indication of underselling with regard to Brazilian imports.[27] Based on the foregoing, we conclude that there is a reasonable indication that the domestic small diameter pipe industry is materially injured by reason of imports from Brazil.

Views of Commissioner Stern on imports from Brazil—Commissioner Stern takes exception to the majority view that there is a reasonable indication that imports of small diameter pipes from Brazil have caused material injury. She notes that the import penetration as a ratio of U.S. consumption for small diameter pipes from Brazil, adjusted to exclude oil country exports, fell slightly from 1979 to 1981.[28] The first quarter of 1982 showed an increase in penetration and volume, though the level of imports was still small. No instances of sales lost to imports from Brazil were confirmed. The single instance of underselling alluded to above by the majority cannot be called representative.[29] In 1981, Brazil supplied only 4 percent of U.S. imports of the product under investigation.

Commissioner Stern finds that the increased market share in the last quarter by a relatively small foreign supplier is insufficient to indicate that imports from Brazil are causing or contributing to any material injury the domestic industry is suffering. Furthermore, the fact that the Brazilian industry is already operating at extraordinarily high capacity utilization.[30] effectively eliminates any threat imports from Brazil could pose to the U.S. industry.

Imports From Italy

In contrast to imports from Korea and Brazil, imports from Italy have shown a steady downward trend from 1979 to 1981. According to information derived from Commission questionnaires, 74,000 short tons of the total 85,000 short tons of imports from Italy entered during 1981 under the items in the Tariff Schedules of the United States Annotated (TSUSA) for small diameter pipes were actually oil country tubular goods, not subject to this investigation.[31] The import data for Italy, adjusted to exclude oil country tubular goods, show a decrease from 32,000 short tons in 1979 to 11,000 short tons in 1981. Import penetration, adjusted for oil country goods, fell from 0.4 percent of U.S. consumption in 1980 to 0.2 percent in 1981. First quarter 1982 data showed an increase in import penetration. However, this quarterly data has not been adjsuted and the product mix between oil country tubular goods and the goods subject to this investigation reportedly has not changed from 1981.[32]

There are no confirmed lost sales to imports from Italy. The Commission attempted to obtain data regarding Italian capacity, but was unable to do so.

Based on the foregoing, we conclude that there is no reasonable indication of

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[19] According to the Senate Report on the Trade Agreements Act of 1979, [n]either the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC [Commission] to decide." S. Rept. 96-249 (96th Cong., 1st Sess.) at 88.

[20] Report, p. A-19.

[21] We considered quarterly data, in addition to the yearly data, in reaching our decision. Quarterly data with regard to small diameter pipes are significant because these pipes generally have stable year-round production and shipment levels.

[22] *Id.*, p. A-16.

[23] *Id.*, p. A-11.

[24] *Id.*, p. A-28.

[25] *Id.*, p. A-36.

[26] At this preliminary stage, the impact of this underselling on domestic prices is not known.

[27] Report, p. A-34.

[28] *Id.*, p. A-26. Most data are confidential and can only be discussed in general terms.

[29] The data available to the Commission do not allow for comparisons with trends in prices reported by domestic producers. *See* Report, p. A-31.

[30] Report, p. A-10.

[31] *Id.*, p. A-24.

[32] Telephone conversation of June 14, 1982, between Abigail Eltzroth, staff investigator, and David P. Houlihan, counsel for Italian producers.

material injury or threat of material injury by reason of imports from Italy.

The Large Diameter Pipe and Tube Industry

Condition of the Industry

Although production and shipment data showed increases for the domestic industry from 1979 to 1981, production for the first quarter of 1982 was approximately the same as the first quarter production figures for 1981, and shipments declined by 19 percent.[33] Financial data for the large diameter pipe industry show heavy losses in 1979, continued losses in 1980, and a slight profit in the boom year of 1981.[34] Testimony at the Commission conference by some domestic producers indicated that they experienced losses in the first quarter of 1982.[35]

The first quarter statistics actually understate the seriousness of the situation with regard to the large diameter pipe industry. First quarter data on production, shipments, imports, profits, and other factors do not reflect the impact of imports from France and West Germany already contracted to enter the U.S. during 1982.

Views of Commissioner Stern on the condition of the industry— Commissioner Stern evaluated the information in this investigation in light of the particular bid process in the large diameter pipe industry. This bid process can result in large swings in economic indicators within short periods of time.[36] Thus, first-quarter 1982 data are not considered a reliable basis for making judgments on the industry's performance.

Further, Commissioner Stern notes that the health of the large diameter pipe industry is unclear. Although the profits reported in Commission questionnaires were modest in 1981, those figures are based on firms covering significantly less than half the industry's production. Producers who filled out other portions of the Commission's questionnaire chose not to provide profit data. Thus, the industry may very well be a good deal healthier than the partial data indicate. Commissioner Stern, however, has reached her negative determinations principally on the basis of the lack of sufficient links between the subject imports and any problems the U.S. industry may be experiencing.

Imports From France

The capacity of the three French producers of large diameter pipes increased by 7 percent, from 777,000 tons in 1979 to 832,000 tons in 1981.[37] Over 80 percent of French production of large diameter pipes was exported in 1981. French exports to the United States, as a percentage of French production, increased from zero in 1979 to 13 percent in 1981.

Imports from France increased steadily from 52 short tons in 1979 to 74,973 short tons in 1981. French imports climbed from 0.2 percent of U.S. consumption in 1980 to 4.2 percent in 1981. Based solely on imports contracted to enter the United States during 1982, imports from France will be approximately 100,000 short tons in 1982. The full impact of imports to be entered in 1982 has yet to be felt by the domestic industry.

U.S. pipeline firms awarded French producers 7 contracts in 1981. There are strong indications of underselling with regard to five of the French bids.[38] This information demonstrates the French producers' ability to underbid the domestic producers.

Based primarily on the projected import levels for 1982, the estimated decrease in U.S. consumption,[39] and the evidence of underselling, we concluded that there is a reasonable indication of threat of material injury by reason of imports from France.

Views of Commissioner Stern regarding imports from France— Commissioner Stern finds no reasonable indication that imports of French large diameter pipes have caused or threaten to cause material injury to the domestic industry, whether considered alone or in combination with imports from West Germany. Confidential information indicates that the French ability to threaten the U.S. industry in a real and imminent sense is not feasible.[40] Further, she notes that though price was a factor in some bids lost by the domestic industry, France's largest U.S. pipeline contract was for a pipeline for which U.S. firms won a predominant share of the tonnage awarded.[41]

Imports From West Germany

Production of large diameter pipes in West Germany has increased irregularly from 1.6 million tons in 1979 to 1.8 million tons in 1981. while data on West German production capacity are not available, information on the record indicates that existing capacity far exceeds production.[42] West German exports to the United States of large diameter pipes increased from 0.6 percent of West German production in 1979 to 2.1 percent in 1981.

Imports from West Germany increased irregularly from 10,312 short tons in 1979 to 16,461 short tons in 1981. Imports of large diameter pipes from West Germany varied from 1.1 percent of U.S. consumption in 1979 to 0.1 percent in 1980 and back up to 0.9 percent in 1981.[43] According to ICF, Inc., an economic consulting firm for a German producer, there are two German shipments due for delivery in the U.S. during June–December 1982. One shipment is for 123,000 tons and the other for 20,000 tons. thus, based on imports already contracted to enter the U.S. in 1982, imports from West Germany will be almost nine times greater in 1982 than in 1981. The full impact of these imports has yet to be felt by the domestic industry.

The Commission has pricing information concerning three contracts won by West German producers since 1980. Although much of the information regarding West German bids is confidential, it indicates that the German producers have underbid U.S. producers.

Based primarily on the estimated import levels for 1982, the projected decrease in U.S. consumption,[44] and the evidence of underselling, we conclude that there is a reasonable indication of threat of material injury by reason of imports from West Germany.

Views of Commissioner Stern on imports from West Germany— Commissioner Stern determines that there is no reasonable indication that imports of large diameter pipes from the Federal Republic of Germany have caused or threaten to cause material injury, whether considered alone or in combination with the French imports. The West German import penetration fell from 1.1 percent of U.S. consumption in 1979 to 0.1 percent in 1980. In 1981, it recovered to 0.9 percent. Analysis of successful West German bids indicates that factors such as ability to meet delivery schedules and specifications were extremely important.[45]

Imports From Italy

Italian producers have not won any contracts for large diameter pipes since 1980. The import penetration of large diameter pipes from Italy increased from less than 0.05 percent of U.S. consumption in 1980 to 6.1 percent in

[33] Report, p. A–16.
[34] *Id.*, p. A–21.
[35] Transcript, p. 14.
[36] Report, p. A–15.
[37] *Id.*, p. A–12.
[38] *Id.*, p. A–35.
[39] *Id.*, p. A–8.
[40] *Id.*, p. A–37.
[41] *Id.*, p. A–35.
[42] *Id.*, p. A–13.
[43] *Id.*, p. A–29.
[44] *Id.*, p. A–8.
[45] *Id.*, p. A–36.

1981 when 110,000 tons from the 1980 contracts were entered. These imports entered in a particularly good year for the U.S. industry in terms of production and shipments. Non-price factors were crucial in awarding these contracts to the Italian firms.[46] There is a strong indication that these contracts were won as a result of the U.S. industry's inability to meet delivery schedules. All Italian pipes for these contracts have entered the United States, and there is no information showing that the Italian producers have any outstanding orders to be shipped during 1982.[47]

We conclude that there is no reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of imports from Italy.

Additional Views of Vice Chairman Michael J. Calhoun

Consistent with my analysis in the recent series of steel investigations[48] and in view of all the relevant economic factors before us, my view is that the requisite impact of the imports before us is most reasonably achieved through their aggregate rather than their individual presence in the domestic marketplace. I reach this conclusion based upon all factors relied upon in the majority opinion as well as two others.

With regard to the small diameter pipes, the market share held by each of the countries under investigation, with the exception of South Korea, is very low: Italy's market share was 1.9 percent in 1981 and Brazil's market share was 1.6 percent. This strongly suggests to me that, in the absence of other information, any causal link between these imports and material injury to the domestic industry likely results from their collective rather than individual impact. In the final investigation, data may well be presented that the 15 percent market share held by Korea has such a predominant impact on domestic producers that the market share impacts from any one country or in the aggregate with other countries cannot be seen as having sufficient impact to warrant inclusion in our assessment. On the other hand, information developed may establish, in fact, my view here that a reasonable indication of nexus exists sufficient to find material injury with respect to all of the imports.

In determining that small diameter pipes from Italy ought to be included in the aggregate, I note that the unadjusted import figures from Italy show that imports have increased from 32,000 short tons in 1979 to 85,000 short tons in 1981. Imports of small diameter pipes increased from 4,000 short tons in the first quarter of 1981 to 15,000 short tons in the first quarter of 1982. In terms of the ratio of imports to consumption, Italian imports increased from .9 percent in 1979 to 1.9 percent in 1981. Quarterly data show that Italian import penetration increased from .4 percent in the first quarter of 1981 to 1.7 percent in 1982.

However, I understand that question exists as to whether these import figures include oil country tubular goods. Apparently, our information that these imports were oil country goods was based on data supplied by the importer who could have based its characteristics on information from purchasers regarding the use to which the Italian pipes were put. Thus, circumstances raise two issues: First, to what extent line pipes are, in fact, coming in from Italy, and, second, to what extent there is actual substitutability between the two products.

Considering that the majority agrees that the question of substitutability ought to be preserved for the final, it is my view that the disposition of Italian imports ought to be made at that time, as well, so we can clearly say whether Italian small diameter pipes are line or oil country or are substitutable for either use.

With regard to large diameter pipes, I have found that the market share held by Italian imports of large diameter pipes has fallen from 6.1 percent in 1981 to less than .05 percent for 1982 thus far. Since no information is available showing some special nexus between Italian large diameter pipes and the current state of the domestic industry, I have eliminated imports from italy from my affirmative finding.

As in the other cases, I wish to make clear that market share analysis is not the sole basis for aggregating in this investigation. Historically, the Commission has looked at a number of factors in deciding if it were appropriate to aggregte the impact of imports from various sources. These factors include comparability, simultaneous impact, and competition between the products from various countries and the like product. Evidence of lost sales and preliminary pricing data strongly suggests to me that imports from the various countries before us interact with the domestic product in ways that are indistinguishable from the way they would impact if all the imports under investigation were from the same country, if not from the same company. In my mind, is tis the essence of the rationale for cumulation.

If imports of a particular product are adversely impacting domestic producers of the like product, then the fact of their national origin ought to be of little significance in finding material injury. By the same token, however, if the national origin of an import somehow has signficance in distinguishing its impact from that of others, then clearly that ought to be a basis for evaluating it separately.

Views of Commissioner Eugene J. Frank

Determination

I find that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of small diameter (not over 16") standard, structural and line welded carbon steel pipes and tubes (hereinafter "small diameter pipes") from the Republic of Korea, Brazil, and Italy.

I find that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of large diameter (over 16") standard and line welded carbon steel pipes and tubes (hereinafter "large diameter pipes") from West Germany, France, and Italy.

Discussion

I concur with my colleagues in that the best information available to the Commission at this time indicates for these preliminary investigations that there are two like products: (i) small diameter standard, structural, and line welded carbon steel pipes and tubes; and (ii) larger diameter structural and line welded carbon steel pipes and tubes. Therefore, I have determined that there are separate domestic industries producing each of the two like products for which adequate relevant economic data are available, for the purpose of these preliminary investigations to assess the condition of each industry. However, should these investigations return for a final Commission determination, industry definitions will be subject to reconsideration based on the record developed at that time.

I would reiterate my oft-stated view that the statute and legislative history of the Title VII investigations require the Commission in its preliminary determinations for both antidumping and countervailing duty investigations to exercise only a low threshold test based on the best information available that the facts reasonably indicate an

[46] *Id.*

[47] *Id.*, p. A-36 and p. A-38.

[48] Investigations Nos. 701-TA-86 through 119, 701-TA-121, 701-TA-123 through 144, 701-TA-146, 701-TA-147, 731-TA-53 through 65, and 731-TA-67 through 86 (Preliminary), USITC Pub. No. 1221.

industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[49] This less rigorous standard, in my view, was intended by Congress to screen those petitions where it was readily apparent, notwithstanding a necessarily incomplete record compiled in a compressed 45-day time period, that there was no indication of possibly establishing injury even with adequate time, a thorough and fully developed investigation and record and a detailed hearing before the Commission.[50]

I have determined that the "factors and conditions of trade" affecting the pertinent industry involved in these preliminary investigations, and other relevant economic factors, compel cumulation of the articles in question.[51]

I note that there are questions surrounding the reliability of data obtained with respect to certain economic factors traditionally scrutinized by the Commission [52] in the conduct of Title VII investigations in assessing the impact of subject imports on the affected domestic industry. The nature and character of the welded carbon pipe and tube industry, both small and large diameter, require certain arbitrariness in allocation of economic data on a "like product", industry basis to comply with the statutory scheme. I believe it germane to reiterate my discussion on this important issue set forth in my views in the recently concluded preliminary investigations on Certain Seamless Steel Pipes and Tubes from Japan: [53]

Although there are inherent limitations in certain "economic" data submitted to the Commission by domestic producers and perhaps questionable reliability with regard to capacity and capacity utilization, employment, investment, etc., I believe such data cannot be dismissed and discarded in entirety inasmuch as perhaps trends can be ascertained which are germane to injury considerations under a "low threshold" standard applicable in preliminary investigations. One of the concerns I think is relevant to any application of the "like product" industry definition approach in determining injury pursuant to the statute, employed in a "universe" comprised by multi-product integrated operations, is an inherent degree of arbitrariness in allocation of economic factors *exclusively* to various product-lines. One can become mired in a quagmire of assumptions as to e.g. their reasonability and consistency of application in a narrow-focused product-line analysis, yet face the dilemma of taking into consideration extraneous and perhaps inappropriate data if an industry definition were expanded, based on necessarily available data. I would expect a final investigation if conducted, to discuss thoroughly these underlying assumptions and their application for such data.

In those views in that investigation, I also expressed my misgivings about the validity of profitability data obtained which are also applicable in these investigations in view of the lack of thorough analysis of varying cost accounting methodologies employed by U.S. producers. Obviously a compressed time-frame in analyzing the available information obtained for the record in the conduct of these preliminary investigations might preclude such a comprehensive analysis of cost allocation considerations; however, I would expect the staff to be in a position in a final investigation, should the Commission be called upon to conduct same, to obtain such data on a uniform, consistent cost allocation basis for domestic producers. Subject to the above, I concur with my colleagues in their assessment of the present condition of the small diameter pipe and tube industry, and concur with Vice Chairman Calhoun, and Commissioners Eckes and Haggart on their assessment of the present condition of the large diameter pipe and tube industry.

Finally, I would expect for any final determinations in these cases that the Commission would have the benefit of more comprehensive and representative price data from U.S. producers and importers on sales of comparable products and on lost sales. The absence of such information in these preliminary investigations from certain of the countries was not a decisive factor in my analyses in view of this expectation.

In aggregating imports of small diameter pipes from South Korea, Italy, and Brazil, it is readily apparent such imports increased markedly during the 1979–1981 period in quantity, value, and in market penetration, and remained at significant levels to the first quarter of 1982.[54] Likewise, in aggregating imports of large diameter pipes from West Germany, France, and Italy, such imports increased substantially during the 1979–1981 period in quantity, value, and in market penetration. Although such imports in the aggregate declined markedly with respect to domestic consumption in the first quarter of 1982, nonetheless their market share remained at a significant level.[55] Moreover, in 1981 such aggregate import levels represented a massive increase over prior years in large part due to Italian imports that were shipped to pipe line projects that year. The terms and conditions and comparable bidding information vis-a-vis domestic and foreign producers for these 1980 bid awards to the Italian producers were not available for their tonnage shipped in 1981, which I expect would be available in the conduct of a final investigation.

By Order of the Commission.

Issued: June 21, 1982.

Kenneth R. Mason,

Secretary.

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[49] H.R. Rep. No. 96-317, 96th Cong., 1st Sess., 52 (1979).

[50] I refer the reader to my views on the January 1982 92 carbon and alloy steel preliminary investigations in which the structural context, from which I believe the Commission should review and analyze the record developed in these preliminary Title VII investigations pursuant to this low threshold standard and render its determinations accordingly, is more fully articulated. Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, The Netherlands, Romania, The United Kingdom, and West German, Invs. Nos. 701-TA-86 to 144, 701-TA-146 and 701-TA-147 (Prel.), and Invs. Nos. 731-TA-53 to 86 (Prel.), USITC Pubs. 1221 and 1226 (1982), Views of Commissioner Eugene J. Frank, pp. 121-185.

[51] See my views on cumulation in the carbon steel cases, Certain Steel Products from Belgium pp. 127-129.

[52] See 19 U.S.C. 1677(7)(c)(iii).

[53] Inv. No. 731-TA-87 (Prel.).

[54] I would expect the question of whether such import data included oil country tubular goods, not subject to these investigations, and any resulting adjustment of data would be resolved in a final investigation on the basis of independent verification by the Commission of such data.

[55] In my analyses leading to cumulation, I considered the historical market presence of such imports in the U.S. as well as the fact that incremental participation in the market in view of the bidding process involved could have a deleterious effect on pricing patterns whether successful bidder or not. I would expect this issue of participation and potential adverse price effects on the domestic market, in view of the dearth of comprehensive pricing information of a representative and comparable nature on U.S. and imported products, to be more fully explored in a final investigation.

DEPARTMENT OF JUSTICE

Antitrust Division

Merger Guidelines

The Department of Justice has issued a new set of Merger Guidelines. Set forth below, these Guidelines replace those which were issued by the Division in 1968, and will be applied by attorneys in the Antitrust Division in deciding whether particular mergers violate Section 7 of the Clayton Act or Section 1 of the Sherman Act. It is hoped that publication of these Guidelines will assist businesses in complying with applicable laws.

Issued: June 14, 1982

William French Smith,

Attorney General.

I. Purpose and Underlying Policy Assumptions

These Guidelines state in outline form the present enforcement policy of the U.S. Department of Justice ("Department") concerning acquisitions and mergers ("mergers") subject to section 7 of the Clayton Act[1] or to section 1 of the Sherman Act.[2] They describe the general principles and specific standards normally used by the Department in analyzing mergers.[3] By staging its policy as simply and clearly as possible, the Department hopes to reduce the uncertainty associated with enforcement of the antitrust laws in this area.

Although the Guidelines should improve the predictability of the Department's merger enforcement policy, it is not possible to remove the exercise of judgment from the evaluation of mergers under the antitrust laws. Difficult factual questions arise under the standards stated below, and the Department necessarily will base its decision on the data that are practicably available in each case. Moreover, the standards represent generalizations to which some exceptions are inevitable. In appropriate cases, the Department will challenge mergers that are competitively objectionable under the general principles of the Guidelines regardless of whether they are covered by the specific standards. Finally, the Guidelines are designed primarily to indicate when the Department is likely to challenge mergers, not how it will conduct the litigation of cases that it decides to bring. Although relevant in the latter context, the factors contemplated in the standards do not exhaust the range of evidence that the Department may introduce in court.[4]

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance "market power" or to facilitate its exercise. A sole seller (a "monopolist") of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Where only a few firms account for most of the sales of a product, those firms can in some circumstances coordinate, explicitly or implicitly, their actions in order to approximate the performance of a monopolist. This ability of one or more firms profitably to maintain prices above competitive levels for a significant period of time is termed "market power." Sellers with market power also may eliminate rivalry on variables other than price. In either case, the result is a transfer of wealth from buyers to sellers and a misallocation of resources.[5]

Although they sometimes harm competition, mergers generally play an important role in a free enterprise economy. They can penalize ineffective management and facilitate the efficient flow of investment capital and the redeployment of existing productive assets. While challenging competitively harmful mergers, the Department seeks to avoid unecessary interference with that larger universe of mergers that are either competitively beneficial or neutral. In attempting to mediate between these dual concerns, however, the Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipiency.

II. Market Definition and Measurement

Using the standards stated below, the department will define and measure the market for each product or service ("product") of each of the merging firms. A market is a group of products and an associated geographic area with certain economic characteristics that will be described in subsequent paragraphs. In theory, all the demand and supply forces relevant to the evaluation of a merger could be incorporated in the definition of a market. Under the Guidelines, however, market definition is not the exclusive analytical technique through which the Department considers those forces. For example, because the potential new entry from the construction of new facilities and from the substantial modification of existing facilities is not easily captured in conventional market statistics, the Department takes such entry into account in interpreting market statistics.[6] Taken as a whole, however, the standards in the Guidelines are designed to ensure that, whenever the Department challenges a merger, the firms in the affected market could exercise market power if they were able to coordinate their actions.

A. Product Market Definition

The first task in market definition is to determine what products to include in the market for the product of the merging firm.[7] In general, the Department seeks to identify a group of products such that a hypothetical firm[8] that was the only present and future seller of those products could raise price profitably. That is, assuming that buyers could respond to an increase in price for a tentatively identified product group only by shifting to other products, what would happen? If readily available alternatives were, in the aggregate, sufficiently attractive to enough buyers, an attempt to raise price would not prove profitable, and the "market" would prove to have been too narrowly defined.

Taking the product of the merging firm as a beginning point, the Department will establish a provisional product market. The Department will include in the provisional market those products that the merging firm's customers view as good substitutes at prevailing prices.[9] The potential weakness of such a market based solely on existing patterns of supply and demand is that those patterns might change substantially if the prices of the products included in the provisional market were to increase. For this reason, the Department will test further and, if necessary, expand the provisional market. The Department will add additional products to the market if

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[1] 15 U.S.C.A. 18 (1981). Mergers subject to section 7 are prohibited if their effect "may be substantially to lessen competition, or to tend to create a monopoly."

[2] 15 U.S.C.A. 1 (1981). Mergers subject to section 1 are prohibited if they constitute a "contract, combination . . . . or conspiracy in restraint of trade."

[3] They replace a set of Guidelines issued by the Department in 1968, and are subject to further revision in light of subsequent judicial decisions or economic studies. Although changes in enforcement policy may precede the issuance of amended Guidelines, the Department will attempt to conform the Guidelines to such changes as soon as possible.

[4] Parties seeking more specific advance guidance concerning the Department's enforcement intentions with respect to any particular merger should consider using the Business Review Procedure. 28 CFR 50.6.

[5] "Market power" also encompasses the ability of a single buyer or group of buyers to depress the price paid for a product to a level that is below the competitive price. Market power by buyers has wealth transfer and resource misallocation effects analogous to those associated with market power by sellers.

[6] In contrast to the comprehensive definition suggested in this paragraph of the test, the market definition used by the Department can be stated formally as follows: "a market consists of a group of products and an associated geographic area such that (in the absence of new entry) a hypothetical, unregulated firm that made all the sales of those products in that area could increase its profits through a small but significant and non-transitory increase in price (above prevailing or likely future levels)." The standards for market definition in the text below implement this definition.

[7] The analysis that follows will be repeated for each product of each merging firm.

[8] In Sections III(A) and III(C), the Guidelines discuss factors affecting the ability of a group of sellers, by coordinating their actions, to approximate the performance of a single firm.

[9] On occasion, the Department may base this analysis on likely future prices, provided that the relevant price relationships can be projected with confidence.

a significant percentage of the buyers of products already included would be likely to shift to those other products in response to a small but significant and non-transitory increase in price. As a first approximation, the Department will hypothesize a price increase of five percent and ask how many buyers would be likely to shift to the other products within one year.[10] The Department will continue expanding the provisional market until it satisfies the general profitability standard stated above.[11]

In evaluating product substitutability,[12] the Department will consider any relevant evidence, but will give particular weight to the following factors:

(1) Evidence of buyers' perceptions that the products are or are not substitutes, particularly if those buyers have shifted purchases between the products in response to changes in relative price or other competitive variables;

(2) Similarities or differences between the products in customary usage, design, physical composition and other technical characteristics;

(3) Similarities or differences in the price movements of the products over a period of years; and

(4) Evidence of sellers' perceptions that the products are or are not substitutes, particularly if business decisions have been based on those perceptions.

The analysis of product market definition to this point has assumed that price discrimination—charging different buyers different prices for products having the same cost, for example—would not be possible after the merger. Existing buyers sometimes will differ significantly in their assessment of the adequacy of a particular substitute and the ease with which they could substitute it for the product of the merging firm. Even though a general increase in price might cause such significant substitution that it would not be profitable, sellers who can price discriminate could raise price only to groups of buyers who cannot easily substitute away.[13] If such price discrimination is possible, the Department will consider defining additional, narrower relevant product markets oriented to the buyer groups subject to the exercixe of market power.[14]

B. Identification of Firms that Produce the Relevant Product

In most cases, the Department's evaluation of a merger will focus primarily on firms that currently produce and sell the relevant product. In addition to those firms, however, the Department may include additional firms in the market in certain circumstances.[15]

1. *Production Substitution.* The same productive and distributive facilities can sometimes be used to produce and sell two or more products that buyers do not regard as good substitutes. Production substitution refers to the shift by a firm in the use of facilities from producing and selling one product to producing and selling another. Depending upon the cost and speed of that shift, production substitution may allow firms that do not currently produce the relevant product to respond effectively to an increase in the price of that product.[16]

If a firm has existing productive and distributive facilities that could easily and economically be used to produce and sell the relevant product within six months in response to a small but significant and non-transitory increase in price, the Department will include those facilities in the market.[17] As a first approximation, the Department will hypothesize a price increase of five percent and ask how many firms would be likely to change to the production and sale of the relevant product within six months.[18] Firms that must construct significant new productive or distributive facilities in order to produce and sell the relevant product will not be included in the market, although the Department will consider their competitive significance in evaluating entry conditions generally.[19]

2. *Durable Products.* Some long-lived products may continue to exert competitive influence after the time of original sale. If, under the standards stated in Section II(A), recycled or reconditioned products represent good substitutes for new products, the Department will include in the market firms which recycle or recondition those products.

3. *Internal Consumption.* Captive production and consumption of the relevant product by vertically integrated firms are part of the overall market supply and demand. Such firms are free to buy or sell in the market, and they incur an opportunity cost for units they consume rather than sell. The increase in that cost resulting from an increase in the market price may induce a change in behavior. The Department will include in the market the facilities that are used to produce the relevant product.[20]

[10] The purpose of hypothesizing a price increase is to interject a dynamic element in the analysis as a conceptual aid in determining the outer limits of the market. Judged by the effect on rate of return on invested capital, a given percentage price increase may be much more significant in some industries than in others.

Direct evidence of the likely effect of a price increase often will not be available, particularly in the context of the Department's prelitigation evaluation of a merger. As a result, the Department often will havae to rely on inferences from the types of circumstantial evidence described in the text below. For consistency, the Department will assume that buyers and sellers immediatedly recognize the price increase and believe that it will be sustained for the foreseeable future.

[11] The Depatment normally will not expand the market beyond the point at which this standard is satisfied unless it is convinced that independent competitive concerns exist in a larger market.

[12] In constructing and expanding the provisional market, the Department will not exclude any product that is at least as good a substitute as any product included. The Department will refer to the products included in the market collectively as the "relevant product."

[13] Price discrimination requires that sellers be able to identify those buyers and that other buyers be unable profitably to purchase and resell to them.

[14] Price discrimination is discussed in the Guidelines because it is sometimes a manifestation of market power created by a merger. In the context described in the text, a price increase to one group of buyers, reducing quantities purchased by that group, will not be accompanied by a price reduction and output increase to the other group. Hence, its effects on consumer welfare are unambiguously negative. It is important to distinguish that situation from the one in which a firm already possesses market power and is likely to exercise it, whether or not it is able to practice price discrimination. In the latter situation, price discrimination often results in an expansion of output, thus reducing the resource misallocation associated with market power.

[15] The situations described in the text below are particularly subject to difficult questions of degree. In such cases, it is often useful to calculate market shares based on alternative reasonable assumptions—for example, with and then without a particular type of facility arguably capable of easy and economical production substitution. In its evaluation of such cases, the Department will take into account the closeness of the issue, whichever way it is resolved for calculation of market statistics.

[16] Under other analytical approaches, production substitution sometimes has been reflected in the description of the product market. For example, the product market for stamped metal products such as automobile hub caps might be described as "light metal stamping," a production process rather than a product. The Department believes that the approach described in the text provides a more clearly focused method of incorporating this factor in merger analysis. If production substitution among a group of products is nearly universal among the firms selling one or more of those products, however, the Department may use an aggregate description of those markets as a matter of convenience.

[17] The amount of sales or capacity to be included in the market is a separate question discussed in Section II(D), below.

[18] See note 10, above.

[19] See Section III(B), below.

[20] See note 17, above. In evaluating the competitive significance of internally consumed production, the Department will consider whether the vertically integrated firm, either through sales of the relevant product or through sales of the products in which the relevant product is embodied, could frustrate an effort by the sellers of the relevant product to exercise market power.

C. Identification of Firms That Produce the Relevant Product at Relevant Locations (Geographic Market Definition)

For each product market of each merging firm, the Department will determine the geographic market(s) in which that firm sells. The purpose of geographic market definition is to establish a geographic boundary that roughly separates firms that are important factors in the competitive analysis of a merger from those that are not. Depending on the nature of the product, the geographic market may be as small as a part of a city or as large as the entire world. Moreover, a single firm may operate in a number of economically discrete geographic markets.

In general, the Department seeks to identify a geographic area such that a hypothetical firm that was the only present or future producer of the relevant product in that area could profitably raise price. That is, assuming that buyers could respond to a price increase within a tentatively identified area only by shifting to firms located outside the area, what would happen? If firms located elsewhere readily could provide the relevant product to the hypothetical firm's buyers in sufficient quantity at a comparable price, an attempt to raise price would not prove profitable, and the "market" would prove to have been too narrowly defined.

Taking the location of the merging firm (or each plant, for multi-plant firms) as a beginning point, the Department will establish a provisional geographic market based upon the shipment pattens of that firm and its closest competitors.[21] The potential weakness of such a market boundary based on existing patterns of supply and demand is that those patterns might change substantially if the price within the provisional market were to increase. For this reason, the Department will test further and, if necessary, expand the provisional market. The Department will expand the provisional market boundaries to include the locations of firms (or plants) that could make significant sales to customers of firms previously included in the provisional market in response to a small but significant and non-transitory increase in price. As a first approximation, the Department will hypothesize a price increase of five percent and ask how many sellers could sell the product to such customers within one year.[22] The Department will continue expanding the provisional market until it satisfies the general profitability standard stated above.[23]

In evaluating geographic substitutability,[24] the Department will consider any relevant evidence, but will give particular weight to the following factors:

(1) Evidence of buyers actually having shifted their purchases among sellers at different geographic locations, especially if the shifts corresponded to changes in relative price or other competitive variables;

(2) Similarities or differences in the price movements of the relative product in different geographic areas over a period of years;

(3) Transportation costs;

(4) Costs of local distribution; and

(5) Excess capacity by firms outside the provisional market.

The analysis of geographic market definition to this point has assumed that geographic price discrimination—charging different prices net of transportation costs for the same product to buyers in different locations, for example—would not be possible after the merger. As in the case of product market definition, however, where price discrimination is possible,[25] the Department will consider defining additional, narrower geographic markets oriented to those buyer groups subject to the exercise of market power.

In general, the standards stated above will govern geographic market definition, whether domestic or international. The Department, however, will be somewhat more cautious, both in expanding market boundaries beyond the United States and in assessing the likely supply response of specific foreign firms. Although firms located outside the United States may exert an important competitive influence on domestic prices, they may be subject to additional constraints not present in the purely domestic context. For example, changes in exchange rates, tariffs, and general political conditions may limit the ability of such firms to respond to domestic price increases.

D. Calculating Market Shares

The Department normally will include in the market the total sales or capacity[26] of all firms (or plants) that are identified as being in the market in Sections II(B) and II(C). In some cases, however, total sales or capacity may overstate the competitive significance of a firm. With respect to firms included in the market under Sections II(B)(1) (production substitution) and II(B)(3) (internal consumption), for example, the Department will include only those sales likely to be made or capacity likely to be used in the geographic market in response to a small but significant and non-transitory increase in price. As a first approximation, the Department will hypothesize a price increase of five percent and ask what the likely response of the firms would be within one year.[27] Similarly, a firm's capacity may be so committed elsewhere that it would not be available to respond to an increase in price in the market. In such cases, the Department also may include a smaller part of the firm's sales or capacity.

III. Horizontal Mergers

Where the merging firms are in the same product and associated geographic market, the merger is horizontal. In such cases, the Department will focus first on the post-merger concentration of the market and the market shares of the merging firms. In some cases with low post-merger market concentration and/or market shares, the Department will be able to determine without a detailed examination of other factors that the merger poses no significant threat to

[21] Because the definition of geographic markets in the Guidelines is an area derived from the location of sellers' facilities, the area may not always exhibit characteristics associated with traditional geographic market definitions that are based, in whole or part, on buyer locations. Nevertheless, as a rule of thumb, the merging firm should make a significant percentage of its sales in the provisional market and firms located outside it collectively should account for a small percentage of total sales there. It is possible that a geographic market could include only one firm.

[22] See note 10, above. In some cases, a general expansion of the market boundaries may overstate the likely supply response. If a specific firm has a particular ability to sell in the provisional market that is not shared by other firms in that firm's area, the Department will treat that firm alone as being in the market.

[23] See note 11, above.

[24] In constructing and expanding the provisional market, the Department will not exclude any area if production there is at least as good a substitute as production that is included.

[25] See notes 13–14, above. Geographic price discrimination against a group of buyers is more likely when other buyers cannot easily purchase and resell the relevant product to them. Such arbitrage is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.

[26] Market shares can be expressed in terms of dollar sales, physical unit sales, physical capacity, or (in natural resource industries) physical reserves. The availability of data often will determine the measurement base. Where a choice is possible, the Department will use the measurement base that is the best indicator or the likely effect of the merger on market power.

[27] See note 10, above. It follows that some firms included in the market might have little or no sales or capacity attributed to them. Conversely, the present sales or capacity of a firm may understate its competitive significance. This effect of most likely in the acquisition of new or as-yet-unexploited patent rights.

competition. In other cases, however, the Department will proceed to examine a variety of other factors relevant to that question.

A. Concentration and Market Share

Market concentration is a function of the number of firms in a market and their respectative market shares. [28] Other things being equal, concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power. The smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. Where collective action is necessary, an additional constraint applies. As the number of firms necessary to control a given percentage of total supply increases to control a given percentage of total supply increases, the difficulties and costs of reaching and enforcing consensus with respect to the control of that supply also increase.

As an aid to the interpretation of market data, the Department will use the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the firms included in the market under the standards in Section II. [29] Unlike the traditional four-firm concentration ratio, the HHI reflects both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms. It also gives proportionately greater weight to the market shares of the larger firms, which probably accords with their relative importance in any collusive interaction.

The Department divides the spectrum of market concentration as measured by the HHI into three regions that can be broadly characterized as unconcentrated (HHI below 1000), moderately concentrated (HHI between 1000 and 1800) and highly concentrated (HHI above 1800). An empirical study by the Department of the size dispersion of firms within markets indicated that the critical HHI thresholds atr 1000 and 1800 correspond roughly to four-firm concentration ratios of 50 percent and 70 percent, respectively. Although the resulting regions provide a useful format for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive concerns.

1. *General Standards.* In evaluating horizontal mergers, the Department will consider both the post-merger market concentration and the increase in concentration resulting from the merger. [30] The link between concentration and market power is explained above. The increase in concentration is relevant to several key issues. Although mergers among small firms increase concentration, they are less likely to have anticompetitive consequences. Moreover, even in concentrated markets, it is desirable to allow firms some scope for merger activity in order to achieve economies of scale and to permit exit from the market.

The general standards for horizontal mergers are as follows:

(a) *Post-Merger HHI Below 1000.* Markets in this region generally would be considered to be unconcentrated, having the equivalent of at least 10 equally sized firms. Because implicit coordination among firms is likely to be difficult and because the prohibitions of section 1 of the Sherman Act are usually an adequate response to any explicit collusion that might occur, the Department is unlikely to challenge mergers falling in this region.

(b) *Post-Merger HHI Between 1000 and 1800.* Because this region extends from the point at which the competitive concerns associated with concentration become significant to the point at which they become quite serious, generalization is particularly difficult. The Department, however, is unlikely to challenge mergers producing an increase in the HHI of less than 100 points. [31] The Department is more likely than not to challenge mergers in this region that produce an increase in the HHI of more than 100 points. In making that decision, however, the Department will take into account the post-merger concentration of the market, the size of the resulting increase in concentration, and the presence or absence of the other factors discussed in Sections III(B) and III(C).

(c) *Post-Merger HHI Above 1800.* Markets in this region generally are considered to be highly concentrated, having the equivalent of no more than approximately six equally sized firms. Additional concentration resulting from mergers is a matter of significant competitive concern, and the Department will resolve close questions in favor of challenging the merger. The Department is unlikely, however, to challenger mergers producing an increase in the HHI of less than 50 points. [32] For mergers producing an increase in the HHI of from 50 to 100 points, the Department will base its decision whether to challenge the merger on the post-merger concentration of the market, the size of the resulting increase in concentration, and the presence or absence of the factors discussed in Sections III(B) and III(C). The Department is likely to challenge mergers in this region that produce an increase in the HHI of 100 points or more. [33]

2. *Leading Firm Proviso.* In some cases, typically where one of the merging firms is small, mergers that may create or enhance the market power of a single dominant firm could pass scrutiny under the standards stated in Section III(A)(1). Notwithstanding those standards, the Department is likely to challenger the merger of any firm with a market share of at least 1 percent with the leading firm in the market, provided that the leading firm has a market share that is at least 35 percent and is approximately twice as large as that of the second largest firm in the market.

[28] Markets can range from atomistic, where very large numbers of firms that are small relative to the overall size of the market compete with one another, to monopolistic, where one firm controls the entire market. Far more common, and more difficult analytically, is the large middle range of instances where a relatively small number of firms account for most of the sales in the market.

[29] For example, a market consisting of four firms with market shares of 30 percent, 30 percent, 20 percent and 20 percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Although it is desirable to include all firms in the calculation, lack of information about small fringe firms is not critical because such firms do not affect the HHI significantly.

[30] The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For examle, the merger of firms with shares of 5 percent and 10 percent of the market would increase the HHI by 100 ($5 \times 10 \times 2 = 100$). [The explanation for this technique is as follows: In calculating the HHI before the merger, the market shares of the merging firms are squared individually. Thus: $(a)^2 + (b)^2$. After the merger, the sum of those shares would be squared. Thus: $(a + b)^2$, which equals $a^2 + 2ab + b^2$. The increase in the HHI therefore is represented by 2ab.]

[31] Mergers producing increases in concentration close to the 100 point threshold include those between firms with market shares of 25 percent and 2 percent, 16 percent and 3 percent, 12 percent and 4 percent, 10 percent and 5 percent, 8 percent and 6 percent, and 7 percent and 7 percent.

[32] Mergers producing increases in concentration close to the 50 point threshold include those between firms with market shares of 12 percent and 2 percent, 8 percent and 3 percent, 6 percent and 4 percent, and 5 percent and 5 percent.

[33] There is some economic evidence that, where one or two firms dominate a market, the creation of a strong third firm enhances competition. The Department has considered this evidence but is not presently prepared to balance this possible gain against the certainty of substantially increased concentration in the market.

Because the ease and profitability of collusion are of little relevance to the ability of a single dominant firm to exercise market power, the Department will not consider the factors discussed in Section III(C) in this context. Under this standard, an ample market for small acquisitions typically will remain, and it is unlikely that any relevant economies will be limited to mergers involving the largest firm in the market.

B. Ease of Entry

If entry into a market is so easy that existing competitors could not succeed in raising price for any significant period of time, the Department is unlikely to challenge mergers in that market. Under the standards in Section II(B)(1), firms that do not presently sell the relevant product, but that could easily and economically sell it using existing facilities, are included in the market and are assigned a market share. This section considers the additional competitive effects of (1) production substitution where the necessary modifications are more substantial, and (2) entry through the construction of new facilities.

In assessing ease of entry to a market, the Department will consider the likelihood and probable magnitude of entry in response to a small but significant and non-transitory increase in price.[34] As a first approximation, the Department will hypothesize a price increase of five percent and ask how much new entry would be likely to occur within two years.[35] In most cases in which significant entry is unlikely, the Department will not attempt to differentiate further the degrees of difficulty of entry. In cases where entry is unusually difficult, however, the Department is more likely to challenge a merger.

[34] See note 10, above. In general, entry is more likely when the additional assets necessary to produce the relevant product are short-lived or widely used outside the particular market. Conversely, entry is less likely when those assets are long-lived and highly specialized to the particular application. Entry is generally facilitated by the growth of the market and hindered by its stagnation or decline. Entry also is hindered by the need for scarce special skills or resources and the need to achieve a substantial market share in order to realize important economies of scale. See also Section IV(B)(1)(b), below.

[35] Although this type of supply response will take longer to materialize than those previously considered, its prospect may have a greater deterrent effect on the exercise of market power by present sellers. Where new entry involves the dedication of long-lived assets to a market, the resulting capacity and its adverse effects on profitability will be present in the market until those assets are depreciated.

C. Other Factors

A variety of factors other than concentration, market shares, and ease of entry affect the likelihood that a merger will create, enhance or facilitate the exercise of market power. In evaluating mergers, the Department will consider the following factors as they relate to the ease and profitability of collusion. Where relevant, the factors are most likely to be important where the Department's decision whether to challenge a merger is otherwise close.

1. *Nature of the Product and Terms of Sale.*—(a) *Homogeneity-Heterogeneity of the Relevant Product Generally.* In a market with a homogeneous and undifferentiated product, a cartel need establish only a single price—a circumstance that facilities reaching consensus and detecting deviation. As the products which constitute the relevant product become more numerous, heterogeneous, or differentiated, however, the problems facing a cartel become more complex. Instead of a single price, it may be necessary to establish and enforce a complex schedule of prices corresponding to gradations in actual or perceived quality attributes among the competing products.[36]

Product variation is arguably relevant in all cases, but practical considerations dictate a more limited use of the factor. There is neither an objective index of product variation nor an empirical basis for its use in drawing fine distinctions among cases. As a result, this factor will be taken into account only in relatively extreme cases where both identification and effect are more certain. For example, when the relevant product is completely homogeneous and undifferentiated, the Department is more likely to challenge the merger. Conversely, when the relevant product is very heterogeneous or sold subject to complex configuration options or customized production, the Department is less likely to challenge the merger.[37] Over a significant middle range of the spectrum of product variation, this factor is less likely to affect the Department's analysis.

(b) *Degree of Difference Between the Products and Locations in the Market and the Next-Best-Substitutes.* The market definition standards stated in section II require drawing relatively bright lines in order to determine the products and sellers to be considered in evaluating a merger. For example, in defining the relevant product, all "good substitutes" in demand are included. The profitability of any collusion that might occur will depend in part, however, on the quality of the next-best substitute. That is, it matters whether the next-best substitute is only slightly or significantly inferior to the last product included in the relevant product. Similarly, it matters whether the next-most-distant seller is only slightly or significantly farther away than the last seller included in the geographic market. The larger the "gap" at the edge of the product and geographic markets, the more likely the Department is to challenge the merger.

(c) *Similarities and Differences in the Products and Locations of the Merging Firms.* There also may be relevant comparisons among the products or sellers included in the market. Where products in a relevant market are differentiated or sellers are spatially dispersed, individual sellers usually compete more directly with some rivals than with others. In markets with highly differentiated products, the Department will consider the extent to which consumers perceive the products of the merging firms to be relatively better or worse substitutes for one another than for other products in the market. In markets with spatially dispersed sellers and significant transportation costs, the Department will consider the relative proximity of the merging firms. If the products or plants of the merging firms are particularly good substitutes for one another, the Department is more likely to challenge the merger.

2. *Information About Specific Transactions and Buyer Market Characteristics.* Collusive agreements are more likely to persist if participating firms can quickly detect and retaliate against deviations from the agreed prices or other conditions. Such deviations are easiest to detect, and therefore least likely to occur, in markets where detailed information about specific transactions or individual price or output levels is readily available to competitors. The Department is more likely to challenge a merger if such detailed information is available to competitors, whether the information comes from an exchange among sellers, public disclosure by buyers, reporting by the press or a government agency, or some other source.

Certain buyer market characteristics also may facilitate detection of

[36] A similar situation may exist where there is rapid technological change or where supply arrangements consist of many complicated terms in addition to price.

[37] This conclusion would not apply, however, where the significance of heterogeneity is substantially reduced through detailed specifications that are provided by the buyer and that form the basis for all firms' bids.

deviation from collusive agreements. If orders for the relevant product are frequent, regular and small relative to the total output of a typical firm in the market, collusion is more likely to succeed because the benefits of departing from the collusive agreement in any single transaction are likely to be small relative to the potential costs. In order to increase its sales significantly in such circumstances, a seller would have to depart from the collusive agreement on a large number of orders. Each such sale takes customers away from other parties to the agreement, a fact that is particularly evident when demand is stable or declining. As a result, the chances of detection and effective response by other sellers increase with the number of such sales. The Department is more likely to challenge a merger where such buyer market characteristics exist.

3. *Conduct of Firms in the Market.* The Department is more likely to challenge a merger in the following circumstances:

(a) Firms in the market previously have been found to have engaged in horizontal collusion regarding price, territories, or customers, and the characteristics of the market have not changed appreciably since the most recent finding. The additional concentration resulting from the merger could make explicit collusion more difficult to detect or tacit collusion more feasible.

(b) One or more of the following types of practices are adopted by substantially all of the firms in the market: (i) mandatory delivered pricing; (ii) exchange of price or output information in a form that could assist firms in setting or enforcing an agreed price; (iii) collective standardization of product variables on which the firms could compete; and (iv) price protection clauses. Although not objectionable under all circumstances, these types of practices tend to make collusion easier, and their widespread adoption by the firms in the market raises some concern that collusion may already exist.

(c) The firm to be acquired has been an unusually disruptive and competitive influence in the market. Before invoking this factor, the Department will determine whether the market is one in which performance might plausibly deteriorate because of the elimination of one disruptive firm.

4. *Market Performance.* When the market in which the proposed merger would occur is currently performing non-competitively, the Department is more likely to challenge the merger. Non-competitive performance suggests that the firms in the market already have succeeded in overcoming, at least to some extent, the obstacles to effective collusion. Additional concentration of such a market through merger could further facilitate the collusion that already exists. When the market in which the proposed merger would occur is currently performing competitively, however, the Department will apply its ordinary standards of review. The fact that the market is currently competitive casts little light on the likely effect of the merger.

In evaluating the performance of a market, the Department will consider any relevant evidence, but will give particular weight to the following evidence of possible non-competitive performance when the factors are found in conjunction:

(a) Stable relative market shares of the leading firms in recent years;

(b) Declining combined market share of the leading firms in recent years;[38] and

(c) Profitability of the leading firms over substantial periods of time that significantly exceeds that of firms of industries comparable in capital intensity and risk.

IV. Horizontal Effect From Non-Horizontal Mergers

By definition, non-horizontal mergers involve firms that do not operate in the same market. It necessarily follows that such mergers produce no immediate change in the level of concentration in any relevant market as defined in Section II. Although non-horizontal mergers are less likely than horizontal mergers to create competitive problems, they are not invariably innocuous. This Section describes the principal theories under which the Department is likely to challenge non-horizontal mergers.

A. Elimination of Specific Potential Entrants

1. *The Theory of Potential Competition.* In some circumstances, the non-horizontal merger [39] of a firm already in a market (the "acquired firm") with a potential entrant to that market (the "acquiring firm") [40] may adversely affect competition in the market. If the merger effectively removes the acquiring firm from the edge of the market, it could have either of the following effects:

(a) *Harm to "Perceived Potential Competition".* By eliminating a significant present competitive threat that constrains the behavior of the firms already in the market, the merger could result in an immediate deterioration in market performance. The economic theory of limit pricing suggests that monopolists and groups of colluding firms may find it profitable to restrain their pricing in order to deter new entry that is likely to push prices even lower by adding capacity to the market. If the acquiring firm had unique advantages in entering the market, the firms in the market might be able to set a new and higher price after the threat of entry by the acquiring firm was eliminated by the merger.

(b) *Harm to "Actual Potential Competition".* By eliminating the possibility of entry by the acquiring firm in a more pro-competitive manner, the merger could result in a lost opportunity for improvement in market performance resulting from the addition of a significant competitor. The more pro-competitive alternatives include both new entry and entry through a "toehold" acquisition of a present small competitor.

2. *Relation Between Perceived and Actual Potential Competition.* If it were always profit-maximizing for incumbent firms to set price in such a way that all entry was deterred and if information and coordination were sufficient to implement this strategy, harm to perceived potential competition would be the only competitive problem to address. In practice, however, actual potential competition has independent importance. Firms already in the market may not find it optimal to set price low enough to deter all entry; moreover, those firms may misjudge the entry advantages of a particular firm and, therefore, the price necessary to deter its entry. [41]

3. *Enforcement Standards.* Because of the close relationship between perceived potential competition and actual potential competition, the Department will evaluate mergers that raise either type of potential competition concern under a single structural analysis analogous to that applied to horizontal mergers. The Department first will consider a set of objective factors

[38] The exercise of market power often results in a gradual loss of market share. Fringe firms find it possible and profitable to expand their sales, and new entry may occur.

[39] Under traditional usage, such a merger could be characterized as either "vertical" or "conglomerate," but the label adds nothing to the analysis.

[40] The terms "acquired" and "acquiring" refer to the relationship of the firms to the market of interest, not to the way the particular transaction is formally structured.

[41] When collusion is only tacit, the problem of arriving at and enforcing the correct limit price is likely to be particularly difficult.

designed to identify cases in which harmful effects are plausible. In such cases, the Department then wil conduct a more focused inquiry to determine whether the likelihood and magnitude of the possible harm justify a challenge to the merger. In this context, the Department will consider any specific evidence presented by the merging parties to show that the inferences of competitive harm drawn from the objective factors are unreliable.

The factors that the Department will consider are as follows:

(a) *Market Concentration.* Barriers to entry are unlikely to affect market performance if the structure of the market is otherwise not conducive to monopolization or collusion. Adverse competitive effects are likely only if overall concentration, or the largest firm's market share, is high. The Department is unlikely to challenge a potential competition merger unless overall concentration of the acquired firm's market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section III(C) indicate the effective collusion in the market is particularly likely). Other things being equal, the Department is increasingly likely to challenge a merger as this threshold is exceeded.

(b) *Conditions of Entry Generally.* If entry to the market is generally easy, the fact that entry is marginally easier for one or more firms is unlikely to affect the behavior of the firms in the market. The Department is unlikely to challenge a potential competition merger when new entry into the acquired firm's market can be accomplished by firms without any specific entry advantages under the conditions stated in Section III(B). Other things being equal, the Department is increasingly likely to challenge a merger as the difficulty of entry increases above that threshold.

(c) *The Acquiring Firm's Entry Advantage.* If more than a few firms have the same or a comparable advantage in entering the acquired firm's market, the elimination of one firm is unlikely to have any adverse competitive effect. The other similarly situated firm(s) would continue to exert a present restraining influence, or, if entry would be profitable, would recognize the opportunity and enter. The Department is unlikely to challenge a potential competition merger if the entry advantage ascribed to the acquiring firm (or another advantage of comparable importance) is also possessed by three or more other firms. Other things being equal, the Department is increasingly likely to challenge a merger as the number of other similarly situated firms decreases below three and as the extent of the entry advantage over non-advantaged firms increases.

If the evidence of likely actual entry by the acquiring firm is particularly strong,[42] however, the Department may challenge a potential competition merger, notwithstanding the presence of three or more firms that are objectively similarly situated. In such cases, the Department will determine the likely scale of entry, using either the firm's own documents or the minimum efficient scale in the industry. The Department will then evaluate the merger much as it would a horizontal merger between a firm the size of the likely scale of entry and the acquired firm.

(d) The Market Share of the Acquired Firm. Entry through the acquisition of a relatively small firm in the market may have a competitive effect comparable to new entry. Small firms frequently play peripheral roles in collusive interactions, and the particular advantages of the acquiring firm may convert a fringe firm into a significant factor in the market.[43] The Department is unlikely to challenge a potential competition merger when the acquired firm has a market share of five percent or less. Other things being equal, the Department is increasingly likely to challenge a merger as the market share of the acquired firm increases above that threshold. The Department is likely to challenge any merger satisfying the other conditions in which the acquired firm has a market share of 20 percent or more.

B. Competitive Problems from Vertical Mergers

1. *Barriers to Entry from Vertical Mergers.* In certain circumstances, the vertical integration resulting from vertical mergers could create competitively objectionable barriers to entry. Slated generally, three conditions are necessary (but not sufficient) for this problem to exist. First, the degree of vertical integration between the two markets must be so extensive that entrants to one market (the "primary market") also would have to enter the other market (the "secondary market")[44] simultaneously. Second, the requirement of entry at the secondary level must make entry at the primary level significantly more difficult and less likely to occur. Finally, the structure and other characteristics of the primary market must be otherwise so conducive to non-competitive performance that the increased difficulty of entry is likely to affect its performance. The following standards state the criteria by which the Department will determine whether these conditions are satisfied.

a. *Need for Two-Level Entry.* If there is sufficient unintegrated capacity[45] in the secondary market, new entrants to the primary market would not have to enter both markets simultaneously. The Department is unlikely to challenge a merger on this ground where post-merger sales (purchases) by unintegrated firms in the secondary market would be sufficient to service two minimum-efficient-scale plants in the primary market. When the other conditions are satisfied, the Department is increasingly likely to challenge a merger as the unintegrated capacity declines below this level.

b. *Increased Dificulty of Simultaneous Entry to Both Markets.* The relevant question is whether the need for simultaneous entry to the secondary market gives rise to a substantial incremental difficulty as compared to entry into the primary market alone. If entry at the secondary level is easy in absolute terms, the requirement of simultaneous entry to that market is unlikely adversely to affect entry to the primary market. Whatever the difficulties of entry into the primary market may be, the Department is unlikely to challenge a merger on this ground if new entry into the secondary market can be accomplished under the conditions stated in Section III(B).[46]

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[42] For example, the firm already may have moved beyond the stage of consideration and have made significant investments demonstrating an actual decision to enter.

[43] Although a similar effect is possible with the acquisition of larger firms, there is an increased danger that the acquiring firm will choose to acquiesce in monopolization or collusion because of the enhanced profits that would result from its own disappearance from the edge of the market.

[44] This competitive problem could result from either upstream or downstream integration, and could affect competition in either the upstream market or the downstream market. In the text, the term "primary market" refers to the market in which the competitive concerns are being considered, and the term "secondary market" refers to the adjacent market.

[45] Ownership integration does not necessarily mandate two-level entry by new entrants to the primary market. Such entry is most likely to be necessary where the primary and secondary markets are completely integrated by ownership *and* each firm in the primary market *uses* all of the capacity of its asociated firm in the secondary market. In many cases of ownership integration, however, the functional fit between vertically integrated firms is not perfect, and an outside market exists for the sales (purchases) of the firms in the secondary market. If that market is sufficiently large and diverse, new entrants to the primary market may be able to participate without simultaneous entry to the secondary market. In considering the adequacy of this alternative, the Department will consider the likelihood of predatory price or supply "squeezes" by the integrated firms against their unintegrated rivals.

[46] Entry into the secondary market may be greatly facilitated in that an assured supplier (customer) is provided by the primary market entry.

When entry is not possible under those conditions, the Department is increasingly concerned about vertical mergers as the difficulty of entering the secondary market increases. The Department, however, will invoke this theory only where the need for secondary market entry significantly increases the costs may take the form of risk) of primary market entry.

(i) *Increased Cost of Capital as a Barrier to Entry.* More capital is necessary to enter two markets than to enter one. Standing alone, however, this additional capital requirement does not constitute a barrier to entry to the primary market. If the necessary funds were available at a cost commensurate with the level of risk in the secondary market, there would be no adverse effect. In some cases, however, lenders may doubt that would-be entrants to the primary market have the necessary skills knowledge to succeed in the secondary market and, therefore, in the primary market. In order to compensate for this risk of failure, lenders might charge a higher rate for the necessary capital. This problem becomes increasingly significant as a higher percentage of the capital assets in the secondary market are long-lived and specialized to the market and, therefore, difficult to recover in the event of failure. In evaluating the likelihood of increased barriers to entry resulting from increased cost of capital, therefore, the Department will consider both the degree of similarity in the essential skills in the primary and secondary markets and the degree of specialization of the capital assets in the secondary market.

(ii) *Economies of Scale as a Barrier to Entry.* Economies of scale in the secondary market may constitute an additional barrier to entry to the primary market in some situations requiring two-level entry. The problem could arise if the capacities of minimum-efficient-scale plants in the primary and secondary markets differ significantly. For example, if the capacity of a minimum-efficient-scale plant in the secondary market were significantly greater than the needs of a minimum-efficient-scale plant in the primary market, entrants would have to choose between inefficient operation at the secondary level (because of operating an efficient plant at an inefficient output or because of operating an inefficiently small plant) or a larger than necessary scale at the primary level. Either of these effects could cause a significant increase in the operating costs of the entering firm.[47]

c. *Structure and Performance of the Primary Market.* Barriers to entry are unlikely to affect performance if the structure of the primary market is otherwise not conducive to monopolization or collusion.[48] The Department is unlikely to challenge a merger on this ground unless overall concentration of the primary market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section III(C) indicate that effective collusion is particularly likely). Above that threshold, the Department is increasingly likely to challenge a merger that meets the other criteria set forth above as the concentration increases.[49]

2. *Facilitating Collusion Through Vertical Mergers.*—a. *Vertical Integration to the Retail Level.* A high level of vertical integration by upstream firms into the associated retail market may facilitate collusion in the upstream market by making it easier to monitor price. Retail prices are generally more visible than prices in upstream markets, and vertical mergers may increase the level of vertical integration to the point at which the monitoring effects becomes significant. Adverse competitive consequences are unlikely unless the upstream market is generally conducive to collusion and a large percentage of the products produced there are sold through vertically integrated retail outlets.

The Department is unlikely to to challenge a merger on this ground unless i) overall concentration of the upstream market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section III(C) above indicate that effective collusion is particularly likely), and ii) a large percentage of the upstream product would be sold through vertically-integrated retail outlets after the merger. Where the stated thresholds are met or exceeded, the Department's decision whether to challenge a merger on this ground will depend upon an individual evaluation of its likely competitive effects.[50]

b. *Elimination of a Disruptive Buyer.* The elimination by vertical merger of a particularly disruptive buyer in a dopwnstream market may facilitate collusion in the upstream market. If upstream firms view sales to a particular buyer as sufficiently important, they may deviate from the terms of a collusive agreement in an effort to secure that business, thereby disrupting the operation of the agreement. The merger of such a buyer with an upstream firm may eliminate that rivalry, making it easier for the upstream firms to collude effectively. Adverse competitive consequences are unlikely unless the upstream market is generally conducive to collusion and the disruptive firm is significantly more attractive to sellers than the other firms in its market.

The Department is unlikely to challenge a merger on this ground unless (i) overall concentration of the upstream market is 1800 HHI or above (a somewhat lower concentration will suffice if one or more of the factors discussed in III(C) above indicate that effective collusion is particularly likely), and (ii) the allegedly disruptive firm differs substantially in volume of purchases or other relevant characteristics from the other firms in its market. Where the stated thresholds are met or exceeded, the Department's decision whether to challenge a merger on this ground will depend upon an individual evaluation of its likely competitive effect.

3. *Evasion of Rate Regulation.* Non-horizontal mergers may be used by monopoly public utilities subject to rate regulation as a tool for circumventing that regulation. The clearest example is the acquisition by a regulated utility of a supplier of its fixed or variable inputs. After the merger, the utility would be selling to itself and might be able arbitrarily to inflate the prices of internal transactions. Regulators may have great difficulty in policing these practices, particularly if there is no independent market for the product (or service) purchased from the affiliate.[51]

[47] It is important to note, however, that this problem would not exist if a significant outside market exists at the secondary level. In that case, entrants could enter with the appropriately scaled plants at both levels, and sell or buy in the market as necessary.

[48] For example, a market with 100 firms of equal size would perform competitively despite a significant increase in entry barriers.

[49] Even if all the conditions above are satisfied, the Department may not challenge a particular merger. The likelihood of significant competitive harm is lower than it is for horizontal mergers identified as competitively objectionable under the standards in Section III, and the extensive pattern of use integration, which is a necessary condition to the competitive problem under discussion, may constitute evidence that substantial economies are afforded by vertical integration. When such economies are present, it might be economically perverse and inequitable to the remaining independent firms to deny them the ability to integrate through merger.

[50] See note 49, above.

[51] A less severe, but nevertheless serious, problem can arise when a regulated utility acquires a firm that is not vertically related. The use of common facilities and managers may create an insoluble cost allocation problem and provide the opportunity to charge utility customers for non-

As a result, inflated prices could be passed along to consumers as "legitimate" costs. In extreme cases, the regulated firm may effectively preempt the adjacent market, perhaps for the purpose of suppressing observable market transactions, and may distort resource allocation in that adjacent market as well as in the regulated market. In such cases, however, the department recognizes that genuine economies of integration may be involved. The Department will consider challneging mergers that create substantial opportunities for such abuses.[52]

V. Defenses

A. Efficiencies

In the overwhelming majority of cases, the Guidelines will allow firms to achieve available efficencies through mergers without interference from the Department. Except in extraordinary cases, the Department will not consider a claim of specific efficencies as a mitigating factor for a merger that would otherwise be challenged.[53] Plausible efficiencies are far easier to allege than to prove. Moreover, even if the existence of efficencies were clear, their magnitudes would be extremely difficult to determine.

B. Failing Firm

The "failing firm defense" is a long-established, but ambiguous,[54] doctrine under which an anticompetitive merger may be allowed because one of the merging firms is "failing." Because the defense can immunize significantly anticompetitive mergers, the Department will construe its elements strictly.

The Department is unlikely to challenge an anticompetitive merger in which one of the merging firms is allegedly failing when: (1) the allegedly failing firm probably would be unable to meet its financial obligations in the near future, and (2) it probably would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act,[55] and (3) it has made unsuccessful good faith efforts to elicit reasonable alternative offers of acquisition of the failing firm [56] that would both keep it in the market and pose a less severe danger to competition than does the proposed merger. Although these standards are more difficult to apply when the allegedly failing firm is an unincorporated part of a larger parent firm, the Department will recognize the defense in appropriate cases of that type.[57]

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utility costs, consequently distorting resource allocation in the adjacent as well as the regulated market.

[52] Where a regulatory agency has the responsibility for approving such mergers, the Department will express its concerns to that agency in its role as competition advocate.

[53] At a minimum, the Department will require clear and convincing evidence that the merger will produce substantial cost savings resulting from the realization of scale economies, integration of production facilities, or multi-plant operations which are already enjoyed by one or more firms in the industry and that equivalent results could not be achieved within a comparable period of time through internal expansion or through a merger that threatened less competitive harm. In any event, the Department will consider such efficiencies only in resolving otherwise close cases.

[54] Although its original basis is open to question, the defense is sometimes explained as a balancing of competitive and non-competitive concerns. Under that view, when the elements of the defense are satisfied, there is a conclusive presumption that the anticompetitive dangers associated with the merger are outweighed by the income losses to creditors, stockholders, and communities associated with the failure of the firm. As a general matter, the Department views the incorporation of non-competitive concerns into antitrust analysis as inconsistent with the mandate contained in the antitrust laws. To the extent that the financial health of the firm is relevant to the competitive analysis, the Department, of course, will consider it in that context.

[55] 11 U.S.C.A. 1101 *et seq.* (1979).

[56] The fact that an offer is less than the proposed transaction does not make it unreasonable.

[57] The Department is unlikely to challenge an otherwise anticompetitive merger in which one of the merging firms is a financially healthy subdivision of an allegedly failing parent firm when: (1) the parent firm satisfies the above conditions, and (2) the competitive harm from the disappearance of the parent firm from its market would substantially outweigh the competitive harm threatened by the merger, (3) the proposed transaction probably would enable the parent firm to avoid bankruptcy or to reorganize successfully, (4) the third condition stated in the text also has been satisfied with respect to the healthy subdivision, and (5) the merging firm is not capable of independent existence as a business entity. Where the merging firm is capable of independent existence, the Division may insist that the parent company attempt to transfer common stock in it to the parent company's creditors.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-38)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Task Force for the Study of Issues in Selecting Private Citizens for Space Shuttle Flight.

DATE AND TIME: July 22, 1982, 8:30 a.m. to 5 p.m.

ADDRESS: NASA Headquarters, Room 6004, 400 Maryland Avenue SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Praktish, Code LB-4, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8380).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Informal Task Force for the Study of Issues in Selecting Private Citizens for Space Shuttle Flight was established under the NASA Advisory Council to conduct a study of the relevent issues and to report its findings and recommendations to the Council. The Task Force is comprised of its Chairman, Dr. John E. Naugle, and five other members of the Council.

This meeting will be closed to the public from 1 p.m. to 5 p.m. for a discussion of candidates being considered for (a) appointment as associate members of or (b) sources of advice to the Task Force. During this session, the qualifications of those individuals will be candidly discussed and appraised. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

For the remainder of the meeting, visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Partially Closed.

Agenda

July 22, 1982

8:30 a.m.—Introduction
9 a.m.—Review of NASA Background: Mission Opportunities; Space Act; Legal, Physical and Training Considerations
1 p.m.—Task Force Planning for Conduct of Study and Candidates for Participation: Members, Advisors. (Closed)
5 p.m.—Adjourn

Walter B. Olstad,

Associate Administrator for Management.

June 22, 1982.

[FR Doc. 82-17589 Filed 6-29-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice (82-37)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: July 21, 1982, 8:30 a.m. to 5 p.m.

ADDRESS: NASA Headquarters, Room 7002, 400 Maryland Avenue SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB–4, National Aeronautics and Space Administration, Washington, DC 20546 (202/755–8383).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of twenty-four members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda

July 21, 1982

8:30 a.m.—Introduction.
8:50 a.m.—NASA Planning Overview.
9:30 a.m.—FY 1984 Program Plans.
4:15 p.m.—Status of Council Studies.
4:45 p.m.—New Candidates for Council Study.
5 p.m.—Adjourn.

Walter B. Olstad,

Associate Administrator for Management.

June 22, 1982.

[FR Doc. 82-17590 Filed 6-29-82; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-364]

Alabama Power Co.; Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. NPF–8 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plan, Unit No. 2, (the facility) located in Houston, Alabama. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specification to enlarge the capacity of the spent fuel pool from 675 fuel assemblies to 1,407 assemblies.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Facility Operating License in connection with this action was published in the **Federal Register** on February 4, 1982 (47 FR 5371). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because the proposed action will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated December 18, 1981, as modified by letters dated February 1, March 18, April 5, and April 21, 1982 (2) Amendment No. 14 to License No. NPF–8, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 23 day of June, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-17701 Filed 6-29-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE FEDERAL REGISTER

Incorporation by Reference

AGENCY: Office of the Federal Register.

ACTION: Publication of incorporation by reference approvals.

SUMMARY: The Office of the Federal Register has published lists of materials approved for incorporation by reference in both the **Federal Register** on a quarterly basis and in the affected Code of Federal Regulations (CFR) volumes annually. The Office will no longer publish these lists in the **Federal Register**, but will continue to print the lists in the Finding Aids section of the appropriate CFR volume. This action is taken because the inventories of incorporation by reference material have been completed and vary only slightly from year to year. The information will continue to be available where it is most useful in the individual CFR volumes.

DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Anne Laweson, (202) 523–4534.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) allows Federal agencies to incorporate by reference publications into the **Federal Register.** The incorporation by reference device may be used validly only with the approval of the Director of the Federal Register. The material approved for incorporation by reference has the same force and effect as if it had been published full text in the **Federal Register.**

Since June 30, 1980, the Office of the Federal Register (OFR) has published lists of approved material in the **Federal Register** and in the Code of Federal Regulations volumes. The **Federal Register** list served as an inventory of materials incorporated by reference. While this information will continue to be available at the OFR, this document gives notice to the public that the Office will no longer publish the lists in the **Federal Register.** The Office has determined that the lists change little from year to year and the information is most useful in the appropriate CFR volumes.

To ensure that the public stays informed, the Office will maintain these lists in each of the affected CFR volumes. These lists will be updated annually, consistent with the revision date of the particular volume. For example, the lists for Title 28–41 of the Code of Federal Regulations will be updated as of July 1 every year. The public should look to the CFR lists for notice of material validly incorporated

by the revision date of the CFR volume. Later approvals of material incorporated by reference should be noted in the applicable Federal agency's final rulemaking document published in the **Federal Register**. Information on approvals is also available from the Special Projects Unit, OFR, Washington, DC 20408, (202) 523–4534.

Dated: June 28, 1982.

Martha B. Girard,

Acting Director of the Federal Register.

[FR DOC. 82–17725 Filed 6–29–82; 8:45am]

BILLING CODE 1505–02–M

PEACE CORPS

Proposed Incorporation of Form; Paperwork Reduction Act of 1980

AGENCY: Peace Corps, Action.

ACTION: Notice of proposed incorporation of forms.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C Chapter 35) the Peace Corps has submitted to the Office of Management and Budget a request to modify the Peace Corps Volunteer Application Form to incorporate the Peace Corps form, "Request for Racial and Ethnic Data" under the existing OMB approval and identification number for the Volunteer Application Form. The Request for Racial and Ethnic Data form is currently the last page of the Volunteer application form but has a separate OMB approval and identification number. The OMB approval and identification number for the Request for Racial and Ethnic Data form expires on 6/30/82. Rather than request approval for extension of it under a separate identification number, the Peace Corps requests that it be incorporated under the OMB approval and identification number for the Volunteer Application Form.

The Racial and Ethnic Data page (form) is used solely for the purpose of determining compliance with federal civil rights laws. Information provided by Peace Corps Volunteer applicants to Peace Corps on this page assists the Peace Corps in assuring that the program is administered in a non-discriminatory manner. A copy of the form may be obtained from Mr. Edward F. Carey, Peace Corps, Planning and Management Studies Division by telephoning area code 202–254–7528.

Information about the proposed collection:

Agency Address: Peace Corps, 806 Connecticut Ave., NW., Washington, D.C. 20526.

Title of Form: Peace Corps Volunteer Application.

Type of Request: Incorporation of forms-revision.

Frequency of Collection: recurring-voluntary.

General Description of Respondents: Individuals applying for Peace Corps volunteer service.

Estimated Number of Responses: 15,600 Annually.

Estimated Hours for Respondents to Complete Form: 15,600.

Respondent's obligation to reply: voluntary.

Comments: Telephone comments on this proposal should be directed to David S. Reed, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget on area code 202–395–7231. Comments should be received on or before July 7, 1982. This is not a collection proposal to which 44 U.S.C. 3504(h) applies.

This notice is issued in Washington, D.C. on June 28, 1982.

Dominick Onorato,

Associate Director for Management.

[FR Doc. 82–17619 Filed 6–29–82; 8:45 am]

BILLING CODE 6051–01–M

POSTAL SERVICE

Phased Postage Rates; Effective Date of Certain Changes in Rates

AGENCY: Postal Service.

ACTION: Notice of Step Increases in Preferred Postage Rates.

SUMMARY: Notice is given that, effective 12:01 a.m. on July 6, 1982, the fourteenth step of phased postage rate increases goes into effect for within-county rate second-class mail and for library rate fourth-class mail. This action represents the next step of scheduled rate adjustments for the designated classifications of mail to be phased in. The new rates are contained in the Appendix to this notice.

EFFECTIVE DATE: 12:01 a.m., July 6, 1982.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 245–4749.

SUPPLEMENTARY INFORMATION: On January 10, 1982, the Postal Service adjusted preferred rates pursuant to Public Law 97–92 so that the rates for all preferred-rate categories except second-class within-county and fourth-class library rate were increased to the full step 16 (unphased) level (46 FR 63159–60). At the same time second-class within-county rates and fourth-class library rates were adjusted to the step 13 level of the 16-year phasing schedule established pursuant to 39 U.S.C. 3626(a). The rates for second-class within-county and fourth-class library rate mail are now adjusted to the step 14 level on the phasing schedule which calls for an annual increase to the next step effective on July 6 of each year.

(39 U.S.C. 401, 403, 404, 2401(c), 3626).

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

APPENDIX

	In cents
Schedule 1	
Second-class rates: In-county:	
Per pound	4.1
Per piece:	
Presorted to carrier route	2.1
Other	2.6
Schedule 2	
Fourth-class rates: Library:	
1st pound	35.0
Each additional pound thru 7 pounds	12.0
Each additional pound	7.0

[FR Doc. 82–17645 Filed 6–29–82; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

June 24, 1982.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Prentice-Hall, Inc.
Common Stock, $.33⅓ Par Value (File No. 1–6246)

This security is registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 16, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17670 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22543; 70-5892]

Central and South West Corp.; Proposal To Issue and Sell Common Stock Pursuant to Employee Share Ownership Plan

June 21, 1982.

Central and South West Corporation ("CSW"), One Main Place, Dallas, Texas 75250, a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration, previously filed and amended in this matter pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 thereunder.

By orders dated October 8, 1976, August 18, 1978 and May 7, 1980 (HCAR Nos. 19710, 20675 and 21555), CSW was authorized to issue and sell up to 4,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, through its employee share ownership plan ("Plan"). The Plan was established for the benefit of CSW and its direct and indirect subsidiaries; Central Power and Light Company, Central and South West Services, Inc., Public Service Company of Oklahoma, Transok Pipe Line Company, Southwestern Electric Power Company and West Texas Utilities Company. As of December 31, 1981 740,011 shares remain unsold.

CSW requests authorization to issue and sell up to 3,500,000 additional shares ("Additional Shares") of its authorized and unissued common stock, par value $3.50 per share, in addition to the 4,000,000 shares previously authorized pursuant to the Plan. The Additional Shares are estimated to be sufficient to account for the total CSW and employee contributions to be made for the 1981 through 1985 tax years and also for purchases to be made through December 31, 1986 in respect of the reinvestment of dividends on shares held in the trust pursuant to the Plan.

For tax years beginning after 1982, the Internal Revenue Code ("Code") as amended by the Economic Recovery Tax Act of 1981, provides that the present investment-based tax credit for contributions to a tax credit employee stock ownership plan will be replaced by a payroll-based tax credit. CSW intends to amend the Plan to conform with the new provisions of the Code. CSW proposes to amend the Plan to provide: (a) in accordance with currently effective requirements of the Code, that for tax years 1981 and thereafter if shares are contributed by CSW in respect of its basic contribution and its matching contribution, such shares will be valued on the basis of the average of the closing prices of CSW's Common Stock reported in the listing of New York Stock Exchange—Composite Transactions for the twenty consecutive trading days immediately preceding the date the contribution is made (presently, the Plan provides that such shares will be valued on the basis of such average of closing prices for the twenty consecutive trading days immediately preceding the date of filing of CSW's consolidated federal income tax return for the applicable tax year); (b) that for the purposes of determining which shares of CSW Common Stock credited to a participant's account may be distributed prior to termination of employment, all shares acquired with reinvested dividends, including shares purchased with dividends on shares acquired through reinvested dividends, may be distributed at the time the share to which such dividends are attributed to the participiant (presently, any share so purchased with reinvested dividends may not be distributed prior to termination of employment until such share has been credited to the participant's account for at least 85 months); and (c) for contributions based on payroll-based credits (rather than investment tax credits). The amendments described in (a) and (b) will be made effective as of January 1, 1981 and the amendment described in (c) will be made effective as of January 1, 1983.

The exact number of shares of CSW Common Stock (including the Additional Shares) to be issued pursuant to the Plan will depend on the amount of additional tax credits available, the price at which such shares are issued and the amount of dividends on shares held in the trust under the Trust Agreement established prusuant to the Plan. Based on the CSW's estimated qualified investment for 1981 and 1982, its estimated total qualifying payroll for 1983, 1984 and 1985, and assuming maximum participation by the participants for 1981 and 1982, CSW estimates that the additional tax credits for the five years would aggregate approximately $23,400,000. In addition, it is estimated that dividends applicable to shares of CSW Common Stock held under the Trust Agreement established pursuant to the Plan will aggregate $37,300,000 through December 31, 1986. Using these estimates, an aggregate of $60,700,000 of CSW Common Stock would be issued pursuant to the Plan in respect to tax years 1981–1985 and reinvested dividends through December 31, 1986.

The price at which shares of the CSW Common Stock will be issued will be determined in accordance with the applicable provisions of the Code and will be based upon the market prices of CSW's Common Stock or averages thereof at the time, or for a specified period preceding the date on which, such shares are issued. Assuming an average price for the CSW Common Stock at $14.50 per share, a total of approximately 4,186,000 additional shares would be issued pursuant to the Plan in respect of such tax years and such reinvested dividends. Assuming the issuance of 4,186,000 additional shares, the total number of shares of CSW Common Stock issued pursuant to the Plan would be 7,445,989 (4,186,000 plus 3,259,989 issued through December 31, 1981.) In view of the possibility that the average price at which shares may be issued may be less than the average price assumed above and that tax credits may be greater than the amounts estimated, CSW requests authority to issue pursuant to the Plan the 3,500,000 Additional Shares, making a total authorization of not to exceed 7,500,000 shares.

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 July 15, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address 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 filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17672 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22544; 70-6710]

Central Vermont Public Service Co., Inc.; Proposal of Exempt Holding Company to Indirectly Acquire the Capital Stock of a New Subsidiary Transmission Company

June 21, 1982.

Central Vermont Public Service Company, Inc. ("Central Vermont"), 77 Grove Street, Rutland, Vermont 05701, an exempt holding company, has filed an application and amendments thereto pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Central Vermont and Vermont Electric Power Company, Inc. ("VELCO"), a transmission subsidiary of Central Vermont, are exempt from all provisions of the Act, except section 9(a)(2), pursuant to section 3(a)(2) of the Act and Rule 2(a)(2) promulgated thereunder. VELCO is not required to file under section 9(a)(2) to acquire the capital stock of Vermont Electric Transmission Company, Inc. ("VEPCO"), a proposed new transmission subsidiary, because VELCO will not as a result of the acquisition of VETCO's securities become an "affiliate" under section 2(a)(11)(A) (by owning 5% or more of the outstanding voting securities) of more than one public utility or holding company. Central Vermont's indirect acquisition through VELCO of VETCO's capital stock is subject to sections 9(a)(2) and 10 because after the proposed transaction Central Vermont will be an "affiliate" under section 2(a)(11)(A) of VETCO and of other public utility companies, including VELCO.

Central Vermont proposes to form and acquire the capital stock of VETCO indirectly through VELCO. VETCO would construct, own and operate the Vermont portion of a proposed interconnection ("Interconnection") between the Hydro-Quebec system and NEPOOL, a power pool in which a number of New England utilities, including VELCO, are members.

The benefits to New England of the Interconnection include access to surplus hydro-electric energy from the Hydro-Quebec system, which is expected to be available during the 1980's at a cost significantly below that of replacement fuel of NEPOOL members. This access will serve the dual purpose of lowering the energy costs to New England consumers and reducing New England's dependence on foreign oil. Other benefits include energy banking, under which the New England utilities will transmit relatively inexpensive energy to Hydro-Quebec during off peak periods and receive equal amounts of energy (adjusted for losses) during on-peak periods when replacement costs are much higher. The Interconnection will also improve reliability of the Hydro-Quebec and NEPOOL systems by providing for emergency transfers and mutual backup. The Interconnection will also facilitate future purchases of hydroelectric capacity from Hydro-Quebec.

The initial stage of the Interconnection, Phase I, is to consist of a ± 450kV DC transmission line from the proposed Des Cantons Substation on the Hydro-Quebec system near Sherbrooke, Quebec, to a proposed terminal having an approximate rating of 690MW at the Comerford Generating station on the Connecticut River. It is currently contemplated that a subsequent stage of construction, Phase II, may augment the Phase I interconnection by expanding its capability to approximately 2000MW through construction of a transmission line to the Sandy Pond Substation in Massachusetts or another suitable location to be determined at a future date and construction of a terminal facility.

The Canadian portion of Phase I will be built by Hydro-Quebec. The United States portion from the Canadian border to a new terminal in Comerford, New Hampshire will be built by one or more New England companies (the "constructing companies") and may be located in Vermont or New Hampshire. If the transmission line is located primarily in Vermont, that portion will be constructed and operated by VETCO. The total cost of Phase I is estimated to be $140–180 million, of which $50 million relates to the VETCO portion. If the line is located primarily in New Hampshire, that line and, in any event, the terminal facility will be constructed by a subsidiary of the New England Electric System as authorized by a Commission order dated November 10, 1981 (HCAR No. 22268).

It is anticipated that Interconnection will commence operation in November 1986. The Interconnection will be financed on the strength of the underlying credit of the participating New England utilities (the "Participants"), whose percentages of participation will be determined on the basis of their 1980 kilowatt hour loads, the route chosen for Phase I and the number of Participants. The constructing companies will enter into contractual arrangements with the Participants providing for the support of the capital and operating costs of the Interconnection and the sharing of the benefits to be derived therefrom. In general, the support agreements provide for each Participant to pay its proportionate share of all costs, including a return on equity of the constructing company computed in accordance with the formula set forth in the agreement. Such costs would be payable during the life of the Interconnection. But, if the constructing company or the parties determine upon an earlier abandonment of the project, costs would be payable upon such termination, subject only to the right of Participants to cancel in the event of total destruction of the Interconnection or taking by eminent domain. The support agreements also provide for automatic adjustments of each Participant's share, up to a maximum increase of 50%, in the event other Participants fail to obtain necessary approvals for participation or otherwise withdraw from the project. VETCO will enter into such agreement, the Phase I Vermont Transmission Line Support Agreement, with each participating New England utility, including VELCO acting on behalf of the electric distribution utilities in Vermont. If the Vermont route is not selected, that agreement will automatically terminate. The Use Agreement among all Participants provides that each Participant has the right to use its proportionate share of the Interconnection for transactions of its choice and, to the extent not so utilized for its individual needs, to share in any savings generated by NEPOOL transactions.

VELCO proposes to acquire all of the intially issued capital stock of VETCO and to enter into a capital funds agreement whereby it agrees to provide further equity funds, as needed, up to a maximum of 25% of VETCO's capital requirements but not to exceed $12,500,000. The initial equity will consist of 10 shares of stock, $100 par value. Further equity will be provided as the project progresses subject to the jurisdiction of the Vermont Public Service Board. Such additional equity may take the form of additional common stock, capital contributions or subordinated securities. VETCO's total capital requirements are estimated at a maximum of $50,000,000; however, it is anticipated the debt financing will be the major source of such capital.

VELCO will cause VETCO to be incorporated and from time to time, as required, will subscribe for and purchase capital stock or subordinated securities of VETCO and/or make capital contributions to VETCO. The initial officers of VETCO will consist of certain existing VELCO managerial personnel and the initial board of directors is expected to consist of VELCO senior executives. It is not anticipated that VETCO will have any significant permanent staff. Rather it will rely upon VELCO engineering and planning services, to be obtained under at cost service contracts, or upon the services of outside consultants. VELCO will also provide all necessary financial, accounting and internal audit functions for VETCO, utilizing appropriate accounting systems. The accounts of VETCO will also be subject to audit by VELCO's independent accountants. VETCO is expected to utilize the office facilities already in use by VELCO. VETCO is not expected to have any fixed assets other than the Vermont portion of the Interconnection.

The application 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 July 14, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for 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, as amended or as it may be further amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17673 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12502; 812-5189]

Cortez Capital Corp.; Filing of Application

June 23, 1982.

Notice is hereby given that Cortez Capital Corporation 100 West Tenth Street, Wilmington, DE, a Delaware Corporation ("Applicant"), filed an application on May 13, 1982, for an order, 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.

Applicant states that its only securities presently outstanding are shares of its capital stock, all of which are owned by Cortez Pipeline Company (the "Partnership"), a general partnership formed under the laws of Texas. The three general partners of the Partnership ("Partners") are Shell Cortez Pipeline Company, ("Shell Cortez"), a wholly-owned subsidiary of Shell Oil Company ("Shell"); Mobil Cortez Pipeline Inc., ("Mobil Cortez"), a wholly-owned subsidiary of Mobil Producing Texas and New Mexico Inc., ("Mobil Producing"), which in turn is a wholly-owned subsidiary of Mobil Oil Corporation, ("Mobil Oil"); and Continental Cortez Pipeline Company, ("Continental Cortez"), an indirect wholly-owned subsidiary of The Continental Group, Inc., ("Continental"). Shell and Mobil Oil are integrated petroleum companies engaged in the exploration production, transportation, refining and marketing of crude oil and its products. Shell is approximately 69% owned by the Royal Dutch-Shell group of companies. Mobil Oil is wholly-owned by Mobil Corporation. Continental is a diversified company with substantial interests in packaging, forest products, insurance and energy.

According to the application, the Partnership was established by direct or indirect wholly-owned subsidaries of Shell, Mobil Producing and Continental to build, own and operate a common carrier pipeline system of approximately 500 miles in length (hereinafter called the "Pipeline") to transport carbon dioxide from the vicinity of Cortez, Colorado, to the Wasson Oil field in Yoakum and Gaines Counties, Texas, where it will be used for tertiary recovery operations. The current projected cost of the Pipeline is approximately $720,000,000, including interest during construction. The Partnership anticipates that the Pipeline will be operational during 1984.

Applicant states that its sole purpose is to assist the Partnership in the financing of the Pipeline through the issuance of debt securities. Proceeds of the issuance of each series of securities will be used by Applicant to purchase notes or other evidences of indebtedness issued by the Partnership ("Partnership Notes"), the principal of and premium (if any) and interest on which will be equal to the principal of and premium (if any) and interest on the corresponding series of Applicant's debt securities. All expenses of Applicant will be reimbursed to it by the Partnership.

Applicant further states that each series of securities issued by it will be secured by a related series of Partnership Notes. The Partnership Notes will be secured by the several obligations of Shell, Mobil Producing and Continental Cortez (together hereinafter called the "Throughput Obligors") under an Initial Facility Throughput and Deficiency Agreement (hereinafter called the "Throughput Agreement"). Each of Mobil Oil and Continental is guaranteeing the performance by its direct or indirect subsidiary of its obligations under the Throughput Agreement. Under the Throughput Agreement, if for any reason, whether before or after completion of construction of the Pipeline, the Partnership has a cash deficiency on the date that any payment is due with respect to debt service obligations of the Partnership designated as "Initial Facility Debt" (Partnership Notes issued to Applicant in exchange for the proceeds of the sale of Applicant's debt securities will be so designated), each Throughput Obligor will be severally and unconditionally obligated to advance in cash its percentage share of such cash deficiency as an advance payment of future costs for transportation through the Pipeline. The percentage share of such cash deficiency payments of each Throughput Obligor is as follows: Shell—50 percent; Mobil Producing—37 percent; and Continental Cortez—13 percent. These cash deficiency percentages, which are subject to adjustment provided they always total 100 percent, are the same as the interests in the Partnership of Shell Cortez, Mobil Cortez and Continental Cortez, respectively.

Applicant represents that the initial series of its debt securities will be short-term notes (with a maturity not to exceed 270 days) issued under a Trust Agreement between it and Bankers Trust Company, a banking corporation organized and existing under the laws of the State of New York, as trustee (hereinafter called the Trustee). These short-term notes will be issued in denominations of not less than $100,000, with the average denomination expected to be significantly larger, will not be advertised for sale to the general public and will be sold in the commercial paper market only to institutional investors

and other entities who normally purchase commercial paper in large denominations. These notes will not contain any provisions for payment on demand or for automatic "roll over." It is expected that the notes will be accorded the highest commercial paper rating by two nationally recognized rating agencies.

The Partnership, with the assistance of Applicant as an external funding source, also intends to issue intermediate and, preferably, long-term debt securities, as market conditions permit or dictate, through a variety of issues corresponding to issues of Applicant in the institutional private placement markets and in the public markets.

Applicant further states that as security for the initial series of its debt securities, a related Partnership Note will be pledged to the Trustee and rights and proceeds of the Partnership under the Throughput Agreement and the performance guaranties of Mobil Oil and Continental to the extent required to honor the initial series of Applicant's debt securities and the Partnership's expense reimbursement obligation to Applicant will be assigned to the Trustee. Future similar pledges of Partnership Notes issued with respect to other debt securities of Applicant and assignment of rights and proceeds under the Throughput Agreement and guaranties to secure such debt securities will be made on a *pari passu* basis without restriction and, as to assignments, without priority by reason of time of assignment or perfection.

Applicant further states that at completion of construction of the Pipeline, the Partnership expects to have a capitalization of approximately 90 percent debt and 10 percent equity. In addition to equity funds obtained from capital contributions by the Partners, the Partnership will raise the debt funds required for construction and, following completion, for short-term working capital through direct bank borrowings and borrowings from Applicant (or a similar wholly-owned corporate entity in the case of borrowings in foreign monetary markets). Applicant states that it intends to raise funds to purchase Partnership Notes in various debt capital markets.

Applicant states that it may be deemed to be an "investment company" as defined in the Act (i) by reason of its proposed acquisition and holding of the Partnership Notes, which will constitute substantially all its assets, and (ii) because its outstanding securities may be deemed to be beneficially owned by more than 100 persons as a result of its capital stock being held by a partnership of direct or indirect subsidiaries of publicly held companies, and because securities it intends to offer may be held by more than 100 persons.

Section 6(c) of the Act provides, however, that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision or provisions of the Act to the extent 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 asserts that an order pursuant to section 6(c) of the Act exempting it from all provisions of the Act is 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 for the following reasons.

The sole purpose and only business of Applicant is to serve as a vehicle to facilitate debt financing for the Partnership on favorable terms. The only significant assets of Applicant will be Partnership Notes. Such Partnership Notes will be pledged as security for the benefit of the holders of the corresponding debt securities of Applicant or their representatives. All payments on Partnership Notes will be applied to the payment of principal, premium (if any), and interest on Applicant's corresponding debt securities. Applicant will not deal with the Partnership Notes after they have been pledged as security for the benefit of the holders of Applicant's debt securities. Applicant will not itself make any investment decisions on behalf of the holders of its debt securities. Applicant will not hold shares of capital stock of any other corporation. The Partnership will maintain sole ownership of all the shares of Applicant's capital stock. Since Applicant's securities will be secured by the pledge of the related Partnership Notes, which will in turn have the benefit of or be secured by the assignment of the Partnership's rights under the Throughput Agreement and the related several guaranties of Mobil Oil and Continental, purchase of Applicant's debt securities will be substantially the equivalent of a purchase of direct obligations of the Throughput Obligors, severally guaranteed by Mobil Oil and Continental as to the respective direct or indirect subsidiaries of each.

Applicant agrees, in the event the Commission grants the application, to the following conditions:

(1) Applicant will file with the Commission within 120 days after the close of its first fiscal year (a) information with respect to persons in a control relationship with it (except with respect to persons under common control with it), persons and number of persons owning equity securities of Applicant and directors, officers, employees and legal counsel required by Items 11 and 12 of Form N–2 under the Act, and (b) a statement of financial position as of the close of such fiscal year, including a statement of income, paid-in surplus and retained earnings, and a schedule of investments as of the close of such fiscal year, and thereafter will notify the Commission promptly of any material change in such information or statement.

(2) Applicant will file with the Commission within 120 days of the close of its first fiscal year a schedule of the number of holders of its short-term or other bearer securities and of its securities in registered form as of the close of such fiscal year and the number of transfers of such registered securities during such fiscal year, and thereafter will notify the Commission promptly of any material change in such schedule; and

(3) Applicant will not sell any equity securities other than to the Partnership or sell any debt securities other than debt securities (a) which are to be held by the Partnership, the Partners, the Throughput Obligors, Mobil Oil or Continental, or (b) which (i) are secured by a pledge of corresponding debt securities or other obligations of the Partnership which in turn are secured by an assignment of rights and proceeds under the Throughput and Deficiency Agreement and the guaranties hereinabove referred to and (ii) are (a) offered and sold in transactions not involving any public offering to institutions, located in the United States and elsewhere, which are not "underwriters" of the securities within the meaning of the Securities Act of 1933, (b) sold in offerings outside the United States pursuant to agreements and procedures reasonably designed to prevent such debt securities from coming into the hands of the United States national or resident, or (c) notes which arise out of current transactions or the proceeds of which have been or are to be used for current transactions, and which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, unless Applicant shall have first given written notice to the Commission describing the proposed issuance of such additional debt securities (including notice of a proposed filing of a registration statement under the Securities Act of

1933, as amended, pursuant to Commission Rule 415) not less than 60 days prior to the date of such proposed issuance, subject, however, to the right of the Commission, upon request of Applicant, to decrease such number of days. Applicant further agrees that if the Commission shall, after receipt of said written notice, determine that a substantial question exists as to whether or not the exemption granted by the order hereby requested should continue and the Commission shall, within 30 days after receipt by the Commission of such written notice from Applicant, mail or otherwise give notice to that effect to Applicant, in care of The Corporation Trust Company, 100 West Tenth Street, Wilmington, Delaware with a copy to Shell Pipeline Corporation, P.O. Box 2648, Houston, Texas 77001, Applicant will not issue such additional debt securities unless, after receipt by Applicant of such notice from the Commission and not less than 30 days prior to the issuance of such additional debt securities, Applicant shall mail or otherwise give written notice to the Commission stating its intention to issue such additional debt securities, and upon the giving of such notice by Applicant the order hereby requested shall be deemed to have terminated as of the date Applicant shall have mailed or otherwise given such notice to the Commission.

Notice is further given that any interested person may, not later than July 19, 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 reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulagated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17671 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12497; 812-5190]

Current Interest, Inc; Filing of Application

June 21, 1982.

Notice is hereby given that Current Interest, Inc. ("Applicant"), 333 Clay Street, Suite 4300, Houston, TX 77002, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on May 18, 1982, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit the net asset value of Applicant's shares of Class A common stock and shares of any series of its Class B common stock, which may in the future be issued, to be calculated and the assets of such classes and series to be valued pursuant to the amortized cost method of valuation. 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.

Applicant states that it is incorporated under the laws of Texas and that it is authorized to issue to the public two classes of its common stock, Class A and Class B. Currently, only shares of Class A common stock are outstanding. Applicant's investment adviser is The Advisory Group, Inc. ("Adviser"). All of the outstanding voting stock of Adviser is held by Funds, Inc.

Applicant represents that it is a money market fund which seeks as its investment objective to obtain maximum current income consistent with the preservation of capital and maintenance of liquidity. Consistent with that objective, Applicant states that it invests primarily in obligations of the United States Government and its agencies or instrumentalities and repurchase agreements for the foregoing, bankers' acceptances, certificates of deposit of banks and financial institutions have total assets in excess of $1 billion and whose deposits are insured by the Federal Deposit Insurance Corporation, and high grade commercial paper and corporate debt obligations. All securities must have a maturity date of within one year from the date of purchase.

Applicant states that it does not presently make commitments to purchase securities on a when issued or delayed delivery basis, enter into reverse repurchase agreements, or lend its portfolio securities. It represents that if in the future it engages in these investment techniques, it will comply with applicable Commission rules and interpretation, including Investment Company Act Release No. 10666 (April 18, 1979). Applicant also states that it does not presently purchase variable rate or floating rate obligations, however, if it should do so in the future, the maturities of such obligations will be determined in accordance with the procedures set forth in proposed Rule 2a–7 or, if the rule should ultimately be adopted, in accordance with procedures set forth in the rule as adopted.

Applicant states that its shares of Class A common stock represent interests in its present portfolio of investments which is invested in accordance with the policies described above. According to the application, Applicant intend to establish additional portfolios of investments if its shareholders approve certain amendments to its Articles of Incorporation which would authorize Applicant to issue shares of its Class B common stock in a number of series. Shares of each such series, if and when issued, would represent interests in separate portfolios of investments that Applicant would acquire. Applicant states that the investment return and net asset value of shares of each of these series would be determined separately from other series and from shares of Class A common stock, and would be based upon the investment results of a series' separate portfolio. Applicants present portfolio would continue to be managed in accordance with the objectives, policies and restrictions now in effect. Each portfolio represented by shares of Class A common stock or shares of a series of Class B common stock is hereinafter referred to as a "Portfolio," or collectively as the "Porfolios." If new Portfolios are created, the investment policies of such Portfolios, which will be set by the board of directors of the Fund, may differ from those of the Fund's present Portfolio.

Applicant determines the values of its portfolio securities in compliance with the views of the Commission as set forth in Investment Company Act Release No.

9786 (May 31, 1977). In accordance with procedures adopted by the board of directors, Applicant uses a matrix to determine the market value of bank certificates of deposit, bankers' acceptances and commercial paper. The market value of United Stated Government and agency obligations and other investments is determined in accordance with market quotations obtained from dealers. Amortized cost valuation is generally used to value those portfolio securities have remaining maturities of 60 days or less, absent unusual circumstances.

On May 1, 1979, the Commission issued an order (Investment Company Act Release No. 10677) granting Applicant an exemption to permit the use of "penny rounding" in determining the price at which shares of Applicant are sold to the public. Accordingly, Applicant's net asset value per share is computed by dividing the value of the net assets of Applicant, determined in accordance with the procedures described above, by the total number of shares outstanding and adjusting the result of such computation to the nearest full cent per share. In accordance with the conditions set forth in the Commission's exemptive order, Applicant uses its best efforts to maintain a constant $1.00 net asset value per share. Unrealized gains or losses on portfolio securities are reflected in Applicant's net asset value and could, if they result in a change of more than $.005 per share, result in a change in the price at which shares of Applicant are sold and redeemed.

As here pertinent, section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable 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 to sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of money market funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a money market fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

In view of the foregoing, Applicant requests an order of the Commission pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit the calculation of net asset value of Applicant's shares of Class A common stock and shares of any series of its Class B common stock which may in the future be issued, to be calculated and the assets of such classes and series to be valued pursuant to the amortized cost method of valuation.

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 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.

In reaching a determination to adopt the use of amortized cost valuation, Applicant states that its board of directors reviewed valuation and pricing practices of money market funds which utilize amortized cost valuation pursuant to exemptive orders issued by the Commission, and concluded that Applicant could better serve the needs of its shareholders and prospective investors if it adopted the amortized cost method of valuation for its present Portfolio and for any other Portfolio that may be created which invests in short-term money market instruments.

Applicant submits that the features of stability of principal and steady flow of investment income, which are favored by investors, can most effectively be obtained through use of amortized cost valuation subject to the conditions hereinafter set forth. Applicant believes that under those conditions, the use of amortized cost valuation would enhance the ability of the Fund to maintain a stable net asset value per share by providing a variety of options to maintain stability which are not available to a money market fund using "Penny rounding." Applicant further believes that with respect to securities maturing in 120 days or less there is normally a negligible discrepancy between market values and amortized cost values. Applicant represents that its board of directors has determined in good faith that, with respect to the Portfolios which would utilize amortized cost valuation pursuant to the conditions hereinafter set forth, such valuation method would be appropriate and would reflect the fair value of the investments of those Portfolios, absent unusual circumstances.

Applicant agrees that the following conditions may be imposed by the Commission upon each of its Portfolios utilizing amortized cost valuation and relying upon any exemptive order granting the exemption requested:

1. In supervising the operations of each Portfolio and in delegating special responsibilities involving management of that Portfolio to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and the investment objectives of the Portfolio, to stabilize the net asset value per share of the Portolio, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions to determine the extent of deviation, if any, of the net asset value per share of the portfolio as determined by using available market quotations, from that Portfolio's $1.00 amortized cost price per share and the maintenance of records of such review.[1]

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the

(b) In the event such deviation from the $1.00 amortized cost price per share of a Portfolio exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes that the extent of deviation from the $1.00 amortized cost price per share of a Portfolio may result in material dilution or other unfair results to investors or existing shareholders of that Portfolio it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of the Portfolio; withholding dividends; or utilizing a net asset value per share as determined by using market quotations.

3. Each Portfolio will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' consideration and actions taken in connection with discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Each Portfolio will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will file a quarterly report on form N–1Q if any action pursuant to paragraph 2(c) above was taken during the preceding calendar quarter and in an attachment thereto will describe the nature and circumstances of such action.

Applicant submits that under its proposed use of amortized cost valuation subject to the conditions set forth above, there would be a negligible discrepancy between the prices obtained by use of amortized cost and those obtained through a market valuation method. In this regard, it asserts that those conditions also insure that it will have proper procedures to control and to monitor its use of amortized cost valuation. Applicant states that the Commission's issuance of numerous orders, similar to the one it request, upon the application of other money market funds evidences a finding by the Commission that use of amortized cost valuation under specified conditions is appropriate and consistent with the interests of investors. Under the circumstances, Applicant submits that the granting of the requested order 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 July 16, 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 reasons for such request, and the issues, in any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17674 Filed 6–29–82; 8:45 am]

BILLING CODE 8010–01–M

board of directors in the exercise of its discretion to be appropriate indicators of value which may include, inter alia, (1) quotations or estimates of market value for individual portfolio securities, or (2) values obtained from yield data relating to classes of securities published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Portfolio will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity of 120 days or less as soon as reasonably practicable.

[File No. 1–7117]

General Housewares Corp.; Application To Withdraw From Listing and Registration

June 24, 1982.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of General Housewares Corp. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8–A which became effective on June 18, 1982, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before July 16, 1982 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the

Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17669 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12496; 811-2621]

Investment Pool For U.S. Government Guaranteed Securities; Filing of Application

June 21, 1982.

Notice is hereby given that Investment Pool for U.S. Government Guaranteed Securities ("Applicant"), 201 Shipyard Way, #E, Newport Beach, CA 92663, registered under the Investment Company Act of 1940 ("Act") as an open-end diversified, management investment company, filed an application on March 29, 1982, pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in 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.

On April 19, 1976, Applicant filed a registration statement pursuant to section 8(b) of the Act. Applicant represents that it has never made a public offering of its securities, has not more than 100 security-holders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind.

Applicant represents that it has no debts or other outstanding liabilities; it has no securityholders, and it is not a party to any litigation or administrative proceeding. Applicant states that within the last 18 months it has not for any reason transferred any of its assets to a separate trust.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than July 16, 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 reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders, a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17675 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 18823]

Midwest Clearing Corp. (File No. SR-MCC-82-8) and Midwest Securities Trust Co. (File No. SR-MSTC-82-11); Filing of Proposed Rule Changes and Order Approving Proposed Rule Changes

June 21, 1982.

Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) notice is hereby given that on June 4, 1982, Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MSTC") (collectively "Midwest") filed with the Commission proposed temporary rule changes that would revise the MCC and MSTC fee structures. The proposed fee schedules will expire on December 31, 1982. Concurrent with the filing of the proposed rule changes, Midwest submitted a letter containing financial data and comments relating to issues raised by the Commission staff in previous discussions with Midwest concerning its fee schedules.[1] Midwest also requested accelerated approval of its proposed rule changes pursuant to section 19(b)(2) of the Act.

Pursuant to the provisions of sections 19(b)(2) of the Act, the Commission has determined, subject to the requirements contained in this order, to approve the proposed rule changes on an accelerated basis. In part because the proposed rule changes, by their terms, will remain in effect only until the end of this year, the Commission is requesting comments on the issues raised by the proposed rule changes and discussed in this approval order. It is the intention of the Commission to consider, at the termination of the period of effectiveness of the proposed rule changes, any comments received in the interim. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capital Street, Washington, D.C. 20549. Reference should be made to File Nos. SR-MCC-82-8 and SR-MSTC-82-11.

Copies of the submission, with accompanying exhibits, and all written comments, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organizations.

Background

Prior to filing SR-MCC-82-8 and SR-MSTC-82-11, MCC, on February 17, 1982, and MSTC, on February 18, 1982, submitted proposed fee schedules under section 19(b)(3)(A) of the Act.[2] Those

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[1] Letter dated June 3, 1982 from A. M. Anderson, President, Midwest Clearing Corporation and Midwest Securities Trust Company to George Fitzsimmons, Secretary, Securities and Exchange Commission. Midwest has requested confidential treatment pursuant to the Freedom of Information Act, 5 U.S.C. 552(b)(4)(1966), for that portion of the letter containing detailed financial data.

[2] Notice of the proposed rule changes, together with the terms of substance of the proposed rule changes, was given by publication in Securities Exchange Act Release Nos. 18550 (SR-MCC-82-3) and 18549 (SR-MSTC-82-2) and by publication in the Federal Register on March 15, 1982 (47 FR 11135 and 47 FR 11136, respectively). Under section 19(b)(3)(A) of the Act, the proposed fee schedules became effective on filing.

initial fee schedules provided volume discounts on MCC trade recording services and MSTC interactivity movement services for one account settlement ("OAS") participants.[3] In addition, the filings generally adjusted fees for monthly fixed services and several labor intensive services to correlate more accurately the particular expenses associated with providing the particular services. Midwest maintained its existing trade recording and interactivity movement fees, without discount, for non-OAS participants.

Because those initial fee schedules imposed different prices on different participants for use of the same services, the Commission carefully reviewed the fee changes in light of the provisions of section 17A of the Act requiring that the rules of a registered clearing agency: (i) provide for the equitable allocation of reasonable dues, fees and other charges among participants; [4] (ii) not discriminate among participants in the use of the clearing agency; [5] and (iii) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[6] Among other things, the Commission reviewed whether providing volume discounts on trade recording fees only to OAS participants created an "interface charge" to non-OAS participants.[7] Specifically, under the fee schedules, any participant that settled trades in volume primarily outside of Midwest paid Midwest more for trade recording than did OAS participants. Moreover, under the fee schedules, non-OAS participants paid the higher fee for trade recording, even if they settled some trades at Midwest.[8]

In connection with the initial fee changes, the Commission received one comment letter.[9] That commenter argued that giving discounts only to OAS participants unjustifiably discriminated against non-OAS participants by requiring participants that designate another clearing agency as their primary settlement facility to pay higher fees for the same service than participants that designate MCC/MSTC as their primary settlement facility. That commenter noted, among other things, that the fee schedules imposed an interface fee, in effect, by denying a discount to participants that use an interface to settle transactons at another clearing agency.

Thereafter, on April 9, 1982, Midwest filed an amended set of fee schedules under section 19(b)(3)(A) of the Act.[10] In filing the new fee schedules, MCC and MSTC indicated their belief that those schedules were designed to offer "discounts" compatible with the provisions of Section 17A of the Act and the Commission's prohibition against interface fees. Concurrent with the filing of the revised fee schedules, Midwest requested Commission consent to withdraw the original fee schedules submitted in February.[11]

The amended fee schedules contained the pricing formulae that are the subject of this Order. The Commission continued its review of issues raised by the fee discounts and requested certain financial information from Midwest useful in determining whether the filings were consistent with Section 17A of the Act. Ultimately, to provide an opportunity for focused public comment and for review of Midwest's financial data by an independent public accountant, the Commission requested that Midwest refile the fee schedules on a temporary basis together with the supporting financial data under Section 19(b)(2) of the Act. Accordingly, on June 4, 1982, Midwest submitted the subject proposed rule changes. Although the amended fee schedules filed in April remain in effect, Midwest has requested that the Commission grant withdrawal of those filings at the time the Commission acts on the proposed rule changes.

Description of the Proposed Rule Changes

Midwest designed the proposed fee schedules to better enable Midwest to offer its volume participants fees that it believes are competitive with other clearing agencies. Because those larger participants substantially support the full spectrum of Midwest's clearance and settlement services, MCC believes that it is important to retain those participants.

Specifically, MCC's proposed fee schedule provides a discount, in the form of a credit, against a participant's total monthly bill, providing the participant settles trades in volume at MCC. Any such participant would receive certain credits per trade along a graduated scale based upon the individual participant's volume of trades settling in the MCC/MSTC system.[12] To eliminate the discriminatory effects on non-OAS participants that settle some of their trades, in volume, at Midwest, MCC made the discount available to both OAS and non-OAS participants. In addition, to avoid any alleged effect on the interface, MCC introduced a credit on a participant's total MCC bill in lieu of a discount specifically on trade recording. Further, in support of its argument that the credit did not create a disincentive to using the interface, MCC provided financial data to the Commission indicating that the MCC fee discount is properly associated only with revenues from MCC services other

[3] An "OAS participant" is a participant that settles all its trades at Midwest regardless of where the trade took place or where it was initially recorded and compared.

[4] Section 17 A (b)(3)(D) of the Act.

[5] Section 17 A (b)(3)(F) of the Act.

[6] Section 17 A (b)(3)(I) of the Act.

[7] In the past the Commission has identified various types of fees that operate "as interface fees". *See e.g.*, Securities Exchange Act Release Nos. 13163 (January 13, 1977) pp. 79–96 and 17343 (November 26, 1980) pp. 40–50. The Commission consistently has prohibited clearing agencies from charging interface fees or fees having the effect of interface fees. The Commission has considered interface fees inappropriate primarily because, if set at high enough levels, they may discourage the use of interfaces and can even influence the willingness of brokers to transact with other broker-dealers that are not members of the same clearing corporation. The Commission generally has required that the interface costs incurred by each interfaced clearing agency that participates in the national system be absorbed by that interfacing clearing agency and mutualized across its own participant base. *See e.g.*, Securities Exchange Act Release No. 17347 (November 26, 1980) pp. 40–50.

Under both the initial and amended MCC fee schedules, the specific type of interface fee of concern to the Commission would involve a special service charge to participants that ship trades through the automated interface to another clearing agency for settlement. Such an additional charge to interfacing participants, whether imposed directly for shipping a trade through the interface or hidden in an inflated charge for trade recording, would constitute an interface fee. *See* discussion, *infra*, at 10–11.

[8] Because MCC records substantially all trades executed on the floor of the Midwest Stock Exchange ("MSE"), the effect of any interface charge under MCC's fee schedule would be aggravated. MCC participants that wish to clear and settle MSE trades at clearing agencies other than Midwest must pay MCC's trade recording fee.

[9] Letter to the Commission staff dated April 2, 1982 from Robert J. Woldow, Vice President and General Counsel, National Securities Clearing Corporation.

[10] The Commission published notice of the fee changes and requested comment thereon by publication in Securities Exchange Act Release Nos. 18670 (SR–MCC–82–5) and 18671 (SR–MSTC–82–9) and by publication in the **Federal Register** (47 FR 19259 (May 4, 1982) and 47 FR 18207 (April 28, 1982), respectively.) In connection with the amended fee schedules, the Commission staff received one letter of comment dated May 17, 1982 from Robert J. Woldow, Vice President and General Counsel, National Securities Clearing Corporation. NSCC's comments are discussed *infra* at p. 7–8.

[11] The Commission granted withdrawal of the proposed rule changes by publication of a notice in Securities Exchange Act Release No. 18687 and by publication in the **Federal Register** on April 30, 1982 (47 FR 18697).

[12] For example, under the proposed fee schedule, MCC participants would not receive a settling trade volume credit for its first 2,000 settling sides per month. Any participant with fewer than 2,000 sides per month would pay $.52 a side. After passing the 2,000 sides per month threshold, participants would receive a $.12 discount on trades, up to 3,000 sides per month; a $.22 discount on trades between 3,001 and 3,500 sides per month; a $.32 discount on trades between 3,501 and 3,750 sides per month; and a $.42 discount on all trades beyond 3,750 sides per month.

than trade recording and stated in its letter supporting the proposed rule changes that if, in the future, there are excess revenues attributable to trade recording, those revenues would be rebated pro rata to all participants using that service.

MSTC's proposed fee schedule provides volume discounts on charges for interactivity movements to all participants that generate such movements, except participants that use primarily the automatic stock loan service.[13] MSTC has indicated that the volume discount on interactivity movement fees reflects economies that it believes emanate from the book-entry settlement process. MSTC will not extend the discount to participants that establish accounts primarily to use the automatic stock loan program because those participants generally do not have settling trades at MCC/MSTC and as a result do not support the full spectrum of MSTC services and do not generate the need for automated stock loans.

Discussion

The proposed rule changes, as amended, raise two principal issues: (i) whether tying the MCC credit to trade settlement at MCC/MSTC creates an interface charge and (ii) whether the differential pricing schedules are consistent with the provisions of the Act that require equitable allocation of clearing agency fees. In this regard, the Commission received a comment letter from NSCC concerning issues it believes are raised by the proposed rule changes. Because NSCC's comments are lengthy, they are summarized below, together with Midwest's response.

Summary of NSCC's Comment Letter

In its letter, National Securities Clearing Corporation ("NSCC") expressed five basic concerns related to the pricing policies underlying the revised set of fee schedules filed by Midwest.

First, NSCC argued that, although the revised filing corrects the original filings' most serious flaw (i.e., discounting trade recording and interactivity movement fees for OAS participants only), the new MCC rate filing continues to impose in effect a different fee for trade recording depending upon whether the participant settles trades in volume at MSTC or at another clearing agency. NSCC asserts that Midwest achieves that pricing differential by granting credits only to participants that settle trades in volume in the MCC/MSTC system. NSCC argues that granting credits only to such participants has the same effect as charging interface participants a separate fee for shipping their trades elsewhere for settlement. NSCC continues that what was previously labeled a trade recording volume discount is now labeled a "settling trade volume credit", with the amount of the credit equalling the previously proposed discount. NSCC concludes that higher trade recording fees for interfacing participants constitute special fees for those participants and amount to "hidden interface fees".

Second, NSCC argues that labeling the new MCC discount a credit for settling trades is illogical because MCC does not charge for "settlement services". Instead, the costs of these services are recovered from MSTC's fees for MSTC book-entry services. NSCC continues that, if MCC's settling trade credit relates to economies realized in the book-entry settlement process at MSTC, NSCC believes that such a credit is appropriate only for MSTC, not for MCC. Additionally, NSCC argues that even if MCC incurs costs in netting trades, trade netting is an activity with distinct cost streams and potential revenues that should be segregated from cost and revenue streams associated with trade recording. NSCC adds that, to the extent trade recording revenues have subsidized trade netting costs incurred at MCC, while at the same time trade netting economies are properly attributed to the book-entry settlement process at MSTC, MCC's and MSTC's cost and revenue allocations for these separate services depart from the concept of cost-based pricing. NSCC views such an alleged departure to be improper. Finally, NSCC argues that the amended fee schedules would aggravate the "subsidy" by returning rebatable revenues properly associated with trade recording only to participants that settle at MCC. Because those participants' settlement activities generate the otherwise unrecovered costs associated with trade netting at MCC, NSCC argues, the trade settlement credit would create a "double subsidy", flowing from participants using only MCC trade recording services to participants using the full spectrum of MCC/MSTC services. Again, NSCC states, the result amounts to a "charge" for using the interface to settle outside of Midwest.

Third, NSCC asserts that even if the MSTC volume discount on interactivity movements reflects economies inherent in the book-entry settlement process, all participants that have interactivity movements, including stock lenders, contribute to those economies and should be eligible for the volume discount. As a corollary, NSCC reasons, all book-entry services should have discounted fee structures to the extent that general economies associated with book-entries exist.

Fourth, NSCC argues that both the MCC settling trade credit and MSTC's volume discounts on interactivity movement fees are out of proportion to any economies likely associated with either discount. To illustrate this point, NSCC provides hypothetical examples of discounted bills for trade recording and interactivity movement fees that would produce a negative MCC/MSTC bill, assuming no other service charges were incurred.

Finally, NSCC argues that Midwest's discounts disfavor smaller firms because these firms do not generally have sufficient volume to take advantage of the discount. NSCC adds that the detrimental effect on smaller firms hinders those firms' participation in the national clearance and settlement system—participation which Congress intended to encourage.

Summary of Midwest's Response

As a general matter, Midwest believes that its pricing policies are both appropriate and consistent with the requirements of the Act. In addition, Midwest argues that the proposed fee schedules, by enabling Midwest to offer more competitive fees, will promote competition among clearing agencies.

In response to NSCC, Midwest argues that, under MCC's proposal, fees would be equitably distributed among its participants. Midwest also contends that the proposed pricing schedules would not impose fees having the effect of an "interface fee". In support of its position, Midwest asserts that MCC participants with large volumes of settling trades at Midwest are directly and substantially responsible for excess revenues. Those participants use the full spectrum of Midwest services and generate the need for the CNS and automatic stock loan services. As a result, MCC argues that its settling trade credit is both equitable and consistent with the requirements of the Act because it returns excess revenue to those participants whose activities generate it.

[13] For example, under the proposed fee schedule, MSTC participants would not receive a discount for interactivity movements for the first 1,000 items per month. Any participant with fewer than 1,001 items per month would pay $.82 per item. After passing the 1,000 items per month threshold, participants would receive a $.30 discount on interactivity movements up to 2,000 items per month; a $.50 discount on each item between 2,001 and 3,000 items per month; a $.60 discount on each item between 3,001 and 4,000 items per month; and $.70 discount on all items in excess of 4,000 items per month.

Determinations Regarding the Proposed Rule Changes

The following discussion is divided into several sections. First, the Commission discusses the scope of its determinations. Second, the Commission considers, and makes determinations regarding, the issues raised by the proposed rule changes. Third, the Commission considers whether the proposed rule changes should be approved. Fourth, the Commission discusses the conditions related to its approval of the MCC proposal.

Scope of the Commission's Determinations

Under section 19(b)(2) of the Act, the Commission must approve Midwest's proposed rule changes if the Commission finds that they are consistent with the requirements of the Act and the rules thereunder applicable to registered clearing agencies. If the Commission is unable to make that finding, it must institute proceedings to determine whether to disapprove the proposed rule changes.

The principal provisions of the Act applicable to clearing agencies are contained in section 17A of the Act. Paragraph (b)(3) of that section requires that the rules of a clearing agency, among other things: (i) "provide for the equitable allocation of reasonable dues, fees and other charges among its participants"; (ii) be "designed to promote the prompt and accurate clearance and settlement of securities transactions"; (iii) be "designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest"; (iv) "are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency"; and (v) "do not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of this title."

In addition the Commission's determinations regarding MCC's and MSTC's proposed fee schedules also must be made in the context of the Commission's statutory responsibility to facilitate the establishment of a national clearance and settlement system.[17]

Interface Fee Issue

The Commission has considered whether the MCC fee schedule, by tying the volume credit to settlement at MCC, would establish an interface fee or a fee having the effect of an interface fee. Certainly, discounts available only to participants settling trades at MCC could create a disincentive to settle MCC-recorded trades outside the MCC/MSTC system. To the extent such a disincentive exists it would "burden" the interface by forcing interfacing participants either to settle their trades at Midwest reluctantly or to pay non-discounted fees and thereby subsidize those participants receiving the discount.

The Commission has determined that MCC's proposed fee schedule will not create an interface fee for two basic reasons. First, contrary to NSCC's argument, the settling trade volume credit is not simply a discount on trade recording fees in disguise. Instead, the credit operates as a discount against a participant's total monthly bill for all MCC services, not just trade recording. Thus, to the extent the discounting program produces differential pricing, the price differences cannot be connected economically to trade recording alone.

Second, Midwest has indicated that the "discount", in the aggregate, is structured to replace in part the MCC year-end rebate of excess revenues not retained by MCC. The financial data MCC submitted to the Commission in connection with the amended fee filings demonstrate that MCC's excess revenues are attributable predominantly to interest income and income from the automatic stock loan program. The data further indicates that trade recording revenues during 1981 marginally exceeded trade recording expenses, and only a small percentage of MCC's 1981 excess revenues were attributable to trade recording. Based upon that data, the Commission concludes that the MCC "rebate" will be allocated to participants whose activity generates the excess revenues and, in contrast to NSCC's suspicion, will not be "redistributed", in effect, from interfacing participants to MCC settling participants.

Finally, the close correlation between trade recording revenues and expenses for 1981 depended in part on 1981 trade volume. Accordingly, Midwest has undertaken in the future to rebate separately any excess revenues attributable to trade recording to all participants using that service.[18]

Equitable Allocation of Fees

The Commission has determined that both the MCC and MSTC proposed rule changes provide for an equitable allocation of fees.

(i) MCC's Proposed Fee Schedule

Although the MCC discount, as a practical matter, will be available only to approximately 20 participants, primarily large regional broker-dealers, it is those firms that use the full spectrum of MCC services and supply MCC with substantial revenues for both trade recording and ancillary settlement services in volume. Specifically, a significant portion of both interest income resulting from float in Midwest's Continuous Net Settlement System and revenue from automated stock loan activity can be attributed to participants with large volumes of settling activity in the MCC/MSTC system. In addition, such participants' settling activity creates in substantial measure both the need for automated stock loans and the opportunity for MCC to garner CNS-related interest income. The Commission therefore believes that "rebating" excess revenues, through the settling trade credit, to participants whose volume use of settlement-related services produces the rebatable revenues represents an equitable allocation of fees.[19] Moreover, the Commission recognizes a small clearing agency's competitive interest in offering a volume discount to participants that provide volume financial support through volume usage.

(ii) MSTC's Proposed Fee Schedule

In determining that the MSTC proposed fee schedule provides for an equitable allocation of fees, the Commission rejects NSCC's contention that any fee discounts associated with book-entry efficiencies must be

[17] Section 17A(a) of the Act directs the Commission to use its authority under the Act "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities (other than exempt securities) in accordance with [certain Congressional findings and objectives.]"

[18] *See* letter from Albert M. Anderson, *supra* note 2 at 2.

[19] Conceivably, the appeal of such a pricing formula may explain the absence of comment from MCC participants. Unlike MCC's initial fee schedule, the amended fee schedule makes the settling trade credit available to all participants settling trades at MCC in volume, including non-OAS participants. thus, the amended fee schedule does not inappropriately favor OAS firms over other firms that settle a like number of trades at Midwest. Moreover, smaller MCC users arguably benefit from the substantial support provided to Midwest by volume users. That support helps make an independent full-service clearing facility available to all users at Midwest. Nonetheless, the Commission specifically solicits MCC participants' views on the proposed fee schedules and the Commission's determination during the comment period.

extended to all participants having interactivity movements, including participants that establish an account primarily for automatic stock lending purposes. Such participants do not have settling trades in the Midwest System and thus do not generate the need for automatic stock loans. Also, such participants do not support the full spectrum of MSTC services, the provision of which is important to MSTC's revenue base and to ensure its meaningful participation in the national clearance and settlement system. Accordingly, the Commission believes that the differential prices attributable to MSTC's decision to limit the volume discount to full-service participants are not inappropriate.

Depth of Volume Discounts

The Commission appreciates NSCC's argument that the MCC settling trade credit and the MSTC volume discount on interactivity movement service fees provide sizable discounts to volume participants. The Commission believes however, that NSCC's hypothetical MCC/MSTC bill that would result in a net credit is not a representative hypothetical. It is based upon the unrealistic assumption that a full-service participant's gross bill for clearance and settlement services would be no greater than its bill for trade recording and interactivity movement fees. To the contrary, Midwest has indicated to the Commission that all participants will have total MCC/MSTC bils substantially in excess of their discounts under the proposed fee schedules.

Moreover, the Commission has determined that a rigorous demonstration of specific cost-related bases for the specific volume break points and discount levels in either schedule is not warranted.[20] As discussed previously, Midwest's discount philosophy appears to be rationally based. The discounts will amount to rebates of interest income and excess stock loan revenues attributable primarily to settling trade volume, and those discounts will flow to all participants that settle in volume at MCC/MSTC. Further, Midwest calculates that its discount program will program competitive rates for its volume participants. Therefore, the Commission believes that Midwest's discount policy appears to further the purposes of the Act, including the enhancement of competition among clearing agencies and the promotion of a national clearance and settlement system comprised of linked clearing agencies [21] and a national market system comprised of linked market centers.[22] In addition, because MCC and MSTC, in general, process a small segment of clearance and settlement business, their pricing determinations with respect to the specific volume break points and discount levels are unlikely to result in any adverse impact on clearing agency competition. In any event, Midwest has represented that, under the amended fee schedules, no service will be provided at less than cost and all participants will contribute significant revenues, notwithstanding the discounts. Accordingly, based upon Midwest's financial data and representations, the Commission believes that it would impose an inappropriate and unnecessary burden on Midwest to require Midwest to provide more detailed cost justifications for the specific volume break points and discount levels.

The Proposed Rule Changes Are Approved on an Accelerated Basis

The Commission has considered the issues raised by the proposed rule changes. In addition, the Commission has reviewed and considered the comments offered by NSCC and, based in part on those comments, has requested certain representations and financial information from Midwest that, in the Commission's view, support approval of the temporary rule changes. As a result, the Commission has determined to approve the temporary MCC fee schedule subject to certain conditions discussed below, and to approve the temporary MSTC fee schedule. In addition, the Commission has determined to grant Midwest's request for withdrawal of SR–MCC–82–5 and SR–MSTC–82–9.

For reasons discussed above, the Commission believes that the proposed rule changes (i) provide for the equitable allocation of reasonable fees, (ii) do not permit unfair discrimination among participants in the use of the clearing agency and (iii) do not impose any inappropriate burden on competition. In addition, the Commission believes that the proposed rule changes promote a safe and efficient national clearance and settlement system.

The Commission finds good cause for approving both proposed rule changes prior to the thirtieth day after the date of publication of the filing.[23] Because the proposed rule changes were originally filed in February, and again in April, under section 19(b)(3)(A) of the Act, the Commission has analyzed extensively the policy and other issues related to the proposed rule changes and does not believe that any regulatory purpose would be served by delayed implementation. Also, prior publication of the amended fee schedules provided the public with a meaningful opportunity to comment on the pricing policies discussed by the Commission in this Order. Moreover, under this Order the fee schedules will be implemented on a temporary basis, and, as a result, the public will have yet an additional opportunity, during the temporary period, to comment on the issues and the Commission's determinations.

Approval of MCC's Proposed Rule Change is Conditioned on MCC Obtaining an Opinion From its Independent Auditors Regarding the Financial Data MCC Submitted in Support of its Proposal

MCC provides financial data to the Commission regarding revenues and costs associated with various services provided by MCC. The Commission relied on that data in reaching the determination that (i) the MCC fee schedule does not impose an interface fee and (ii) the fees are equitably allocated among MCC participants. Because that financial data is important to the approval of the MCC proposed rule change, the Commission will require MCC by year-end 1982 to obtain an opinion from its independent auditors regarding the acceptability from an accounting standpoint of MCC's allocations of costs to revenue sources. MCC's authority to continue to offer the settling trade volume credit after December 31, 1982 (the termination date of the temporary filing), will depend, in

[20] The Commission specifically solicits public comment concerning this determination.

[21] *See* sections 17A(a)(1)(D) and 17A(a)(2) of the Act.

[22] *See* sections 17A(b)(3)(F) and 11A(a)(2) of the Act.

[23] With respect to the MSTC filing, however, under section 19(b)(2)(B) of the Act, the Commission may approve a proposed rule change prior to the thirtieth day after the date of publication of notice of the filing if the Commission finds good cause for so doing. Section 19(b)(4)(B) of the Act provides that:

> The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

The Board of Governors of the Federal Reserve System ("BOG"), the appropriate regulatory agency for MSTC as defined by section 3(a)(34) of the Act, has consented to the accelerated approval of MSTC's proposed rule change. *See* letter dated June 17, 1982, from Mr. William W. Wiles, Secretary, BOG, to George Fitzsimmons, Secretary, Securities and Exchange Commission.

part, upon the independent auditor's favorable opinion.

Conditions and Directives

In accordance with the provisions of section 19(b)(2) of the Act, the Commission has determined that, subject to the terms contained in this Order, MCC's and MSTC's proposed rule changes are consistent with the requirements of the Act and the rules and regulations applicable to registered clearing agencies, and in particular: (i) Provide for the equitable allocation of reasonable dues, fees and other charges among its participants; (ii) are designed to promote the safe and efficient clearnace and settlement of securities transactions; (iii) are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions; (iv) are not designed to permit unfair discrimination among participants in the use of the clearing agency; and (v) do not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

It therefore is ordered that SR–MCC–82–8 and that SR–MSTC–82–11 are approved subject to the requirement that MCC shall obtain and submit to the Commission by December 31, 1982, an opinion from its independent public accountants regarding the accuracy of the financial data and the adequacy of the financial data and the adequacy of that data as the basis for the related conclusions and representations contained in Midwest's June 3, 1982 letter to the Commission supporting SR–MCC–82–8. The opinion should cover the accuracy of costs and revenues allocated to each service by Midwest. The opinion should also state whether MCC's criteria and methodology of allocating costs and revenues to services are not inconsistent with generally accepted accounting principles and whether MCC correctly applied that criteria and methodology in preparing the financial data submitted with SR–MCC–82–8. Further, in connection with the independent public accountant's review, Midwest shall provide the accountants with data and schedules of expense categories, such as personnel, data processing, occupancy and management costs, used by Midwest in preparing its letter to the Commission concerning the costs attributable to particular services.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17676 Filed 6–29–82; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 18831; SR–MSRB–82–7]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

June 22, 1982.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, submitted April 27, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder, to make MSRB Rule G–33, which sets forth formulas for calculating accrued interest, yield, return on investment, and dollar price, effective on August 1, 1982 instead of June 7, 1982, as previously ordered by issuance of a Commission release (Securities Exchange Act Release No. 18213, December 7, 1981) and by publication in the **Federal Register** (46 FR 60708, December 11, 1981). The MSRB has requested the additional delay in the effective date in order to give dealers adequate time to fully comply with two proposed amendments to MSRB Rule G–33 contained in companion filings SR–MSRB–82–5 and SR–MSRB–82–6.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 18723, May 10, 1982) and by publication in the **Federal Register** (47 FR 20895, May 14, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17665 Filed 6–29–82; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 18829; SR–MSRB–81–10]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

June 22, 1982.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue NW., Washington, D.C. 20036, submitted on May 3, 1982, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder to broaden the provisions of proposed paragraph (a)(i) of MSRB Rule G–12 on uniform practice to cover all transactions which are settled or cleared through the facilities of a registered clearing agency, regardless of the actual means of delivery.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 18745, May 17, 1982) and by publication in the **Federal Register** (47 FR 22439, May 24, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17667 Filed 6–29–82; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 18832; SR-MSRB-82-5]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

June 22, 1982.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW., Washington, D.C. 20036, submitted on April 27, 1982, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder, to clarify the application of certain of the day counting provisions set forth in MSRB Rule G–33 on calculations, and to correct an error in the statement of assumptions regarding securities dated or paying interest on the 31st of a month.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 18722, May 10, 1982) and by publication in the **Federal Register** (47 FR 21658, May 19, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved

For the Commission, by the Division of Market Regulation, pursuant ot delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17668 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 18830; SR-MSR-82-6]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

June 22, 1982.

The Municipal Securities Rulemaking Board ("MSRB") 1150 Connecticut Avenue, N.W., Washington, D.C. 20036, submitted on april 27, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder, to make technical modifications to MSRB Rule G–33, on calculations, to clarify or permit the use of formulas for the purposes of computing dollar prices or yields to a premium or call or par option feature. In addition, the proposed rule changes slightly revise certain of the formulas to eliminate an extraneous variable and make other clarifying changes to certain of the references in the rule.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 18724, May 10, 1982) and by publication in the **Federal Register** (47 FR 21659, May 19, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17702 Filed 6-29-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/02-0215]

All State Venture Capital Corp.; Filing of Application for Transfer of Control of a Licensed Small Business Investment Company (SBIC)

Notice is hereby given that an Application has been filed with the Small Business Administration (SBA) pursuant to Section 107.701 of the SBA regulations governing small business investment companies for the transfer of control of All State Venture Capital Corporation, 830 Post Road East, Westport, Connecticut 06880 (Licensee) (13 CFR 107.701(1982)),a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.).

The Licensee is registered with the Securities and Exchange Commission as a regulated investment company under the Investment Company Act of 1940 and has approximately 115 shareholders.

The proposed transfer of control is subject to, and contingent upon, the approval of SBA.

In order to affect the transfer of control the Licensee would create a subsidiary corporation and transfer the license, its portfolio and all obligations to the subsidiary.

The applicant, Investors Technology Capital Corporation (ITCC), 314 Flanders Rd., East Lyme, Connecticut 06333 would then purchase the stock of the aforementioned subsidiary corporation. All State would then become a subsidiary of ITCC. At the present time the known principal stockholders of ITCC are:

Mr. Richard D. McHugh, 15 Southgate Lane, North Haven, Connecticut, 30%

Mr. Gary C. Granai, 202 Grassy Hill Road, East Lyme, Connecticut, 30%

ITCC has further agreed to increase the paid-in capital and surplus of its newly acquired subsidiary to $500,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new management, and the probability of a successful operation under their control, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, on or before July 15, 1982, submit to SBA, in writing, comments on the transfer of control. Any such communication should be addressed to the Acting Deputy Associate Administrator for Investment, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Westport and East Lyme, Connecticut areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 22, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17428 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0308]

City Ventures, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On March 18, 1982, a notice was published in the **Federal Register** (47 FR 12005), stating that City Ventures, Inc., located at 404 North Roxbury Drive, Beverly Hills, California 90210, has filed an application with the Small Business

Administration pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on April 5, 1982, and one comment was received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-0308 to City Ventures, Inc.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: June 22, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17686 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at 1:00 p.m., Thursday, July 22, 1982 through Noon, on Friday, July 23, 1982, at the Holiday Inn (Airport), Roanoke, Virginia by members and the staff of the Small Business Administration or others attending.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, P.O. Box 10126, Richmond, Virginia 23240, (804) 771-2741.

Dated: June 23, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82-17429 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-5309]

Allied Business Investors, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR Section 107.102), under the name of Allied Business Investors, Inc., 626 West 15th Street, Los Angeles, California 90010, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The Officers, directors, and shareholders are as follows:

Teddy T. Su, President, Director and 8.3% Shareholder, 6825 Millwood Road, Bethesda, MD. 20817

Lindy H. Huang, Vice President, Secretary Director and 4.1% Shareholder, 1439 Wembley Road, San Marino, CA 91108

James C. Huang, Chief Financial Officer, Director and 16.7% Shareholder, 1605 Waverly Road, San Marino, CA 91108

Joseph S. Huang, Director and 16.7% Shareholder, 1439 Wembley Road, San Marino, CA 91108

George Ko, Director and 16.7% Shareholder, 394 Minsheng W. Road, 6F, Taipei, Taiwan

Bill M. Lin, Investor and 25.0% Shareholder, 401 Minsheng W. Road, Taipei, Taiwan

Jerry C. Huang, Investor and 12.5% Shareholder, 183 Section 2 Cheng-Tai Rd., Wu-KuShang, Taipei, Taiwan

The Applicant, a California corporation, will begin operations with $600,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the State of California.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the mobility of successful operations of the new company in accordance with the Act and Regulations.

Notice is hereby given that any person may, on or before July 15, 1982, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice should be published once in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: June 18, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17708 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0305]

Enterprise Venture Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102), under the name of Enterprise Venture Capital Corporation, 1922 The Alameda, Suite 305, San Jose, California 95126, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders of the applicant are as follows:

Ernest de la Ossa, President, Chief Financial Officer, Director and 21.45% Shareholder, 440 Davis, No. 721, San Francisco, CA 94111

Carl E. Wood, Secretary and Director, Bayview Plaza, Suite 515, 2121, El Camino Road, San Mateo, CA 94403

George Larsen, Director and 17.86% Shareholder, 16485 Blackberry Hill Road, Los Gatos, CA 95030

Benjamin Ichinose, Director and 35.71% Shareholder, 30 Fagon Drive, Hillsborough, CA 94010

Joseph A. Cohen, Director and 25.00% Shareholder, 184 Recora Way, Portola Valley, CA 94021

The Applicant, a California Corporation, will begin operations with $750,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operations of the new company in accordance with the Act and Regulations.

Notice is hereby given that any person may, July 15, 1982, submit written comments to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in San Jose, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17707 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 08/08-0056]

FMA Capital Corp.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by FMA Capital Corporation, 2060 East 2100 South, Salt Lake City, Utah, 84109 (applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982).

The officers, directors and stockholders of the applicant are as follows:

John H. Firmage, Jr., Director, President, 941 South 2300 East, Salt Lake City, Utah 84108
Richard C. Emery, Director, Treasurer, 8709 Oak Valley Drive, Sandy, Utah 84902
Gean M. Thorpe, Director, Secretary, 5758 Park Place East, Salt Lake City, Utah 82121
FMA Financial Corporation, Sole shareholder, 2060 East 2100 South, Salt Lake City, Utah 84109

The applicant, a Utah Corporation, with its principal place of business at 2060 East 2100 South, Salt Lake City, Utah 84109, will begin operations with $510,000 paid-in capital and paid-in surplus. Those individuals owning 10 or more percent of FMA Financial Corporation:

John H. Firmage, Jr., 941 South 2300 East, Salt Lake City, Utah 84108
Dan D. Firmage, 1536 Maule Drive, Ogden, Utah 84403
Gerald O. Cannon, 29 South State Street, Salt Lake City, Utah 84110
Thomas F. Ralphs, 245 North Vine Street, Salt Lake City, Utah 84103

The applicant will conduct its activities principally in the State of Utah.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, on or before July 15, 1982, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Salt Lake City, Utah.

(Catalog of Federl Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17709 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct business loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is fourteen and three-fourths (14¾) percent for the fiscal quarter beginning July 1, 1982.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July-September quarter of 1982, this rate will be thirteen and seven-eighths (13⅞) percent.

Dated: June 22, 1982.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 82-17712 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 06/10-0096]

Walnut Street Capital Co.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1982)), by Walnut Street Capital Company (the Applicant), 618 Baronne Street, New Orleans, Louisiana 70113, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder. The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

William D. Humphries, Managing General Partner, 6.00 percent, 618 Baronne Street, New Orleans, Louisiana 70113
Bryan Bell, General Partner, 14.00 percent, 1331 Third Street, New Orleans, Louisiana 70130
Delta Associates, Inc., Limited Partner, 25.18 percent, 122 Cherokee Road, Charlotte, North Carolina 28207
Memorial Drive Trust, Limited Partner, 47.00 percent, 20 Acorn Park, Cambridge, Massachusetts 02140

The purpose of the Applicant is to acquire substantially all of the assets and liabilities of Royal Street Investment Corporation (RSIC), a Louisiana Corporation and a Federal licensee under the Act, and to continue the operations of RSIC as a Federal licensee under the Act and the SBA Rules and Regulations. The Applicant will commence operations with an initial private capital of approximately $1.5 million.

Matters involved in SBA's consideration of the application include the general business reputation and character of the two general partners and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, on or before July 15, 1982, submit written comments on the proposed SBIC to the Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416. A copy of this Notice will be published in a newspaper of general circulation in New Orleans, Louisiana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 21, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17711 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-5150]

Washington Finance and Investment Corp.; Issuance of License To Operate as a Small Business Investment Company

On March 10, 1982, a notice was published in the **Federal Register** (FR 10339), stating that Washington Finance and Investment Corporation, located at 600 New Hampshire Avenue, NW., Suite 818, Washington, D.C. 20037, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1981), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business March 25, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 03/03-5150 to Washington Finance and Investment Corporation on June 3, 1982, to operate as a small business investment company, pursuant to Section 301(d) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 21, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-17710 Filed 6-29-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

Advisory Committee on the Law of the Sea; Partially Closed Meeting

In accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) as amended by Pub. L. 94-409 Section 5(c), notice is hereby given that the Advisory Committee on the Law of the Sea will meet in open and closed sessions on July 14, and 15, 1982. The open session of the meeting will convene July 15 at 9:30 a.m. in Room 1912, U.S. Department of State, 21st and C Streets, NW., Washington, D.C.

The purpose of the closed meeting is to consider the Draft Law of the Sea Convention, the U.S. review process and its outcome and the U.S. approach to the Law of the Sea issues. During the closed sessions, documents classified under the provisions of Executive Order 12065 will be discussed.

These documents relate to the issues which the United States has reviewed and has negotiated at the Third U.N. Conference on Law of the Sea. Accordingly it has been determined that is in the public interest to close these meetings pursuant to 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9).

The issues cover such subjects as the review, freedom of navigation on the high seas and in straits used for international navigation, the deep seabed mining regime, the continental margin, the economic zone, fisheries, marine pollution, scientific research, dispute settlement, and other topics involving U.S. national security and foreign relations matters. Premature disclosure of the contents of these documents could adversely affect our foreign relations interests and jeopardize United States law of the sea interests.

The open session of the Advisory Committee meeting will discuss all principal Law of the Sea issues, including those issues stated above, but will not examine the classified items discussed during the closed session.

The Advisory Committee on the Law of the Sea represents a broad cross-section of industries, professions, academic disciplines, and other public groups. As such, it will comprehensively review the proposals which have come and will come before the Conference.

At the open session, beginning at 9:30 a.m., July 15, the general public attending may participate in the discussion subject to instructions of the Chairman.

As entrance to the State Department is controlled, members of the public who wish to attend the open session should contact Robert Watkins and provide their name and affiliation to facilitate their attendance. His telephone number is (202) 632-8234.

Otho E. Eskin,

Director, Office of Ocean Law and Policy.

June 21, 1982.

[FR Doc. 82-17704 Filed 6-29-82; 8:45 am]

BILLING CODE 4710-09-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Notice of Meeting

The Veterans Administration gives notice under the provisions of Public Law 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, D.C. on August 31, 1982, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. until 12 noon to discuss research and other agency activities relative to the herbicide issue. A closed session will be held from 1:00 p.m. to 5:00 p.m. to permit the Committee to review the portions of the proposed epidemiological study of exposure to herbicides in Vietnam which are not available to the public, specifically the data collection instruments. Premature disclosure of this information would be likely to significantly frustrate implementation of a proposed agency action, namely conduct of the epidemiological study mandated by Public Law 96-151, amended by Public Law 97-72. Thus, the closing is in accordance with the provisions set forth in section 552b, subsection (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of Public Law 92-463.

Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the open proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director for Environmental Medicine (102), Room 848, Department of Medicine and Surgery, Veterans Administration Central Office, Washington, D.C. 20420, Telephone: (202) 389-5411.

Dated: June 23, 1982.

By direction of the Administrator.

Larry R. Moen,

Deputy Assistant Administrator, Office of Public and Consumer Affairs.

[FR Doc. 82-17636 Filed Filed 6-29-82; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitative Engineering Research and Development; Notice of Meeting

In accordance with Public Law 92-463 the Veterans Administration gives notice of a meeting of the Scientific

Review and Evaluation Board for Rehabilitative Engineering Research and Development. This meeting will convene at the Annapolis Hilton Inn, Compromise at St. Marys Street, Annapolis, Maryland on July 27 and 28, 1982, beginning at 9 a.m. on Tuesday, and 9 a.m. on Wednesday. The purpose of the meeting is to review rehabilitative engineering research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitative Engineering Research and Development (RER&D) Service regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the July 27th session for approximately one hour to cover administrative matters and to discuss the general status of the program. During the closed session, the Board will be reviewing research and development applications relating to the delivery and organization of rehabilitative research. This review involves oral review and discussions of site visits, staff and consultant critiques of research protocols, and similar documents that necessitate the consideration of personnel qualifications and the performance and competence of individual investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Proprietary data from contractors and private firms will also be presented and this information should not be disclosed in a public session. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with section 552b, subsections (c)(4), (c)(6), and (c)(9)(b), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of the Federal Advisory Committee Act, Title 5, U.S.C., Appendix I.

Due to the limited seating capacity of the room those who plan to attend the open session should contact Mr. Robert Fleming, Administrative Officer, Rehabilitative Engineering Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue, N.W., Washington, DC 20420 (Phone: (202) 389-5177) at least 5 days before the meeting.

Dated: June 23, 1982.

By direction of the Administrator.

Larry R. Moen,

Deputy Assistant Deputy Administrator, Office of Public and Consumer Affairs.

[FR Doc. 82-17635 Filed 6-29-82; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Proposed Amendment of Systems Notice: Additional Routine Use Statement

Notice is hereby given that the Veterans Administration is considering adding two new routine use statements to the following system of VA records set forth on page 671 of the Federal Register publication, "Privacy Act Issuances, 1980 Compilation, Volume V".

24VA136 Patient Medical Records—VA

The Veterans Administration's Office of the Inspector General, in coordination with other Federal agencies, plans to conduct a series of computer matches as part of VA's participation in the President's Council on Integrity and Efficiency Project entitled "Federal Employees Receiving Government Assistance". The goal of these matches is to reduce the amount of outstanding debt owed to the VA by individuals as a result of their participation in a VA benefits program. Two new routine use statements must be added in order to use information generated by the matches and permit initiation of appropriate collection actions and/or follow-up on previously initiated actions. The routine uses will permit the disclosure of information to any third party in connection with the collection process. The VA has determined that release of information for this purpose is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

Interested persons are invited to submit comments, suggestions, or objections regarding the proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All relevant material received before July 30, 1982 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 13, 1982. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in Room 132. Visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

If no public comment is received during the thirty-day review period allowed for public comment or unless otherwise published in the Federal Register by the Veterans Administration, the new routine use statements included herein are effective July 30, 1982.

Approved: June 23, 1982.

Robert P. Nimmo,

Administrator.

Notice of System of Records

In the system identified as 24JA 136, "Patient Medical Record-VA," the two new routine use statements are added to read as follows:

24VA 136

SYSTEM NAME

Patient Medical Record—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

21. Any information in this system of records, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed for the purposes identified below to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Veterans Administration. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) to assist the VA in collection of title 38 overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtain title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 3301(b)(6).

22. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness,

provided that the provisions of 38 U.S.C. 3301(g)(4) have been met.

* * * * *

[FR Doc. 82-17649 Filed 6-29-82; 8:45 am]
BILLING CODE 8320-01-M

Privacy Act of 1974; New System of Records

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requiries that all agencies publish in the Federal Register a notice of the existence and character of their system of records. Accordingly, the Veterans Administration published and adopted a notice of its inventory of personal records on September 27, 1977 (42 FR 49726).

Notice is hereby given that the Veterans Administration is adding a new system of records entitled "VA Employee Counseling Services Program Records" (68VA05). This system is authorized under 5 U.S.C. 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 4561, 44 U.S.C. 3101.

The purpose of this new system of records is to document the nature of an employee's problem, progress, and actions taken by the Veterans Administration to resolve the problem, or when appropriate to refer individuals to governmental, community, or private resources for treatment or rehabilitation. The system contains records relating to the counseling and treatment of VA employees or employee family members who obtain counseling from a VA Employee Alcoholism and Drug Abuse Program (Employee Counseling Program) Coordinator or Counselor. These records, indentifiable by employee name, or family member name, contain documentation of visits to employee counselors, and information related to diagnosis, treatment, and notes of discussions held by the conselor with the employee, employee's family members, supervisor, physician or therapist.

This system contains routine uses as defined by the Privacy Act of 1974 (5 U.S.C. 552a(a)(7)). The Veterans Administration has determined that the release of data and information, as provided for in the listed routine uses statements, is a necessary and proper use of the data in this system of records.

Interested persons are invited to submit written comments, suggestions, or objections regarding the system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before July 30, 1982 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until August 13, 1982. Any person visiting the above address for the purpose of inspecting any such comments will be received by the VA Central Office Veterans Services Unit in room 132.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by the Veterans Administration, the system of records is effective July 30, 1982.

Approved: June 23, 1982.

Robert P. Nimmo,

Administrator.

68 VA05

SYSTEM NAME:

VA Employee Counseling Services Program Records.

SYSTEM LOCATION:

These records are located at VA facilities (See Appendix 1) and at other Federal, State, or local government or private sector agencies or institutions which have agreements with the VA to provide counseling to VA employees or family members with alcohol, drug or emotional or personal health problems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals who may be covered by the system include current or former VA employees or immediate family members of VA employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records (or information contained in records) may include records and documents related to employee visits to counselors, diagnosis, recommended treatment, prognosis, results of treatment, and other notes or records of discussions held by a program counselor with the employee, employee's family members or supervisors. Records in this system may also contain documentation of treatment at a Federal, State, local government, private agencies, or institutions which have agreements with the VA to provide counseling to VA employees or family members with alcohol, drug or personal or emotional health problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 4561 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Any information in this system may be disclosed to approved third parties for the purpose of conducting scientific research, management audits, financial audits, or program evaluations; however, such third parties may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit or evaluation, or otherwise disclose patient or subject identities in any manner.

2. Any information in this system may be disclosed to the Department of Justice, or, when appropriate, to other Federal agencies, in order for the VA or another Federal agency to defend any claims against the United States arising from the treatment or counseling of an employee or family member with alcohol, drug, emotional or personal health problems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on paper documents in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets with access limited to the program Counselor or Coordinator.

RETENTION AND DISPOSAL:

Records are maintained for three years after the employee's last contact with the Counselor, or for three years after the employee's separation or transfer, whichever comes first. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Administrator for Personnel & Labor Relations (05), 810 Vermont Avenue, NW., Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

VA employees or family members wishing to inquire whether this system of records contains information about them should contact the VA Employee Alcoholism and Drug Abuse or Counseling Services Program Counselor or Coordinator who arranged for counseling or treatment. Individuals must furnish their name and date of birth for their records to be located and identified.

RECORD ACCESS PROCEDURES:

VA employees or family members wishing to request access to records pertaining to them should contact the VA Employee Alcoholism and Drug Abuse or Counseling Services Program Counselor or Coordinator who arranged for counseling or treatment. Individuals must furnish their name and date of birth for their records to be located and identified.

An individual must also follow the VA's Privacy Act regulations and procedures regarding verification of identity and amendment of records.

CONTESTING RECORDS PROCEDURES:

VA employees or family members wishing to request amendment to these records should contact the Program Counselor or Coordinator who arranged for counseling or treatment. Individuals must furnish their name and date of birth for their records to be located and identified.

An individual must also follow the VA's Privacy Act regulations and procedures regarding verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the employee, if the employee was referred by a supervisor for counseling, the Program Counselors or Coordinators who recorded counseling sessions, and therapists or institutions providing treatment.

[FR Doc. 82-17650 Filed 6-29-82; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 126
Wednesday, June 30, 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, July 16, 1982.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

* * * * *

TIME AND DATE: 10 a.m., Wednesday, July 7, 1982.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Minimum Financial and Related Reporting Requirements for Futures Commission Merchants

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-956-82 Filed 6-28-82; 11:42 am]

BILLING CODE 6351-01-M

2

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 28004, Monday, June 28, 1982.

PLACE: Board room, sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following items have been added to the open portion of the Bank Board meeting scheduled Thursday, July 1, 1982.

Net Worth Amendment

Liquidity Amendments

[No. 45, June 28, 1982]

[S963-82 Filed 6-28-82; 3:44 pm]

BILLING CODE 6720-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-24]

TIME AND DATE: 2:30 p.m., Wednesday, July 7, 1982.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Electrostatic copiers (Docket No. 836).
5. Investigation 731-TA-50 (Final) (Stainless Steel Clad Plate from Japan)—vote.
6. Investigation 701-TA-174/175 (Preliminary) (Commuter Aircraft from France and Italy)—vote.

Portions closed to the public:

5. Investigation 731-TA-50 (Final) (Stainless Steel Clad Plate from Japan)—briefing.
6. Investigations 701-TA-174/175 (Preliminary) (Commuter Aircraft from France and Italy)—briefing.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-957-82 Filed 6-28-82; 12:03 pm]

BILLING CODE 7020-02-M

4

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., on July 8, 1982.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634-4015.

Dated: June 28, 1982.

[S-960-82 Filed 6-28-82; 3:18 pm]

BILLING CODE 7600-01-M

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m. on July 15, 1982.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: June 28, 1982.

[S-961-82 Filed 6-28-82; 3:18 pm]

BILLING CODE 7600-01-M

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m. on July 22, 1982.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: June 28, 1982.

[S-962-82 Filed 6-28-82; 3:18 pm]

BILLING CODE 7600-01-M

7

PAROLE COMMISSION

[2P0401]

TIME AND DATE: 9 a.m. to 5:30 p.m., Friday, July 23, 1982.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 12 cases decided by the National Commissioners pursuant to a reference

under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

[S–958–82 Filed 6–28–82; 2:09 pm]

BILLING CODE 4410–01–M

8

PAROLE COMMISSION

[2P0401]

TIME AND DATE:

9 a.m.–5:30 p.m., Wednesday, July 21, 1982.

9 a.m.–5:30 p.m., Thursday, July 22, 1982.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Meeting of April 15 and 16, 1982.
2. Reports from the Chairman, Vice Chairman, Commissioners, General Counsel, Director of Research, and Case Operations.
3. Report on SENTRY Development.
4. Proposed Modification of 28 CFR 2.27 and related rules.
5. Proposed Modification of 28 CFR 2.37.
6. Proposed Clarification of 28 CFR 2.21.
7. Proposed Clarification of 28 CFR 2.10(c).
8. Proposed Modification of 28 CFR 2.28—2.30.
9. Search and Seizure.
10. Credit for Street Time.
11. Remand of Cases by the National Appeals Board.
12. Severity Rating of Probation Violators Where Probation Is Not Revoked.
13. Preliminary Report on the Ten-Year Reconsideration Issue.
14. Review of Special Parole Terms for Termination.

CONSENT AGENDA: The following consent agenda items, only if previously requested to be opened for discussion at the meeting on or before July 16, 1982:

15. A provision at § 2.33–01 of the Procedures Manual that the Commission has final authority to determine the district of supervision.
16. A provision at §§ 2.13–02(c) and at 2.50–07 of the Procedures Manual that representatives and probation officers respectively may be present throughout hearings.
17. A provision at § 2.40–12 of the Procedures Manual that probation officers require persons under supervision to comply with local registration ordinances.
18. Proposed modification of 28 CFR 2.32(a)(2) concerning parole to detainers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Peter B. Hoffman, Director of Research, United States Parole Commission (301) 492–5980.

[S–959–82 Filed 6–28–82; 2:09 am]

BILLING CODE 4410–01–M

federal register

Wednesday
June 30, 1982

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Confirmation of effective date in part and stay of effective date in part.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is giving notice that its final rule, published in the **Federal Register** of May 17, 1982, will be effective July 1, 1982, with the exception of a portion of § 31.303(i)(3)(iv)(B), which is stayed pending additional comments. OJJDP is requesting further comments on this specific clause of the regulation. The regulation implements the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, establishing a basic framework within which State law or procedure may permit noncriminal juvenile offenders who violate valid court orders to be placed in secure facilities.

DATES: All comments on § 31.303(i)(3)(iv)(B) (first clause) of the regulation are due on or before July 30, 1982. Unless comments on this clause result in its modification through further notice in the **Federal Register** by August 16, 1982, then the reserved clause of the final rule, as published in the **Federal Register** of May 17, 1982, shall become effective on August 16, 1982.

ADDRESS: Send all comments to David D. West, Director, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Ave., NW., Washington, D.C. 20531 Telephone: (202) 724–5911.

SUPPLEMENTARY INFORMATION: On May 17, 1982, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** a "Notice of Final Rule with Request for Comments" (47 FR 21226). OJJDP requested comment on its regulation to implement the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The regulation is § 31.303(i)(3) of 28 CFR Part 31 (Appendix A), which implements the formula grant program established by the Act.

In its May 17, 1982 **Federal Register** publication, OJJDP stated that unless final comments raised major issues not already considered by OJJDP which resulted in modification of the regulation, it would become effective on July 1, 1982.

During the comment period, such an issue was raised by the National Council of Juvenile and Family Court Judges, by individual members of the Council, and by other judges and judicial system representatives. This issue involves the clause of § 31.303(i)(3)(iv)(B) which establishes the conditions under which a juvenile accused of violating a valid court order may be held in secure detention after a judicial determination has been made, based on a hearing, that there is probable cause to believe the youth violated the court order. In such case, the first clause of § 31.303(i)(3)(iv)(B) provides the following two circumstances under which detention pending a violation hearing would be sanctioned:

"(B) the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others."

The commentators raised the following issues related to this clause:

(1) The proposed limitation on judicial authority to place a status offender charged with a violation of a valid court order in secure detention is inconsistent with the plain language of section 223(a)(12)(A), which places no limit on this authority;

(2) The proposed limitation fails to provide States with the ability to authorize detention where needed to comply with the State's responsibility to detain and return runaway children under the Interstate Compact on Juveniles;

(3) The proposed limitation fails to provide States with the ability to authorize detention for other protective purposes such as when a parent, guardian, or custodian cannot be found for the juvenile, when a juvenile requests that he or she be held in secure detention, or when the juvenile is a chronic or habitual runaway; and

(4) The requirement for a "demonstrable recent record" in the proposed regulation provides interpretation problems in the matter of quantum of proof required, particularly in view of the 24 hour limitation on secure custody prior to a probable cause hearing.

The cited clause of § 31.303(i)(3)(iv)(B) of the regulation, limiting pre-violation hearing detention to the two circumstances, was the subject of commentary under Paragraph 2 of the *Explanation of Changes* section of the May 17, 1982 **Federal Register** announcement. Commentators should also review Paragraph 15 of the *Discussion of Other Comments* section of the May 17, 1982 **Federal Register** which discusses the out-of-State runaway issue. These paragraphs are set forth at Appendix B.

No other comments received in response to the May 17, 1982 **Federal Register** announcement are considered by OJJDP to have raised major issues not already considered by OJJDP. Therefore, as provided in that announcement, 28 CFR 31.303(i)(3), as printed in the **Federal Register** of May 17, 1982, is effective July 1, 1982 with the exception of the portion of § 31.303(i)(3)(iv)(B) set forth below, which is stayed until further notice pending additional comment:

(B) *The juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others.*

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix A to Preamble

For the convenience of the user, we are reprinting the final rule promulgated on May 17, 1982 (47 FR 21230).

PART 31—FORMULA GRANTS

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of compentent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile *and to his attorney and/or to his legal guardian* in writing *and* be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a vaild court order must be held before a court of competent

jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, only if: (A) There has been a judicial determination based on a hearing *during the 24-hour grace period*, that there is probable cause to believe the juvenile violated the court order; *and* (B) *the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others.* In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed *72 hours exclusive of nonjudicial days.* A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceedings;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine *on the record* that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile *and the judge must determine on the record that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.*

(vii) *A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.*

Appendix B to Preamble

For the convenience of the user, we are reprinting pro portions of the preamble to the final rule promulgated May 17, 1982 (47 FR 21226). The following excerpt reviews the rationale for the clause we are staying (§ 31.303(i)(3)(iv)(B)):

OJJDP's position, strongly supported by the comment and testimony, is that status offenders, including those accused or found to have violated a valid court order, will seldom need to be detained in secure detension or correctional facilities. Such juveniles should, whenever possible, be released to a parent or legal guardian or be placed in a foster home or shelter facility pending an adjudicatory violation or dispositional hearing or as a dispositional alternative.

The legislative history of the "valid court order" amendment reflects the fact that this exception was intended by the Congress to give the juvenile or family court judge the ability to enforce valid court orders by authorizing secure incarceration of those status offenders who "continually flout the will of the court," who "chronically refuse voluntary treatment," or who are considered "chronic offenders" as the result of a pattern of continued violations of the court's orders. The legislative history also states that the judicial discretion to securely detain a status offender for violating a valid court order "would be rarely used as far as a juvenile judge would go." Thus, consistent with NAC Standard 3.152, Criteria for Detension in Secure Facilities, and the legislative history, the regulation was modified.

The regulation now provides that, where it has been judicially determined that there is probable cause to believe a status offender violated a valid court order, secure detention pending the violation hearing may be authorized if the juvenile has a demonstrable recent record of willful failure to appear in court *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others. This provision of the regulation is consistent with the basic principles regarding the use of short-term secure settings pending adjudication or disposition. Secure detention prior to a violation hearing should only be used when it is needed to assure appearance in court or for protective purposes and should not be used as a punitive measure. If a juvenile accused of violating a valid court order has no recent history of failing to appear in court, then there is no need to securely hold the juvenile to assure court appearance. Similarly, if the juvenile has no recent record of violent conduct resulting in physical harm to self or others, there is no need to securely detain the juvenile for protective purposes. The term "demonstrable record" is not intended to require introduction of a certified copy of a prior adjudication order or certified documents that the juvenile has recently and willfully failed to appear at family court proceeding, but should include more than mere allegations of prior failure to appear or violent conduct.

* * * * *

The following excerpt reviews the rationale for the clause we are staying today (28 CFR 31.303(i)(3)(iv)(B)):

15. *Recommendation:* The OJJDP regulations should address the time limits on secure detention of out-of-state runaways.

OJJDP Response: This issue is beyond the scope of the valid court order provision. The experience of the States has shown that there are few instances where the out-of-state runaway needs to be held beyond the 24-hour grace period. For those instances when it is necessary, the criteria for de minimis exceptions to full compliance with Section 223(a)(12)(A) (See 46 FR 2566–2569) has a provision to consider the holding of out-of-state runaways as an exceptional circumstance when such holding meets specified criteria.

[FR Doc. 82–17605 Filed 6–29–82; 8:45 am]

BILLING CODE 4410–18–M

federal register

Wednesday
June 30, 1982

Part III

Department of the Interior

Bureau of Land Management

Minerals Management and Oil and Gas Leasing; Oil and Gas Leasing on Federal Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3040, 3100, 3110, 3120, 3140 and 3150

Minerals Management and Oil and Gas Leasing; Amendments to the Regulations Covering Oil and Gas Leasing on Federal Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The amendments made by this proposed rulemaking rewrite the provisions of the existing regulations in Groups 3000 and 3100 to reduce the regulatory burden imposed on the public, to provide access to public lands in Alaska for oil and gas exploration and development and to achieve a number of miscellaneous purposes under the authority granted the Secretary of the Interior.

DATE: Comments by August 30, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles E. Weller (202) 343-7753; or Robert C. Bruce (202) 343-8735

SUPPLEMENTARY INFORMATION: This proposed rulemaking completely revises Parts 3000 and 3100 of Title 43 of the Code of Federal Regulations. The elimination of counter-productive and obsolete provisions from the existing regulations would reduce the total volume of the regulations relating to onshore oil and gas leasing on Federal lands by 17 per cent. The remaining provisions of the existing regulations would be rewritten and reorganized to make them easier to read and understand. In addition, a number of substantive changes would be made to provide access to public lands in Alaska for oil and gas exploration and development, to reduce the regulatory impact on the public and for other miscellaneous purposes. These substantive changes, by catagory, would be:

Access to Public Lands in Alaska for Oil and Gas Exploration and Development

1. The proposed rulemaking would formalize the geophysical exploration permitting system for all public lands in Alaska, except those within the Central Arctic Management Area or the Arctic National Wildlife Refuge Coastal Plain (Subpart 3045).

2. The proposed rulemaking would specifically describe the leasing program authorized by the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) for non-North Slope Alaska. All lands within favorable geologic provinces will be leased competitively. All other lands will be leased noncompetitively. The regulations which govern competitive and noncompetitive leasing in the lower-48 states would apply except: (a) The maximum size of a competitive lease would be 2,560 acreas; and (b) several thousand parcels which would be available for simultaneous leasing under existing regulations would be subject to over-the-counter leasing.

3. The proposed rulemaking would reflect that National Wildlife Refuge System lands within Alaska, except the Arctic National Wildlife Refuge, are subject to leasing if such leasing is not incompatible with the purposes for which the unit was created. Leases shall be issued subject to stipulations prescribed by the U.S. Fish and Wildlife Service (Section 3101.5).

Reduction of Regulatory Burden

1. The proposed rulemaking incorporates changes issued in the **Federal Register** of February 26, 1982 (47 FR 8544), as an interim final rulemaking amending provisions of Group 3100 of Title 43 of the Code of Federal Relgulations. The changes include the elimination of: (a) The requirement that simultaneous oil and gas lease application filing fees be paid by guaranteed remittance; (b) the mandatory use of pre-numbered assignment forms for the transfer of oil and gas leases; and (c) the requirement to submit documents related to qualifications prior to lease acquisition. All comments received as a result of the issuance of the interim final rulemaking and this proposed rulemaking on these subjects will be reviewed and considered at the time of decisionmaking on issuance of a final rulemaking on this proposed rulemaking.

2. Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, leases are terminated automatically by operation of law if the rental payment is not received by the proper Bureau of Land Management office on or before the anniversary date. Such terminated leases may be reinstated provided: (1) The rental is received within 20 days after the due date, (2) the lessee petitions for reinstatement, and (3) the lessee proves that the late payment was either justified, or was not due to a lack of reasonable diligence. Each year, leases terminated under this procedure are the subject of numerous appeals and private bills are introduced in the Congress seeking reinstatement. This proposed rulemaking would provide that there has been reasonable diligence if the rental payment is postmarked on or before the due date (Section 3108.2).

3. The proposed rulemaking would eliminate the requirement that requests for the approval of assignments of oil and gas leases be filed with the Bureau of Land Management within 90 days after execution.

4. Exisitng regulations require record title holders or operators under approved operating agreements to post a bond to cover any difficulties which may result from planned operations. The proposed rulemaking would allow a designated operator to post a bond in lieu of the record title holder or the operator under an approved operating agreement (Section 3106.6).

5. Existing regulations require separate Statewide bonds of $25,000 be maintained for leases on public domain lands and leases on acquired lands. The proposed rulemaking would allow one $25,000 bond to cover all Federal lands within a State (Section 3104.3).

6. The proposed rulemaking would exclude the acreage covered by a lease offer or an overriding royalty interest in computing the total acreage charged to a lessee.

7. Under existing regulations, the issuance of a lease to one who, upon issuance would control less than 50 percent of the operating rights in the lands covered by the lease, is not ordinarily regarded as being in the public interest. This amendment would eliminate this policy in order to prevent an uncooperative holder of a fractional interest in the lands from tying up the resource. The issuance of a lease by the United States for it interest will allow the lessee to actively seek the remaining interest to permit development of the resource.

Miscellaneous Changes

1. The proposed rulemaking sets forth the procedure for issuance of Federal oil and gas leases for lands under the jurisdiction of a Federal agency outside the Department of the Interior. The proposed rulemaking would formalize existing practice in accordance with the decision in *Mountain States Legal Foundation* v. *Andrus*, (499 F. Suppl. 383). Even though this proposal applies only to leasing of oil and gas, the public is asked to comment on the possibility of applying it to other minerals (Section 3101.7).

2. The proposed rulemaking would establish all filing fees required for oil and gas leasing, except the noncompetitive lease application filing fee, at $25.

3. The proposed rulemaking would provide for only one application being selected in a simultaneous oil and gas lease drawing, rather than the three applications currently drawn. Applicants drawn with second or third priority have frequently filed protests against the drawing winner, protests that were often found to be without merit. Detection of fatal defects through protests by the second and third priority holders has been minimal. The change in the proposed rulemaking will allow leases to issue more promptly (Section 3112.3–1).

4. The proposed rulemaking would provide that simultaneous oil and gas lease applications may not be withdrawn (Section 3110.2).

5. The proposed rulemaking would delete the prohibition on the leasing of public domain lands within one mile of a naval or national petroleum or helium reserve.

6. The proposed rulemaking would give the Secretary of the Interior authority to suspend overriding royalty interests for gas production which are in excess of 17½ percent when aggregated with the royalty interest retained by the United States. The Secretary would order such a suspension upon a determination that the excess constitutes a burden on lease operations to the extent that it will retard proper and timely development, or impair continued operation of the lease or cause premature abandonment of the wells. This suspension authority already exists for oil production (Section 3103.3–3).

7. This proposed rulemaking would allow equitable principals to be used to retroactively approve communitization agreements. The purpose of such retroactive approval would be to allow lease extension and vacate lease expiration. The public is asked to comment on the advisability of including a provision of probable limited applicability in the final rulemaking.

8. Under the existing regulations, aliens may hold leases or interests therein only through stock ownerships, holding or control, only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries which have been determined to provide "similar or like" privileges has been maintained. The proposed rulemaking will provide, instead, for a list of nations which do not accord like or similar privileges.

The regulations on leasing within certain parts of the National Park System that have been issued by the National Park Service will be integrated into the final rulemaking on Group 3100.

The principal author of this proposed rulemaking is Charles E. Weller, Division of Oil and Gas, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this 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 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96–354).

The information collection requirements contained in 43 CFR Parts 3000 and 3100 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Under the authority of the Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), it is proposed to amend Groups 3000 and 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects

43 CFR Part 3000

Public lands—classification, Public lands—mineral resources.

43 CFR Part 3040

Oil and gas exploration, Public lands—mineral resouces.

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral reources, Surety bonds.

43 CFR Part 3110

Administrative practice and procedure, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3120

Adminstrative practice and procedure, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3140

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—mineral resources.

43 CFR Part 3150

Administrative practice and procedure, Mineral royalties, Oil and gas reserves, Public lands—mineral resources.

A. Group 3000 is revised as follows:

GROUP 3000—MINERALS MANAGEMENT

PART 3000—MINERALS MANAGEMENT; GENERAL

Subpart 3000—General

Sec.

3000.0–5 Definitions.
3000.1 Nondiscrimination.
3000.2 False statements.
3000.3 Unlawful interests.
3000.4 Limit on time to institute suit.
3000.5 Filing of documents.
3000.6 Multiple development.

Authority: Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Department of the Interior Appropriations Act, Fiscal year 1981 (Pub. L. 96–514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3000—General

§ 3000.0-5 Definitions.

As used in Groups 3000 and 3100 of this title, the term:

(a) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state at ordinary temperatures and pressure conditions.

(b) "Oil" means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing processes.

(c) "Secretary" means the Secretary of the Interior.

(d) "Director" means the Director of the Bureau of Land Management.

(e) "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3000 and 3100.

(f) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in which the term is used in Group 3000 and 3100, except that all oil and gas lease applications and assignments for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska. (See § 1821.2-1 of this title for office location and area of jurisdiction of Bureau of Land Management offices)

(g) "Public domain lands" means lands which never left the ownership of the United States, lands which were obtained by the United States in exchange and lands which have reverted to the ownership of the United States through operation of the public land laws.

(h) "Acquired lands" means lands which the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws including the mining laws.

(i) "Anniversary date" means the same day and month in succeeding years as that on which the lease became effective.

(j) "Act" means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

(k) "Party in interest" means a party who is or will be vested with any legal or equitable rights under the lease. No one is a sole party in interest with respect to an application, offer or lease in which any other party has any of the interests hereinafter described. An interest in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights, options or any aggreements covering such interests. Any claim or any prospective future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived, or which may accrue, in any manner from the lease based upon, or pursuant to any agreement or understanding existing at the time when the application or offer is filed, constitutes an interest in such lease.

(l) "Surface managing agency" means any Federal agency outside of the Department of the Interior with jurisdiction over the surface overlying Federally-owned minerals.

(m) "Service" means the Minerals Management Service.

§ 3000.1 Nondiscrimination.

Any person acquiring a lease under this chapter shall comply fully with the equal opportunity provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor (41 CFR Part 60 and 43 CFR Part 17).

§ 3000.2 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3000.3 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in 43 CFR Part 20, shall be entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—See 43 CFR Part 20; Member of Congress—See R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431—433).

§ 3000.4 Limitations on time to institute suit to contest a decision of the Secretary.

No action contesting a decision of the Secretary involving any oil or gas lease, offer or application shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3000.5 Filing of Documents.

All necessary documents shall be filed in the proper BLM office. A document shall be considered filed when it is received in the proper BLM office during regular business hours (See § 1821.2 of this title).

§ 3000.6 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any 1 mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States.

PART 3040—EXPLORATION ACTIVITY

Subpart 3045—Geophysical Exploration (Oil and Gas)

Sec.

3045.0-1 Purpose.
3045.0-2 Policy.
3045.0-3 Authority.
3045.0-5 Definitions.
3045.1 Suspension, revocation or cancellation.
3045.2 Exploration outside of Alaska.
3045.2-1 Notice of intent to conduct oil and gas operations.
3045.2-2 Notice of completion of operations.
3045.3 Exploration in Alaska.
3045.3-1 Application for oil and gas exploration permit.
3045.3-2 Action on application.
3045.3-3 Renewal of exploration permit.
3045.3-4 Relinquishment of exploration permit.
3045.3-5 Modification of exploration permit.
3045.3-6 Collection and submission of data.
3045.3-7 Completion of operations.
3045.4 Bond requirements.

Authority: Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3045—Geophysical Exploration (Oil and Gas)

§ 3045.0-1 Purpose.

The purpose of this subpart is to establish procedures for conducting oil and gas exploration operations on the public lands. These procedures are not applicable to exploration operations conducted pursuant to oil and gas leases except in Alaska where a geophysical exploration permit is required on or off

leased Federal lands. The provisions of this subpart do not apply to section 1002 of the Alaska National Interest Land Conservation Act or to the Arctic National Wildlife Refuge Coastal Plain.

§ 3045.0-2 Policy.

A notice of intent to conduct oil and gas exploration operations shall be accepted for oil and gas exploration activities in all States where public lands are open to oil and gas exploration, with the exception of Alaska. In Alaska, oil and gas exploration activities shall not be conducted on the public lands without the issuance of a permit.

§ 3045.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148(b)(B)) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514).

§ 3045.0-5 Definitions.

As used in this subpart, the term:

(a) "Oil and gas exploration" means any activity on the public lands, the surface of which is administered by the Bureau of Land Management, relating to the search for evidence of oil and gas which requires physical presence upon the lands and which may result in damage to the public lands or the resources located thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over such lands. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities shall only be authorized by the issuance of an oil and gas lease and the approval of an application for a permit to drill. The regulations in this subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges, where permissible, for seismic exploration, nor do they affect the exclusive right to drill for oil and gas by a lessee upon the lease premises.

(b) "Public lands" means any lands and interest in lands owned by the United States within the several States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts and Eskimos.

(c) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are casual use.

§ 3045.1 Suspension, revocation or cancellation.

All notices and permits shall contain a provision authorizing revocation or suspension, after notice and hearing, and upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations issued under Acts applicable to the public lands and applicable State air and water quality standards or implementation plan. The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization prior to a hearing or final administrative finding if he/she determines that such a suspension is necessary to protect health or safety or the environment. Further, where other applicable law contains specific provisions for suspension, revocation or cancellaion of a permit or other authorization to use, occupy or develop the public lands, the specific provisions of such law shall prevail.

§ 3045.2 Exploration outside of Alaska.

§ 3045.2-1 Notice of intent to conduct oil and gas operations.

Any person desiring to conduct oil and gas exploration operations on public lands outside the State of Alaska shall, prior to entry upon the public lands, file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent shall be filed with the District Manager of the proper BLM office on a form approved by the Director. The completion of and signing of the form by the operator and his/her agents or employees signifies agreement comply with the terms and conditions contained therein and in this subpart.

§ 3045.2-2 Notice of completion of operations.

Upon completion of exploration, there shall be filed with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 90 days after this filing, the authorized officer shall notify the party who conducted the operations whether all of the terms and conditions set out by the regulations in this subpart and in the notice of intent have been met, or whether additional action shall be required to rehabilitate the lands, specifying the nature and extent of the required action.

§ 3045.3 Exploration in Alaska.

§ 3045.3-1 Application for oil and gas exploration permit.

Any person wishing to conduct oil and gas exploration operations on public lands in Alaska, including the National Petroleum Reserve—Alaska, shall complete an application for an oil and gas geophysical exploration permit on a form approved by the Director. The application shall be submitted, along with a non-refundable fee of $25 and a plan for conducting the exploration operations, to the District Manager of the proper BLM office.

§ 3045.3-2 Action on application.

(a) The authorized officer shall review each application and approve or disapprove it within 90 calender days, unless compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.) delays this action. The applicant shall be notified in writing of any such delay.

(b) The authorized officer shall include in each geophysical exploration permit special terms and conditions needed to protect the natural land surface, other mineral resources and non-mineral resources. Geophysical permits within the National Pertroleum Reserve—Alaska shall contain such conditions, restrictions and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonable adverse effects upon the surface resources of the Reserve and to satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504). (See Part 3130 of this title for special stipulations relating to the National Petroleum Reserve—Alaska).

(c) An exploration permit shall become effective on the date specified by the authorized officer and shall expire 1 year thereafter.

(d) The exploration plan approved by the Service shall be attached to and made a part of each exploration permit.

(e) For lands subject to section 1008 of the Alaska National Interest Lands Conservation Act, exploration shall be authorized only upon a determination that such activities can be conducted in a manner which is consistent with the purposes for which the affected area is managed under applicable law.

§ 3045.3–3 Renewal of exploration permit.

An exploration permit may be renewed by the authorized officer, upon application, for a period not to exceed 1 year.

§ 3045.3–4 Relinquishment of exploration permit.

Subject to the continued obligations of the permittee and the surety to comply with the terms and conditions of the exploration permit, the exploration plan and the regulations, the permittee may relinquish an exploration permit for all or any portion of the lands covered by it. Such relinquishment shall be filed with the District Manager of the proper BLM office.

§ 3045.3–5 Modification of exploration plan.

(a) A permittee may request, and the Service may, with the concurrence of the authorized officer, approve a modification of an exploration plan.

(b) The Serivce may, with the concurrence of the authorized officer, require modifications it deems necessary to the exploration plan.

§ 3045.3–6 Collection and submission of data.

(a) The permittee shall submit to the Service all data and information obtained in carrying out the exploration plan.

(b) The Service shall make such data and information available to the public, except that any processed, analyzed and interpreted material shall be held confidential until the lands from which the information was obtained is leased or until 5 years following the submission of the data, whichever occurs first.

§ 3045.3–7 Completion of operations.

(a) The permittee shall submit to the authorized officer a completion report within 30 days of completion of all operations under the permit. The completion report shall contain the following:

(1) A description of all work performed;

(2) Charts, maps or plats depicting the areas and blocks in which the exploration was conducted and specifically indentifying the lines of geophysical traverses and any roads constructed;

(3) The dates on which the actual exploration was conducted;

(4) Such other information about the exploration operations as may be specified by the authorized officer in the permit; and

(5) A statement that all terms and conditions have been complied with or that corrective measures shall be taken to rehabilitate the lands or other resources.

(b) Within 90 days after the authorized officer receives a completion report from the permittee that exploration has been completed or after the expiration of the permit, whichever occurs first, the authorized officer shall notify the permittee of the specific nature and extent of any additional measures required to rectify any damage to the lands or resources.

§ 3045.4 Bond requirements.

(a) For each planned exploration, the party or parties filing the notice of intent or application for a permit shall simultaneously file with the authorized officer a bond, as described in § 3104.1 of this title, in the amount of $5,000, conditioned upon full and faithful compliance with all of the terms and conditions of the regulations of this subpart, the notice of intent and permit. In lieu thereof, the party or parties may file a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $50,000 covering all oil and gas exploration operations in the nation. Holders of statewide, nationwide or National Petroleum Reserve—Alaska oil and gas lease bonds shall be permitted to amend those bonds to extend coverage to oil and gas exploration operations.

(b) The authorized officer shall not consent to the cancellation of the bond or to the termination of liability unless and until all of the terms and conditions of the notice of intent or permit have been met. Should the authorized officer fail to notify the party within 90 days of the filing of the notice of completion that all terms and conditions have been met or that additional action shall be required to rehabilitate the lands, liability for that particular exploration operation shall automatically terminate on the 91st day.

(c) The authorized officer, on his/her own motion or upon the recommendations of the Service, may increase the amount of any bond to be issued or any outstanding bond when additional coverage is deemed appropriate.

B. Group 3100 is amended as follows:

GROUP 3100—OIL AND GAS LEASING

1. Part 3100 is revised to read as follows:

PART 3100—OIL AND GAS LEASING

Subpart 3100—Oil and Gas Leasing—General

Sec.
3100.03 Authority.
3100.0–5 Definitions.
3100.1 Helium.
3100.2 Drainage.
3100.2–1 Compensation for drainage.
3100.2–2 Drilling and production or payment of compensatory royalty.
3100.3 Competitive and noncompetitive leasing areas.
3100.3–1 Determination of service.
3100.3–2 Date determinative of rights.
3100.4 Options.
3100.4–1 Enforceability.
3100.4–2 Effect of option on acreage.
3100.4–3 Option statements.

Subpart 3101—Issuance of Leases

Sec.
3101.1 Lease terms and conditions.
3101.1–1 Standard terms.
3101.1–2 Special stipulations.
3101.1–3 Statutes.
3101.1–4 Regulations.
3101.2 Acreage limitations.
3101.2–1 Public domain.
3101.2–2 Acquired lands.
3101.2–3 Excepted acreage.
3101.2–4 Excess acreage.
3101.2–5 Computation.
3101.2–6 Showing required.
3101.3 Leases within unit areas.
3101.3–1 Joinder evidence required.
3101.3–2 Separate leases to issue.
3101.4 Lands covered by application to close lands to mineral leasing.
3101.5 National Wildlife Refuge System lands.
3101.6 Recreation and public purposes lands.
3101.7 Federal lands administered by an agency outside the Department of the Interior.
3101.7–2 Submittal to surface managing agency.
3101.7–3 Review by surface managing agency.
3101.7–4 Action by the Bureau of Land Management.
3101.7–5 Appeals.
3101.8 State's or charitable organization's ownership of surface overlying Federal minerals.

Subpart 3102—Qualifications of Lessees

Sec.
3102.1 Who may hold leases.
3102.2 Aliens.
3102.3 Minors.
3102.4 Signatures.
3102.5 Evidence.

Subpart 3103—Fees, Rentals and Royalty

Sec.
3103.1 Payments.
3103.1–1 Form of remittance.
3103.1–2 Where submitted.
3103.2 Rentals.
3103.2–1 Rental requirement.
3103.2–2 Advance rental payments.
3103.3 Royalties.

Sec.
3103.3–1 Royalty on production.
3103.3–2 Minimum royalties.
3103.3–3 Limitation on overriding royalties.
3103.4 Promotion of development.
3103.4–1 Waiver, suspension or reduction of rental, royalty or minimum royalty.
3103.4–2 Suspension of operations and production.

Subpart 3104—Bonds

Sec.
3104.1 Bond obligations.
3104.2 Types of coverage.
3104.3 Statewide and nationwide bonds.
3104.4 Unit operator's bond.
3104.5 Increased amount of bonds.
3104.6 Where filed and number of copies.
3104.7 Default.
3104.8 Termination of period of liability.
3104.9 Protection of surface owners.

Subpart 3105—Cooperative Conservation Provisions

Sec.
3105.1 Cooperative or unit agreements.
3105.1–1 Where filed.
3105.1–2 Purpose.
3105.1–3 Adoption and operation under a unit plan.
3105.2 Communitization of drilling agreements.
3105.2–1 Where filed.
3105.2–2 Purpose.
3105.2–3 Requirements.
3105.3 Operating, drilling or development contracts.
3105.3–1 Where filed.
3105.3–2 Purpose.
3105.3–3 Requirements.
3105.4 Combination for joint operations or for transportation of oil.
3105.4–1 Where filed.
3105.4–2 Purpose.
3105.4–3 Requirements.
3105.4–4 Rights-of-way.
3105.5 Subsurface storage of oil and gas.
3105.5–1 Where filed.
3105.5–2 Purpose.
3105.5–3 Requirements.
3105.5–4 Extension of lease term.

Subpart 3106—Assignments and Other Transfers

Sec.
3106.1 Assignments, general.
3106.2 Qualifications of assignees.
3106.3 Filing fees.
3106.4 Forms.
3106.4–1 Record title and operating rights.
3106.4–2 Royalty interests and production payments.
3106.5 Description of lands.
3106.6 Bonds.
3106.6–1 Lessee's general lease bond.
3106.6–2 Operator's bond.
3106.6–3 Statewide/nationwide bond.
3106.7 Approval of assignment.
3106.7–1 Failure to qualify.
3106.7–2 Continuing responsibility.
3106.7–3 Lease account status.
3106.7–4 Effective date of assignment.
3106.7–5 Effect of assignment.
3106.8 Other types of transfer.
3106.8–1 Heirs and devisees.
3106.8–2 Change of name.
3106.8–3 Corporate merger.

Subpart 3107—Continuation, Extension or Renewal

Sec.
3107.1 Continuation by drilling.
3107.2 Continuation by production.
3107.2–1 Production.
3107.2–2 Cessation of production.
3107.2–3 Nonproduction from lease capable of production.
3107.3 Extension for terms of cooperative or unit plan.
3107.3–1 Leases committed to plan.
3107.3–2 Segregation of leases committed in part.
3107.3–3 20-year lease or any renewal thereof.
3107.4 Extension by elimination.
3107.5 Extension of leases segregated by assignment.
3107.5–1 Extension after discovery on other segregated portions.
3107.5–2 Undeveloped parts of leases in their extended term.
3107.5–3 Undeveloped parts of producing leases.
3107.6 Exchange leases—20-year term.
3107.7 Renewal leases.
3107.7–1 Requirements.
3107.7–2 Terms.
3107.7–3 Approval.
3107.8 Other types—payment of compensatory royalty.

Subpart 3108—Relinquishment, Termination, Cancellation

Sec.
3108.1 Relinquishments.
3108.2 Termination by operation of law.
3108.2–1 Automatic terminations and reinstatement.
3108.3 Cancellation.
3108.4 Bona fide purchaser.

Subpart 3109—Leasing Under Special Acts

Sec.
3109.1 Rights-of-way.
3109.1–1 Application.
3109.1–2 Notice.
3109.1–3 Award of lease or compensatory royalty agreement.
3109.1–4 Compensatory royalty agreement or lease.
3109.2 Lake Mead Recreation Area.
3109.2–1 Authority to lease.
3109.2–2 Area subject to lease.
3109.3 Wilderness lands.
3109.4 Whiskey-Shasta-Trinity National Recreation Area.

Authority: Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3100—Onshore Oil and Gas Leasing; General

§ 3100.0–3 Authority.

(a) Public domain:

(1) Oil and gas in public domain lands and lands returned to the public domain under section 2370 of this title are subject to lease under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

(2) *Exceptions.*

(i) National parks and monuments;

(ii) Indian reservations;

(iii) Incorporated cities, towns and villages; and

(iv) Naval petroleum and oil shale reserves and the National Petroleum Reserve—Alaska.

(b) *Acquired lands.* (1) Oil and gas in acquired lands are subject to lease under the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C 351–359).

(2) *Exceptions.* (i) National parks and monuments;

(ii) Incorporated cities, towns and villages;

(iii) Naval petroleum and oil shale reserves and the National Petroleum Reserve—Alaska;

(iv) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States;

(v) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas and other minerals subject to leasing under the Act;

(vi) Lands reported surplus under the Surplus Property Act of 1944 or the Federal Property and Administrative Services Act of 1949; and

(vii) Lands acquired by the United States by foreclosure or otherwise for resale.

(c) National Petroleum Reserve—Alaska is subject to lease under the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514).

(d) Other lands in Alaska:

(1) Federal lands in Alaska are subject to lease under the Alaska National Interest Lands Conservations Act (16 U.S.C. 3101 et seq.);

(2) Exceptions:

(i) National Petroleum Reserve—Alaska;

(ii) Lands north of 68 degrees north latitude and east of the western boundry of the National Petroleum Reserve—Alaska; and

(iii) Conservation system units established by the Alaska National Interest Lands Conservation Act.

(e) Where oil is being drained from lands otherwise unavailable for leasing, there is implied authority in the agency having jurisdiction of those lands to grant authority to the Bureau of Land Management to lease such lands (See 43 U.S.C. 1457; also Attorney General's Opinion of April 2, 1941 (Vol. 40 Ap. Atty. Gen. 41)).

(f) Where lands previously withdrawn or reserved from the public domain are no longer needed by the agency for which the lands were withdrawn or reserved and such lands are retained by the General Services Administration, or where acquired lands are declared surplus to the General Services Administration, authority to lease such lands may be transferred to the Department for leasing in accordance with the Federal Property and Administrative Services Act of 1949.

(g) The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits under railroad and other rights-of-way to the owner of the right-of-way or any assignee.

§ 3100.0–5 Definitions.

As used in this part, the term:

(a) "Operator" means the person who has control or management of operations on the lease or a portion thereof. The operator may be the lessee, designated operator, holder of rights under an approved operating agreement or designated agent of such holders.

(b) "Unit operator" means the person authorized under the agreement approved by the Department of the Interior to conduct operations within the unit or holder of an operating right.

(c) "Record title" means a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title interests.

(d) "Operating right" (working interest) means the interest created out of a lease authorizing the holder thereof to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the term of the lease. Operating rights may or may not be transferred through an operating agreement.

(e) "Assignor" means the party assigning or transferring to another an interest.

(f) "Assignee" means the party to whom a lease or an interest therein is being assigned or transferred.

(g) "Royalty interest" means a share of gross production.

(h) "Designated operator" means the party designated by the lessee or holder of operating rights under an operating agreement, who is authorized to conduct operations on the lease or a portion thereof.

(i) "Actual drilling operations" includes not only the physical drilling of a well, but the testing, completing or equipping of such well for production.

(j)(1) "Primary term" of lease subject to section 4(d) of the Act prior to the revision of 1960 (30 U.S.C. 226–1(d)) means all periods of the life of the lease prior to its extension by reason of production of oil and gas in paying quantities; and

(2) "Primary term" of all other leases means the initial term of the lease. For competitive leases, except those within the National Petroleum Reserve—Alaska, this means 5 years and for noncompetitive leases this means 10 years. The primary term of leases within the National Petroleum Reserve—Alaska shall not exceed 10 years.

§ 3100.1 Helium.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the Act have been reserved to the United States.

§ 3100.2 Drainage.

§ 3100.2–1 Compensation for drainage.

Upon a determination by the Service that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer may execute agreements with the owners of adjacent lands whereby the United States and its lessees shall be compensated for such drainage. Such agreements shall be made with the consent of any lessee affected by an agreement. Such lands may also be offered for lease in accordance with Part 3120 of this title.

§ 3100.2–2 Drilling and production or payment of compensatory royalty.

Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, the lessee shall both drill and produce all wells necessary to protect the leased lands from drainge. In lieu of drilling necessary wells, the lessee may, with the consent of the Service, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

§ 3100.3 Competitive and noncompetitive leasing areas.

§ 3100.3–1 Determination by Minerals Management Service.

The Service shall determine the boundaries of known geologic structures of producing oil or gas fields outside of Alaska and favorable petroleum geologic provinces in Alaska. All lands within such boundaries shall only be leased to the highest responsible qualified bidder. All other lands shall be leased, if at all, to the first qualified applicant.

§ 3100.3–2 Date determinative of rights.

If the producing character of a structure or the favorable nature of a geologic province in Alaska is actually known prior to the date of the official pronouncement of the Service on that subject, the date that the information becomes known and not the date of the determination establishes whether the lands shall be leased competitively.

§ 3100.4 Options.

§ 3100.4–1 Enforceability.

(a) No option to acquire any interest in a lease shall be enforceable if entered into for a period of more than 3 years (including any renewal period that may be provided for in the option) without the approval of the Secretary.

(b) No option or renewal thereof shall be enforceable until a signed copy or notice or option has been filed in the proper BLM office. Each such signed copy or notice shall include:

(1) The names and addresses of the parties thereto;

(2) The serial number of the lease to which the option is applicable;

(3) A statement of the number of acres covered by the option and of the interests and obligations of the parties to the option; and

(4) The interest to be conveyed and retained in exercise of the option. Such notice shall be signed by all parties to the option or their duly authorized agents. The signed copy of notice of option required by this paragraph shall contain or be accompanied by a signed statement by the holder of the option that he/she is the sole party in interest in the option; if not, he/she shall set forth the names and provide a description of the interest therein of the other interested parties, and provide a description of the agreement between them, if oral, and a copy of such agreement, if written.

§ 3100.4–2 Effect of option on acreage.

The acreage to which the option is applicable shall be charged both to the

grantor of the option and the option holder. The acreage covered by an unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the proper BLM office.

§ 3100.4–3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively:

(a) His/her name and address and the name and address of each grantor of an option held by him/her, the serial number of every lease subject to option;

(b) Date and expiration date of each option;

(c) Number of acres covered by each option;

(d) Aggregate number of options held in each State, and the total acreage thereof; and

(e) A statement of his/her interest and obligation under each option; provided, that the statement of his/her interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under § 3100.4–1(b) of this title and there have been no changes in such interests and obligations since such filing.

Subpart 3101—Issuance of Leases

§ 3101.1 Lease terms and conditions.

§ 3101.1–1 Standard forms.

All leases shall be issued on the appropriate form approved by the Director and shall be subject to the terms and conditions printed in the form.

§ 3101.1–2 Special stipulation.

The authorized officer may require stipulations in addition to those contained in the lease form as conditions to leasing. These stipulations and stipulations required by an agency other than the Bureau shall be part of the lease and shall supersede any inconsistent provisions printed in the lease form.

§ 3101.1–3 Statutes.

All leases shall be subject to the provisions of the statute under which they are issued.

§ 3101.1–4 Regulations.

All reasonable regulations of the Secretary in force at the time of lease issuance or later enacted are incorporated into all leases when not inconsistent with any express and specific provision of a particular lease. This includes among others, the regulations in this group, in 30 CFR Parts 221, 223, 225 and 226 and regulations issued under section 302 (b) and (c) of the Department of Energy Organization Act (42 U.S.C. 7152 (b) and (c)).

§ 3101.2 Acreage limitations.

§ 3101.2–1 Public domain.

(a) No person or entity shall take, hold, own or control more than 246,080 acres of Federal oil and gas leases in any one State at any one time. No more than 200,000 acres of such acres may be held under option.

(b) In Alaska, the acreage that can be taken, held, owned or controlled is limited to 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the 2 leasing districts. The boundary between the 2 leasing districts in Alaska is the left limit of the Tanana Rivers from the boundary between the United States and Canada to the confluence of the Tanana Rivers and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

§ 3101.2–2 Acquired lands.

An acreage limitation separate from, but equal to the acreage limitation for public domain lands described in § 3101.2–1 of this title, applies to acquired lands. Where the United States owns only a fractional interest in the mineral resources of the lands involved in a lease, only that part owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be charged as acreage holdings until the lease for the future interest becomes effective.

§ 3101.2–3 Excepted acreage.

Leases committed to any unit or cooperative plan approved or prescribed by the Secretary and leases subject to an operating, drilling or development contact approved by the Secretary, other than communization agreements, shall not be included in computing accountable acreage.

§ 3101.2–4 Excess acreage.

(a) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from an operating, drilling or development contract, a party holds or controls excess accountable acreage, said party shall have 90 days from the date of such termination, contraction or elimination to reduce the holdings to the prescribed limitation and to file proof of the reduction in the proper BLM office.

(b) If any person or entity is found to hold accountable acreage in violation of the provisions of these regulations, lease(s) or interests therein shall be subject to cancellation or forfeiture in their entirety, until sufficient acreage has been eliminated to bring the lessee within the acreage limitation.

§ 3101.2–5 Computation.

The accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party who is the beneficial owner of more than 10 percent of the stock of a corporation which holds Federal oil and gas leases shall be the party's proportionate part of the corporation's accountable acreage. Parties to a contract for development of leased lands and co-licenses shall be charged with their proportionate interests in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the laws for any one lessee shall be permitted.

§ 3101.2–6 Showing required.

At any time the authorized officer may require any lessee or operator to file with the Bureau of Land Management a statement showing as of specified date the serial number and the date of each lease in which he/she has any interest, in the particular State, setting forth the acreage covered thereby.

§ 3101.3 Leases within unit areas.

3101.3–1 Joinder evidence required.

Before issuance of a lease for lands within an approved unit, the lease offeror shall file evidence of having joined in the unit agreement and unit operating agreement with the unit operator for the development and operation of the lands pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the lessee shall be permitted to operate independently but shall be required to conform to the terms and provisions of the unit agreement with respect to such operations.

§ 3101.3–2 Separate leases to issue.

A noncompetitive lease offer for lands partly within and partly without the boundary of a unit shall result in separate leases, one for the lands within

the unit, and one for the lands outside the unit.

§ 3101.4 Lands covered by application to close lands to mineral leasing.

Offers filed on lands within a pending application to close lands to mineral leasing shall be suspended until the segregative effect of the application is terminated.

§ 3101.5 National Wildlife Refuge System lands.

(a) Lands within the contiguous 48 States that are in the National Wildlife Refuge System are not available for leasing, except where it is determined by the Service that any of the lands are subject to drainage or that the lands are needed for unitization under State unitization and/or spacing requirements. Lands subject to drainage shall be leased in accordance with Part 3120 of this title. Lands not in a known geologic structure needed for unitization or to comply with well spacing requirements shall be leased in accordance with Subpart 3111 of this title subject to a no surface occupancy stipulation. Directional drilling from lands outside the refuge system may be permitted.

(b) Lands within the National Wildlife System in Alaska, except the Arctic National Wildlife Refuge are subject to leasing.

(c) Leases shall be issued subject to stipulations prescribed by the Fish and Wildlife Service.

(d) Leases shall be issued only upon a determination by the Fish and wildlife Service that leasing is compatible with the major purposes for which the unit was established.

§ 3101.6 Recreation and public purposes lands.

Under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), all lands within Recreation and Public Purposes leases and patents are subject to lease under the provisions of this part, subject to such conditions as the Secretary deems appropriate.

§ 3101.7 Federal lands administered by an agency outside of the Department of the Interior.

§ 3101.7-1 General requirements.

(a) Acquired lands shall only be leased with the consent of the surface managing agency.

(b) Public domain lands shall only be leased after the Bureau of Land Management has consulted with the surface managing agency, unless consent is required by law.

§ 3101.7-2 Submittal to surface managing agency.

Upon receipt of a noncompetitive lease offer under subpart 3111 of this title or upon the availability of lands under subpart 3112 or 3120 of this title, the surface of which is not under the jurisdiction of the Bureau of Land Management, the authorized officer shall submit a description of the lands involved to the appropriate office of the surface managing agency for review.

§ 3101.7-3 Review by surface managing agency.

The surface managing agency shall report to the authorized officer as follows:

(a) As to lands on which consent of the surface managing agency is required, that it consents to leasing with special stipulations, if any, or that it withholds its consent;

(b) As to lands on which consultation with the surface managing agency is required, that it concurs in or recommends leasing with special stipulations, if any, or recommends against leasing.

§ 3101.7-4 Action by the Bureau of Land Management.

(a) The Secretary has the final authority and discretion to decide whether to issue a lease.

(b) Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.

(c) The authorized officer shall not issue a lease and shall reject any lease offer on lands for which the surface managing agency withholds consent required by statute.

(d) The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency.

§ 3101.7-5 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with special stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under part 4 of this title.

(b) Where the surface managing agency has required that special stiuplations be included in a lease or has refused to consent to leasing, an affected lease offeror may pursue the administrative remedies provided by the particular surface managing agency. Such appeal shall not suspend the effect of any decision by the authorized officer unless the affected offeror notifies the authorized officer of the pendency of such appeal within 30 days of service of the authorized officer's decision.

§ 3101.8 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of the lands containing oil and gas to any State or political subdivision, agency or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, such party shall be given written notification of the offer to lease by certified mail and shall be given a reasonable time within which to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of the lease. Where a party controlling the surface opposes the issuance of a lease, the facts submitted in support of the opposition shall be given consideration and each case decided on its merits. The opposition to lease expressed by the party controlling the surface affords no legal basis or authority to refuse to issue the lease for the reserved minerals in the lands; in such case, the final determination whether to issue the lease depends upon whether the interests of the United States would best be served by the issuance of the lease.

Subpart 3102—Qualifications of Lessees

§ 3102.1 Who may hold leases.

Leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities.

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries which do not provide "similar or like" privileges is available from any Bureau of Land Management office.

§ 3102.3 Minors.

Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf.

§ 3102.4 Signatures.

All applications, offers and requests for approval of an assignment shall be holographically (manually) signed in ink by the potential lessee or by anyone authorized to sign on behalf of the potential lessee. Documents signed by anyone other than the potential lessee shall be rendered in a manner to reveal the name of the potential lessee, the name of the signatory and their relationship. (Example: John Smith, agent for May Jones; or ABC Corporation, agent for Mary Jones by John Smith). Machine or rubber stamped signatures shall not be used.

§ 3102.5 Evidence.

Submission of a lease application, offer or request for approval of an assignment constitutes certification of compliance with the regulations of this group and the act. Compliance means that the potential lessee, all other parties who hold an interest (as defined in § 3100.0–3(k) of this title) in the application, offer, assignment or lease or all parties who hold or control more than 10 percent interest in a lessee which is a corporation or association are: (a) Citizens of the United States or qualified stockholders in a domestic corporation (see § 3102.2 of this title); (b) in compliance with the Federal acreage limitations (see §§ 3101.1–5 and 3101.2–4 of this title); (c) not minors (see § 3102.3 of this title); and (d) not participants in any agreement, scheme, plan or arrangement prohibited in relation to simultaneous oil and gas leasing (see § 3112.6–1(a) of this title). Anyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein, may be required to submit additional information to show compliance with the regulations of this group and the act.

Subpart 3103—Fees, Rentals and Royalty

§ 3103.1 Payments.

§ 3103.1–1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency. Remittances returned unpaid shall be assessed a $10 service charge. Applications shall be barred from acquiring leases until the returned remittances is redeemed and the service charge paid.

§ 3103.1–2 Where submitted.

(a) All filing fees for lease applications, offers or for applications for approval of an instrument of transfer, and all rentals on nonproducing and nonunitized leases shall be paid to the proper BLM office. All remittances shall be made payable to the Bureau of Land Management.

(b) All rentals and royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Service.

§ 3103.2 Rentals.

§ 3103.2–1 Rental requirements.

(a) Each offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and, if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent or $200, whichever is less, may be accepted by the authorized officer provided all other requirements are met. The additional rental shall be paid within 30 days from notice of the deficiency under penalty of rejection of the offer.

(b) Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable for the full acreage in such lands.

§ 3103.2–2 Advance rental payments.

Rentals shall be paid on or before the anniversary date of the lease. A full year's rental shall be required even if less than a full year remains in the lease term. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the proper BLM office is not open on the anniversary date, payment received on the next day the proper BLM office is open to the public shall be deemed to be timely filed. Rental shall be payable at the following rates:

(a) On lease issued under subpart 3112 of this title, an annual rental of $1 per acre or fraction thereof for each of the first 5 lease years and an annual rental of $3 per acre or fraction thereof for each remaining lease year;

(b) On leases issued under subpart 3111 of this title, an annual rental of $1 per acre or fraction thereof;

(c) On competitive leases, an annual rental of $2 per acre or fraction thereof;

(d) On lands within a lease issued under subpart 3111 of this title, after the effective date of this regulation which is later determined to be within a known geologic structure outside of Alaska or a favorable geologic province in Alaska, the annual rental shall be $2 per acre or fraction thereof beginning with the first lease year after the expiration of 30-days notice to the lessee. During the first 5 years of the lease term, the same rental increase is applicable to leases issued under subpart 3112 of this title.

(e) On exchange or renewal issued after the effective date of this regulation, the annual rental shall be $2 per acre or fraction thereof;

(f) Rental shall not be due on acreage for which royalty is being paid:

(g) The annual rental for leases issued prior to the effective date of this regulation is as established in the lease.

Over 130, but not over 150, the royalty rate shall be 19 percent of all production;

Over 150, but not over 200, the royalty rate shall be 20 percent of all production;

Over 200, but not over 250, the royalty rate shall be 21 percent of all production;

Over 250, but not over 300, the royalty rate shall be 22 percent of all production;

Over 300, but not over 350, the royalty rate shall be 23 percent of all production;

Over 350, but not over 400, the royalty rate shall be 24 percent of production; and

Over 400, the royalty rate shall be 25 percent of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide and all other natural gases and mixtures thereof, and on casinghead gasoline and other liquid products obtained from gas, when the production per well per calendar day for the month is:

Not in excess of 5 million cubic feet, the royalty rate shall be 12½ percent of the amount or value of the gas and liquid products produced; and

In excess of 5 million cubic feet, the royalty rate shall be 16⅔ percent of the amount or value of the gas and liquid products produced.

(b) The average production per well per day for oil and gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only with the approval of the Secretary.

(d) The Secretary may establish reasonable values for purposes of computing royalty rates on any or all oil, gas, natural gasoline and other liquid products obtained from gas, due

consideration being given to the highest price paid for part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases, this will be done after notice to the parties and opportunity to be heard.

§ 3103.3–2 Minimum royalties.

(a) On leases issued on or after August 8, 1946, and on those issued prior thereto, if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $2 per acre in lieu of rental shall be payable at the expiration of each lease year after a discovery has been made on the leased lands commencing with the lease year, beginning on or after the date of such discovery; except that on unitized leases, the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $2 per acre, the lessee shall pay the difference at the expiration of the lease year.

(b) Minimum royalties shall not be prorated for any lands in which the United States owns a fractional interest but shall be payable on the full acreage of the lease.

§ 3103.3–3 Limitation on overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil and gas which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess 17½ percent may be declared null and void by the Secretary at any time upon a determination that the excess constitutes a burden on lease operations to the extent that proper and timely development may be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused. The limitations in this section shall apply separately to any zone or portion of a lease segregated for computing royalty due the United States.

§ 3103.4 Promotion of development.

§ 3103.4–1 Waiver, suspension or reduction of rental, royalty or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that is necessary to promote development or that the leases cannot be successfully operated under the terms provided therein, may waive, suspend or reduce the rental minimum royalty or reduce the royalty on an entire leasehold, or any portion thereof.

(b)(1) An application for the above benefits shall be filed in tripicate in the proper office of the Service. It shall contain the serial number of the leases, the proper BLM office name, the name of the record title holder and operator or sub-lessee, the description of the lands by legal subdivision and a description of the relief requested.

(2) Each application shall show the number, location and status of each well drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty, the number of wells counted as producing each month and the average production per well per day.

(c) Every application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production and all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant shall also file agreements of the holders to a reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the royalties due the United States.

§ 3103.4–2 Suspension of operations and production.

(a) Applications for relief from production requirements or from operating requirements shall be filed in triplicate in the proper office of the Service. No suspension of operations and production shall be granted in the absence of a well capable of production on the leasehold, except where the Service directs a suspension in the interest of conservation. Complete information shall be furnished showing the necessity of such relief.

(b) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Service.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Service. Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the Service beginning with the first day of the lease month on which the suspension of operations or production becomes effective or if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which the operations or production is resumed.

(d) No lease shall be deemed to expire during a suspension of either operations or production.

(e) If there is a well capable of producing on the lease and all operations and production are suspended, the commencement of drilling operations shall be regarded as terminating the suspension of operations but not the suspension of production, and as terminating the period to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section.

(f) The relief authorized under this section may also be obtained for any lease included within an approved unit or cooperative plan of development and operation.

Subpart 3104—Bonds

§ 3103.4–1 Bond obligations.

(a) Prior to the commencement of drilling operations, the lessee or operator shall submit a surety or personal bond as described in this subpart.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (See Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by a deposit as security therefor or negotiable Treasury bonds by the United States or cash or guaranteed remittance of a value equal to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the lease.

§ 3104.2 Types of coverage.

(a) A leessee's general lease and drilling bond shall be in an amount of not less than $10,000 conditioned upon compliance with all the terms and conditions of the lease.

(b) An operator's bond in an amount of not less than $10,000 conditioned upon compliance with all of the terms

and conditions of the lease, may be furnished in lieu of a general lease and drilling bond, if the operator owns all of the operating rights in the tract(s), the formation or the lease covered by the operating agreement. Where 2 or more operators have interests in different formations or portions of the lease, each operator may file an operator's bond in his/her own name as principal on the bond in lieu of the general lease land drilling bond. Every operator shall be covered by either a general lease and drilling bond or an operator's bond.

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of general lease and drilling bonds or operator's bonds, lessees or operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State.

(b) In lieu of general lease and drilling bonds, operator's bonds or statewide bonds, lessees or operators may furnish a bond in an amount of not less than $150,000 covering all leases or operations nationwide.

§3104.4 Unit operator's bond.

The approved unit operator may furnish and maintain a unit operator bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms and conditions of every lease subject thereto in lieu of a separate general lease and drilling bond or operator's bond for each lease committed to the unit agreement. All unit operator's bonds shall be furnished upon request and in the amount recommended by the Service.

§ 3104.5 Increased amount of bonds.

The authorized officer, on his/her own motion or upon the recommendation of the Service, may elect to increase the amount of any bond to be issued or any outstanding bond when additional coverage is determined appropriate.

§3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a form approved by the Director. A single copy executed by the principal and, in the case of surety bonds, by both the principal and an acceptable surety is sufficient.

3104.7 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, upon penalty of cancellation of all of the leases covered by such bond, that principal shall either post a new bond or increase the existing bond to the amount previously held by the United States, within 6 months after notice, or within such shorter period as may be fixed by the authorized officer. In lieu thereof, the principal may within that time file separate or substitute bonds for each lease or operating agreement.

§3104.8 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and condition of the lease have been met.

§3105.1 Cooperative or unit agreement.

§3105.1-1 Where filed.

All applications for cooperative or unit agreements shall be filed in the proper office of the Service. The procedure for obtaining approval of such an agreement is contained in 30 CFR Part 226.

§3105.1-2 Purpose.

The agreement shall be for the purpose of properly conserving the natural resources of any oil or gas pool, field or area covered by the agreement and shall be determined and certified by the Service to be in the public interest.

§3105.1-3 Adoption and operation under a unit plan.

Lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field or like area, or any part thereof (whether or not any part of such pool, field or like area is then subject to any cooperative or unite plan of development or operation).

§3105.2 Communitization or drilling agreements.

§3105.2-1 Where filed.

(a) Preliminary request to communitize separate tracts shall be filed, in triplicate, with the proper office of the Service.

(b) Executed agreements shall be submitted in sufficient number to permit retention of 5 copies by the Department after approval.

§3105.2-2 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the Service may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

§3105.2-3 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be effective only after approval by the Service. Generally, no communitization agreement shall be given an effective date that is prior to the date of its filing with the Service. 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. 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 Service to qualify for this equitable relief, but may be any agreement between lessees and 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 Service 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 the earlier agreement between the parties that combined their leases or interests.

§3105.3 Operating, drilling or development contracts.

§3105.3-1 Where filed.

A contract submitted for approval under this section shall be filled with the proper BLM office, together with enough copies to permit retention of 5 copies by the Department after approval.

§3105.3-2 Purpose.

Approval of operating, drilling or development contracts ordinarily shall be granted only to permit operations or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a scale large enough to justify the discovery, development, production or transportation of oil or gas and to finance the same.

§3105.3-3 Requirements

The contract shall be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan for development and operation of the field. All the contracts held by the same contractor in the area or field shall be submitted for approval at the same time and full disclosure of the projects made.

§3105.4 Combination for joint operations or for transportation of oil.

§3105.4-1 Where filed.

An application under this section together with sufficient copies to permit retention of 5 copies by the Department after approval shall be filed with the Director.

§3105.4-2 Purpose.

Upon obtaining approval of the authorized officer, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing as a common carrier a pipeline or lines or railroads to be operated and used by them jointly in the transportation of oil or gas from their wells or from the wells of other lessees.

§3105.4-3 Requirements.

The application shall show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of law.

§ 3105.4-4 Rights-of-way.

Rights-of-way for pipelines may be granted as provided in part 2880 of this title.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5-1 Where filed.

(a) Applications for subsurface storage shall be filed in the proper office of the Service.

(b) Enough copies of the final agreement signed by all the parties in interest shall be submitted to permit the retention of 5 copies by the Department after approval.

§ 3105.5-2 Purpose.

In order to avoid waste and to promote conservation of natural resources, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil and gas, whether or not produced from lands owned by the United States. Such authorization shall provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

§ 3105.5-3 Requirements.

The final agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

§ 3105.5-4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of storage under an approved agreement. The obligation to pay rent continues during the extended period.

Subpart 3106—Assignments and other transfers

§ 3106.1 Assignments, general.

(a) Leases may be assigned as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. Lease applications and offers shall not be assigned. An assignment of a separate zone or deposit or of part of a legal subdivision shall be disapproved unless the necessity of the assignment is established and it is determined that such assignment is in the best interest of the United States. The rights of the assignee to a lease or an interest therein shall not be recognized by the Department until the assignment has been approved by the authorized officer. A designation of operator, assignment of production payments or overriding royalty assignment shall not require approval (See Operating Regulations, 30 CFR Part 221).

(b) No lease or interest therein may be assigned prior to the issuance of the lease. No agreement or option to assign a simultaneous oil and gas lease or interest therein shall be made or given prior to the effective date of the lease or 60 days from the date of selection, whichever comes first. The existance of such a prior agreement or option shall result in disapproval of the subsequent assignment.

§ 3106.2 Qualifications of assignees.

Assignees shall comply with the provisions of subpart 3102 of this title and post any bond that may be required.

§ 3106.3 Filing fees.

In order to be accepted for filing, each instrument of assignment of record title, operating rights, royalty interest or payment out of production shall be accompanied by a nonrefundable filing fee of $25. Any instrument not accompanied by the required $25 filing fee shall not be accepted.

§ 3106.4 Forms.

§ 3106.4-1 Record title and operating rights.

Assignments of record title or operating rights shall be filed in triplicate with the proper BLM office on a form approved by the Director or reproductions thereof. A separate instrument of assignment shall be used for each lease out of which an assignment is made.

§ 3106.4-2 Royalty interest and production payments.

(a) If any royalty interest or payment out of production is created or reserved under the assignment which is not shown in the instrument of transfer, a statement describing the interest shall accompany the assignment when filed.

(b) A single signed copy of assignments of royalty interest shall be filed with the proper BLM office. No official form is required. The assignment shall include the assignee's signed statement as to his/her qualifications under subpart 3102 of this title and a suspension provision in accordance with § 3103.3-3 of this title.

§ 3106.5 Description of lands.

(a) Each instrument of assignment or transfer shall describe the lands involved in the same manner as the lands were described in the lease or in the manner required by § 3111.2 of this title.

(b) An assignment of record title to a separate zone or a part of a legal subdivision shall not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 3106.6 Bonds.

§ 3106.6-1 Lessee's general lease bond.

Where a general lease or drilling bond is required to be maintained by the lessee in connection with a particular lease, the assignee of a record title interest in such lease shall furnish a replacement bond, except that an assignee of an undivided interest in the lease may furnish appropriate consent

of the surety under the existing bond to become co-principal on such bond if the assignor's bond does not expressly contain such consent.

§ 3106.6-2 Operator's bond.

Where operating rights are assigned and coverage was provided under an operator's bond, the assignee/operator shall furnish an appropriate replacement bond.

§ 3106.3 Statewide/nationwide bond.

If the assignee is maintaining a statewide or nationwide bond, no individual bond shall be required.

§ 3106.7 Approval of assignment.

§ 3106.7-1 Failure to qualify.

No assignment shall be approved if the assignee and other parties in interest are not qualified to hold the assigned interest, or if the bond, should one be required, is insufficient.

§ 3106.7-2 Continuing responsibility.

Until the assignment is approved, the assignor and surety shall continue to be responsible for the performance of all obligations under the lease. If the assignment is not approved, their obligations to the United States shall continue as though no such assignment had been filed for approval. After approval, the assignee and surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the assignment to the contrary.

§3106.7-3 Lease account status.

An assignment of an interest in a producing lease shall not be approved unless the lease account is in good standing; except that the assignment may be approved subject to the continued obligation of the assignor and surety to remain bound under the existing bond until the lease account is placed in good standing.

§3107.7-4 Effective date of assignment.

The signature of the authorized officer on the official form shall constitute approval of the assignment, which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§3106.7-5 Effect of assignment.

An assignment of record title to 100 percent of a portion of the lease segregates the assigned portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. An assignment of an undivided record title interest of an operating right shall not segregate the assigned and retained portions into separate leases.

§3106.8 Other types of transfer.

§3106.8-1 Heirs and devisees.

If an offeror, applicant, assignee or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required.

§3106.8-2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If bonds have been furnished, change of name may be made a rider to the original bond or by a replacement bond.

§3106.8-3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no assignment of any affected lease is required. A notification of the merger shall be furnished with a list, by serial number, of all leases affected.

Subpart 3107—Continuation, Extension or Renewal

§3107.1 Continuation by drilling.

Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved cooperative or unit plan of development or operation upon which such drilling takes place, shall be extended for 2 years subject to the rental being timely paid on or before the anniversary date. Actual drilling operations shall be conducted in the manner in which someone seriously looking for oil or gas could be expected to proceed in that particular area, given existing knowledge or geologic and other pertinent facts.

§3107.2 Continuation by production.

§3107.2-1 Production.

Lease shall be extended so long as oil and gas is being produced in paying quantities.

§3107.2-2 Cessation of production.

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

§3107.2-3 Nonproduction from leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lease fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice to do so by registered mail from the Service. Such production shall be continued unless and until suspension of production is granted by the Service.

§3107.3 Extension for terms of cooperative or unit plan.

§3107.3-1 Leases committed to plan.

Any lease or portion of a lease, except as described in § 3107.3-3 of this title, committed to a cooperative or unit plan that contains a general provision for allocation shall continue in effect so long as the lease or portion thereof remains subject to the plan; *Provided,* That there is production of oil or gas in paying quantities under the plan prior to the expiration date of such lease.

§3107.3-2 Segregation of leases committed in part.

Any lease committed after July 29, 1954, to any cooperative or unit plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan, the other lands not committed to the plan. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term of the lease but for not less than 2 years from the date of segregation.

§3107.3-3 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease

was so committed prior to August 8, 1946.

§ 3107.4 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease or for 2 years after its elimination from the plan or agreement of the termination of the plan or agreement, whichever is longer.

§ 3107.5 Extension of leases segregated by assignment.

§ 3107.5-1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for 2 years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

§ 3107.5-2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are int their extended term shall continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960.

§ 3107.5-3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for 2 years after the effective date of assignment.

§ 3107.6 Exchange leases—20-year term.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease shall be issued for a primary term or 5 years. An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the terms of the lease and applicable regulations and shall be accompanied by a nonrefundable filing fee of $25.

§ 3107.7 Renewal leases

§ 3107.7-1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee and may be joined in or consented to by the operator of record. The application shall show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the applicable regulations.

(b) The applicant or his/her operator shall furnish, in triplicate, with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existance as of the date of its expiration.

§ 3107.7-2 Terms.

An application to renew shall be filed, in triplicate, in the proper BLM office at least 90 days, but not more than 6 months, prior to the expiration of its terms and shall be accompanied by a nonrefundable filing fee of $25.

§ 3107.7-3 Approval.

Copies of the renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, shall be forwarded to the lessee for execution. If, upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed by the authorized officer, 1 copy of the lease shall be delivered to the lessee.

§ 3107.8 Other types—payment of compensatory royalty.

The payment of compensatory royalty shall extend the term of any lease for the period during which such compensatory royalty is paid and for a period of 1 year from the discontinuance of such payments.

Subpart 3108—Relinquishments, Termination, Cancellation

§ 3108.1 Relinquishments.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper BLM office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement shall be furnished that all monies due and payable to workers employed on the lease premises have been paid.

§ 3108.2 Termination by operation of law.

§ 3108.2-1 Automatic termination and reinstatement.

(a) Except as provided in paragraph (d) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the proper BLM office on or before the anniversary date of such lease. However, if the proper BLM office is closed on the anniversary date, payment received on the next day the office is open to the public shall be deemed timely filed.

(b) If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in a bill or decision rendered by the authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency shall be considered nominal if it is not more than $25 or more than 5 percent of the total payment due, whichever is greater. The authorized officer shall send a Notice of Deficiency to the lessee on a form approved by the Director. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the proper BLM office. If the payment required by the Notice is not paid within the time allowed, the lease shall have terminated by operation of law as of its anniversary date.

(c)(1) Except as hereinafter provided, the authorized officer may reinstate a lease which is terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(i) Such rental was paid or tendered within 20 days after the anniversary date; and

(ii) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

(iii) A petition for reinstatement, together with a nonrefundable filing fee of $25 and the required rental, including any back rental which has accrued from

the date of the termination of the lease, is filed with the proper BLM office within 15 days after receipt of Note of Termination of Lease due to late payment of rental. The Notice of Termination shall be sent only if the rental is actually paid.

(2) The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee. However, a remittance which is postmarked on or before the lease anniversary date and is received in the proper BLM office no later than 20 days after such anniversary date shall be accepted as meeting the showing of reasonable diligence required in paragraph (c)(1)(ii) of this section.

(3) Under no condition shall a terminated lease be reinstated if:

(i) A valid oil and gas lease has been issued prior to the filing of a petition of reinstatement affecting any of the lands covered by that terminates lease; or

(ii) The oil and gas interests of the United States in the lands have been disposed of or otherwise have become unavailable for leasing.

(4) The authorized officer shall not issue a lease for lands covered by a lease which terminates automatically until 90 days after the date of termination.

(d) Where a reinstatement of a terminated lease is granted under this section and the authorized officer finds that the reinstatement will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of such lease for a period sufficient to give the lessee such an opportunity. Any extension shall be subject to the following conditions:

(1) No extension shall exceed a period equivalent to the time (i) beginning when the lessee knew or should have known of the termination and (ii) ending on the date which the authorized officer grants such petition.

(2) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(3) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition.

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder or the lease, the lease may be cancelled by the Secretary, if the lands covered by the lease are not known to contain valuable deposits of oil or gas. The lease may be cancelled only after notice to the lessee in accordance with section 31 of the act and only if default continues for the period prescribed in that section after service of notice of failure to comply.

(b) Leases shall be cancelled if improperly issued.

(c) Leases for lands known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

§ 3108.4. Bona fide purchasers.

A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers are on notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease. Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation of any provisions of the act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser. If, during any such proceeding, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments or rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver of the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

Subpart 3109—Leasing Under Special Acts

§3109.1 Rights-of-way.

The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes either the leasing of oil and gas deposits under railroad and other rights-of-way to the owner of the right-of-way or the entering of a compensatory royalty agreement with adjoining landowners. This authority shall be exercised only where a right or access was not reserved to the United States in the right-of-way grant. In all other cases, such lands shall be subject to lease under Parts 3110 and 3120 of this title.

§ 3109.1–1 Application.

No particular form of application for lease of lands in a right-of-way is required. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her assignee and be accompanied by a nonrefundable filing fee of $25, and if filed by an assignee, by a duly executed assignment of the right to lease. The application shall detail the facts as to the ownership of the right-of-way, and of the assignment if the application if filed by an assignee; the development of oil and gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required but each legal subdivision through which the portion of the right-of-way desired to be leased extends shall be described.

§ 3109.1–2 Notice.

After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on its own motion, the authorized officer shall serve notice on the owner or lessee of the adjoining lands. The adjoining land owner or lessee shall be allowed a reasonable time, as provided in the notice, within which to submit a bid for the extraction of the oil and gas underlying the right-of-way through wells on such adjoining lands. The owner of the right-of-way shall be given the same time period to submit a bid for the lease.

§ 3109.1–3 Award of lease or compensatory royalty agreement.

Award of lease to the owner of the right-of-way, or a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands shall be made to the bidder whose offer is determined by the authorized officer to be to the best advantage of the United States, considering the amount of royalty to be received and the better development under the respective means of production and operation.

§ 3109.1–4 Compensatory royalty agreement or lease.

(a) The lease or compensatory royalty agreement shall be on a form approved by the Director.

(b) The royalty to be charged shall be fixed by the Bureau of Land Mangement, but shall not be less than 16⅔ percent.

(c) The term of the lease shall be for a period of not more than 20 years.

§ 3109.2 Lake Mead Recreation Area.

§ 3109.2-1 Authority to lease.

The Act of October 8, 1964 (16 U.S.C. 460n), provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

§ 3109.2-2 Area subject to lease.

The area subject to lease under this section is that area which is shown on a certain map identified as "boundary map, RA-LM-7060-B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director, National Park Service, and in the headquarters office of the Superintendent, Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the Act of October 8, 1964.

§ 3109.3 Wilderness lands.

All laws pertaining to mineral leasing and the regulations of this chapter extend to lands subject to the Wilderness Act of 1964 (16 U.S.C. 1131 et seq.) until midnight December 31, 1983, unless otherwise provided by law. After that date, the wilderness areas are withdraw from leasing, subject to valid existing rights, under section 4(d)(3) of the Wilderness Act.

§ 3109.4 Whiskeytown-Shasta-Trinity National Recreation Area.

Section 6 of the Act of November 8, 1965 (Pub. L. 89-336), authorizes the Secretary to permit the removal of oil and gas from lands within the Whiskeytown-Shasta-Trinity National Recreation Area in accordance with the act or the Acquired Lands Mineral Leasing Act of 1947.

2. Part 3110 is revised to read as follows:

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases; General

Sec.
3110.1 Leases terms.
3110.1-1 Duration of lease.
3110.1-2 Dating of lease.
3110.1-3 Lease size.
3110.2 Withdrawal of offer or application.
3110.3 Action on offer.

Subpart 3111—Over-the-Counter Offers

Sec.
3111.1 Requirements.
3111.1-1 General.
3111.2 Description of lands in offer.
3111.2-1 Public domain.
3111.2-2 Acquired lands.
3111.2-3 Accreted lands.
3111.2-4 Conflicting descriptions.
3111.3 Future interest offers.
3111.3-1 Application.
3111.3-2 Form of Application.
3111.3-3 Effective date of lease.
3111.3-4 Supplemental agreement.
3111.3-5 Approval.

Subpart 3112—Simultaneous Filings

Sec.
3112.0-5 Definitions.
3112.1 Parcels.
3112.1-1 Availability of lands.
3112.1-2 Parcel list.
3112.1-3 Posting of notice.
3112.2 How to file an application.
3112.2-1 Simultaneous oil and gas lease applications.
3112.2-2 Filing fees.
3112.2-3 Qualifications.
3112.2-4 Filing assistance.
3112.3 First qualified applicant.
3112.3-1 Selection procedure.
3112.3-2 Reselection process.
3112-4 Lease issuance.
3112.4-1 Lease offer and payment of the first year's rental.
3112.4-2 Acceptance of lease offer.
3112.4-3 Restriction on transfer.
3112.5 Unacceptable filings.
3112.6 Adjudication.
3112.6-1 Rejection of an application.
3112.6-2 Rejection of an offer.
3112.6-3 Cancellation of leases.
3112.7 Availability of unleased lands.

Authority: Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3110—Noncompetitive Leases, General

§ 3110.1 Lease terms.

§ 3110.1-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years.

§ 3110.1-2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Leases shall be effective as of the first day of the month following the date the leases are issued except that where prior written request is made, a lease may be effective the first of the month within which it is issued.

§ 3110.1-3 Lease size.

(a) No offer may be made for less than 640 acres except where the offer described all of the available lands in a surveyed or protracted section, and all contiguous lands are unavailable.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area.

§ 3110.2 Withdrawal of offer or application.

An offer under subpart 3111 or 3112 of this title may be withdrawn, either in whole or in part, before the lease issues. An application under subpart 3112 of this title may not be withdrawn.

§ 3110.3 Action on offer.

(a) If, prior to the time a noncompetitive lease is issued, all or part of the lands in the offer are found to be within a known geologic structure or a producing oil or gas field or a favorable petroleum geologic province in Alaska, the offer shall be rejected in whole or in part, as appropriate.

(b) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension or petition for reinstatement of an existing or former lease on the lands. If a lease is issued before final action, it shall be cancelled, after due notice to the lessee, if the offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

Subpart 3111—Over-the-Counter Offers

§ 3111.1 Requirements.

§ 3111.1-1 General.

(a) Except as provided in subpart 3112 of this title, a noncompetitive offer to lease shall be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas" (for leasing

public domain lands) or "Offer to Lease and Lease for Oil and Gas; Noncompeitive Acquired Lands," (for leasing acquired lands) or on unofficial copies of that form in current use. Copies shall be exact reproductions on 1 page of both sides of the official approved form without additions, omissions or other changes or advertising. Each offer shall be filled in by typewriter or printed plainly in ink and signed by the offeror or offeror's agent and shall be accompanied by a nonrefundable filing fee of $75 and the first year's rental. Five copies of the official form, or valid reproductions, for each offer to lease public domain lands and 7 copies for each offer to lease acquired lands shall be filed in the proper BLM office.

(b) Priority of an offer filed over-the-counter shall be determined as of the time and date the offer is filed in the proper BLM office. Offers to lease which are recieved in the same mail or over-the-counter at the same time, shall be considered as having been filed simultaneously. Priority of the offers as to the extent of the conflicts between them shall be determined by random selection.

(c) No offer may include both public domain and acquired lands.

(d) Compliance with subpart 3102 shall be required.

(e) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by the signature of the authorized officer on the lease form. A signed copy of the lease shall be mailed to the offeror.

(f) Except as herein provided, an offer which is not filed in accordance with the regulations in this part shall be rejected. An offer to lease containing any of the following deficiencies shall be approved by the authorized officer, provided all other requirements are met:

(1) An offer on a lease form not currently in use;

(2) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect on the date of filing; or

(3) An offer exceeding the 10,240-acre maximum by not more than 160 acres. The offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which, the offer shall be rejected to the extent of the excess acreage.

(g) All offers for leases should name, if practicable, the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part. Leases for which such consent is necessary shall not be issued until the offeror executes any stipulations that may be required by the consenting agency.

§ 3111.2 Description of lands in offer.

§ 3111.2-1 Public domain.

(a) If the lands have been surveyed under the public land rectangular system, each offer shall describe the lands by legal subdivision, section, township and range.

(b) If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form and connected by courses and distances to an official corner of the public land surveys.

(c)(1) When protracted surveys have been approved and the effective date thereof published in the Federal Register, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall, except as provided below, include only entire sections described according to the section, township and range shown on the approved protraction surveys.

(2) An offer may include less than an entire protracted section when only a portion of such a section is available for lease. In such case, the offer shall describe all the available lands by subdivisional parts in same manner as provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer shall be deemed to include all of the lands in the described section which are available for lease.

(d)(1) Where offers are pending for unsurveyed lands which are subsequently surveyed or protracted prior to the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

§ 3111.2-2 Acquired lands.

(a) If the lands have been surveyed under the rectangular system of public land surveys, the lands shall be described by legal subdivision, section, township and range.

(b) If the lands have not been surveyed under the rectangular system of public land surveys, they shall be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired lands constitute less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include such courses and distances between the suceessive angle points on the boundaries of the desired tract, the description in the offer shall be expanded to include such courses and distances.

(c) In those instances where the acquiring agency has assigned an acquisition number to the tract applied for, a description by such tract number shall be required in lieu of the description otherwise required by paragraphs (a) and (b) of this section.

(d) Each offer submitted under paragraphs (b) and (c) of this section shall be accompanied by 7 copies of a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part.

§ 3111.2-3 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3111.2-4 Conflicting descriptions.

If there is any variation in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

§ 3111.3 Future interest offers.

A lease for future interest in lands believed, but not known, to contain mineral deposits may be issued whenever the public interest will best be served by the lease issuance.

§ 3111.3-1 Application.

(a) A noncompetitive future interest lease shall be issued only to an offeror

who owns all or substantially all of the present operating rights in the lands, either as an operator holding such rights, or as mineral fee owner or as lessee.

(b) An offer for the future interest lease filed less than 1 year prior to the date of vesting in the United States of the present interest in the minerals shall be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all offers for future interest leases pending at the time shall automatically lapse and thereafter only offers for a present interest shall be considered.

§ 3111.3–2 Form of application.

There is no required form for an offer to lease a future interest. The offer shall, to the extent applicable, conform to and include the terms of the noncompetitive lease forms currently in use and shall also be accompanied by a copy of such lease or contract. In lieu of an abstract, a certification of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3111.3–3 Effective date of lease.

Future interest leases shall become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the United States' title to the minerals are different for different tracts, separate leases covering each of the different tracts shall be issued.

§ 3111.3–4 Supplemental agreement.

(a) As part of the consideration for the issuance of a future interest lease and as supplemental thereto, the offeror shall execute, in triplicate, an agreement for approval by the Director. The agreement shall provide for the payment of annual rental in advance at the rate of $1, or a minimum royalty of $2 after a discovery has been made, for each acre covered by the offer until the future interest therein becomes possessory and the lease becomes effective. The agreement shall be effective as of the date the lease issues and shall govern the relationship of the offeror and the United States between its effective date and the date when the lease becomes effective. Where the United States owns both a fractional interest and fractional future interest in the minerals in the same tract, the supplemental agreement shall cover only the fractional future interest in that tract. The lease, when issued, shall cover both the present and future interests in the lands and shall be effective for the present interest held by the United States as of the date on which the lease issues.

(b) The agreement shall provide that the rental shall be $2 per acre per year for any lands determined to be within a known geologic structure, or a favorable petroleum geologic province in Alaska.

(c) The agreement shall provide that if the lands covered by the lease become producing, the lessee shall pay a royalty of not less than $2 per acre per year, at the particular rate that is applicable as described below. When the interval from the date that production is obtained to the date when title shall vest in the United States is:

Not more than 4 years 10 percent
From 4 years to 8 years 8 percent
From 8 years to 12 years 6 percent

(d) Upon vesting of the rights to the lands in the United States, the royalty rate which shall attach to the lease shall be 12½ percent for those lands which are not within a known geologic structure or a producing oil or gas field or a favorable petroleum province in Alaska, and as set forth in § 3103.3–1(a)(2) of this title, for those lands which are within such areas.

§ 3111.3–5 Approval.

Leases for future interest shall be issued on a form approved by the Director. The lease shall be sent to the offeror for signature and return to the proper BLM office for signature by the authorized officer.

Subpart 3112—Simultaneous Filing

§ 3112.0–5 Definitions.

As used in this subpart, the term "person or entity in the business of providing assistance to the participants in the Federal simultaneous oil and gas leasing program" means those enterprises, commonly known as filing services, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration. All other services such as general secretarial assistance or general geologic advice whether or not it is specifically related to Federal lease parcels or leasing, are excluded from this definition.

§ 3112.1 Parcels.

§ 3112.1–1 Availability of lands.

(a) Except as provided in paragraph (b) of this section and § 3120.1 of this title, all lands which are not within a known geologic structure of a producing oil or gas field, or a favorable petroleum geologic province in Alaska, and were covered Federal oil and gas leases which have been cancelled terminated or expired are subject to leasing only under this subpart.

(b) Lands in Alaska which are not included in a pending application or offer filed under this subpart and which are available for posting for simultaneous oil and gas leasing on the effective date of this rulemaking shall be subject to leasing under the provisions of subpart 3111 of this title when such lands become available for leasing. Subsequent leasing shall be in accordance with this subpart.

§ 3112.1–2 Parcel list.

The lands available for leasing shall be described in leasing units identified by parcel numbers. The lands shall also be described by subdivision, section, township and acreage if the lands are surveyed or officially protracted, or if unsurveyed, by metes and bounds, or by acquisition tract number. The list shall include a statement as to, and a copy of, stipulations applicable to each parcel.

§ 3112.1–3 Posting of notice.

At the start of business on the first working day of January, March, May, July, September and November, a list of the lands for which applications shall be received shall be posted in the proper BLM office. The list shall include a notice stating that the lands listed are subject to the filing of lease applications from the time of posting until the close of business on the 15th working day of that month. Copies of the posted notice may be purchased from the proper BLM office.

§ 3112.2 How to file an application.

§ 3112.2–1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be given the opportunity to complete an offer to lease as described in § 3112.4–1 of this title.

(b) The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purposes provided in § 3112.4–1 of this title. The address of any other person or entity which is in the business of providing assistance to those participating in the

simultaneous oil and gas leasing system shall not be used.

(c) The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period.

(d) The parcel applied for shall be identified by the proper parcel number, including State prefix, as shown on the posted notice.

(e) Applicants participating in the simultaneous oil and gas leasing program in Bureau of Land Management State offices which use automated processing shall enter their social security number on the lease application. Corporations and other entities shall use their Internal Revenue Service number or taxpayer number. If an applicant has no social security number or does not wish to disclose such a number, the Bureau shall, upon application, assign an applicant number which shall be used for all future filings.

(f) No person or entity shall hold, own or control an interest in more than 1 application for a particular parcel.

(g) The properly completed and signed lease application shall be filed in the proper BLM office.

§ 3112.2-2 Filing fees.

Each filing shall be accompanied by a nonrefundable filing fee of $75. Failure to submit sufficient fees to cover all filings in a group shall render unacceptable the entire group of filings submitted with that remittance, except that a filing fee deficiency of not more than 1 percent of the total filing fee shall be deemed a curable defect. An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. Any uncollectable remittance or deficiency shall constitute a debt due to the United States which shall be paid before the applicant shall be permitted to participate in any future selection.

§ 3112.2-3 Qualifications.

Compliance with subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3100.0-3(k) of this title) in the application, or the lease, if issued.

§ 3112.2-4 Filing assistance.

Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants is the Federal simultaneous oil and gas leasing program shall indicate on the lease application the name of the party or filing service that provided assistance.

§ 3112.3 First qualified applicant.

§ 3112.3-1 Selection procedure.

(a) One applicant shall be considered for each numbered parcel. If more than 1 lease application is filed for a parcel, the successful applicant shall be determined by random selection.

(b) The results of the selection process shall be posted in the proper BLM office.

(c) All unsuccessful applicants shall be notified in writing or by return of their applications.

(d) Successful applicants shall be notified in accordance with § 3112.4-1 of this title.

§ 3112.3-2 Reselection process.

If a properly filed application is omitted from the selection process, a new selection shall be held. An omitted application may not be withdrawn by the applicant. The new selection shall consist of the omitted application(s) and the number of blank applications equal to the number of applications which were included in the first selection. The new selection shall be conducted in the same manner as the original selection. If the omitted application is not selected, the result of the original selection shall stand. However, if an omitted application is selected, it shall displace the application selected in the original selection.

§ 3112.4 Lease issuance.

§ 3112.4-1 Lease offer and payment of the first year's rental.

(a) The lease agreement, consisting of a lease form approved by the Director, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. Only the personal handwritten signature, in ink, of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, shall be accepted. The signed lease agreement and rental payment shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease.

(b) An attorney-in-fact may sign the lease offer and pay the first year's rental only if:

(1) The power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant;

(2) The power of attorney specificaly authorizes the attorney-in-fact to execute on behalf of the participant all offers, statements or interest and of holding and other statements required by the regulations; and

(3) The power of attorney binds the participant to representations made on his/her behalf by the attorney-in-fact under the power of attorney. An attorney-in-fact signing a lease offer on behalf of the prospective lessee shall file, together with the offer, a copy of his/her power of attorney over the personal handwritten signature, in ink, of the prospective lessee. Evidence of the applicant's physical handicap which precludes an ability to sign may be submitted in lieu of the applicant's signature on the power of attorney.

§ 3112.4-2 Acceptance of lease offer.

The signature of the authorized officer on the lease shall constitute the acceptance of the lease offer and the issuance of the lease by the United States.

§ 3112.4-3 Restriction on transfer.

For restrictions on transfers, see § 3106.1(b) of this title.

§ 3112.5 Unacceptable filings.

(a) Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant or remitter for any filing which is:

(1) Received prior to the beginning of the simultaneous filing period;

(2) Received after the closing of the filing period;

(3) Accompanied by an unacceptable remittance or insufficient filing fees;

(4) Filed in the wrong office;

(5) Filed without a parcel number or with a parcel number which is not on the current posted notice;

(6) Filed for a parcel which is withdrawn by the Bureau of Land Management;

(7) Received in a condition which the authorized officer determines will prevent automated processing; or

(8) Filed on the wrong form.

(b) Failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in this section or any reason set forth in §§ 3112.6-1 through 3112.6-3 of this title.

§ 3112.6 Adjudication.

§ 3112.6-1 Rejection of an application.

(a) Rejection is an adjudication process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned.

(b) Any application which is not filed in accordance with § 3112.2 of this title or any application which is unacceptable, as set forth in § 3112.5 of this title, shall be rejected.

Misplacement of name and address or incomplete address on the face of form 3112–1 shall not be a basis for rejection until 30 days from posting the list of priority or return of the documents described in § 3112.1–4 of this title as undeliverable, whichever is later.

(c) Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited. Any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected: Specifically:

(1) Any agreement, scheme, plan or arrangement which obligates the applicant to transfer any interest in the lease, if issued, to a third party; or which gives the third party a right of first refusal for the lease, if issued; or which obligates the applicant to use the services of the third party when assigning or transferring any interest in the lease, if issued, is prohibited if such agreement, scheme, plan or arrangement exists between the third party and 2 or more applicants for the same parcel or if the third party files for the same parcel as the applicant;

(2) Any agreement, scheme, plan or arrangement between any person or entity in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program and any potential assignee whereby such person or entity will seek to induce an assignment of any lease is prohibited;

(3) Filings by members of an association, including a partnership, or officers of a corporation, under any agreement, scheme, plan or arrangement whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited; or

(4) Separate filings by a trustee or guardian in its own behalf and on behalf of 1 or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of 2 or more beneficiaries on the same parcel or, separate filing by the grantor or person with the power of revocation of a revocable trust and the trust are prohibited.

(d) The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4–1 of this title.

(e) The authorized officer shall reject all filings which are made in accordance with any illegal agreement, scheme, plan or arrangement and shall take other appropriate actions including investigations for prosecution under 18 U.S.C. 1001.

§ 3112.6–2 Rejection of an offer.

An offer shall be rejected if the application upon which it is based should have been properly rejected under § 3112.6–1 of this title.

§ 3112.6–3 Cancellation of leases.

In the event a lease has been issued on the basis of an application or offer which properly should have been rejected or, if any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the act or regulations in this title, action shall be taken to cancel the interest or lease unless the rights of a bona fide purchaser, as provided in § 3108.3(c) of this title, intervene. The United States may take action to cancel regardless of whether information showing the application or offer was rejectable is obtained or was available before or after the lease was issued.

§ 3112.7 Availability of unleased lands.

The State Director of the proper BLM office may make available for leasing under subpart 3111 of this title any parcel which has been made available for leasing under this subpart upon a determination the parcel is not favorable for the production of oil and gas and that little or no interest in leasing such parcel exists. Such parcels shall become available for leasing under subpart 3111 of this title upon notation of such fact to the public land records.

Part 3120 is revised to read as follows:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.

3120.1 General.
3120.2 Lease terms.
3120.2–1 Duration of lease.
3120.2–2 Dating of lease.
3120.2–3 Lease size.
3120.2–4 Qualification.
3120.3 Initiation of offer.
3120.4 Notice of lease sale.
3120.4–1 Contents of notice.
3120.4–2 Detailed statement.
3120.4–3 Publication of the notice.
3120.5 Award of lease.
3120.6 Rejection of bid.
3120.7 Consideration of next highest bidder.
3120.8 Future or fractional interest.
3120.8–1 Applications.
3120.8–2 Supplemental agreement.
3120.8–3 Compensatory royalty agreements.

Authority: Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3120—Competitive Leases

§ 3120.1 General.

Lands which shall be leased by competitive bidding under this subpart include:

(a) Lands within any known geologic structure of a producing oil or gas field, as determined by the Service.

(b) Lands for which authority to lease has been delegated to the General Services Administration.

(c) Lands in Alaska within a favorable petroleum geologic province, as determined by the Service.

(d) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein which are not subject to cancellation, forfeiture or compulsory disposition, such underlying lease, interest or option shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received.

(e) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

§ 3120.2 Lease terms.

§ 3120.2–1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2–2 Dating of lease.

All competitive leases shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States except where prior written request is made, a lease may be made effective on the first of the month within which it is signed.

§ 3120.2-3 Lease size.

(a) Lands outside of Alaska which are within a known geologic structure of a producing oil or gas field shall be divided into leasing blocks or tracts in units of not more than 640 acres each, which shall be as nearly compact in form as possible.

(b) Lands in Alaska which are within a favorable petroleum geologic province shall be divided into leasing blocks or not more than 2,560 acres, which shall be as compact in form as possible.

(c) If 2 or more blocks are awarded to any bidder, the blocks where the total combined acreage does not exceed the maximum allowable lease size may be included in a single lease if circumstances warrant.

(d) Leases for lands in which the United States owns a future interest shall be subject to the same acreage limitations as set forth in paragraphs (a) and (b) of this section.

§ 3120.2-4 Qualifications.

(a) Each bidder shall submit with the bid a statement over the bidder's own signature with respect to compliance with subpart 3102 of this title.

(b) The successful bidder at a sale by public auction shall on the day of the sale deposit with the authorized officer, and each bidder, if the sale is by sealed bids, shall submit with the bid one-fifth the amount bid.

§ 3120.3 Initiation of offer.

A request or nomination of a tract(s) for competitive sale shall be submitted to writing to the proper BLM office. The Bureau of Land Management may also on its own motion offer lands through competitive bidding.

§ 3120.4 Notice of lease sale.

§ 3120.4-1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale including a general description of the lands offered for sale, and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as where bid forms may be obtained.

§ 3120.4-2 Detailed statement.

The detailed statement shall contain information on when and where to submit bids, bidding requirements, payments required, lease terms and stipulations, the description of the leasing unite being offered and any other information that may be helpful to the prospective bidder.

3120.4-3 Publication of the notice.

The notice of lease sale shall be published one a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publication as the authorized officer may determine.

§ 3120.5 Award of lease.

(a) All bids shall be opened at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after that time shall not be considered. The right to reject any and all bids is reserved.

(b) The lease shall be awarded to the highest responsible qualified bidder. Three copies of the lease on a form approved by the Director shall be sent to the successful bidder who shall within 15 days of receipt of notice, sign the lease forms, pay the balance on the bonus bid and the first year's rental and file a bond as required under subpart 3104 of this title.

§ 3120.6 Rejection of bid.

If the high bid is rejected for failure of the successful bidder to execute the lease forms and pay the balance of the bonus bid, or otherwise to comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited.

§ 3120.7 Consideration of next highest bid.

The Department reserves the right to offer the lease to the next highest bidder if the highest bid is rejected. In no event shall an offer be made to the next highest bidder if the difference between his/her bid and that of the successful bidder is greater than the one-fifth bonus forfeited by the successful bidder.

§ 3120.8 Future or fractional interest.

§ 3120.8-1 Application.

Applications and requests to have leases offered competitively for future or fractional interests in lands shall, to the extent possible, conform to and include the information requested in §§ 3101.3-2, 3111.2(a) and this subpart. The competitive lease sale for such interests shall be conducted in the same manner as provided under this subpart.

§ 3120.8-2 Supplemental agreement.

(a) The high bidder for a competitive future or fractional interest shall be required to execute a supplemental agreement as provided under § 3111.3-4 of this title except that the annual rental or minimum royalty shall be $2 per acre.

(b) The agreement shall provide that if the lands covered by the lease become producing, the lessee shall pay a royalty of not less than $2 per acre per year, at the particular rate that is applicable as described below. When the interval from the date that production is obtained to the date when title shall vest in the United States is:

Not more than 4 years 10 percent
From 4 years to 8 years 8 percent
From 8 years to 12 years 6 percent
More than 12 years 4 percent

(c) Upon the vesting of the rights to the lands in the United States, the royalty shall be as described in § 3103.3-1 of this title.

§ 3120.8-3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements may be considered in lieu of leasing where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

PART 3140—COMBINED HYDROCARBON LISTING

4. Section 3142.4 is revised to read:

§ 3142.4 Qualifications.

Submission of a lease bid constitutes certification of compliance with the regulations in this group. Anyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein may be required to submit additional information to show compliance with the regulations in this group.

PART 3150 [REMOVED]

5. Part 3150 is removed in its entirety.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
March 5, 1982.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Revision of the Abandoned Mine Land Reclamation Program Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 872, 874, 875, 877, 879, 882, 884, 886, and 888

Revision of the Abandoned Mine Land Reclamation Program Rules

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

ACTION: Final rules.

SUMMARY: The Office of Surface Mining (OSM) has revised the abandoned mine land reclamation rules in response to the Administration's request for regulatory review. These revised rules concern the establishment and administration of the Abandoned Mine Land Reclamation (AMLR) Program by the States, Tribes, and Federal Government as required by the Surface Mining Control and Reclamation Act of 1977, (the Act). The revised rules clarify the relationships and responsibilities of the States, Indian tribes, and Federal Government in implementing a coordinated AMLR Program.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Land Reclamation, 1951 Constitution Ave., NW., Washington, D.C. (202) 343-7951.

SUPPLEMENTARY INFORMATION: The Abandoned Mine Land Reclamation Program was established by the Surface Mining Control and Reclamation Act of 1977 (the Act, Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*) in response to concern over extensive environmental damage caused by past coal mining activities. The Abandoned Mine Reclamation Fund derives its financing from Title IV of the Act which establishes a fee on coal production for the purpose of financing specified Federal, State, and Indian reclamation programs. Programs funded by congressional appropriation include grants to States and Indian tribes to plan and carry out reclamation programs and projects, Federal reclamation projects carried out by the Secretary of the Interior through OSM and other Interior agencies, and the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture and carried out by the Soil Conservation Service. On October 25, 1978, OSM published final rules (43 FR 49932-49952) implementing an abandoned mine land reclamation program incorporating the provisions of Title IV of the SMCRA.

These rules established procedures and requirements for the preparation and implementation of State and Indian reclamation programs, consisting of reclamation plans, submission of annual projects, and applications for annual grants. Additional parts included provisions for Federal, State, and Indian Abandoned Mine Reclamation Funds, general reclamation objectives, rights-of-entry, liens, emergency reclamation procedures, acquisition and disposition of lands and waters, reclamation on private lands, and Indian reclamation programs.

Rules relating to the amount and collection of fees were promulgated in 30 CFR Part 837 on December 31, 1977 (42 FR 62713). This Part has since been redesignated as Part 870.

Information Collection and Recordkeeping Requirements

The information collection requirements in the existing AMLR rules were approved by OMB under 44 U.S.C. 3507. Those approvals were identified in "notes" at the introductions to 30 CFR Parts 870, 872, 877, 879, 882, 884 and 886. OSM has deleted those "notes" and codified the OMB approvals under new §§870.10, 872.10, 877.10, 879.10, 882.10, and 886.10. These approvals are described below under the preamble discussions for each Part having information collection and recordkeeping requirements. Since the information collection requirements contained in § 884.13 and §884.15 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by the Office of Management and Budget.

The required information is being collected to insure the adequate implementation of approved reclamation programs and to enforce the fee provisions of the Act. OSM, States, and Indian tribes will use the information, and it will benefit the States and Indian tribes by enabling OSM to effectively allocate grant funds for administration and implementation of State/Indian reclamation plans and construction projects.

Introduction To Final Rule Revisions

Pursuant to Executive Order 12291, every Federal agency is required, within applicable statutory constraints, to choose regulatory goals that maximize benefits to society and to select the most efficient and effective means to achieve these goals. In addition, one of the Secretary's goals is to eliminate rules which are excessive, burdensome or counterproductive. To accomplish this deregulation and regulatory reform and to assure that the Executive Order is carried out, OSM with the assistance of the Secretary's Regulatory Reform Task Force, has reviewed its existing rules concerning the implementation of the abandoned mine land reclamation program and is promulgating final revisions to 30 CFR Chapter VII, Subchapter R. OSM has sought to provide early and meaningful public participation during its regulatory review. To this end, OSM has met with and received comments and recommendations from the representatives of coal mining States. A public comment period was held (46 FR 60778 and 47 FR 967) and a public hearing was conducted on January 8, 1982.

Numerous comments from the public and representatives of the States, industry, and environmental organizations were received and considered in the rulemaking process. All substantive comments received are addressed in the following preamble.

All comments received as well as summaries of meetings held and the record of the public hearing are available for inspection in the Administrative Record, Room 5315, 1100 L St., NW., Washington, D.C.

Organization

The regulatory revisions are intended to implement the requirements of the Act consistent with the purposes stated in Section 102(h), its legislative history, and the Secretary's commitment to avoid excessive and burdensome rules. The material is organized into parts which comprise Subchapter R.

Part 870—Abandoned Mine Reclamation Fund—Fee Collection And Coal Production Reporting

Title IV of the Surface Mining Control and Reclamation Act of 1977 (the Act) directed the Secretary of the Interior to collect per-ton reclamation fees from coal mine operators to support the reclamation and other activities listed under this title. OSM developed a reclamation fee collection program and published rules in the **Federal Register** to assist mine operators in meeting their fee obligations, to specify management activities for fee collection, and to define a range of compliance activities that include compliance investigations, audits, debt collection, and litigation procedures.

The major components of the fee collection program are the fee collection system, the fee compliance system, and the litigation system.

Fee collection system: The United States Bureau of Mines' (BOM) Finance Branch in Denver, Colo., is currently

OSM's agent for the collection of fund revenues. BOM, through a reimbursable agreement with OSM, is responsible for providing accounting and data processing services to implement and maintain a reclamation fee collection system. These services include (1) collecting and depositing reclamation fees into the Federal depository, (2) providing an automated information system for fee payments, delinquencies, and program management, and (3) reconciling procedures to make annual allocations of collections for appropriation and use by States and Indian tribes under approved reclamation programs.

Fee compliance system: Fee compliance officers are located in the coal producing regions to insure that fees are collected through appropriate investigation, audits, and collection activities.

Litigation system: The Associate Solicitor, Division of Surface Mining, is responsible for litigation associated with the collection of delinquent fees. The Division takes enforcement action to collect delinquent fees and provides legal assistance on fee-related issues.

On December 13, 1977, OSM published final rules as Part 837 (42 FR 62713) setting forth procedures for payment of reclamation fees and recordkeeping requirements. On May 15, 1978, OSM published an amendment to these rules (43 FR 20793) to establish the interest rate on late payments. These rules were later renumbered in the Code of Federal Regulations as Part 870. Although the existing rules have been adequate for initial implementation of OSM's fee collection program, this revision clarifies those rules regarding the individual responsible for the fee payment; the point of initial sales, transfer of ownership, or use; the method by which the fee liability is calculated; and OSM's authority to examine sales records relevant to determination and verification of fee liability.

Section 870.1 (Scope). The existing section has not been changed. One commenter recommended that the entire fee collection program be turned over to the States. OSM's response is that Section 405(d) of the Act, which addresses State reclamation programs, excludes fee collection activities. Fees are paid to the Secretary of the Interior; they are then deposited in a United States Treasury Trust Fund and subsequently appropriated from this fund by Congress to carry out reclamation projects. Accordingly, even if some administrative collection activities could be transferred to the States, the monies collected could not be retained by the States due to the statutory provisions. OSM has elected, therefore, to retain all collection work.

Two commenters also proposed that Part 870 include detailed procedures for collection and enforcement actions against delinquent operators and provide for regular program reports to each State on delinquencies, collections, litigation, etc. OSM does not believe that internal procedures and program reports belong in these rules. Part 870 establishes procedures to assist operators in voluntarily complying with the fee reporting and payment provisions of the Act and to assist agency employees in administering the fee collection program.

Section 870.2 (Objectives). This section has been deleted. OSM considers this section unnecessary because the objectives are clearly defined in the Act.

Section 870.3 (Responsibility). This section has been deleted for the same reason as § 870.2.

Section 870.5 (Definitions). All definitions used in Parts 870 through 888 have been moved to this section for clarity and ease of reference. Amended or new definitions are set forth below, along with a discussion of the comments received. Throughout Subchapter R, the term "Office" has been changed to "OSM" to avoid possible confusion with other offices. There is no change in meaning, and "OSM" has been added to the list of definitions in § 870.5.

Abandoned Mine Reclamation Fund. In the existing rules and Section 401 of the Act, this "fund" is described as a "trust fund." This caused certain States to inquire whether trust fund moneys are deposited in interest-bearing accounts. Consequently, the word, "trust" was replaced by the word, "special," in the proposed regulations to avoid confusion in the definition. Five commenters opposed the use of the term "special fund" based on the view that the intent of Section 401(a) of the Act was to establish an interest-bearing "trust fund." The Treasury does not pay interest on moneys in special accounts unless Congress specially provides for interest to be paid and makes appropriations for that purpose. Congress has not provided for interest payments in Title IV of the Act nor appropriated moneys for that purpose. The use of the term "special fund" is, therefore, retained as proposed.

One commenter urged that, when the Act comes up for amendment, the 50-percent share allocated to the States be placed in an interest-bearing account. This comment is outside the scope of this rulemaking activity.

Anthracite, bituminous, and subbituminous coal. In the existing rules, this definition is included to distinguish all other coals from lignite. Such a distinction is necessary because Section 402(a) of the Act establishes a separate tonnage fee for lignite coal.

Two commenters suggested that the definition of anthracite, bituminous, and subbituminous coal be revised to exclude excess moisture; that is, including the natural inherent or bed moisture of the coal, but not water adhering to the surface of the coal. Both commenters asserted that such a change would make this definition "consistent with the exclusion of excess moisture in the existing definition of lignite coal." This change excludes "excess moisture" from the calculation of weight for determining fee liability. The excess moisture issue and related comments are addressed in § 870.12, below. However, it should be noted that all references to moisture in the definition of lignite coal relate to the accepted technical definition (Parr's formula). This definition is for categorizing coal as lignite and has no relevance to the excess moisture issue. Once coal is determined to be lignite, moisture (or other impurities) will not be excluded from the gross weight of the lignite unless physically removed prior to sale, transfer of ownership, or use. Therefore, no revision is being made to the definition of anthracite, bituminous, and subbituminous coal.

Eligible lands and water. This term has been included to clarify what lands and water qualify for reclamation expenditures under Section 404 of the Act. One commenter requested OSM to "petition" Congress to remove the requirement that AMLR funds be used for "pre-Act scars only". This commenter wanted the States to have discretion to select reclamation projects regardless of when they originated. OSM plans to consider this request if and when amendments to the Act are considered by Congress. For the present, however, both the Act and Congressional intent are clear that lands which were mined and abandoned or inadequately reclaimed after August 3, 1977, are not eligible for expenditures under Title IV of the Act. Congress, intended the States to administer regulatory programs that require adequate reclamation of surface mined land after August 3, 1977.

Expended. This term has been revised to provide that "expended" means that moneys have been obligated, encumbered, or committed for work to be accomplished or services to be rendered. The definition formerly used

was the strict interpretation of Black's Law Dictionary: "to pay out or distribute". One commenter supported the change because it provides greater flexibility to the States. Another commenter opposed the change because the revised definition results in expanding "the language of the Act beyond that intended, which was actual expenditure." This commenter further contends that the effect of the revised definition will be to allow "hasty, unplanned commitments of funds" to avoid having these funds subject to withdrawal by the Director since, under § 872.11(b), funds not expended by the States within 3 years of the date of their allocation may be withdrawn and used for other reclamation. This commenter further requested that, if the revised definition is not withdrawn, then it should be amended to include funds obligated, encumbered, or committed "in a planned manner pursuant to established priorities and criteria for reclamation." The purpose of this suggested amendment is, according to the commenter, "to insure that the commitments are made in a rational fashion."

OSM finds no basis for the commenter's assertion that the Act limits the word "expended" to mean only "actual expenditure" of funds. OSM has the responsibility to interpret the Congressional language in keeping with the Act and legislative intent. The revised definition of "expended" provides greater clarity and should encourage participation in the AMLR Program by providing the States with more flexibility in the management of AMLR funds. Congress intended the States to have primacy in the administration of their abandoned mine land reclamation programs and the revised definition advances this legislative mandate. Moreover, OSM believes that there are sufficiently stringent financial control procedures required by OMB Circular A–102 to prevent misuse of funds.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition. This definition was modified to eliminate the confusion between the findings of "eligibility" and those related to "abandonment" and "inadequate reclamation". One commenter pointed out that in the preamble discussion of the proposed revision (46 FR 60780) the impression was given that OSM makes the findings for eligibility for reclamation under Title IV of the Act for the Rural Abandoned Mine Program (RAMP). In order to clarify any possible misimpression, OSM's position is that the agency responsible for conducting the reclamation (State, Indian tribe, Department of Agriculture, or OSM) is also responsible for determining reclamation project eligibility under Title IV of the Act. This position does not, however, lessen OSM's responsibility for monitoring and oversight of reclamation programs required by Section 405 of the Act.

The revised definition provides sufficient latitude for the Federal agency or State/Indian tribe to exercise discretion on a case-by-case basis in its determination of eligibility for reclamation expenditures under Title IV. The following are examples of different applications of the revised definition:

Example 1—OSM considers lands and water eligible, if the following conditions are met: (1) All conditions in Section 404 of the Act are met; (2) All mining processes have ceased but a permit did exist as of August 3, 1977; and (3) The permit has since lapsed and has not been renewed or superseded by a new permit as of the date of the request for reclamation assistance.

Example 2—Where a permit has lapsed prior to August 3, 1977, but subsequent reclamation attempts were made after that date to satisfy State regulatory or bond requirements, the area would still be eligible.

Example 3—(One commenter suggested that a third example should be given). OSM considers lands and water eligible if the following conditions are met: (1) Mining ceased prior to August 3, 1977, (2) No mining activity occurred or will occur after August 3, 1977; (3) A permit or bond exists as of August 3, 1977, and this permit or bond is released after all conditions are met; and (4) The land was inadequately reclaimed due to State requirements in existence at the time. These three examples illustrate the complexity of the factual situations faced by the reclamation authorities and the need to consider each project on a case-by-case basis.

Lignite coal. The comma after the word, "moist," has been deleted from the definition in the existing rules to correspond with the sentence structure in Title VII, Section 701(30). In addition, two commenters noted in the proposed definition that the word "Fund" should be replaced by "pound," that is, "less than 8,300 British thermal units per *pound*." [Emphasis added]. That editorial revision has been made in the definition. One commenter recommended adding a sentence to the definition saying "this term does not include anthracite, bituminous, and subbituminous coal." Such language is both unnecessary and redundant. The definition of lignite is based on "Parr's formula" and is reprinted verbatim to avoid possible confusion or the need to further cross-reference. Moreover, anthracite, bituminous, and subbituminous coals are defined as "all coals other than lignite coal."

Operator. OSM is withdrawing this definition from the final rules and will be proposing a new definition in the near future. Until a new definition is finalized, OSM expects to follow its past policy of an expansive interpretation of the term "operator" when necessary to recover reclamation fees. See, 42 FR 62713 (December 13, 1977), comment No. 2.

Permanent facility. This is a new definition requested by the States in comments on the draft proposed rules. The definition clarifies and provides a more flexible way to define "facility" as it relates to structures and any modification of the surface designed to remain after reclamation.

Project. This is a new definition which should provide the States and Indian tribes the opportunity to define the scope of their projects in concert with their individual abandoned mine land problems and planning efforts. A project may be limited to a single construction site to remedy a single problem, such as filling an open shaft, or it may include more than one construction site such as mine openings, high walls, or denuded areas requiring revegetation. All these situations might be contained in a single watershed, soil conservation district, or county planning area. Since a State assumes exclusive responsibility for implementing its approved reclamation program, OSM has attempted to define this term to give the States and Indian tribes the greatest flexibility in designing individual reclamation projects.

One commenter supported the new definition because it uses, by way of example, a "conservation district" as a geographically defined area for purposes of project planning. Another commenter supported the new definition except for its reference to "political subdivision of a State". This commenter feels that planning and resource expenditures should be "based on planning designed in natural terms (e.g., watershed), and not artificial political parameters" like political subdivisions of a State. OSM disagrees with this commenter's suggestion to delete "political subdivision" of a State from the definition and deal only with natural boundaries, because a political subdivision (e.g., a conservation district) is a definable area that can be and is used for planning of programs and

projects in the administration of the AMLR Program.

Reclaimed coal. The definition of reclaimed coal in the existing rules has been modified to reinforce OSM's position that such operations are subject to the reclamation fee requirements. The authority of OSM to regulate operators involved in the mining or processing of refuse coal has been upheld by the U.S. District Court for the District of Columbia. See *In re: Permanent Surface Mining Regulation Litigation,* No. 79–1144 (May 16, 1980). Since Section 402(a) of the Act requires "all operators of coal mining operations subject to . . . the Act" to pay reclamation fees and since the mining of coal from silt banks and refuse piles is considered a surface coal mining operation, the collection of the reclamation fee from these operations is proper.

One commenter objected to the inclusion of anthracite silt in the definition of reclaimed coal. This commenter asserted that: (1) Anthracite silt is not coal and (2) the removal or recovery of such silt from refuse piles does not constitute a surface coal mining operation subject to reclamation fee payments. OSM is currently involved in litigation on these issues and will continue to assert authority and coverage over anthracite silt recovery as a surface coal mining operation until the issue is finally decided by the courts.

One commenter proposed that, for purposes of clarification, the final sentence in the definition of reclaimed coal be modified as follows: "Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes." OSM has incorporated this clarification in the revised definition.

Reclamation activity. One commenter recommended that the word "restoration" be deleted from the existing definition. OSM agrees that, in context, "restoration" gives the definition a meaning contrary to what was intended. Moreover, "reclamation" is sufficiently descriptive to convey the intent of that particular provision.

Section 870.10 (Information collection). The information required by Part 870 is being collected to meet the mandate of Sections 401 and 402 of the Act, which requires the Secretary to establish an Abandoned Mine Reclamation Fund and a reclamation fee on coal mining operations. The obligation to respond is mandatory. The information collection requirements contained in §§ 870.12(c), 870.15 (b) and (c), and 870.16 (a) and (d) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029–0063.

Section 870.11 (Applicability). Three revisions were made to § 870.11. In § 870.11(b), the term: "surface mining" has been changed to "surface coal mining operations" to clarify that both surface and underground operations are affected. In § 870.11(d), OSM established a definite timeframe for "extraction of coal incidental to the extraction of other minerals." Two commenters questioned OSM's authority to add the phrase, "in any twelve consecutive calendar months," since Section 701(28) of the Act does not include a specific timeframe. However, OSM believes that the proposed language is necessary and proper and within the Secretary's authority to "* * * do all things necessary or expedient, including promulgation of rules and regulations, to implement the provisions of this title." (Section 412(a) of the Act). If no timeframe is specified, incidental production would be subject to quarterly determinations of applicability, because production reports and fee payments are due quarterly, even though the extraction of coal over a longer period (e.g., 1 year or the life of the project) did not exceed 16⅔ percent of the mineral tonnage removed. Moreover, the twelve consecutive calendar months is consistent with the 250-ton limitation included in the statutory definition of operator in Section 701(13) of the Act. Therefore, the twelve-month timeframe in § 870.11(d) is retained in the final regulation.

The third change to § 870.11 is the addition of § 870.11(e), which incorporates in the rules of Part 870 the statutory exemption from fee liability contained in Section 701(13) of the Act (definition of "operator"). One commenter suggested that this new paragraph specify extraction by a "person, partnership, or corporation." OSM believes that such an addition is unnecessary since identical language is included in the § 870.5 definition of operator. The exceptions listed in § 870.11 relate to "operations" and not individuals, partnerships, or corporations.

In addition, six commenters recommended other revisions to existing § 870.11. One commenter suggested two editorial changes to clarify the introductory language, both of which have been incorporated in the final rules. The word "part" has been substituted for "chapter," and the lead sentence in § 870.11 has been revised to read: "The regulations in this part apply to all surface and underground coal mining operations except * * *" to clarify that Part 870 applies to underground as well as surface coal mining operations.

Two commenters proposed a new § 870.11(f) that would exempt reclamation operations from fee liability. OSM cannot accept the proposal for the same reasons outlined in the above discussion of comments relating to the definitions of "operator" and "reclaimed coal." Two commenters recommended that language be added to § 870.11(c) to specifically exempt government-financed abandoned mine land projects from fee liability. Both commenters maintained that all proceeds from the sale of coal recovered as part of an approved reclamation project should be used to partially offset project costs. As discussed in the preamble of the proposed rules, application of fee liability to individual projects "* * * may or may not be appropriate." The determination of applicability of Part 870 to an individual project will be made in light of existing or revised rules for Part 707. These Title V rules are mandated by Section 528(3) of the Act. Pending clarification of Part 707, OSM retains the current language in § 870.11(c).

One commenter recommended that the word "or" be substituted for the word "and" at the end of § 870.11(d) to make clear that any of the five conditions in § 870.11 would exempt affected operations from fee liability. However, the word "and" is properly used since the introductory language clearly indicates that separate and distinct exceptions, not interrelated conditions, are listed.

Section 870.12 (Reclamation fee). In order to clarify the point in time of fee determination, as well as the value and weight parameters for calculating reclamation fees, OSM added § 870.12(b)(1), (2), and (3). This new language restates OSM policy in effect since initial implementation of the fee collection program in December, 1977. Section 870.12(a) has been deleted, since it applies only to the fourth quarter of 1977. Four commenters objected to § 870.12(b)(3) which prohibits the deduction of impurities, including water, from the weight of the coal unless physically removed prior to sale, transfer of ownership, or use. These commenters argued that the clarifying language should allow deductions for moisture content in excess of "inherent bed moisture." Two of these commenters proposed two alternative approaches for implementing their recommendation. One approach was the proposed revision to the definition of "anthracite, bituminous, and subbituminous coal," discussed above.

The second alternmative proposed was preamble language stating that "only inherent or natural bed moisture need be included in establishing the weight of the coal." Such language is contrary to established policy and the intent of the clarifying rule. Both the existing and proposed rules require that fees be paid on the actual weight of the coal sold. No fees are paid on impurities if these impurities are physically removed prior to sale. If moisture deductions were allowed, audit of operator records would be further complicated and laboratory analyses required to document moisture content. Moreover, such deductions could reduce fee collections by many millions of dollars over the 15-year life of the Fund. A third approach recommended by one of the above commenters was to allow moisture deductions by operators in those States where similar deductions are allowed for State coal severance tax purposes. At present, only the State of Alabama allows such a deduction and only when accompanied by laboratory analysis. OSM believes that acceptance of this approach would be inconsistent with requirements for uniform application of Part 870 and equitable treatment of all operators. Furthermore, given the wide variety of State severance tax structures and the lack of any legal relationship between State taxes and Federal reclamation fees, OSM believes this approach could result in considerable competition among States and encourage similar proposals for other deductions inconsistent with the objectives of the Abandoned Mine Reclamation Fund.

Based on the lack of clear policy and rules concerning the deduction of excess moisture, OSM has included the clarifying language as proposed in § 870.12(b)(1), (2), and (3) in the final rules.

Section 870.13 (Fee computations). The examples in existing § 870.13 (a), (b), (c), and (d) were proposed to be moved from the regulations to the **Federal Register** preamble to these rules. One commenter objected to moving these examples and technical calculations from the main body of the rules to the preamble. The commenter maintained that shifting this explanatory material fragments what is "currently a coherent, compact regulatory package." However, OSM believes this change simplifies the rules and properly separates the actual rules from examples and technical information. Since no substantive changes are being made to § 870.13 and the most frequently used computations can be simply expressed, this material is being included here, in the supplementary information section.

Under § 870.13(a) on surface mining fees, if the value of a ton of coal is equal to or greater than $3.50 per ton, multiply the number of tons produced in the calendar quarter by $0.35. For example, if the tonnage is 1,000, then 1,000 tons × $0.35 = $350, which is the fee. If the value of a ton of coal is less than $3.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1 (or 10 percent). For example, if the value of a ton of coal is $2 and the tonnage is 1,000, then $2 × 1,000 tons × 0.1 = $200, which is the fee.

Under § 870.13(b) on underground mining fees, if the value of a ton of coal is equal to or greater than $1.50 per ton, multiply the number of tons produced in the calendar quarter by $0.15.

For example, if the tonnage is 1,000, then 1,000 tons × $0.15 = $150, which is the fee. If the value of a ton of coal is less than $1.50 per ton, multiply the value of a ton of coal by the total number of tons produced in the calendar quarter by 0.1 (or 10 percent). For example, if the value of a ton of coal is $1 and the tonnage is 1,000, then $1 × 1,000 tons × 0.1 = $100, which is the fee.

Under § 870.13(c) on surface underground mining fees for lignite coal, if the value of a ton of lignite is equal to or greater than $5 per ton, multiply the number of tons produced in a calendar quarter by $0.10. For example, if the tonnage is 1,000, then 1,000 tons × $0.10 = $100, which is the fee. If the value of a ton of lignite is less than $5 per ton, multiply the value of a ton of lignite by the total number of tons produced in the calendar quarter by 0.02 (or 2 percent). For example, if the value of a ton a lignite is $4 and the tonnage is 1,000, then $4 × 1,000 tons × 0.02 = $80, which is the fee.

Under § 870.13(d), in situ coal mining fees, if the Btu value of the in situ coal is determined to be 23 million Btu's per ton, then for every 23 million Btu's of gas produced at the wellhead, one ton of coal will be deemed produced for the purposes of this part. The Btu value of a ton of in-place coal shall be determined by analyses, certified by an independent laboratory, of the coal seam that is affected for potential Btu value of a ton of in-place coal. For anthracite, bituminous, and subbituminous coal the fee shall be computed as follows:

$F = (G/C) \times V1$. For lignite coal the fee shall be computed as follows: $F = (G/L) \times V2$. Where:

F = Reclamation fee.

C = Million Btu's per ton of coal in place.

L = Million Btu's per ton of lignite in place.

G = Gas produced at the wellhead in million Btu's.

V1 = $0.15/ton equivalent; or if the value of a ton of coal equivalent is less than $1.50, multiply the value by 0.1 and substitute the result for V1, in the appropriate formula.

V2 = $0.10/ton equivalent, or if the value of a ton of lignite equivalent is less than $5.00, multiply the value by 0.02 and substitute the result for V2 in the appropriate formula.

Section 870.15 (Reclamation fee payment). This section was changed to delete existing § 870.15(b) which dealt with the fourth quarter of 1977. Existing § 870.15(c) was redesignated § 870.15(b) in the final rules and revised to reflect new form numbers in current use (OSM-1 and OSM-1A).

OSM had proposed revising in proposed § 870.15 the interest rate on delinquent payments to equal the adjusted prime rate (as determined by the Federal Reserve) for the month of September. According to the proposed formula, the current rate would be increased from 12 percent to 20 percent from the effective date of these rules until February 1, 1983. Four commenters objected to the higher interest rates and two commenters questioned OSM's authority to exceed the current Treasury rate. Although OSM had planned to seek Treasury approval for the higher rate, recent discussions with Treasury Departmental officials indicate that their policy no longer includes exceptions to the government-wide rate established for overdue accounts. Therefore, OSM has withdrawn the planned increase and will retain the 12 percent interest rate specified in the existing rules.

A new § 870.15(e) was proposed to require operators to submit "negative" reports for calendar quarters where no fee liability exists. Two commenters objected to this reporting requirement and questioned OSM's authority to require reports by operators with no fee liability. Section 412(a) of the Act authorizes the Secretary to "do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of this title." Section 402(c) of the Act makes it mandatory for all coal mine operators to submit a statement of the amount and type of coal produced and the method of coal removal, together with the reclamation fees payable to the Secretary for each calendar quarter. The statutory definition of "operator" (Section 701(13)) refers to "any person, partnership, or corporation * * * who

removes or intends to remove more than two hundred and fifty tons of coal from the earth * * * within twelve consecutive calendar months in any one location." A reasonable interpretation of the reporting requirement (which extends to those who merely "intend" to remove) would encompass production possibilities from zero tonnage upward. It should be noted the Section 402(d) of the Act provides for criminal penalties for failure to file and fraudulent reporting by operators.

With respect to the reporting burden imposed, it should be noted that, at the end of each calendar quarter, OSM mails to each operator (believed to be actively producing) a preprinted Form OSM–1. Of approximately 8,000 forms mailed, as many as one-half are not returned. OSM must currently verify nonproduction of these operators. While followup compliance checks verify zero production in most cases, approximately one-fourth of the "nonrespondents" are active operators and should have reported and paid fees on tonnage produced. Positive reporting, or affirmative reports of nonproduction, will reduce the need for followup compliance investigations and serve as the basis for collection and enforcement actions, when necessary. In order to further clarify the intent of this change, § 870.15(e) has been deleted and the language added to § 870.15(b) to require operators who receive Forms OSM–1 or 1A to report production, including zero tons.

Section 870.16 (Production records). No changes were proposed to this section. However, three commenters objected to the § 870.16(d) requirement that operators "maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due." Actual truck receipts or weight tickets need not be kept for the full term, but normal business records, which include the information required by § 870.16(a)(1)–(4), must be retained for six years in conformity with the Federal statute of limitations applicable to enforcement actions.

Section 870.17 (Compliance authority). This new section was added in the proposed rules to provide authority for examination of buyers' records of any first sale or transfer of ownership between operators or to other purchasers of coal. One commenter supported this change and one commenter objected. The commenter who opposed this section argued that OSM has no statutory authority to examine records of a "second party" involved in the sale of coal. OSM maintains that Section 412(a) of the Act provides the Secretary with sufficient authority to promulgate rules "necessary and expedient" to administer the provisions of Title IV. Since sales records maintained by the operator serve as the primary basis for production reports and determination of fee liability, purchasers, records represent an important secondary source of verification of the number and amounts of coal-sale transactions. Since virtually all coal sold is subject to the reclamation fee, lack of authority to review purchasers' records (including those maintained by coal tipples) would greatly impede compliance investigations and audit activities of fee compliance officers. Accordingly, this requirement remains unchanged in the final rules.

Part 872—Abandoned Mine Reclamation Funds

The U.S. Department of the Treasury established an account on its books in accordance with Section 401(a) of the Act and Treasury's rules for a fund of this type.

Moneys from the fund are available for the purposes of Title IV only when appropriated therefore and such appropriations are to be made without fiscal year limitations.

One commenter suggested that less restrictive use of Title IV mine reclamation funds in the Commonwealth of Pennsylvania would bring about the use of idle forfeited bond account moneys. It was suggested that these funds could be used to perform reclamation where it would otherwise not be undertaken because of insufficient funds. OSM's response is that Section 404 of the Act states clearly that lands and water eligible for reclamation are those abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing responsibility under State or other Federal Laws. Accordingly, no changes have been made. For further discussion on eligibility, the reader is referred to the preamble discussion in § 870.5 on the definition of "left or abandoned in either an unreclaimed or inadequately reclaimed condition."

One commenter suggested that the Abandoned Mine Reclamation Fund should be administered as a "trust fund" in accordance with applicable standards regarding the recovery of delinquent payments and the earning of interest on unspent portions of the fund. OSM's response is that a determination has been made by the Department of Treasury that the Abandoned Mine Reclamation Fund is a special fund under Treasury rules. The Department of Treasury does not pay interest on special accounts unless specific legislation requires it. OSM has retained the proposed language unchanged in the final rule.

The following explanation of the fund management process is included to aid understanding to the purpose of Part 870. The U.S. Bureau of Mines' (BOM) Finance Branch in Denver, Colo., is currently OSM's agent for the collection of fund revenues. BOM, through a reimbursable agreement with OSM, is responsible for providing accounting and automatic data processing services to implement and maintain a reclamation fee collecting system. These services include (1) collecting and depositing reclamation fees into a depository, (2) providing an automated information system for fee payments, delinquencies, and program management, and (3) reconciling procedures to make annual allocations of collections for appropriation and use by States and Indian tribes under approved reclamation programs.

Fund revenues are derived from reclamation fees on each ton of coal produced and from late payment interest charges, sales of acquired lands, and donations. The fees and interest charges are paid by coal mine operators and submitted with production and reclamation fee reports for payment identification and credit to OSM's Fee Collection and Assessment Unit.

Funds collected are contolled by deposit tickets (prepared by the collection officer), debit vouchers issued by the Federal depository for uncollected checks, and refund schedules for overpayment (prepared by the Bureau of Mines Finance Branch). These transactions are identified by mine operators as well as by mine and geographic location. Data from OSM approved forms OSM 1 or 1–A submitted by mine operators with their payment are coded and stored in OSM's ADP system for compliance and disbursement purposes. Net collections (per deposit tickets, debit vouchers, and refund schedules) are reconciled on a monthly basis with the amounts reported by mine operators on OSM's approved forms.

All accounts are closed at the end of business each September 30, the final day of the Federal fiscal year (FY). The System is reconciled and collections are identified by State and Indian lands. Fifty percent of the FY collection is reserved for use by States and Indian tribes to carry out approved reclamation programs. The remainder may be expended by the Secretary of the Interior through the Director, OSM, to

meet the objectives of Title IV. Any errors found in prior year allocations are corrected in current allocations. This financial information provides one of the bases for budget requests to support Title IV progams.

One commenter sugested a revision in proposed Part 872 to clarify to the public that abandoned mine reclamation funds may also be expended through RAMP by the Secretary of Agriculture. OSM considered this revision unnecessary on the basis that Section 401 of the Act clearly defines the transfer of funds by the Secretary of the Interior to the Secretary of Agriculture.

The part has been considerably shortened by deleting in their entirety § 872.2 (Objectives) and § 872.4 (Responsibilities), moving § 872.5 (Definitions) to Part 870 of this chapter, and combining §§ 872.12 and 872.13 (State and Indian Abandoned Mine Reclamation Funds) into one section. A major change to the existing rules is a new § 872.11(b)(2)(ii) that provides States with a commitment by OSM that will afford States every opportunity to use allocated moneys.

Section 872.1 (Scope). This section has been changed to reflect the deletions of unnecessary language.

Section 872.2 (Objectives). This section has been deleted in the final rules since the Act provides an overview of the Abandoned Mine Land Reclamation Program, and the detailed procedures relative to management of program funds are covered in the final rules.

Section 872.4 (Responsibilities). This section has been deleted in the final rule due to OSM's reorganization. Three commenters suggested that OSM publish information on functions and responsibilities as part of the final rules. OSM will consider amending rules in the future if there is a need for the information.

Section 872.5 (Definitions). Definitions were moved to Part 870 of this chapter in the July 17, 1981, draft of the proposed rules to provide easy reference for all definitions of Subchapter R of this chapter. The definitions remain in Part 870 in the final rules.

Section 872.10 (Information Collection). The information required by Part 872 is being collected to meet the mandate of Sections 401 and 402 of the Act, which requires the Secretary to establish an Abandoned Mine Reclamation Fund and a reclamation fee on coal mining operations. The obligation to respond is mandatory. The information collection requirements contained in § 872.11 (b)(2) and (b)(3) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029–0054.

Section 872.11 (Abandoned Mine Reclamation Fund). Two commenters suggested that OSM seek congressional action to have the Abandoned Mine Reclamation Fund placed in an interest-bearing account or fund rather than a "special account." OSM will take this suggestion under advisement. Except for the deletion of the reference to Part 882 of this chapter, § 872.11 (a) and (b)(1) remain the same in the final rules.

Section 872.11(b)(1) remains the same. A new paragraph (ii) has been added to existing § 872.11(b) (2) and (3). This addition is the result of the following activities:

The Interstate Mining Compact Commission (IMCC), on behalf of member States, petitioned the Director, Office of Surface Mining (OSM) to initiate rulemaking procedures that would amend § 872.11(b) to preserve States' 1978 and 1979 reclamation fee allocations for an additional 3 years. This amendment would prevent the Director, OSM, from using these funds during this period, while guaranteeing their availability for States' use under approved reclamation programs. The existing rule allows the Directors to use States' allocations if they have not been granted within 3 years after allocation. OSM believes that the proposed amendment might contravene the intent of Congress as set forth in section 402(g)(2) of the Act. This section provides the Secretary with discretionary authority to utilize in any section of the country funds allocated to the States but not expended within 3 years. Recognizing the merits of the petition, however, OSM modified the draft of the proposed rules to satisfy the States' concerns without jeopardizing the Secretary's authority by adding a new paragraph (ii) under § 872.11(b) (2) and (3) to provide that funds not expended in three years will not be withdrawn from the State/Tribe if the State/Tribe has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

Twelve commenters requested that OSM modify the proposed rules to insure that the States are able to obtain allocated State funds when there have been unavoidable program delays and grants have not been made for the full amount of funds allocated to the States. OSM's response is that it cannot through the rulemaking process change the statutory authority provided to the Secretary in Section 402(g)(2) of the Act. Therefore, the substance of § 872.11(b)(2) of the proposed rules is retained unchanged in the final rules. It should be emphasized, however, that the Secretary may choose not to exercise this authority.

One commenter stated that the language proposed in § 872.11(b)(2)(ii) was unnecessary, burdensome, and duplicative and recommended that the following clause be added:

"(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities; provided that unavoidable delays in program approval shall not be considered avoidable delay."

OSM's response is that it has retained the substance of the proposed language in the final rules on the basis that this language clearly defines the conditions under which OSM will not withdraw granted funds and does so without jeopardizing the Secretary's authority.

Section 872.11(b)(3). The term "Indian lands" was changed in error to "Indian reservation" in earlier drafts. This error was corrected in these rules. One commenter suggested that use of "Indian lands" instead of "Indian reservation" is not accurate. See the preamble to Part 888 for a discussion of use of "Indian lands" as opposed to "Indian reservations". OSM has decided to continue to use the term "Indian lands" since Congress has not decided the question of the jurisdictional status of Indian lands outside the exterior boundaries of the Indian reservations, and because section 710 of the Act uses the term "Indian lands" in discussing the jurisdictional question.

Section 872.11(b)(5). Paragraph (b)(5) has been changed in the proposed rules to reference the applicable statutory provisions rather than cite specific uses. One commenter requested revision of the rules to clearly specify how the "Federal share" funds are to be used and to maintain complete disclosure and accountability for such expenditures. OSM's response is that it recognizes that the changing character of the AMLR program resulting from State assumption of AMLR responsibilities, together with Congressionally requested reductions in the number of AMLR delivery mechanisms, has resulted in a need to clarify policy. These policies and procedures which provide for the use of "Federal share" moneys will be developed. OSM anticipates developing and publishing new policy statements before the end of 1982. Accordingly, no change has been made in the final rule.

One commenter suggested that the language used in proposed § 872.11(b)(5) would allow the Director to recommit funds withdrawn from the State back to that State to expend under Section 401(c)(8) of the Act and that this is

clearly not the intent of Section 402(g)(2). This commenter suggested that the language should be amended to avoid potentially endless cycling of funds back into State allocations. OSM has retained unchanged the language of the proposed rule in the final rules because, in OSM's view Section 402(g)(3) of the Act allows the Secretary to expend discretionary moneys on specific reclamation projects which are considered the best means of accomplishing the objectives of the Act. The Secretary could decide on a case-by-case basis, regarding the propriety of disbursements to a particular State to accomplish the purposes of the Act. No endless cycling of funds would occur.

One commenter stated that the best means for reclaiming land in the State of Illinois is through the State program and that this significant determination should be published for public comment. OSM's response is that this determination will be considered by the Secretary in making decisions regarding where and how discretionary funds can be best utilized.

One commenter suggested that proposed § 872.11(b)(2)(ii) leaves too much discretion because "reasonable effort" and "unavoidable delay" are left open for interpretation. OSM's response is that the broad range of possible efforts and possible delays which may be experienced among the States and Indian tribes requires individual analysis by OSM based on a careful review of the facts. For this reason, the proposed language has been retained unchanged in the final rule.

Section 872.11(c). One commenter suggested that the use of fund moneys should be clearly defined in the rules as follows: "(c) Moneys deposited in the State Fund shall be used to carry out the reclamation plan approved under 30 CFR Part 884." OSM agrees and has made the suggested change for clarification. OSM has expressed the intent of the suggested language as follows in the final rule: "(c) Money deposited in State or Indian Abandoned Mine Reclamation Funds shall be used to carry out the reclamation plan approved under 30 CFR Part 884 and projects approved under Part 888."

Sections 872.12 and 872.13 (State and Indian Abandoned Mine Funds). These sections were combined in the proposed rules into § 872.12 to eliminate duplication. Also, extraneous language was deleted. No changes have been made in the final rule.

One commenter suggested deleting the requirement in proposed § 872.12(a) to manage funds in accordance with OMB Circular A–102. OSM's response is that the Circular A–102 was required by the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101) and has therefore been retained in the final rules.

Part 874—General Reclamation Requirements

Part 874 sets forth requirements relating to project eligibility and reclamation objectives and standards that are applicable to the federal government's direct reclamation activities. All references to State and Indian reclamation programs have been deleted from Part 874 in the final rules because Title IV of the Act clearly sets forth the reclamation requirements binding on these programs.

Section 874.1 (Scope). One commenter noted that proposed § 874.1 incorrectly indicates that Part 874 establishes requirements for project selection and evaluation standards which the proposed rules deleted. OSM agrees that it inadvertently retained the reference to project selection and evaluation standards in the proposed rules. Section 874.1 has accordingly been modified in the final rules to indicate that the scope of Part 874 is establishing land and water eligibility requirements and reclamation objectives and priorities.

Section 874.11 (Applicability) was modified in the proposed rules to limit Part 874 to those programs administered by OSM or as part of the Rural Abandoned Mine Program (RAMP). One commenter found the language of proposed § 874.11 to be "somewhat confusing" and requested that a statement be added that specifically excludes the States from the purview of Part 874. OSM does not agree since all of the parts that constitute Subchapter R and their respective preambles have applicability sections that indicate what programs are specifically covered by each part.

Two commenters opposed the deletion of the State/Indian AMLR programs for proposed § 874.11 for different reasons. The first commenter indicated that Part 874 must apply to the States because the eligibility restrictions set out in existing § 874.12 apply to State and Indian programs since they arise under Section 404 of the Act." The Secretary is charged by Section 201 (c)(2) of the Act with promulgating regulations to carry out the provisions of the Act and "the State program eligibility regulations must be consistent with those in Section 404 in order to be approvable under Section 405(d)." This commenter contends that it is "insufficient response by OSM to state that since the Act requires it, OSM need not repeat it in regulations." This commenter additionally believes that the Secretary has a "responsibility to interpret the congressional mandate, to implement rather than echo, and to enforce the Act, including establishing criteria for State programs." This commenter concluded by requesting that it should be specified in this rule that the State programs must restrict lands and water eligible "consistent with § 874.12 and Section 404 of the Act. OSM disagrees that the State/Indian programs must be included in Part 874 because Section 404 of the Act is a clear mandate that does not need interpretation or repetition. One of the main objectives of this revision to Subchapter R is to eliminate duplication.

It is unnecessary to include the language of the Act in these rules. It is clear that State/Indian reclamation programs and grants cannot be approved by OSM unless AMLR projects meet the eligibility requirements of Section 404 of the Act.

The second commenter opposed the deletion of the State/Indian AMLR programs from proposed Part 874 because the "purpose of Part 874 was to provide uniform reclamation standards and objectives." The result of the deletion will be "a Federal standard and 29 State standards with a wide range in quality of completed reclamation." This commenter also believes that, if States and Indian tribes are allowed to develop their own standards, an area reclaimed under one program could be eligible for reclamation under a program with higher standards.

OSM does not agree with the commenter because it must implement the intent of Congress which requires that the State/Indian tribes that meet and maintain the standards of Title IV of the Act be given primary responsibility in administering the abandoned mine land reclamation program for their jurisdiction. OSM, under Section 405(i) of the Act, is charged with monitoring the progress and quality of the State/Indian reclamation programs and will ensure, through its oversight policy, that the State/Indian reclamation programs meet the objectives and standards of Title IV of the Act. Although the reclamation standards in existing Part 874 were deleted in the final rules and OSM recognizes that the quality of reclamation programs may now vary somewhat, OSM believes that giving the States primacy is consistent with the intent of Congress and will still result in an orderly reclamation effort of abandoned mine lands without duplicaton of effort. The States will have primary authority for establishing priorities and Federal projects will only be undertaken after consideration of

those priorities and negotiations with the States. Based on such factors, OSM believes that there will be no overlap of programs or duplication of effort.

This commenter also requested that, if the recommendation to not delete the States/Tribes from the purview of Part 874 is rejected, OSM delete the RAMP program from proposed Part 874. The reason given is that Section 406 of the Act has "considerably more detailed requirements for the RAMP program than are listed in Part 874," and, as stated in Section 406 of the Act and existing § 872.1(c), the "regulations for implementation of the Rural Lands Reclamation Program are the responsibility of the Secretary of Agriculture." Moreover, this commenter contends that everything contained in proposed Part 874 is already incorporated in the RAMP rules and program and, therefore, if the States/Tribes are deleted, Part 874 is only needed for OSM's reclamation program.

OSM disagrees with the commenter because it considers Part 874 to be applicable to RAMP since Section 406 of the Act does not exclude RAMP from the provisions of Title IV or these rules. Accordingly, no change has been made in the final rules. Moreover, RAMP is a Federal reclamation program and cannot be excluded from the requirements of Part 874 like the States/Tribes to which the Secretary can give primacy under Section 405 of the Act.

OSM also believes that there should be a common standard for the Federal reclamation programs and centralization of program priorities to avoid duplication of effort and waste of limited funds.

RAMP has several features that set it apart from other Title IV reclamation programs, such as cost sharing formulas, acreage limitations, contractual land use convenants, Federal lands exclusion, and low priority projects. These features make RAMP more exclusive and less widely applicable than the other Title IV reclamation programs.

To the extent that priority one and two projects are identified by RAMP officials, OSM believes that such projects should be referred to the States for ranking and selection among all other eligible projects of the same priority for annual AMLR grants. This will ensure that the limited AMLR funds are utilized in the most cost efficient and timely manner, and it will avoid duplication of effort between State and Federal programs. In addition, it is consistent with this Administration's efforts to provide the States with primary responsibility for implementing and administering this type of program. Finally, it will allow RAMP to focus its attention on accomplishing the environmental projects (i.e. erosion control and conservation and development of soil and water resources) set out in Section 406 of the Act.

Existing § 874.12 (Eligible lands and water) has been modified in the proposed rules to apply only to eligible coal land and water. Two commenters requested that, for the sake of increased clarity, the title and first phrase of the section should have the word "coal" inserted to clearly distinguish this section from noncoal requirements. OSM agrees and has inserted the word "coal" into § 874.12 of the final rules.

One commenter requested that proposed § 874.12 be amended to make clear the "broad scope of eligibility specified in Section 404 of the Act, including consideration of fund money for facilities necessary to maintain an acceptable level of reclamation." Since the language and intent of Section 404 are clear and OSM wants to avoid duplication of the words of the Act in these rules, it has decided not to amend this section in the final rules.

Section 874.13 (Reclamation objectives and priorities) was modified in the proposed rules to exclude State and Indian reclamation programs. One commenter requested that the reference to the "Final Guidelines for Reclamation Programs and Projects," be deleted because the States should be permitted to establish their own criteria for reclamation project accomplishments. OSM's response is that Part 874 does not apply to the State/Tribal reclamation programs and therefore it is not necessary to delete the reference to the "Final Guidelines."

One commenter recommended that proposed § 874.13 be amended to include the following: "That one of the highest priorities of the coal States be to utilize every method available to recover incidental coal and, in every case possible, to include Priority III highwalls which are in close proximity to Priority I and II sites in the project parameters, using Extended Depth Secondary Recovery techniques to maximize coal recovery and minimize surface disturbance." OSM cannot accept this request since it would amount to an endorsement of a specific method of incidental coal recovery. Such an endorsement is beyond the OSM's responsibility.

Section 874.14 (Reclamation project evaluation) was deleted in the proposed rules because the State primacy provisions of Section 101(f) and Section 405(d) of the Act give States responsibility for project evaluation under approved reclamations programs. One commenter opposed this deletion because the Secretary has the responsibility for assuring that State programs are in compliance with Section 405(a) of the Act. The Secretary is obligated to monitor the State programs under Section 405 of the Act and to do this he must be sure that the States have criteria for prioritizing reclamation projects consistent with Section 403 of the Act. This commenter contends that "monitoring after the fact" is not acceptable under Title IV of SMCRA. It is OSM's position that the State primacy provisions, Section 101(b) and Section 405(d) of the Act, give States the responsibility for project evaluation under approved State reclamation programs. All State programs must, therefore, contain provisions for project evaluation. The Secretary is only responsible for monitoring, under Section 405(i) of the Act, the progress and quality of the State programs and is, therefore, not bound to promulgate rules governing project evaluation for the States. The Secretary approves State standards for project evaluation under § 884.13. If the States/Tribes do not meet their approved project evaluation standards, then the Secretary can, under Section 405 of the Act, withdraw his approval of the State/Tribal reclamation program. Accordingly, no change was made in the final rule.

Part 875—Noncoal Reclamation

Existing § 874.12(b) has been redesignated as Part 875 in the proposed rules to clarify requirements for noncoal mined lands. Part 875 establishes requirements for reclamation of noncoal mined lands and water conducted under Title IV by State and Indian Reclamation Programs.

Section 875.1 establishes the scope of Part 875 as the land and water eligibility requirements for noncoal reclamation.

One commenter suggested there is a need for definition of "noncoal reclamation" and "noncoal lands" because it is unclear whether this part refers to lands affected by coal mining, but not actually mined, or to lands mined for minerals other than coal. OSM meant proposed Part 875 to apply to lands mined for minerals other than coal since Part 874 applies to lands mined or affected by coal mining activities. For clarity, OSM has decided to include new § 875.11 (Applicability) in the final rules.

Proposed § 875.12 establishes the eligibility requirements for noncoal mined lands and water. OSM reviewed the legislative history of Section 409 and concluded that Congress intended that

the eligibility requirements for noncoal reclamation be consistent with the statutory eligibility requirements contained in Section 404 of the Act (30 U.S.C. 1234) for coal mined lands and waters. Since the source of funds for all reclamation conducted under Title IV of the Act comes from a fee collected from coal mine operators, less stringent requirements for noncoal reclamation cannot be logically justified in fairness to the coal mine operators. Moreover, there is no basis in the legislative history of Section 409 (30 U.S.C. 1239) to justify a conclusion that Congress intended to allow funding for reclamation on noncoal mined lands and water abandoned after August 3, 1977.

Proposed § 875.12(c) was necessary to clarify the meaning of the words "continuing responsibility" in Section 404 (30 U.S.C. 1234) of the Act. Continuing responsibility will be determined by State statutes and not by common law. In addition, the language was broadened in the proposed rules to allow lands to remain eligible if a forfeited bond is insufficient to conduct adequate reclamation. This is consistent with the interpretation of "continuing responsibility" as applied to coal mined lands.

One commenter suggested that proposed § 875.12 be amended by requiring a finding, before a noncoal reclamation project is approved, that the land or water condition endangers life and property, constitutes a hazard to public health and safety, or degrades the environment. The suggested amendment would ensure that the primary goal of Title IV to reclaim abandoned coal mined lands is met. OSM does not consider the suggested amendment to be necessary because proposed § 875.13 (Requirements for noncoal reclamation) requires that the provisions of Section 409 of the Act be met before a noncoal project is eligible for reclamation. Section 409 of the Act clearly requires a finding that a noncoal project must constitute a condition that endangers life and property, is a hazard to public health and safety, or degrades the environment before it is eligible for reclamation assistance under Title IV of SMCRA. Since Section 409 is clear and incorporated by reference into § 875.13 of the final rules, it is not necessary to repeat its mandate in the body of the regulation.

Two commenters suggested that proposed § 875.12 be revised to provide for funding of noncoal projects only when there is both a necessity to protect the public health and safety and when all coal mine reclamation is accomplished. The commenters feel that since the reclamation fee which finances the AMLR program is collected from coal mine operators, it is "only fair" that coal mine reclamation be completed before any noncoal mine reclamation is undertaken. OSM cannot accept this suggestion because it is clearly contrary to the explicit wording and intent of Section 409 of the Act. As indicated in the previous paragraph, Section 409 and Part 875 set forth the conditions under which lands mined for minerals other than coal can be reclaimed under the provisions of Title IV of SMCRA.

Proposed § 875.13 is included to clarify that the requirements for noncoal reclamation are limited to those contained in Section 409 (30 U.S.C. 1239) of SMCRA. No change has been made in the final rules.

Part 877—Rights of Entry

Part 877 establishes procedures for OSM to obtain entry on private lands for purposes of carrying out reclamation activities. The rules state a policy preference for entry under a written consent from the owner rather than under the police powers provided in Sections 407 (a) and (b) and 410(b) of the Act. Nonconsensual entry will be undertaken only after reasonable efforts have been made to obtain written consent.

Section 877.1 (Scope). The final rules reinstate the reference to States or Indian tribes in the existing rules under an approved reclamation program because this requirement is included in section 407 of the Act. The proposed rules had deleted the requirement for States and Indian tribes to effect police power entry on private land for reclamation.

Four comments were received and are discussed as follows:

One commenter supported the emphasis on a closer working relationship with landowners in obtaining entry on private lands for reclamation.

Three other commenters pointed out that Section 405(d) of the Act provides that States are required to adopt provisions in accord with Title IV and in the specific case of entry under Section 407, States should be able to enter upon private lands by invoking the State's police power to protect the public health and safety. These commenters pointed out that the deletion of the States and Indian tribes from this section of the proposed rules was improper.

Under the circumstances, OSM agrees that the requirements of Part 877 apply to the States and Indian tribes as well as to OSM. Consequently, § 877.1 (Scope) was changed in the final rules to include States and Indian tribes under an approved reclamation program. However, final rule § 877.14 concerning emergency reclamation applies exclusively to OSM, its agents, employees and contractors.

The broad use of police powers for entry on private lands, authorized in the Act, is not controverted by stating a preference for landowners' consent for entry on private lands. OSM has taken a judicious approach to the use of police power entry on private lands. The States or Tribes are free to invoke the use of police powers to effect nonconsensual entry consistent with the conditions that threaten the public health or safety and the provisions of the State's statutes for use of police powers.

Section 877.10 (Information Collection). The information required by Part 877 is being collected to meet the mandate of Seetion 407 of the Act, which provides for use of the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory. The information collection requirements contained in § 877.11 and § 877.13(b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029–0055.

Section 877.11 (Written Consent for Entry). One commenter recommended that the wording of the second paragraph of § 877.11 be changed to be consistent with the wording in proposed § 879.12(c). This would provide for reasonable efforts to get landowner consent for entry before nonconsensual entry by exercise of police power. Proposed § 879.12(c) requires reasonable efforts be made to purchase before condemnation is begun. OSM has accepted the comment in the final rule as an improvement over "due care and deliberation".

Section 877.13 (Entry and Consent to Reclaim). Six comments were received on this proposed section.

One commenter suggested that proposed § 877.13(a) should include noncoal as well as coal mining. This was not done because noncoal reclamation is treated separately in Part 875 of this chapter.

One commenter opposed the requirement for written findings in proposed § 877.13 (b) and (c) where nonconsensual entry will be made. The reason advanced was that Congress did

not specify that the findings be in writing. OSM's response is that due to legal considerations, a written record should always be made to preserve a record of circumstances surrounding any nonconsensual entry. No change was made in the final rule.

One commenter suggested that landowner consent in proposed § 877.13 (b) and (c) should not be required for entry to conduct studies or exploratory work on private lands and that there is no requirement in the Act for findings of adverse effect to be made in advance of entry for studies or exploratory work. OSM's response is that due to legal considerations, a written record should be made in order to preserve the record of circumstances surrounding nonconsensual entries. Accordingly, the final rule remains unchanged from the proposed rule.

One commenter suggested that the phrase "of 5 working days" be inserted in proposed § 877.13(c) for notice to property owners after entry for emergency work. The phrase was not added in the final rule because entry for emergency reclamation is treated in § 877.14.

A fifth comment noted that Paragraph (c) of proposed § 877.13 was inconsistent with Paragraphs (a) and (b) and should begin: "(c) If consent is not obtained * * *" This has been included in the final rule.

Section 877.14 (Entry for Emergency Reclamation). One comment was received on proposed § 877.14 suggesting that since the proposed notice requirements cause delay, all written requirements should be deleted for emergency situations.

As written, final rule § 877.14 does not require landowner's consent but does state that OSM shall make reasonable efforts to notify landowners consistent with the emergency conditions at hand. OSM's successful experience in managing emergency situations supports the rule as written. Written findings are essential for record purposes and create no delay in emergency response capability.

Part 879—Acquisition, Management and Disposition of Lands and Water

Proposed Part 879 reflects several provisions of Title IV of the Act concerning the acquisition, use, and disposal of lands and water for emergency and reclamation purposes. States raised two general issues concerning this part of the proposed rules. These were: (1) Whether acquired land must serve recreation and historic purposes, conservation and reclamation purposes or provide open-space benefits exclusively and (2) what constitutes permanent facilities as mentioned in proposed § 879.11 of the rules.

Sections 407, 409, and 410 of the Act provide that reclamation can be done on private property. Land acquisition by OSM, States and Indian tribes will be restricted to those situations where reclamation cannot be done without acquiring the land. In those cases, the Act spells out certain requirements; that is, the land will serve recreation and historic purposes, conservation and reclamation purposes or provide open-space benefits. This does not mean that the land must serve all these purposes or only these purposes. It is also not necessary that the total area continue to be used exclusively for reclamation purposes for an indefinite period of time. Land can be acquired for a variety of future uses. Multiple-use purposes should be encouraged, so long as such uses are not inconsistent with the reclamation objectives and as long as one of the uses meets one requirement in section 407(c) of the Act. Accordingly, the final rule remains unchanged.

The States asked that OSM provide a definition of "permanent facilities." This definition has been included in proposed and final rule § 870.5. The term permanent facilities is given an expansive connotation and is defined in the final rule to mean any structure that is built, installed or established on the surface.

Two comments were received on proposed § 879.11. One comment endorsed the interpretation that land use following reclamation will fulfill the requirements of section 407(c) of the Act if it meets any one of the recommended uses. The other comment endorsed a more restrictive interpretation that acquired land must meet only the beneficial uses of the Act; that is, recreation and historic purposes, conservation and reclamation purposes, or open-space benefits. We do not agree with a restrictive interpretation of land uses following reclamation. So long as one of the purposes of the Act is met, other land uses should be allowed. Section 407 of the Act does not restrict land uses and the word only is not used. One of the purposes of the Act, as set out in section 102, is to reclaim land for beneficial uses, not to restrict its use. Accordingly, final rule § 879.11 remains unchanged.

Section 879.1 (Scope). The proposed section has been modified to include emergency projects and to insure that State and Indian tribe acquisition procedures are included in their reclamation plans.

One comment pointed out a redundancy in proposed § 879.1 in that the word "State" before reclamation program was unnecessary. This has been corrected in the final rule.

Section 879.10 (Information Collection). The information required by Part 879 is being collected to meet the mandate of Section 407 of the Act, which requires that a State/Indian tribe include in its State reclamation plan assurances that the aquisition, management, and disposition of eligible lands and water for reclamation and other designated purposes will be accomplished in a manner prescribed by the Act. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to be in compliance. The obligation to respond is mandatory. The information collection requirements contained in § 879.11(b)(1), (b)(2), and (e)(3), § 879.12(a), § 879.13(b), and § 879.15 (a) and (b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029–0056.

Section 879.11 (Land Eligible for Acquisition). This proposed section included a new paragraph 879.11(b)(2). OSM reexamined Section 407(c)(3) of the Act stating "or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices" and concluded that it was not meant to apply to coal refuse piles in particular, but rather to emergency situations. Proposed § 879.11(b)(2) provides the Secretary with the authority to acquire land in emergency situations where no other viable means are available to abate an immediate threat to human life.

One comment on proposed § 879.11(b) indicated that acquiring property in emergencies was not intended by the Act and that policy power entry was the means to use in emergencies. OSM's response is that authority to acquire land in emergency situations is given in Sections 407(c)(3) and 412(a) of the Act. This authority provides the Secretary additional flexibility in abating emergency situations. Accordingly, no change has been made in the final rule.

Examples of permanent facilities in existing rule § 879.11(a)(2) were deleted in the proposed and final rule since they are now included in a definition section in final § 870.5. Existing § 879.11(c) was changed in the proposed rule to refer to Section 407 of the Act rather than to repeat the statutory requirements. Existing § 879.11(d) was modified in the proposed and final rule to change a reference from § 874.12(b) to Part 875, because reclamation on noncoal areas is now covered in this new part.

Two comments were received suggesting that the word "and" be

changed to "or" in proposed § 879.11(a)(1) if it is to be construed that acquired lands can serve any one of the purposes listed. OSM's response is that the word "and" is correct because it follows the language in Section 407(c) of the Act. A thoughtful reading will lead to the conclusion that any one of the purposes listed can be reasonably inferred. To require that any one tract of land will serve all the listed purposes would be unrealistic. Accordingly, no change was made in the final rule.

Two comments concerned proposed § 879.11 (c) and (d). One concerned an incorrect reference to another section. This has been corrected in the final rule. The other asked if these two sections were restricted to OSM. OSM's response is that proposed § 879.11(c) is limited to OSM because the Act limits land acquisition for housing purposes to the OSM. No change in the final rule has been made. In proposed and final § 879.11(d), land acquisition for noncoal reclamation purposes includes States and Indian tribes.

Section 879.12 (Procedures for Acquisition). OSM emphasizes that there are basically two requirements for land acquisition: (1) Compliance with Section 407(c) of the Act; and (2) compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and Department of the Interior rules implementing this Act. States and Indian tribes may use procedures already in place as long as they are in compliance with items (1) and (2) above. There were no comments on this section. Accordingly, no changes have been made in the final rule.

Section 879.13 (Acceptance of gifts of land). Existing paragraphs (a) and (b) of § 879.13 were rewritten in the proposed rules to eliminate Federal requirements governing acceptance of gifts of land. If the gift is to the Federal government, the donor must comply with existing Department of the Interior rules. If the gift is to States of Indian tribes, the gift must be consistent with existing State or Indian tribal laws. No changes have been made to the final rule.

Two comments concerned proposed § 879.13. Both comments noted that this section did not reflect the fact that land donations must meet the same criteria as any other land acquisition as well as the criteria for donations. This has been clarified in the final rule to show this requirement.

Section 879.14 (Management of acquired lands). One comment stated that the proposed rule should specify that moneys collected for user charges should be returned to the fund. This has been inserted in the final rule.

Section 879.15 (Disposition of reclaimed lands). Six comments were received. Three supported the changes in the proposed rules. Two others pointed out redundancies in wording. One stated that title to acquired land in proposed § 879.15(b)(2) should revert to OSM since the State would not want a reverter of title if it was not involved in the project. OSM's response is that title can only revert to the grantor under a deed. Consequently, if the State was not the grantor, it could not take title under a reverter. Accordingly, no substantive change has been made in the final rule.

Part 882—Reclamation on Private Land

Part 882 states the authority of OSM, States and Indian tribes to perform reclamation on private lands. It establishes a requirement for appraisals of the land value in lien situation before and after reclamation work consistent with uniform appraisal standards. The rules also establish conditions and procedures for the filing of liens on private property equal to the increase in fair market value that results from reclamation work under certain circumstances.

Section 882.1 (Scope). This § 882.1 is retained as it appears in the present rules.

Section 882.10 (Information collection). The information required by Part 882 is being collected to meet the mandate of Section 408 of the Act which establishes conditions for the application of liens and procedures for filing liens on private property. This information will be used by the regulatory authority to insure that the State/Indian tribe has sufficient programmatic capability to file liens under certain conditions. The obligation to respond is mandatory. The information collection requirements contained in § 882.12(c) and § 882.13(b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1029–0057.

Section 882.12 (Appraisals). In proposed § 882.12, OSM changed the requirement in the original rule requiring appraisals on all projects to one requiring appraisals only when the possibility of a lien cannot be disregarded. Nine comments were received regarding this section. Two issues are involved. The first is whether a real estate appraisal is required as the basis for waiver of lien for every reclamation project. The second issue is whether an appraisal should be conducted before or after completion of the project. Three commenters believe the modified requirement in the proposed rule for appraisal is too restrictive; two commenters believe it is too permissive, and one favors the modification. Two comments concern the requirement for an appraisal upon completion of reclamation. One comment opposes use of an independent appraiser. One commenter points out the redundancy of proposed § 882.12(c). These comments are discussed below.

Three commenters expressed concern that the proposed § 882.12 did not adequately clarify the existing regulatory language with respect to the requirement for appraisal in connection with a possible lien. They contend that there will be circumstances under which it can be determined, without benefit of an appraisal, that there will be a significant increase in the value of the property after reclamation or that the "reclamation primarily benefits health, safety, or environmental values of the greater community." Under such circumstances, they believe that appraisals are unnecessary and wasteful. OSM agrees that there will be many situations in which appraisals are unnecessary. Indeed, that is the reason the wording was changed in the proposed rule to require appraisals only when property may be subject to a lien. When the official responsible for the reclamation program can determine from available evidence that the primary benefit from reclamation is to the greater community or that it is clear that there will be no significant increase in market value, then the property is not subject to a lien and no appraisal is necessary. When there is any doubt that these determinations can be made without the basis of appraisals, then it must be considered that the property may be subject to a lien and appraisals must be obtained. In such cases, the appraisals would provide evidence supporting waiver of a lien when they show that no significant difference in value exists.

On the other hand, one commenter believes "the cart has been placed before the horse," that the only valid method of implementing Section 408(a) of the Act is to determine, by appraisal, if there is or is not a significant increase in property value. Three years of program experience have demonstrated that in many projects, prior to start of reclamation, it was clear that either the primary benefit accrued to the public good or there was no significant increase in value resulting from reclamation, or both. In such instances, a requirement for an appraisal is unnecessary to ensure that public funds are not being expended to benefit an individual property owner and, therefore, would be wasteful. For example, in a project which stops acid

mine drainage from polluting a municipal water supply, purification of a public drinking supply is the primary benefit. It may be obvious that private land adjacent to the reservoir may appreciate in value as a result of the reclamation; however, the public health of the local population or user is the element primarily benefited. Since a benefit accruing primarily to the public safety offsite is one of the justifications for waiver of lien in the existing rules, the increase in land value is secondary and no appraisal need be obtained.

Furthermore, the determination to be made is not simply whether the benefit occurs offsite. For example, in a project involving reclamation of barren, stripmined land having large, open, water-filled pits, drainage from the pits causes sediment to build up on an adjoining county road creating a traffic hazard. The offsite benefit is the permanent elimination of the traffic hazard. It must be compared to the benefit to the landowner in the form of increased land value, in order to determine where the primary benefit lies. However, the magnitude of the benefit to the owner which may result from enhanced market value may not be even reasonably estimated without appraisals. OSM, therefore, believe that the proposed rule accommodates both situations and no change in this regard is required; however, we have restructured the paragraphs for clarity in the final rule.

Two commenters recommended either deletion or modification of the last sentence in proposed § 882.12(b) to eliminate the requirement for appraisal after completion of reclamation activities when reclamation takes more than 6 months. An advantage is cited to estimating the increase in land value before the start of reclamation activities; the difference between the appraisal of the land before reclamation and after reclamation is the basis for any increase in value. OSM's own experience has shown that landowners want to know the extent of any lien which may be placed against their property. Otherwise, they are reluctant to grant permission for entry out of fear of the unknown amount of the future lien. Since OSM prefers to obtain written consent as a means for obtaining entry to reclaim, progress on some projects has been hampered.

OSM agrees that there is good reason to perform an appraisal of the market value of the land as if reclaimed, before the start of reclamation. However, the comments fail to recognize the landowner's point of view that the appraised value of the land as if reclaimed is based upon the assumption that the reclamation will be successful and enhance the value of the land. The landowner's apprehension is that the value of the reclaimed land will not increase to the extent of the appraiser's estimate. In such event, proceeds from the sale may be even less than the value of the land in its unreclaimed state. The disparity may even be greater when appreciation due to time factors has taken place. OSM has, therefore, rewritten the existing section to require another appraisal of the land as reclaimed upon completion of reclamation activities. This updated appraisal will determine if the increase in value originally estimated has actually occurred. If a lower increase in value results, it will be the basis of the amount of the lien. An appraisal showing a higher increase in value will not be used in determination of a lien because this would defeat the purpose of implementing landowner consent. Thus, landowners have greater opportunity to be involved with project issues, such as right of entry, while assuring that the determination of the necessity of a lien or the amount of the lien will be done equitably.

One commenter wants the requirement for an independent appraiser in proposed § 882.12(a) changed to permit staff appraisers of the responsible reclamation agency to perform appraisals for liens. This comment cannot be accommodated. Section 408(a) of the Act specifically requires that appraisals performed to determine the amount of a lien must be obtained from an independent appraiser.

One commenter points out that proposed § 882.12(c) pertains to liens and therefore, should be made part of proposed § 882.13. After a review of proposed § 882.13(b), OSM finds that it contains essentially the same elements as § 882.12(c). Proposed § 882.12(c) has therefore been eliminated in the final rule.

Section 882.13 (Liens). Twelve comments were received on proposed § 882.13. One commenter noted that, in situations where a lien will be filed, the landowner should be given the right to discharge or pay a lien prior to filing in the land records. The recommended language has been incorporated in the final § 882.13(b).

Three comments were received concerning the change in proposed § 882.13(a) that would give OSM, State or Indian tribe the discretionary authority to place or waive the lien. Two of these comments supported the change while the third comment argued that the use of the word "may" in § 408 of the Act limited filing to those cases where a significant increase in value results. This commenter quoted the legislative history to the effect that "a lien is to be placed on the property for the value of the work in those instances when the reclamation results in significant increases in the property value." The legislative history reflects the fact that there was discussion of liens being placed on property for the value of the reclamation. However, in the final text of the Act the Congress provided in Section 408 that the lien shall not exceed the increase in the market value of the property as a result of the reclamation. Accordingly, OSM believes that proposed and final § 882.13 correctly reflect the provisions of Section 408 of the Act and also provide guidance for waiver of lien. This commenter also disputed the proposed rule change in § 882.13(a)(2) to allow States or Indian tribes to establish abandoned mine lands liens in accordance with State laws. With regard to the priority of the lien, OSM recognizes that liens are governed by existing State and Federal laws with which there must be compliance. An example of this is the State homestead laws.

One comment noted that the tax status of landowners who benefit from reclamation activities is still in question. This issue remains unresolved at this time.

One commenter asked about the waiver of lien if the cost of filing the lien exceeds the increase in fair market value. This provision (existing § 882.13(a)(2)) was inadvertently left out of the proposed rules but has been added as § 882.13(a)(4) in the final rules.

Three comments dealt extensively with the waiver of lien provisions in proposed § 882.13(a)(3) where the reclamation will primarily benefit the health, safety, or environmental values of the greater community. These commenters made recommendations that OSM, State, or Indian tribe be allowed to make this determination in advance so that landowners will know for certain whether there will be a lien or lien waiver. We have accepted the recommendation and clarified final rule § 882.13(a)(3) to reflect the fact that this waiver can be treated in this manner.

One commenter recommended that OSM delete the requirement in proposed § 882.13(b) for filing by OSM, States or Indian tribes of an accounting of moneys expended for the reclamation work together with the lien. The reasons advanced are that providing an accounting is expensive and time consuming. Further, the Act provides

that this "may," not "shall," be done. OSM acknowledges that Section 408 of the Act provides that OSM or a State or Indian tribe "may" file a statement of these reclamation costs together with the notarized appraisals. Accordingly final rule § 882.13(b) was changed to reflect the fact that although notarized appraisals must be filed with the lien, OSM, States or Indian tribes may include a statement of reclamation costs.

Part 884–State Reclamation Plans

Part 884 establishes the content of the State plan required by Section 405(b) (30 U.S.C. 1235) of the Act.

Section 884.1 (Scope). OSM has decided to delete portions of existing § 884.1 already contained in the Act. Existing § 884.2 (Objectives) was deleted for the same reasons.

Section 884.11 (State eligibility). Section 884.11 has not been changed and remains necessary to clearly set forth the requirements of the Act.

Section 884.13 (Content of proposed State reclamation plans). Since the information collection requirements of § 884.13 now only applies to fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.)* and does not require clearance by the Office of Management and Budget.

At the request of States, existing § 884.13 was substantially modified in the proposed rules. These modifications were as follows:

—Section 884.13(a)—limits the opinion of the State's or agency's legal officer to the authority of the agency under State law to conduct the Title IV program of the Act.

—Section 884.13(c)—the word "detailed" and the phrase "but not limited to" were deleted.

—Section 884.13(c)(1)—the word "purposes" was substituted for the phrase "goals and objectives".

—Section 884.13(c)(4)—combined public participation requirements for coal and noncoal reclamation and for public participation in the preparation of the State reclamation plan and deleted specifc requirements as to how the States implement public participation.

—Section 884.13(d)—was rewritten to preclude repetitious phrases.

—Section 884.13(e)—was consolidated with proposed § 884.13(c)(4).

—Section 884.13(f)—was redesignated (e), the phrase "derived from available data" was added, and the required map scale of 1:250,000 was deleted.

—Section 884.13(f)(4)—the requirement that the State reclamation plan contain a table summarizing the quantities of land and water proposed for reclamation was deleted.

—Section 884.13(f)(5)—deleted the required narrative descriptions of: sociologic and demographic characteristics; hydrology; flora and faura; underlying or adjacent beds of commercially mineable coal and other materials and projected methods of extraction; and the anticipated benefits from reclamation.

The reasons for the above changes are discussed in the preamble to the proposed rules at 46 FR 60785–60786.

One commenter supported all the changes to proposed § 884.13 because they "aid in speeding the approval" of State reclamation plans by eliminating several unnecessary provisions with which the States must now comply.

One commenter requested that § 884.13(b), which requires a legal opinion that the designated agency have the authority under State law to conduct the program in accordance with Title IV of the Act, be deleted because "it is not required" by the Act. OSM cannot accept this comment because Section 405(e) of the Act explicitly requires that each State reclamation plan contain the "legal authority" to perform reclamation work in conformance with Title IV.

One commenter supported the proposed § 884.13(b) modification to limit the opinion of the State's or agency's legal officer to the authority of the agency under State law to conduct the Title IV program. Another commenter requested that proposed § 884.13(b) be deleted because "it is not required" by the Act. OSM cannot accept this comment because Section 405(e) of the Act explicitly requires that each State reclamation plan contain the "legal authority" to perform reclamation work in conformance with Title IV.

One commenter suggested that proposed § 884(c)(3) be amended to require that the State also coordinate its reclamation work with OSM's reclamation projects. This coordination was formally required by existing § 872.4, which was deleted. OSM agrees that the States should be specifically required to coordinate with all reclamation programs and has, therefore, amended proposed § 884.13(c)(3) to include OSM's programs.

One commenter contended that Section 102(i) of SMCRA requires that the State reclamation plan must provide for public participation and involvement in the State program operation and not just in its development and, therefore, opposed the proposed deletion of existing § 884.13(c)(7). OSM's response is that it has not deleted the requirement for public participation and involvement in the State program operation. OSM merely proposed to combine, in order to avoid duplication and to add clarity, existing §884.13(c)(7) and existing § 884.13(e) into one new proposed § 884.13(c)(4) that requires public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

One commenter contended that the requirement of proposed § 884.13(d) for a description of the purchasing, procurement, accounting system, and personnel staffing policies is "inappropriate" for inclusion in a State reclamation plan. For this commenter, these descriptions would be more appropriate in a grant agreement since then "only add bulk to the plan and very little to the comprehension of the plan by the public." OSM's response is that Section 405(e) of the Act requires that the State reclamation plan contain the State's "programmatic capability" to perform reclamation work in conformance with Title IV. OSM has decided that, in order for it to assess "programmatic capability," it needs a description of the State agency's purchasing, procurement, accounting, and personnel staffing systems. Moreover, by including these descriptions in the State plan, they will not have to be repeated every time a State requests a grant for funds to perform reclamation under Title IV. Accordingly, no change had been made in the final rules.

One commenter asked for the authority for requiring in proposed § 884.13(d)(3) that purchasing and procurement systems to be used by the agency must meet the requirements of OMB Circular A–102. OSM's answer is that the Act provides for grants to the States and all Federal grants must conform to OMB Circular A–102 under the statutory authority of the Intergovernmental Cooperation Act of 1968, Pub. L. 90–577 (42 U.S.C. 4201 *et seq.*).

One commenter objected to the inclusion in proposed § 884.13(e) of a general description of the reclamation activities to be conducted under the State plan, including known or suspected eligible lands and water within the State and a map showing their general location. For this commenter, Section 405(e) of the Act only requires the plan to generally identify the areas to be reclaimed and therefore § 884.13(e) goes beyond the scope of the Act. OSM's response is that Section 403 requires more than just a

description of the "areas to be reclaimed," but also "the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects * * *" Moreover, the Act requires that reclamation be accomplished according to the priorities set forth in Section 403. OSM has decided that in order to implement Section 405, and the requirement that it only fund abandoned mine land reclamation projects that meet the priorities of Section 403, it needs the information required by proposed § 884.13(e). Otherwise, the State would be free to select projects without meeting the Congressional mandated priorities of Title IV. Accordingly, no change was made in the final rules.

One commenter wants proposed § 884.13(f) deleted because the Act does not require the State reclamation plan to contain descriptions of the economic base, the esthetic, historic, cultural, and recreational values, and the endangered and threatened plants, animals, and their habitats. For this commenter, such descriptions are more appropriate to State grant applications. OSM's response is that the information required by proposed § 884.13(f) is needed by OSM for it to meet the mandate of Section 702 of the Act that requires its action in approving the State reclamation plan to be coordinated with the requirements of other Federal laws. Moreover, OSM believes that it is more efficient to include the required information in the State plan rather than to require the descriptions every time a State requests a grant. The State grant application can then be limited to specific project site information. Accordingly, no change was made in the final rules.

Section 884.14 (State reclamation plan approval). One commenter requested that proposed § 884.14(a) be amended to require that the Director either approve or disapprove a State plan or amendment within 60 or 90 days instead of only having to "act on the State plan or amendment in 90 days." OSM cannot accept this request since under Section 405 of the Act it must determine that a State complies with Title IV before it can approve a State reclamation plan. The failure of OSM to act within a specific time period on a submitted State reclamation plan cannot result in approval absent specific statutory authority that would so permit. OSM will strive to meet its goal of reviewing State reclamation plans within 90 days.

Section 884.15 (State reclamation plan approval). Since the information collection requirements of 884.15 apply to fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) and does not require clearance by the Office of Management and Budget.

Section 884.16 (Suspension of plan). One commenter contended that in proposed § 884.16 the OSM cannot substitute "suspension" for "withdrawal" of a State reclamation plan because "withdrawal" is required by Section 405(d) of the Act. OSM's response is that its purpose in substituting "suspension" for "withdrawal" is that it avoids the necessity of a State having to resubmit a new reclamation plan which OSM would then have to reapprove whenever OSM takes action against a State for failing to meet the requirements of either Title IV or V of the Act. OSM believes that "suspension" is sufficient to achieve the purposes of Section 405(d) of the Act. Accordingly, no change was made in the final rules.

One commenter requested proposed § 884.16(c) be amended to require that the OSM decision on suspension of a State reclamation plan be conveyed to the State by mail with return receipt requested or by registered letter. OSM does not believe it is necessary to include such wording in the final rule because on a matter as serious as suspension of a State reclamation plan, it will ensure that its decision is conveyed and received by the State in the most expeditious manner.

Part 886—State Reclamation Grants

Part 886 sets forth the procedures and requirements for annual grants to States to conduct reclamation activities under their approved reclamation plans. Based on comments received from the States on the draft of the proposed rules, OSM decided to retain the major requirements for State reclamation grants in the form of Part 886 rules rather than in a separate publication.

State commenters requested exemption from the requirements of Office of Management and Budget (OMB) Circulars A–95 and A–102. Discussions with OMB concluded that such exemptions are not permissible under the authority of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577). However, OSM has attempted to minimize the reporting requirements imposed upon the States in the administration of grants under the OMB circulars.

Section 886.1 (Scope). Proposed § 886.1 indicates that the purpose of Part 886 is to set forth procedures for grants to States having approved reclamation plans. OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819) is included in order to provide program guidance. One commenter requested that the reference to the guidelines be deleted because they do not specifically pertain to grants but rather to individual projects. OSM has decided to retain the reference to the guidelines in the final rules because they pertain to the individual projects which are the subject of the grant request.

One commenter noted that the statement in proposed § 886.1, that the guidelines should be utilized as appropriate, is confusing because the guidelines state that they apply to all projects under any program. For this commenter, proposed § 886.1 seems to imply that some guidelines might now not be appropriate to be used by a State. OSM's response is that it agrees with the commenter that the use of the word "appropriate" can be confusing. It was not OSM's intent to imply that the guidelines may not be "appropriate." OSM believes that they are appropriate whenever they are applicable to reclamation projects and should be utilized by the States. OSM intended to say that the guidelines may not be applicable to all projects in all situations but where they are applicable they should be utilized. Proposed § 886.1 has therefore been changed in the final rule to substitute the word "applicable" for the word "appropriate".

Existing § 886.2 (Objectives) has been deleted in the final rule to avoid duplication with the Act.

Section 886.10 (Information collection). The information required by Part 886 is being collected to meet the mandate of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) for the purpose of implementing the State/Indian tribes reclamation program. This information will be used by OSM to ensure that the State/Indian tribe complies with OMB Circular A–102 and sound principles of grants management. The obligation to respond is mandatory. The information collection requirements contained in § 886.15(c), § 886.17(b), § 886.18(c), § 886.23(a) and (b), and § 886.24(a) and (b) were approved by OMB under 44 U.S.C. 3507 and assigned clearance numbers 1029–0016, 1029–0017, 1029–0054, 1029–0064, 1029–0068, 1029–0070, 1029–0072 through 1029–0079.

Section 886.12 (Coverage and amount of grants). Two commenters requested that proposed § 886.12(a) be amended to

include Federal agencies as well as State agencies and local jurisdictions to which the State reclamation agency can transfer funds for services and materials provided. OSM agrees and has amended § 886.12(a) to allow transfer of funds to Federal agencies. This amendment will allow State reclamation agencies to utilize a Federal agency (for example, U.S. Forest Service or Soil Conservation Service) to carry out reclamation activities.

One commenter suggested that proposed § 886.12(b) be amended so that indirect as well as direct costs are eligible for payment of services rendered by other agencies. The OSM agrees but notes that OMB Circular A–87 must be followed. This circular allows for reimbursement for costs incurred by agencies other than the grantee and sets forth the rules and agencies other than the grantee and sets forth the rules and requirements pertaining to such reimbursement. OSM has, therefore, amended in the final rule the second sentence of proposed § 886.12(a) by deleting the word "direct" and adding as reference to OMB Circular A–87.

One commenter requested that in proposed § 886.12(b) the deleted language of the existing rule that "100 percent of the total agreed upon costs" be reincluded because the phrase makes it clear as to the funding that can be approved by OSM. OSM's response is that the language was proposed to be removed because it is redundant. Section 405 (g) of the Act states that the Secretary will grant funds for reclamation. There is no provision in the Act for a matching fund grant for reclamation as there is for land acquisition (90 percent). Therefore, it is obvious that reclamation will be funded for 100 percent of total allowable costs. Accordingly, no change has been made in the final rule.

One commenter, while supporting Executive Order 12185 (use of fuels other than petroleum or natural gas in facilities constructed with AMLR funds), expressed concern that States will have to produce a "life cycle cost analysis" for each project. OSM's response is that it does not believe that compliance with the Executive Order will be a burden to the AMLR programs since almost all projects funded will be for reclamation. Moreover, the Executive Order does not require a "life cycle cost analysis" but only to the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with Federal funds should utilize fuel other than petroleum or natural gas.

One commenter requested that proposed § 886.12(c) be amended by defining land acquisition costs to be "land costs, attorney fees, closing costs, and other related acquisition costs." OSM's response is that this amendment is not necessary. The proposal rule says that acquisition of land shall be approved for up to 90 percent of the costs. The related costs which the commenter lists are included. Otherwise, the rule would restrict approval to 90 percent of the purchase price. Accordingly, no change has been made in the final rule.

Section 886.13 (Grant period). One commenter contended that proposed § 886.13 should not be construed to allow the Secretary to withdraw funds from a State if the State has not spent the funds in a given time period. OSM cannot accept this comment because it is bound by Section 402(g)(2) of the Act, which explicitly allows the Secretary to withdraw funds from States if they have not been expended within 3 years of their allocation. The Secretary has limited his power to withdraw funds as indicated in § 872.11(b) of the final rules.

One commenter requested that proposed § 886.13(a) be amended to read "shall not exceed 1 year" instead of "shall be for 1 year." The effect of the amendment would be to allow for an administrative grant of less than 1 year and thereby allow the first administrative grant to mesh with the State's budget system. OSM agrees and adopts the amendment in the final rule since it allows for increased flexibility to the States in the administration of their reclamation programs.

One commenter requested the following rewrite of proposed §886.13(b):

"(b) The Director may extend the grant period for specific projects beyond 3 years if he finds, on the basis of information contained in the grant application that: (i) Projects to be funded will complete all the objectives of Section 403 of the Act except coal impact assistance; or (ii) an extended period is necessary to accomplish the reclamation projects; or (iii) the grant requests funding for specific projects with adequate plans, acceptable deadlines for completion, and the likelihood of specific construction contracts to meet the project deadlines; provided that (iv) sufficient funds allocated to the State or tribe under 30 CFR 872.11(b)(2) are available to complete the projects."

The commenter emphasized that he deleted the last part of § 886.13(b) which reads "including provisions for corrective works on completed projects and any additional eligible projects which may be discovered." The reason the commenter offered this deletion is that the Eastern States "may never, during the life of the OSM program, be in a position to say that they have no projections of additional eligible projects which may be discovered because of the vast magnitude of the abandoned mine problems within these States." The commenter concluded that use of the phrase in the rule will only serve "to constrain completion of projects which have projected construction periods of longer than 3 years."

OSM does not accept the suggested amendment. The reason why the existing § 886.13 was proposed to be amended is, as stated in the preamble to the proposed rules (46 FR 60786), to address a petition to amend the grant period filed by the State of Wyoming. This petition requested that the project grant period be extended beyond 3 years if the objective of Sections 403 and 409 of the Act are completed. The effect of this extension would be to allow States to obtain grant funds for coal impact assistance under Section 402(g)(2) of the Act even though the last remaining priority reclamation projects of Sections 403 and 409 of the Act have not been actually completed provided that the conditions listed in § 886.13(b) of the final rules can all be met.

The effect of the amendment which the commenter now proposes would be to extend the provision for grant funding beyond 3 years for all grants that meet any of the conditions of § 886.13(b) instead of only those grants which seek funding for coal impact assistance in States which have commenced work on the last of the priority reclamation projects required by Sections 403 and 409 of the act and which meet all the conditions of § 886.13(b).

OSM has decided that the suggested amendment which the commenter offers is not necessary since grant extensions can already be obtained under the provisions of final § 886.17. The purpose of proposed § 886.13(b) is to facilitate the consideration of coal impact assistance projects which would otherwise be delayed if all Section 403 and 409 reclamation projects had to be totally completed. The commenter's amendment is unacceptable because it would effectively avoid the provisions governing grant extensions contained in § 886.17 and the requirements of OMB Circular A–102 referenced therein. In order to avoid any possible future "misunderstandings", OSM has decided to limit § 886.13(b) of the final rules to grants requesting impact assistance

funding and to amending the rule to so indicate.

Section 886.14 (Annual submission of projects). One commenter supported proposed § 886.14 because OSM decided to limit the information requirements to Section 405(f) of the Act. Two commenters opposed proposed § 886.14. The first commenter opposed the rule because he contends that Section 405(f) of the Act only applies to annual grant applications, the information required by Section 405(f) will "not be available thirty months in advance," and this information is not needed by OSM to justify its requests to Congress for appropriations for the State reclamation projects. OSM does not agree with this comment for the reasons which follow. First, OSM believes that it can require the information listed in Section 405(f) prior to a request for assistance from a State with an approved reclamation program because Section 405(b) of the Act entitles the Secretary to obtain information which is necessary to fulfill responsibilities under Title IV of the Act. Second, OSM does not require the information contained in Section 405(f) "thirty months" in advance. Section 886.14 specifically indicates that the schedule for providing the information shall be determined by OSM on an annual basis. Third, as indicated in proposed § 886.14, OSM does need its information in order to justify to the Congress its requests for appropriations to fund the State reclamation programs and projects. In addition, OSM needs the information contained in Section 405(f) before the annual grant submission in order to justify its budget request to the Office of Management and Budget. It should be noted that proposed § 886.14 seeks the cooperation of the States and only asks for estimates which can be refined when the States actually apply for reclamation project assistance. Without some general description of proposed projects and estimates of reclamation benefits, such as number of acres to be restored and costs of reclamation projects, OSM will not be able to justify its funding requests with the consequent detriment to the State reclamation programs' need for reclamation assistance. Accordingly, no change has been made in the final rules.

The second commenter opposes proposed § 886.14 for the same reasons as the first and, in addition, contends that it is "virtually impossible for any State to provide the details of Section 405(f)" 22 months before it submits its annual grant application." This commenter also offers substitute language as follows:

> The agency shall cooperate with the Office in the development of advance budget estimates for use by the Director in the preparation of the request for appropriation of moneys from the Fund. The schedule for such estimates shall be determined by OSM on an annual basis. Funds required to collect and submit data under this section may be included in administrative grants under 30 CFR 886.12.

OSM does not accept the comment or substitute language because, as indicated in the previous paragraph, it is only requesting estimates and not, as this commenter contends "details" of the information contained in Section 405(f) of the Act. OSM notes that it has not required the estimates of Section 405(f) 22 months in advance, as the commenter contends, but will cooperate with the States in preparing an annual annually arriving at a schedule for submission of the needed estimates. OSM does not believe that the requirements of § 886.14 are a burden on the States since it will, as indicated in § 886.14, reimburse the States for the costs of obtaining the estimates.

Section 886.15 (Grant application procedures). One commenter requested that proposed § 886.15(a) be changed to limit the time in which OSM has to act on a grant application to 60 instead of 90 days. For this commenter, 90 days is too long because the State's abandoned mine land staff and their work activities are dependent on the approval of the grant application. In addition, if the State had to amend the application, that "would mean at least another 30 days, resulting in more than a 4-month delay." OSM response is that it needs 90 days in which to act upon a grant application. OSM will attempt to act upon grant applications as rapidly as possible. OSM suggests that States can avoid delay by working closely with OSM during the developmental stages of the application so that the grant application is complete and adequately supported and thus facilitate OSM's review and processing. Moreover, OSM strongly encourages the States to submit their grant applications more than 90 days before existing grants expire so that the continuity of their staff work will not risk interruption.

One commenter wants proposed § 886.15(a) to be amended to require OSM to approve or disapprove a grant application in 90 days instead of having to act on a grant application in 90 days. OSM cannot accept this amendment because the Act does not allow failure to act on a grant application within a specified time period to be construed as either approval or disapproval of a grant. Federal funds cannot, absent specific statutory authority, be committed by default, but rather require a determination of the validity of their use.

One commenter requested that a time period be placed in proposed § 886.15(a) on the preparation of the grant agreement. OSM does not believe that this is necessary since it construes the 90-day period in which it has to act on a grant application to include the preparation of the agreement. Accordingly, no change has been made in the final rule.

One commenter requested the following changes in proposed § 886.15(d): (1) OMB Circular A–95 not be required, (2) the feasibility analysis be removed, and (3) the requirement for an environmental assessment for each project be deleted. The commenter wants compliance with OMB Circular A–95 not be required since the Act "assigns moneys to the different organizations conducting AML works," the Act already requires States to coordinate with other agencies, and provides for public participation. OSM cannot accept the commenter's deletion of Circular A–95 from proposed § 886.15(d) because it is required of all Federal grants by Section 401 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577). As for the commenter's second request that the "feasibility analysis" be removed, there is no requirement in proposed § 886.15(d) for a "feasibility analysis." The commenter also requested that the requirement for an environmental assessment be removed. OSM's response is that § 886.15(a) does not require environmental assessments. Environmental assessments are a requirement of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–47).

One commenter requested that proposed § 886.15(e) be amended to read: "Review and approval of project plans and specifications by OSM will not be required." The commenter's reason is that the existing regulations conveys "the impression that a State must receive approval of project plans and specifications for a project implemented under an approved State program." OSM cannot accept the commenter's amendment because proposed § 886.15(e) implements the statutory mandate of Section 405(i) of the Act. OSM's position in proposed § 886.15(e) is that complete plans and specifications are not required before the grant is approved, but OSM may review plans and specifications after the start of the project in order to fulfill its responsibilities under Section 405(i) to monitor the progress and quality of the

State reclamation programs. Accordingly, no change has been made in the final rule.

One commenter requested that the second sentence of proposed § 886.15 end with the word "Office" because an OSM representative should only visit the project site during construction at the invitation of the State agency under current OSM oversight policies. The Office disagrees and notes that under the mandate of Section 405(i) and 412(a), it has the authority to visit project sites without the invitation of the State agency. Accordingly, the final rule remains unchanged.

One commenter indicated that proposed § 886.15(f) is unnecessary because each State plan already outlines public involvement and the regulation could be interpreted to require a very detailed description for every project. OSM disagrees Section 102(i) of the Act and OMB Circular A–102 mandate public involvement. OSM's policy is not to require a detailed description of public involvement for every project but rather a general description that meets the approved State plan's requirements and OMB Circular A–102.

Section 886.16 (Grant agreements). One commenter requested that in proposed § 886.16(a) OSM impose upon itself a time limit to prepare a grant agreement. OSM believes the commenter's request is not necessary. The grant agreement is a simple administrative and clerical procedure that will be completed as rapidly as possible. OSM has already indicated in proposed § 886.15(a) that it will act upon a grant agreement within 90 days of submittal. The preparation of the agreement normally would occur within this 90-day review period.

Two commenters requested that Federal agencies be included along with other agencies and local jurisdictions in allowing for transfers of funds under proposed § 886.16(a)(4) and (b). OSM agrees and notes that this is consistent with its decision to make the same change to proposed § 886.12(a). See preamble discussion of § 886.12(a) for reason. The final rule has been changed accordingly.

One commenter indicated that the phrase "the grant is effective" in proposed § 886.16(d) should be clarified. The commenter indicates that it could be interpreted as either that the terms of the grant become effective upon the date of the Director's signature or that the effective date of the grant is the date appearing in the terms of the grant agreement. The commenter indicated preference for the second interpretation for two reasons: 1) "the letter-of-credit cannot be processed until the Director has signed the agreement which means funds cannot be drawn down for 3 to 5 weeks" and 2) "the effective starting date of a grant should coincide with a State's payroll period." For this commenter, an effective date written within the grant agreement will allow a State better management of its program. OSM's response is that the effective date of the grant is the performance period specified in the grant agreement. The date of the Director's signature does not, therefore, determine the effective date. The States are responsible for requesting the performance period dates that best suit the management of their programs. Accordingly, this change has not been incorporated into the final rule.

Section 886.17 (Grant and Budget revisions). One commenter requested that proposed § 886.17(a) be amended to provide that if the Director does not approve or disapprove of a budget revision within 15 days of its receipt, the budget revision will be "automatically approved." OSM cannot accept this amendment because the Act does not permit it and OMB Circular A–102 requires the Federal agency to act upon budget revisions. OSM will strive to act upon all budget revisions within 15 days.

One commenter requested proposed § 886.17(b)(1) and (3) be amended to allow a State to revise its budget without OSM's approval if the increase or decrease in any project is "$10,000 or 10 percent, whichever is greater" rather than "$5,000 or 5 percent, whichever is greater." The commenter's reasons are "inflation and changes in costs due to weather" make the $5,000 or 5 percent limit too low. OSM's response is that it has reconsidered its interpretation of the Circular A–102 requirement as it applies to reclamation grants under Part 886. OSM now believes that the $5,000 or 5 percent limit, as applied to each project budgeted under a reclamation grant as proposed in § 886.17(b)(1) and (b)(3), places an unnecessary burden on the States in the management of their reclamation projects. As the commenter indicated, inflation has made the $5,000 or 5 percent limit stringent. Therefore, in order to provide the States with increased flexibility in the management of reclamation projects and to reduce the paperwork burden of having to seek written authority for minor changes in a project's budget, OSM has decided to interpret the requirement of OMB Circular A–102 to apply to the total grant amount and not to the amount budgeted for each project in a multi-project grant. Proposed § 886.17(b)(1) and (b)(3) has therefore been changed accordingly in the final rules.

OSM is amending proposed § 886.17(b)(1) to add the words "whenever the total amount of the revisions" in the final rules. The reason for this amendment is that the language is necessary to prevent a series of minor revisions of less than $5,000 or 5 percent which would accumulate to more than the $5,000 or 5 percent total limit on any grant. OSM has decided that this is not a substantive amendment and is intended to implement the requirement of OMB Circular A–102.

Section 886.18 (Grant reduction, suspension, and termination). One commenter requested that proposed § 886.18 be amended to provide that OSM's decision on suspension, reduction, and termination of a grant be a final decision which is appealable to the appropriate court of law, instead of allowing the State the right to appeal OSM's decision to the Secretary. OSM does not agree with the commenter's amendment because it believes that, in order to avoid unnecessary litigation, a State should be allowed an administrative level of appeal beyond OSM. No change has been made in the final rule.

One commenter requested that note be made in proposed § 886.(a)(2) of the extension permitted under proposed § 886.13. OSM's response is that, even though it would not reduce a grant which it had agreed to extend because it would then not be expended within 3 years, OSM has decided to accept the comment in order to achieve consistency between proposed § 886.13 and proposed § 886.18(a)(2) and the final rule § 886.13 has been amended accordingly.

One commenter contended that proposed § 886.18(a)(5) and § 886.18(a)(6) do not apply to employees of a State reclamation agency because of this chapter Part 705 only covers employees of State surface mining regulatory agencies. OSM disagrees because it is clear that in Section 517(g) of the Act of Congress intended that any State employee performing any function or duty under the Act shall not have an interest in a coal mining operation. Moreover, of this chapter 705.5 defines State regulatory authority as including responsibility for reclamation as well as regulation of coal mining. Therefore, OSM has concluded that it is the intent of Part 705 to include employees of State reclamation agencies under Part 705 provisions in restrictions on financial interests of State employees. No change was made in the final rules.

Section 886.19 (Audit). One commenter requested that in proposed § 886.19, the phrase "audit guides of the

Department of the Interior" be removed because these guides are "excessive". OSM's response is that since the publication of the proposed rules, the audit guides of the Department of the Interior have been superseded by audit guides provided by the General Accounting Office and by the "Approved Compliance Supplement" issued by the OMB. The final rule has been amended to reflect this change. OSM notes that it is bound by current U.S. Government and Department of the Interior policy on audit procedures in the administration of its grant programs.

Section 886.23 (Reports). Five commenters opposed the quarterly reporting requirements of proposed §886.23, and one commenter requested that quarterly reports only apply to States with annual grants of over $3 million. Four commenters requested annual reporting only, and two commenters requested semiannual reporting. The reasons given for opposing quarterly reports were:

(1) Quarterly reports "interfere with State programs";

(2) OSM "should be sufficiently informed" of a State's work that annual reports need only be required;

(3) Quarterly reports are "excessive";

(4) Quarterly reports are not practical because projects usually take 3 months to get started;

(5) Quarterly reports are "unnecessarily burdensome on the States and of little value to OSM" because in the "duration of AML projects there will not be significant changes on a quarterly basis;

(6) Quarterly reports are "not specifically required by OMB";

(7) The "SF 183 (form that reports drawdowns on letter of credit) is sufficient to allow OSM to monitor" the progress of the State reclamation projects; and

(8) Quarterly reports are "inconsistent" with the Federal Government's current regulatory reporting requirements."

OSM has reconsidered its proposed requirement for quarterly reports and now believes that semi-annual reports will be sufficient for purposes of monitoring the progress of reclamation performed under its reclamation grant program. In keeping with the provisions of circular A-102, may require more frequent reporting whenever the State's management system is not able to achieve the grant, an applicant or recipient has a history of poor performance, or in any other circumstances where more frequent reporting would advance the goals and objectives of Title IV of the Act.

The reasons why OSM now believes that semi-annual reports are sufficient are as follows:

(1) Under its reorganized administrative structure, OSM, through its newly created State Offices, will be able to more efficiently monitor and work with the States in accomplishing abandoned mine reclamation and therefore, frequent reporting will not usually be necessary;

(2) OSM's extensive review of State Reclamation Plans under Part 884 of this subchapter assures that States with approved abondoned mine land reclamation plans have legal and administrative capacity to accomplish reclamation in keeping with the goals and objectives of Title IV of the Act; and

(3) OSM's oversight policy will assure that States maintain progress in achieving the goals and objectives of Title IV of the Act.

One commenter requested deletion of the cumulative annual report required by proposed § 886.23(b)(2) and replacement with a requirement that the States only need report changes in status since their last report. The OSM cannot agree because proposed § 886.23(b)(2) is the annual report which the OSM must obtain from the State reclamation agencies under Section 405 of the Act.

Part 888—Indian Reclamation Programs

Part 888 establishes interim procedures for identifying and conducting needed reclamation work on Indian lands. OSM did not propose change to the existing Part 888 rules but indicated that it would consider comments. OSM has made one minor change to final Part 888. In proposed § 888.11(c), costs of projects undertaken during the interim period before final plan approval could be charged against monies allocated to the Tribes under Section 402(g)(2) of the Act. A State's or a Tribe's 50% share of the AML fund, however, cannot be utilized under the limitation in Section 405(c) of the Act until a reclamation program is approved. To rectify this situation, the final states that projects undertaken during this interim period will utilize funds from OSM's discretionary share.

Two commenters requested that the term "Indian lands" used in Part 888 be changed to "Indian reservation." These commenters contend that, while Congress deferred its decision with regard to Title V jurisdication on Indian lands until such time as the Secretary of the Interior presented draft legislation, with regard to the Abandoned Mine Land Program in Title IV, Congress was specific in its allocation of funds between the States and Indian tribes. These commenters point out that Sections 402(g)(2), 409(b) and 409(c) of the Act use the term "Indian reservation" to indicate the proper scope of allocations to Indian tribes for abandoned mine land reclamation projects. These commenters contend that it is "inappropriate" for the abandoned mine land reclamation rules to allocate funds in a manner which disregards the Act. Additionally, a distinction between "Indian lands" as used in Title V and the term "Indian reservation" as used in Title IV is reasonable given that an allocation of actual funds being currently generated is necessary under Title IV, while Congress has not yet decided to make ultimate jurisdictional decisions under Title V. OSM believes that Part 888 does not concern allocation of Abandoned Mine Land Reclamation Funds collected on either "Indian lands" or "Indian reservations" but rather the interim procedures for Indian AMLR programs. The question of the jurisdiction of the Indian tribes to regulate surface mining on Indian lands or reservations under Title V is the same for regulation of abandoned mine land reclamation under Title IV. Until Congress decides the jurisdictional issue, OSM cannot promulgate final rules governing Indian AMLR programs. The fact that Congress used the term "Indian reservation" in Sections 402(g)(2) and Section 409 with regard to allocation of funds does not, as the commenters assume, require OSM to use the same term in its interim rules on Indian AMLR programs. Since Congress has not decided the question of the jurisdictional status of Indian lands outside the exterior boundaries of Indian reservations, and because Section 710 of the Act uses the term "Indian lands" in discussing the jurisdictional question, OSM has decided to continue to use the term "Indian lands" in Part 888.

Determination Under Executive Order 12291, the Regulatory Flexibility Act and the National Environmental Policy Act

The Office of Surface Mining has examined this rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981), and determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination of the regulation revisions are as follows:

1. Approval will not have a major effect on costs or prices for consumers, individual industries, Federal, State or local Government agencies or geographic regions;

2. Approval will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act 5 U.S.C. 601 et. seq., and OSM has determined that the rule will not have a significant economic impact on small entities. The revisions do not alter the statutory fee collection requirements or the disbursement of Abandoned Mine Land funds to States or Tribes. In addition, agency policy and statutory mandates requiring the utilization of small and minority businesses, when possible, remain unchanged. The revised rules will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs and aggregate effects on small entities.

Environmental Assessment: OSM has prepared a final environmental assessment (EA) on this rule that reaches the conclusion that this rule should not significantly affect the quality of the human environment. The final EA is on file in the OSM Administrative Record, Room 5315, 1100 L St., NW., Washington, D.C. 20240.

List of Subjects in 30 CFR

Part 870

Coal mining, Reporting requirements, Surface mining, Underground mining.

Part 872

Coal mining, Indian lands, Reporting requirements, Surface mining, Underground mining.

Parts 874 and 875

Coal mining, Indians—lands, Surface mining, Underground mining.

Parts 877, 879, and 882

Coal mining, Indians—lands, Reporting requirements, Surface mining, Underground mining.

Parts 884 and 886

Coal mining, Grants programs—natural resources, Reporting requirements, Surface mining, Underground mining.

Part 888

Coal mining, Indians—lands, Surface mining, Underground mining.

Effective date: June 30, 1982, The reason for making this rule effective upon date of publication is that OSM wants to avoid delay in reviewing State AMLR program submissions and wants to use the revised grant procedures to expedite review of grant requests submitted by several States.

Accordingly, 30 CFR Parts 870, 872, 874, 875, 877, 879, 882, 884, 886, and 888 are amended as set forth herein.

Dated: April 28, 1982.

J. R. Harris,

Director, Office of Surface Mining.

Dated: May 5, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

1. Part 870 is revised to read as follows:

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.

870.1 Scope.
870.5 Definitions.
870.10 Information collection.
870.11 Applicability.
870.12 Reclamation fee.
870.13 Fee computations.
870.14 Determination of percentage-based fees.
870.15 Reclamation fee payment.
870.16 Production records.
870.17 Compliance authority.

Authority: Secs. 201, 402, and 412, Pub. L. 95–87, 91 Stat. 445, 457, and 446 (30 U.S.C. 1211, 1232, and 1242).

Source: 42 FR 62713, Dec. 13, 1977, unless otherwise noted. Redesignated at 43 FR 49940, Oct. 25, 1978.

§ 870.1 Scope.

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund.

§ 870.5 Definitions.

As used in Part 870 through 888 of this subchapter—

Abandoned Mine Reclamation Fund or *Fund* means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

Agency means the State agency designated by the Governor to administer the State reclamation program to receive and administer grants under this part.

Allocate means the administrative identification in the records of OSM of moneys in the fund for a specific purpose, e.g., identification of moneys for exclusive use by a State.

Anthracite, bituminous and subbituminous coal means all coals other than lignite coal.

Calendar quarter means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of the calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

Eligible lands and water means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law other than the Act.

Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

Expended means that moneys have been obligated, encumbered, or committed for reclamation by contract by the OSM, State, or Tribe for work to be accomplished or services to be rendered.

Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

Fee compliance officer means any person authorized by the Secretary to exercise authority in matters relating to this part.

In situ coal mining means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, Part 870 considers only in situ gasification.

Indian Abandoned Mine Reclamation Fund or *Indian Fund* means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

Indian reclamation program means a program established by an Indian tribe in accordance with this chapter for reclamation of lands and water

adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water—

(a) Which were mined or which were affected by such mining, wastebanks, processing, or other mining processes prior to August 3, 1977, and on which all mining has ceased;

(b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal laws.

Lignite coal means consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free. Moist, mineral-matter free British thermal units per pound are determined by Parr's formula, equation 3, on page 222 of "Standard Specification for Classification of Coals by Rank," in American Society for Testing and Materials ASTM D 388–77 (Philadelphia, 1977). Parr's formula follows:

Moist, Mn-Free Btu=
(Bu−50S)/[100−(1.08A+0.55S)]×100 where:
Mn=Mineral matter
(Btu=British thermal units per pound (calorific value)
A=percentage of ash, and
S=percentage of sulfur
"Moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

OSM means the Office of Surface Mining Reclamation and Enforcement.

Permanent facility means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

Project means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

Reclaimed coal means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

Reclamation activity means the reclamation, abatement, control, or prevention of adverse effects of past mining.

Reclamation plan means a plan submitted and approved under Part 884 of this chapter.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

State reclamation program means a program established by a State in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

Surface coal mining means the extraction of coal from the earth by removing the materals over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

Ton means 2,000 pounds avoirdupois (0.90718 metric ton).

Underground coal mining means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

Value means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

§ 870.10 Information collection.

The information required by Part 870 of this chapter is being collected to meet the mandate of Section 402 of the Act, which requires the Secretary to collect a reclamation fee from coal mining operations. The information collection requirements contained in §§ 870.12(c), 870.15 (b) and (c) and 870.16 (a) and (d) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0063. This information will be used by the regulatory authority to determine whether coal mine operators are reporting accurate production figures and paying proper fees. The obligation to respond is mandatory.

§ 870.11 Applicability.

The regulations in this Part apply to all surface and underground coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface coal mining operations which affects two acres or less during the life of the mine;

(c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale in any twelve consecutive months; and

(e) The extraction of less than 250 tons of coal within twelve consecutive months.

§ 870.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities, including water, that *have not* been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator *shall not* be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

§ 870.13 Fee computations.

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than $3.50 per ton, in which case the fee is 10 percent of the value.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than $1.50 per ton, in which case the fee is 10 percent of the value.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than $5.00 per ton, in which case the fee charged is 2 percent of the value.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

§ 870.14 Determination of percentage-based fees.

(a) If the operator submits a fee based on a percentage of the value of coal, the operator shall include, with his fee and production report, documentation supporting the alleged coal value. Based on this information and any additional documentation; including examination of the operator's books and records, that the Director may require, the Director may accept the valuation submitted by the operator, or may otherwise determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under § 870.15(c).

§ 870.15 Reclamation fee payment.

(a) Each operator shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.

(b) Each operator shall use mine report form OSM–1 (or OSM–1A approved by OSM) to report tonnage of coal sold, used, or ownership transferred during the applicable calendar quarter.

(c) Delinquent payments are subject to interest at the rate of 1 percent per month, or any part thereof, on any amounts due. Interest shall begin to accrue on the 31st day following the end of the calendar quarter and will run until the date of payment or until judgment is rendered by a court of competent jurisdiction in an action at law to compel payment of debts. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators, including those with zero production, who receive Form OSM–1 must submit a completed form together with any fee payment due.

(d) A check or money order for each coal mine or a check or money order for all of the operator's mines represented by OSM's approved form(s) shall be made payable to Director, Office of Surface Mining, and shall be sent in the same envelope with OSM's approved form(s) to: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, P.O. Box 25065—DFC, Denver, Colorado 80225.

§ 870.16 Production records.

(a) Each operator shall maintain, on a current basis, books and records that contain at least the following information and data—

(1) Tons of coal sold or transferred, amount received per ton, name of party to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold or used for fee computation purposes under § 870.12 of this Part.

(4) For in situ coal mining operations, total Btu value of gas produced, the Btu value of a ton of coal in place certified by an independent laboratory, and the amount received for gas sold, transferred or used.

(b) The fee compliance officer shall have access to the mine for the purpose of determining compliance with the regulations in this part.

(c) Each operator shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by the fee compliance officer. If the fee is paid at the maximum rate, the fee compliance officer shall not copy information relative to price. All information copied shall be protected by OSM in accordance with the Freedom of Information Act [5 U.S.C. 552(b)].

(d) The operator shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due.

§ 870.17 Compliance authority.

(a) Fee Compliance Officers shall have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator.

(b) Fee Compliance Officers shall have the authority to examine the records of any party selling coal to the operator.

2. Part 872 is revised to read as follows:

PART 872—ABANDONED MINE RECLAMATION FUNDS

Sec.
872.1 Scope.
872.10 Information collection.
872.11 Abandoned Mine Reclamation Fund.
872.12 State/Indian Abandoned Mine Reclamation Funds.

Authority: Secs. 102(g), 201(c), 401, 402(g), and 412, Pub. L. 95–87, 91 Stat. 449, 456, 458, and 466 (30 U.S.C. 1211, 1231, 1232, and 1242).

§ 872.1 Scope.

This part sets forth general responsibilities for administration of Abandoned Mine Land Reclamation Programs and procedures for management of the Abandoned Mine Reclamation Funds to finance such programs.

§ 872.10 Information collection.

The information required by Part 872 is being collected to meet the mandate of Sections 401 and 402 of the Act, which require that the Secretary make a determination regarding the use of allocated State funds which have not been expended in three years. The information collection requirements contained in § 872.11 (b)(2) and (b)(3) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0054. This information will be used by the regulatory authority to determine whether delays by State/Indian tribes in use of allocated and granted funds were due to unavoidable delays in program approval. The obligation to respond is mandatory.

§ 872.11 Abandoned Mine Reclamation Fund.

(a) Revenue to the Fund shall include—

(1) Reclamation fees collected under section 402 of the Act and Part 870 of this chapter;

(2) Amounts collected by OSM from charges for use of land acquired or reclaimed with moneys from the Fund under Part 879 of this chapter;

(3) Moneys recovered by OSM through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 882 of this chapter;

(4) Moneys recovered by OSM from the sale of lands acquired with moneys from the Fund or by donation; and

(5) Moneys donated to OSM for the purpose of abandoned mine land reclamation.

(b) Moneys deposited in Fund and appropriated by the Congress shall be used for the following purposes:

(1) An amount not exceeding 10 percent of the reclamation fees collected each quarter, up to a maximum of $10,000,000 each year, shall be used to finance the Small Operator Assistance Program under Part 795 of this chapter.

(2) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises OSM in writing that it does not intend to submit a State reclamation plan, no moneys shall be allocated to that State. Amounts allocated to a State that have not been granted to the State within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the State that have not been expended within 3 years from the date of allocation may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities: *Provided, however,* That amounts allocated to a State and subject to withdrawal because they are not expended in 3 years will not be withdrawn from the State if the State has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(3) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian reclamation plan. If an Indian tribe advises OSM in writing that it does not intend to submit an Indian reclamation plan, no moneys shall be allocated to that tribe. Amounts allocated to Indian tribes that have not been granted to the Indian tribes within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the Indian tribe that have not been expended within 3 years from the date of allocation may be withdrawn from the Indian tribe if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities: *Provided, however,* That amounts allocated to an Indian tribe and subject to withdrawal because they are not expended in 3 years will be reallocated to the tribe if the tribe has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(4) An amount not exceeding 20 percent of the moneys deposited in the Fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Abandoned Mine program.

(5) All amounts not used for the above purposes shall be available to the Director for the purposes outlined in section 401(c) of the Act.

(c) Money deposited in State or Indian Abandoned Mine Reclamation Funds shall be used to carry out the reclamation plan approved under Part 884 of this chapter and projects approved under Part 888 of this chapter.

§ 872.12 State/Indian Abandoned Mine Reclamation Funds.

(a) Accounts to be known as State or Indian Abandoned Mine Reclamation Funds shall be established in each State or Indian tribal government with approved reclamation plans. These funds will be managed in accordance with the Office of Management and Budget Circular A-102.

(b) Revenue shall include—

(1) Amounts granted by the OSM for purposes of conducting the approved State reclamation plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with moneys from the State Fund under Part 879 of this chapter;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys recovered by the State from the sale of lands acquired under Title IV of the Act; and

(5) Such other moneys as the State decides should be deposited in the Fund for use in carrying out the approved reclamation programs.

3. Part 874 is revised to read as follows:

PART 874—GENERAL RECLAMATION REQUIREMENTS

Sec.
874.1 Scope.
874.11 Applicability.
874.12 Eligible coal lands and water.
874.13 Reclamation objectives and priorities.

Authority: Secs. 201(c), 403, 404, 409, and 412(c), Pub. L. 95-87, 91 Stat. 449, 458, 459, 465, and 466 (30 U.S.C. 1211, 1233, 1234, 1239, and 1242).

§ 874.1 Scope.

This part establishes land and water eligibility requirements and reclamation objectives and priorities.

§ 874.11 Applicability.

The provisions of this part apply to all reclamation projects carried out with money from the Fund and administered by OSM and to the Rural Abandoned Mine Program administered by the Secretary of Agriculture under Section 406 of the Act (30 U.S.C. 1236).

§ 874.12 Eligible coal lands and water.

Coal lands and water are eligible for reclamation activities if—

(a) They were mined for coal or affected by coal mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under Parts 886 or 888 of this chapter.

§ 874.13 Reclamation objectives and priorities.

Reclamation projects shall reflect the priorities set out in Section 403 of the Act (30 U.S.C. 1233) and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

4. Part 875 is added to read as follows:

PART 875—NONCOAL RECLAMATION

Sec.
875.1 Scope.
875.11 Applicability.
875.12 Eligible lands and water.
875.13 Requirements for noncoal reclamation.

Authority: Secs. 409 and 412, Pub. L. 95-87, 91 Stat. 465 and 466 (30 U.S.C. 1239 and 1242).

§ 875.1 Scope.

This part establishes land and water eligibility requirements and for noncoal reclamation.

§ 875.11 Applicability.

The provisions of this part apply to all reclamation projects on lands or water mined or affected by mining of minerals and materials other than coal and are to be carried out with money from the Fund and administered by a State or Indian tribe under an approved reclamation program according to Part 884 of this chapter.

§ 875.12 Eligible lands and water.

Noncoal lands and water are eligible for reclamation if—

(a) They were mined or affected by mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or the State as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under Parts 886 or 888 of this chapter;

(d) The reclamation has been requested by the Governor of the State or head of the tribal body;

(e) The reclamation is necessary for the protection of the public health and safety or all coal related reclamation has been accomplished; and

(f) Moneys allocated to the State or Indian tribe under § 872.11(b) (2) and (3) of this chapter are available for the work.

§ 875.13 Requirements for noncoal reclamation.

Reclamation of eligible noncoal mined lands and waters shall comply with the provisions of Section 409 of Pub. L. 95-87 (30 U.S.C. 1239).

5. Part 877 is revised to read as follows:

PART 877—RIGHTS OF ENTRY

Sec.
877.1 Scope.
877.10 Information collection.
877.11 Written consent for entry.
877.13 Entry and consent to reclaim.
877.14 Entry for emergency reclamation.

Authority: Sec. 201(c), 407 (a) and (b), 410, and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, and 466 (30 U.S.C. 1211, 1237, 1240, and 1242).

§ 877.1 Scope.

This part establishes procedures for entry upon lands or property by OSM, States, and Indian tribes for reclamation purposes.

§ 877.10 Information collection.

The information collection requirements contained in §§ 877.11 and 877.13(b) were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029-0055. This information is being collected to meet the mandate of Section 407 of the Act, which provides that States or Indian tribes, pursuant to an approved reclamation program, may use the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory.

§ 877.11 Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

§ 877.13 Entry and consent to reclaim.

(a) OSM, the State, or Indian tribe or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the OSM, State, or Indian tribe shall find in writing, with supporting reasons that—

(1) Land or water resources have been or may be adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for OSM, State, or Indian tribe or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, OSM, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

§ 877.14 Entry for emergency reclamation.

(a) OSM, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, OSM shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with the requirements set out in Section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. OSM shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements set out in § 877.13(c) of this chapter.

6. Part 879 is revised to read as follows:

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Sec.
879.1 Scope.

Sec.

879.10 Information collection.
879.11 Land eligible for acquisition.
879.12 Procedures for acquisition.
879.13 Acceptance of gifts of land.
879.14 Management of acquired land.
879.15 Disposition of reclaimed land.

Authority: Secs. 201(c), 407 (c), (d), (e), (f), (g), and (h); and 412 (a), Pub. L. 95–87, 91 Stat. 449, 463, 464, and 466 (30 U.S.C. 1211, 1237, and 1247).

§ 879.1 Scope.

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by OSM or a State or Indian tribe under an approved reclamation program. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe and establishes requirements for the redeposit of proceeds from the use or sale of land.

§ 879.10 Information collection.

The information collection requirements contained in §§ 879.11(b)(1),(b)(2), and (e)(3), 879.12(a), 879.13(b), and 879.15(a) and (b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0056. This information is being collected to meet the mandate of Section 407 of the Act, which requires that a State/Indian tribe include in its reclamation plan assurances that the acquisition, management, and disposition of eligible lands and water for reclamation and other designated purposes will be accomplished in a manner prescribed by the Act. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to acquire, manage, and dispose of land in the prescribed manner. The obligation to respond is mandatory.

§ 879.11 Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired by the OSM with moneys from the Fund, or by a State or Indian tribe if approved in advance by OSM.

OSM shall find in writing that acquisition is necessary for successful reclamation and that—

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b)(1) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by OSM or by a State or Indian tribe if approved in advance by OSM. Prior to the approval of the acquisition of such sites, the OSM, State, or Indian tribe shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program.

(2) Where an emergency situation exists and a written finding as set out in § 877.14 of this chapter has been made, OSM may use Fund moneys to acquire lands where public ownership is necessary to meet an emergency situation and prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by OSM if the acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements set out in Section 407(h) of the Act.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the OSM, State, or Indian tribe if OSM finds that acquisition is necessary under Part 875 of this chapter.

(e) The OSM, State, or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

§ 879.12 Procedures for acquisition.

(a) An appraisal of all land or interest in land to be acquired shall be obtained by the OSM, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The OSM, State, or Indian tribe which acquires land under this part shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, *et seq.*, and 41 CFR Part 114–50.

§ 879.13 Acceptance of gifts of land.

(a) The OSM, State, or Indian tribe under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in § 879.11.

(b) Offers to make a gift of land or interest in land to the U.S. Government shall be in writing and comply with U.S. Department of the Interior regulations for land donations. The States and Indian tribes may use procedures provided by applicable State or Indian tribal law.

§ 879.14 Management of acquired land.

Land acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the OSM, State, or Indian tribe shall provide that all user fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

§ 879.15 Disposition of reclaimed land.

(a) Prior to the disposition of any land acquired under this part, OSM, State, or Indian tribe shall publish a notice of proposed land disposition, hold public hearings, if required, and make written findings in accordance with the authority contained in Section 407(g)(2) of the Act.

(b) OSM may transfer administrative responsibility for land acquired by OSM to any Federal Department or Agency, with or without cost to that Department or Agency. OSM may transfer title for land acquired by OSM to any State or Indian tribe or to any agency or political subdivision of a State or Indian tribe, with or without cost to that entity, for the purposes set out in paragraphs (e) or

(f) of this section. The agreement under which a transfer is made shall specify—

(1) The purposes for which the land may be used, which shall be consistent with the authorization under which the land was acquired; and

(2) That the title of administrative responsibility for the land shall revert to OSM, State, or Indian tribe if, at any time in the future, OSM finds that the land is not used for the purposes specified.

(c) OSM may accept title for abandoned and unreclaimed land to be reclaimed and administered by OSM. If a State or Indian tribe transfers land to OSM under this section, that State or Indian tribe shall have a preference right to purchase such land from OSM after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(d) OSM may sell land acquired and reclaimed under this part, except that acquired for housing under § 879.11(c), to the State or local government at less than fair market value but in no case less than purchase price plus reclamation cost provided such land is used for a valid public purpose.

(e) OSM may transfer or sell land acquired for housing under § 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to an Indian tribe, or to any firm, association, or corporation. The conditions of transfer or sale shall be in accordance with Section 407(h) of the Act.

(f) OSM may transfer title for land acquired for housing under § 879.11(c) by grants or commitments for grants, or may advance money under such terms and conditons as required, to—

(1) Any State or Indian tribe; or

(2) A department, agency, or instrumentality of a State; or

(3) Any public body or nonprofit organization designated by a State.

(g)(1) OSM may sell or authorize the States or Indian tribes to sell land acquired under this part by public sale if—

(i) Such land is suitable for industrial, commercial, residential, or recreational development;

(ii) Such development is consistent with local, State, of Federal land use plans for the area in which the land is located; and

(iii) Retention by OSM, State, or Indian tribe, or disposal under other paragraphs of this section is not in the public interest.

(2) Disposal procedures will be in accordance with Section 407(g) of the Act and applicable State or Indian tribal requirements.

(3) States may transfer title or administrative responsibility for land to cities, municipalities, or quasi-governmental bodies, provided that the State provide for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

(h) All moneys received from disposal of land under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872 of this chapter.

7. Part 882 is revised to read as follows:

PART 882—RECLAMATION ON PRIVATE LAND

Sec.

882.1 Scope.
882.10 Information collection.
882.12 Appraisals.
882.13 Liens.
882.14 Satisfaction of liens.

Authority: Secs. 201(c), 407 (a) and (b), 408, 409, 410, and 412(a), Pub. L. 95–87, 91 Stat. 449, 462, 463, 464, 465, and 466 (30 U.S.C. 1211, 1237, 1238, 1239, 1240, and 1242).

§ 882.1 Scope.

This part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the OSM, State, or Indian tribe.

§ 882.10 Information collection.

The information collection requirements contained in §§ 882.12(c) and 882.13(b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0057. This information is being collected to meet the mandate of Secion 408 of the Act, which allows the State/Indian tribe to file liens on private property that has been reclaimed under certain conditions. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to file liens. The obligation to respond is mandatory.

§ 882.12 Appraisals.

(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under § 882.13 shall be obtained from an independent appraiser. The appraisal shall state—

(1) The estimated market value of the property in its unreclaimed condition; and

(2) The estimated market value of the property as reclaimed.

(b) This appraisal shall be made prior to start of reclamation activities. The agency shall furnish to the appraiser information of sufficient detail in the from of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than 6 months to complete, an updated appraisal under paragraph (a)(2) of this section shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. OSM shall provide appraisal standards for Federal projects, and the State or Indian tribes shall provide appraisal standards for State or Indian tribal projects consistent with generally acceptable appraisal practice.

§ 882.13 Liens.

(a) OSM, State, or Indian tribe has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value; except that—

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by OSM, State, or Indian tribe pursuant to the Congressional intent expressed in Section 408 of the Act and consistent with State or Indian tribal laws governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

(4) OSM, State, or Indian tribe may waive the lien if the cost of filing it, including indirect costs to OSM, State, or Indian tribe, exceeds the increase in

fair market value as a result of reclamation activities.

(b) If a lien is to be filed, the OSM, State, or Indian tribe shall, within 6 months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under § 882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with existing Federal, State or Indian tribal laws: *Provided, however,* That prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

§ 882.14 Satisfaction of liens.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(b) The OSM, State, or Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate abandoned mine reclamation fund account.

8. Part 884 is revised to read as follows:

PART 884—STATE RECLAMATION PLANS

Sec.
884.1 Scope.
884.11 State eligibility.
884.13 Content of proposed State reclamation plan.
884.14 State reclamation plan approval.
884.15 State reclamation plan amendment.
884.16 Suspension of plan.
884.17 Impact assistance.

Authority: Secs. 201(c), 402(g)(2), 403, 404, 405, 407, 409, and 412(a), Pub. L. 95–87, 91 Stat. 449, 458, 459, 462, 465, and 466 (30 U.S.C. 1211, 1232, 1233, 1234, 1235, 1237, 1239, and 1242).

§ 884.1 Scope.

This part establishes the procedures and requirements for the preparation, submission and approval of State reclamation plans.

§ 884.11 State eligibility.

A State is eligible to submit a State reclamation plan if it has eligible lands or water as defined in § 870.5 within its boundaries. A State is eligible for a State reclamation plan to be approved by the Director if it has an approved State regulatory program under Section 503 of the Act and meets the other requirements of this chapter and the Act.

§ 884.13 Content of proposed State reclamation plan.

Each proposed State reclamation plan shall be submitted to the Director in writing and shall include the following information:

(a) A designation by the Governor of the State of the agency authorized to administer the State reclamation program and to receive and administer grants under Part 886 of this chapter.

(b) A legal opinion from the State Attorney General on the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act.

(c) A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including—

(1) The purposes of the State reclamation program;

(2) The specific criteria, consistent with Section 403 of the Act for ranking and identifying projects to be funded;

(3) The coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program administered by the Soil Conservation Service, the reclamation programs of any Indian tribes located within the States, and OSM's reclamation programs; and

(4) Policies and procedures regarding land acquisition, management and disposal under 30 CFR Part 879;

(5) Policies and procedures regarding reclamation on private land under 30 CFR Part 882;

(6) Policies and procedures regarding rights of entry under 30 CFR Part 877; and

(7) Public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

(d) A description of the administrative and management structure to be used in conducting the reclamation program, including—

(1) The organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity;

(2) The personnel staffing policies which will govern the assignment of personnel to the State reclamation program;

(3) The purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular A–102, Attachment 0; and

(4) The accounting system to be used by the agency, including specific procedures for the operation of the State Abandoned Mine Reclamation Fund.

(e) A general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation, including—

(1) A map showing the general location or known or suspected eligible lands and waters;

(2) A description of the problems occurring on these lands and waters; and

(3) How the plan proposes to address each of the problems occurring on these lands and waters.

(f) A general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned, including—

(1) The economic base;

(2) Significant esthetic, historic or cultural, and recreational values; and

(3) Endangered and threatened plant, fish, and wildlife and their habitat.

§ 884.14 State reclamation plan approval.

The Director shall act upon a State reclamation plan within 90 days after submittal. A State reclamation plan shall not be approved until the Director has—

(1) Held a public hearing on the plan within the State which submitted it, or made a finding that the State provided adequate notice and opportunity for public comment in the development of the plan;

(2) Solicited and considered the views of other Federal agencies having an interest in plan;

(3) Determined that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan;

(4) Determined that the proposed plan meets all the requirements of this subchapter;

(5) Determined that the State has an approved State regulatory program; and

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) If the Director disapproves a proposed State reclamation plan, the Director shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State reclamation plan at any time under the procedures of this section.

§ 884.15 State reclamation plan amendment.

A State may, at any time, submit to the Director a proposed amendment or revision to its approved plan. If the amendment or revision changes the objectives, scope, or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

§ 884.16 Suspension of plan.

(a) The Director shall suspend a State reclamation plan, in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part; or

(2) The State is not conductng the State reclamation program in accordance with the plan.

(b) If the Director determines that the plan should be suspended, the Director shall notify the State by mail, return receipt requested, of the proposed action. The notice of proposed suspension shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State and performance of remedial action prior to the notice of suspension.

(c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.

(d) The Director shall lift the suspension if he determines that the deficiencies that led to suspension have been corrected.

§ 884.17 Impact assistance.

(a) The State reclamation plan may provide for construction of specific public facilities in communities impacted by coal development. This form of assistance is available when the Governor of the State has certified, and the Director has concurred that—

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the Act of October 20, 1978, Public Law 94–565 (90 Stat. 2662) are inadequate for such construction.

(b) Grant applications for impact assistance may be submitted in accordance with § 886.13 of this chapter.

9. Part 886 is revised to read as follows:

PART 886—STATE RECLAMATION GRANTS

Sec.

886.1 Scope.
886.3 Authority.
886.10 Information collection.
886.11 Eligibility for grants.
886.12 Coverage and amount of grants.
886.13 Grant period.
886.14 Annual submission of projects.
886.15 Grant application procedures.
886.16 Grant agreements.
886.17 Grant and budget revisions.
886.18 Grant reduction, suspension and termination.
886.19 Audit.
886.20 Administrative procedures.
886.21 Allowable costs.
886.22 Financial management.
886.23 Reports.
886.24 Records.

Authority: Secs. 201(c), 401 (a) and (c), 402(g), 405(h), and 412(a), Pub. L. 95–87, 91 Stat. 449, 456, 458, 460, 466 (30 U.S.C. 1211, 1231, 1232, 1235, and 1242).

§ 886.1 Scope.

This part sets forth procedures for grants to States having an approved State reclamation plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980) should be utilized as applicable.

§ 886.3 Authority.

(a) The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to the State under § 872.11(b)(2).

(b) The Director is authorized to approve additional grants to a State from the moneys available under § 872.11(b)(5).

§ 886.10 Information collection.

The information collection requirements contained in 30 CFR 886.15(c), 886.17(b), 886.18(c), 886.23 (a) and (b), and 886.24 (a) and (b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029–0016, 1029–0017, 1029–0059, 1029–0064, 1029–0068, 1029–0070, 1029–0072 through 1029–0079. This information is being collected to meet the mandate of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with OMB Circular A–102 and sound principles of grants management. The obligation to respond is mandatory.

§ 886.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under Part 884 of this chapter.

§ 886.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this part to adminster the approved State reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to the OMB Circular A–87.

(b) Grants shall be approved for reclamation of eligible lands and water, construction of public facilities, program administration, the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes, and community impact assistance. To the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas.

(c) Acquisition of land or interests in land and any mineral or water rights associated with the land shall be approved for up to 90 percent of the costs.

§ 886.13 Grant period.

(a) Except as provided in paragraph (b) of this section, the grant funding period for projects shall not exceed 3 years. The grant period for administrative costs of the authorized agency shall not exceed 1 year.

(b) The Director may, in order to facilitate consideration of impact assistance funding, approve a grant period for specific projects beyond 3 years if he finds, on the basis of the information contained in the grant application that—

(1) Projects to be funded will fulfill all the objectives of Section 403 and Section 409 of the Act;

(2) The requests are for funding of specific projects with adequate plans, acceptable deadlines for completion, and the likelihood of specific construction contracts to meet the project deadlines; and

(3) Sufficient funds allocated to the State or Indian tribe under § 872.11(b)(2) of this chapter are available to complete the projects, including provisions for corrective works on completed projects and any additional eligible projects which may be discovered.

§ 886.14 Annual submission of projects.

The agency shall cooperate with OSM in the development of the annual submission of projects by providing the information required by Section 405(f) of the Act for use by the Director in the preparation of his requests for appropriation of moneys for the State reclamation grants. The schedule for such estimates shall be determined by the OSM on an annual basis. Funds required to prepare the annual submission of projects under Section 405(f) of the Act may be included in administrative grants under § 886.12.

§ 886.15 Grant application procedures.

(a) OSM shall act upon a grant application within 90 days of submittal. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(b) If the application is not approved, OSM shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application. OSM shall approve or disapprove the resubmitted grant application within 30 days of the resubmittal.

(c) A preapplication is not required if the total of the grant requested is within the amounts allocated to the State under § 872.11(b)(2) of this chapter. The agency shall use the following application forms and procedures applicable to construction and/or nonconstruction programs specified by OSM in accordance with Office of Management and Budget Circular A–102, Attachment M:

(1) SF–424 Application for Federal Assistance;
(2) OSM–50A Section A of the Project Approved Information;
(3) OSM–50B Section B of the Project Approved Information;
(4) OSM–51 Program Narrative Statement
(5) OSM–47 OSM Budget Information Report; and
(6) OSM–48 Budget Information-Construction Report

(d) The agency shall agree to perform the grant in accordance with the Act, OSM implementing regulations, and applicable OMB and Treasury Circulars.

(e) Complete copies of plans and specifications for projects shall not be required before the grant is approved nor at the start of the project. The Director may review such plans and specifications after the start of the project in the agency office, on the project site, or at any other appropriate site.

(f) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on how the land will be used after reclamation shall be included in the application.

§ 886.16 Grant agreements.

(a) If the Director approves an agency's grant application, OSM shall prepare a grant agreement, which includes:

(1) A statement of the work to be covered by the grant;

(2) A statement of the approvals of specific actions as required under this subchapter or the conditions to be met before such approvals can be given if moneys are included in the grant for such actions;

(3) The amounts approved for each individual project included in the grant application; and

(4) Allowable transfers of funds to other Federal, State or local agencies.

(b) The Director may allow an agency to assign functions and funds to other Federal, State or local agencies. The Director shall require the grantee agency to retain responsibility for overall administration of that grant, including use of funds and reporting.

(c) The Director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 weeks after receipt, or within an extension of time granted by the Director.

(d) The Director shall sign the agreement upon its return from the agency or when funds are available for the grants, whichever is later, and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds at the time the Director signs the agreement.

(e) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

§ 886.17 Grant and budget revisions.

(a) Grant revisions. (1) A grant revision is a written alteration of the terms of conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for the grant revisions shall conform to OMB Circular A–102.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes which may require a grant revision. The agency shall notify the Director in advance of—

(i) Planned changes in the scope or objective of any individual project even if the change will not result in a change in the total cost of the project; and

(ii) Changes which will result in an extension of the grant period.

(b) Budget revisions. (1) The agency shall obtain the written approval of the OSM for budget revisions whenever the total amount of the revisions result in an increase or decrease of more than $5,000 or 5 percent of the grant amount, whichever is greater.

(2) OSM shall either approve or disapprove the budget revision within 15 days of its receipt.

(3) Changes of less than $5,000 or 5 percent of the grant amount may be made by the agency without advance notification or approval of OSM if the change:

(i) Can be made without exceeding the total amount of the project grant;

(ii) Does not involve a change in the scope or objective of the project involved; and

(iii) Is consistent with the procedures set forth in Office of Management and Budget Circular A–102, attachment K.

§ 886.18 Grant reduction, suspension, and termination.

(a) Conditions for reduction, suspension or termination.

(1) If an agency violates the terms of a grant agreement or an approved reclamation plan, OSM may reduce, suspend or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within three years from the date of allocation, or an extension granted under § 866.13,

OSM may reduce the grant in accordance with § 872.11(b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under Part 735 of this Chapter is terminated, OSM shall terminate the grant awarded under this part.

(4) If an agency is not in compliance with the following nondiscrimination provisions, OSM shall terminate the grant:

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, 78 Stat. 252 (42 U.S.C. 2000d-1). "Nondiscrimination in Federally Assisted Programs", which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, "Equal Employment Opportunity," requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs."

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this chapter, OSM shall terminate the grant.

(6) If an agency fails to submit reports required by this subchapter or Part 705 of this chapter, OSM shall terminate the grant.

(b) *Grant reduction, suspension, and termination procedures.* (1) OSM shall give at least 30 days written notice to the agency by mail, return receipt requested, of intent to reduce, suspend, or terminate a grant. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) OSM shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) OSM shall notify the agency of the termination, suspension, or reduction of the grant in writing by mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon notification of intent to terminate the grant, the agency shall not make any new commitments without the approval of the OSM.

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A–87.

(c) *Appeals.* (1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(2) The agency shall include in the appeal—

(i) A statement of the decision being appealed; and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Secretary shall act upon the appeal within 30 days of receipt.

§ 886.19 Audit.

The agency shall arrange for an independent audit at least once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A–102. The audit will be performed in accordance with the audit guides provided by the General Accounting Office and by the "Approved Compliance Supplement" issued by the Office of Management and Budget.

§ 886.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in Office of Management and Budget Circular No. A–102 and use the following forms: OSM–60 (Report of Government Property), OSM–62 (Recipients' Release), and OSM–63 (Recipients Assignments of Refunds, Rebates and Credits)

§ 886.21 Allowable costs.

(a) Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administration costs, and up to 90 percent of the costs of the acquisition of land.

(b) Costs must conform with any limitations, conditions, or exclusions set forth in the grant agreement.

§ 886.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirement of Office of Management and Budget Circular No. A–102. Agencies shall use generally accepted accounting principles and practices consistently applied. Accounting for grant funds must be accurate and current.

(b) The Agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.23 Reports.

(a) For each grant/cooperative agreement, the agency shall semiannually submit to OSM the following reports prepared according to the Office of Management and Budget Circular No. A–102, Attachments H and I:

(1) Financial Status Report, Form SF–269, for the agency's administrative grant/cooperative agreement and the Performance Report, Form OSM–51, covering the performance aspects of the grant/cooperative agreement.

(2) Outlay Report and Request for Reimbursement for Construction Programs, Form SF–271, and the Performance Report, Form OSM–51, for each activity or project on which some work has occurred.

(b) For each grant/cooperative agreement, the agency shall annually submit to the Office the following reports prepared according to Office of Management and Budget Circular A–102, Attachments H and I:

(1) A final Financial Status Report, Form SF–269, for the Agency's administrative grant/cooperative agreement and a final Performance Report, Form OSM–51, covering the performance aspects of the grant/cooperative agreement.

(2) An annual Outlay Report and Request for Reimbursement for Construction Programs, Form SF–271, and a cumulative annual Performance Report, Form OSM–51, which includes—

(i) For each project or activity, a brief description and the type of reclamation

performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed, and a summary of achieved or expected benefits;

(ii) For any land previously acquired by not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land; and

(iii) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

§ 886.24 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular A–102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly—

(1) The amount and disposition by the agency of all assistance received for the program; and

(2) The total direct and indirect costs of the program for which the grant was awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

10. Part 888 is revised to read as follows:

PART 888—INDIAN RECLAMATION PROGRAMS

Sec.
888.1 Scope.
888.2 Objectives.
888.11 Interim procedures.

Authority: Secs. 201(c), 405(k), 412(a), and 710, Pub. L. 95–87, 91 Stat. 449, 460, 466, and 523 (30 U.S.C. 1211, 1235, 1242, and 1300).

§ 888.1 Scope.

This part is reserved for any additional or unique regulations that may be required as a result of the special study report submitted pursuant to Section 710 of the Act and to achieve the purposes of the Act on Indian lands. Because of the special jurisdictional status of Indian lands, general responsibilities for administration of Indian reclamation programs are set forth on an interim basis.

§ 888.2 Objectives.

(a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian lands.

(b) Upon completion or required legislation, this part will be either deleted and supplanted by the other parts of this chapter dealing with State and Indian reclamation programs or expanded as required to achieve the purposes of the Act.

§ 888.11 Interim procedures.

(a) The Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian lands and to carry out such projects pursuant to Parts 872 through 882 of this chapter.

(b) The Director shall consult with the Indian tribe and the Bureau of Indian Affairs' office having jurisdiction over the Indian lands on all reclamation activities carried out on indian lands under this subchapter.

(c) If a proposal is made by an Indian tribe and approved by the Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under § 872.11(b)(5).

(d) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

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

List of Public Laws

Last Listing June 28, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.J. Res. 519 / Pub. L. 97–204 To provide for a temporary increase in the public debt limit. (June 28, 1982; 96 Stat. 130) Price: $1.75.