7-22-82
Vol. 47 No. 141
Pages 31673-31840

federal register

Thursday
July 22, 1982

Selected Subjects

Anchorage Grounds
Coast Guard

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Candy
Federal Trade Commission

Coal Mining
Surface Mining Reclamation and Enforcement Office

Commodity Exchanges
Commodity Futures Exchange Commission

Foreign Assets Control
Foreign Assets Control Office

Loan Programs—Agriculture
Farmers Home Administration

Marine Safety
Coast Guard

Marketing Orders
Agricultural Marketing Service

Medicare
Health Care Financing Administration

Milk Marketing Orders
Agricultural Marketing Service

Motor Vehicle Safety
National Highway Traffic Safety Administration

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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

Contents

Federal Register
Vol. 47, No. 141
Thursday, July 22, 1982

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 47, No. 141
Thursday, July 22, 1982

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 300; Valencia Orange Reg. 699, Amdt. 1]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 23–29, 1982, and increases the quantity of such oranges that may be so shipped during the period July 16–22, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective July 23, 1982, and the amendment is effective for the period July 16–22, 1982.

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

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1, and Executive Order 12291 and has been designated a "non-major" rule. 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. This action is designed to promote orderly marketing of the California-Arizona Valencia orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on July 20, 1982, at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is good.

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

List of Subjects in 7 CFR Part 908

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

1. Section 908.600 is added as follows:

§ 908.600 Valencia Orange Regulation 300.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period July 23, 1982, through July 29, 1982, are established as follows:

(1) District 1: 306,000 cartons;
(2) District 2: 344,000 cartons;
(3) District 3: Unlimited cartons.

2. Section 908.999 Valencia Orange Regulation 699 (47 FR 30715), is hereby amended to read:

§ 908.999 Valencia Orange Regulation 699.

* * * * *

(1) District 1: 353,000 cartons;
(2) District 2: 397,000 cartons;
(3) District 3: Unlimited cartons.

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

Dated: July 21, 1982.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-20066 Filed 7-21-82; 11:51 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA

ACTION: Suspension of rule.

SUMMARY: This action suspends certain order provisions affecting the regulatory status of milk plants under the Nebraska-Western Iowa milk order. The suspension removes for July and August 1982 the requirement that a cooperative association must deliver at least 51 percent of its member producer milk to pool distributing plants each month to qualify its supply plants as pool plants under the order. The action is taken in response to a request by a cooperative association that operates several supply plants under the order and which is a principal supplier of milk to other handlers in the market to avoid inefficient handling and transportation of milk. It would also assure that its member dairy farmers who have regularly been associated with the

market will continue to share in the market's fluid milk sales.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Proposed Suspension: Issued June 17, 1982; published June 22, 1982 (47 FR 26840).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It also has been determined that the need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the issuance of the suspension in time to include July 1982 in the suspension period. The initial request for this action was received June 14, 1982. A notice of proposed suspension was issued on June 17, 1982, inviting interested parties to comment on the proposed action by June 29, 1982.

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** (47 FR 26840) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No opposing comments were received.

After considering all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that for the months of July and August 1982 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1065.7(c) the words "51 percent or more of the."

Statement of Consideration

This action removes for July and August 1982 the requirement that a cooperative must deliver at least 51 percent of its producer milk to pool distributing plants each month, either through transfers from its supply plants or directly from farms, in order to qualify the supply plants as pool plants under the order. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that operates four pool supply plants under the Nebraska-Western Iowa order and which is a principal supplier of milk to other handlers in the market.

The basis of the request was that this spring the cooperative had to depool milk of some of its producers who have been regularly associated with the market in order to meet the 51 percent delivery requirement. It indicated this was because deliveries to pool distributing plants, which are used to qualify the cooperative's supply plants, decreased significantly. For instance, the cooperative stated its deliveries to pool distributing plants were down over 6 percent in May 1982 from May 1981. It expects this situation to become more serious during July and August due to the closing of schools.

In the absence of the suspension action, the cooperative estimates that it may be necessary to remove from the market as much as 10 million pounds of its member milk during each month of July and August in order to meet the 51 percent delivery requirement. To the extent possible, the cooperative wants to avoid such costly and inefficient movements of milk solely for the purpose of pooling its supply plants and the milk of its member producers who regularly have supplied the fluid needs of the market.

In view of the circumstances, it is concluded that the aforesaid provisions should be suspended to avoid such costly and inefficient movements of milk solely for the purpose of pooling its supply plants and the milk of its member producers who regularly have supplied the fluid needs of the market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without this action uneconomic movements of milk would be made solely for the purpose of assuring that the dairy farmers who have supplied a portion of the fluid milk needs of the market will continue to have their milk pooled and priced under the order;

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

(c) Notice of proposed rulemaking was given to interested parties and they were afforded the opportunity to comment. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for July and August 1982.

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

Effective date: July 22, 1982.

Signed at Washington, D.C., on July 16, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection, Food Marketing and Inspection Services.

[FR Doc. 82–19796 Filed 7–21–82; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Communications Procedures; Clarifying Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to inform applicants and licensees that prior to submitting any communications in microform, they shall obtain specifications and copy requirements from the Nuclear Regulatory Commission. These amendments are issued as the result of a recommendation to clarify the requirements for submission of documents by licensees to allow and encourage use of microform. It was anticipated that the use of microform would result in the reducing of the volume of paper copies submitted to the

NRC as well as relieving the burden of on the licensees of submitting large numbers of paper copies.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: Steve Scott, Chief, Document Management Branch, Division of Technical Information and Document Control, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–8585.

SUPPLEMENTARY INFORMATION: In February 1979, as part of a survey of the NRC's Public Document Room activities, the Office of Inspector and Auditor recommended that the Executive Director for Operations consider clarifying the requirements for submission of documents by licensees to allow and encourage use of microform. It was anticipated that the use of microform would result in reducing the volume of paper copies submitted to the NRC as well as relieving the burden on the licensees of submitting large numbers of paper copies. A canvass of licensees, conducted by the Nuclear Records Management Association, revealed that they favored the option of submitting required material on microform. Therefore, the NRC is issuing this rule to provide instructions so that licensees can obtain guidance on how to submit microforms.

Because this is a nonsubstantive amendment dealing with minor procedural matters, good cause exists for finding that the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) are unnecessary and for making the amendment effective July 22, 1982.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting requirements.

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, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 50, is published as a document subject to codification.

(Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201))

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

In § 50.4, the introductory paragraph is designated as paragraph (a), and paragraph (b) is added to read as follows:

§ 50.4 Communications.

(a) * * *

(b) Before making any submittal in microform, the applicant or licensee shall contact the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8585, to obtain specifications and copy requirements.

Dated at Bethesda, Maryland, this 8th day of June 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-19682 Filed 7-21-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-NW-96-AD; Amdt. 39-4418]

Airworthiness Directives: Fokker B.V. Model F28 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) which requires inspection, replacement, or modification of certain structural components on Fokker F28 airplanes, as necessary, to detect and/or prevent unsafe conditions. This AD resulted from manufacturer's service bulletins which are made mandatory by the Netherlands Civil Aviation Department (RLD).

DATE: Effective date August 23, 1982.

ADDRESSES: The service bulletin specified in this Airworthiness Directive may be obtained upon request to Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767–2530. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The RLD, which is the civil aviation authority for the Netherlands, has classified as mandatory a number of Fokker Model F28 service bulletins relating to structural components. A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the inspection, replacement, or modification of these components was published in the **Federal Register** on February 1, 1982, (47 FR 4523). The comment period was closed on March 8, 1982. The manufacturer provided detailed comments on the proposed amendment as follows:

Items A, B, O, P, S, U, Z, BB, CC, DD, EE, and GG should be deleted since the service bulletins have been canceled. These items are monitored by documents made mandatory by inclusion on the airplane's data sheet or by other service bulletins or by special modification programs accomplished on all affected airplanes.

Item E should have serialization as follows: For the rear cargo door, S/N 11021–11062 and 11991–11993. For the front and center cargo doors, S/N 11003–11062 and 11991–11993.

Item F, delete Part 3 of the service bulletin since it applies to airplanes not presently eligible for U.S. certification.

Item H, delete the sentence referring to a temporary safety pin since item J installs a permanent safety catch.

Item K should be expanded to include the modification of the guide rail at station 4610.

Item L should list serial numbers 11003–11112, 11115, 11116, 11120, and 11991–11993. It should also require the modification of the actuating mechanism of the cargo door lock warning switches.

Item R should reference Service Bulletin F28/53–26, Revision 1, dated January 2, 1975, which deletes the requirement for a repetitive inspection.

Item T should reference serial number 11003 instead of 11033.

Item FF should include serial number 11040 and reference Service Bulletin F28/57–33, Revision 1, dated February 24, 1972.

Comments were also received from one operator of the F28 recommending that items A, B, and C be deleted since they no longer were applicable.

The FAA concurs with these comments and has revised the rule accordingly.

It is estimated that no airplane will be immediately affected by this AD since there is only one airplane of the specified serial numbers currently on the U.S. Register, and the operator of that airplane has previously complied with the service bulletins. Any other airplane of the specified serial numbers

will be affected only if it is later entered on the U.S. Register and if the service bulletins have not been complied with under the cognizance of the airworthiness authority of the country from which it was imported.

After review of the available data, including the above comments, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Fokker B.V.: Applies to Model F28 Series 1000 and 4000 airplanes certificated in all categories, serial numbers as indicated below. Note: Some serial numbers listed may actually be 2000, 3000, 5000, or 6000 airplanes that are not presently eligible for U.S. certification. Those serial numbers may be disregarded insofar as this AD is concerned.

1. Unless already accomplished, accomplish the following within the time specified in each paragraph below after the effective date of this AD.

A. Applies to F28 airplanes S/N 11003–11064 and 11991–11993 inclusive. Compliance required within six months after the effective date of this AD. Install an inspection window in the passenger door per Fokker Service Bulletin F28/52–43, Part IV, dated April 16, 1974.

B. Applies to F28 airplanes S/N 11003–11070, 11072–11074, and 11991–11993 inclusive. Compliance required within six months after the effective date of this AD. Replace sliding pins in the passenger door per Fokker Service Bulletin F28/52–44 dated April 9, 1974.

C. Applies to F28 airplanes S/N 11021–11062 and 11991–11993 inclusive for the rear cargo door and 11003–11062 and 11991–11993 inclusive for the front and center cargo doors. Compliance required within six months after the effective date of this AD. Install the improved switch operating mechanism in the rear, forward, and center cargo door rabbets per Parts I and II of Fokker Service Bulletin F28/52–49, Revision 1, dated March 1, 1976.

D. (1) Applies to F28 airplanes S/N 11003–11081 and 11991–11993 inclusive. Compliance required within six months after the effective date of this AD. Install a reinforced safety catch and stop assembly on the front cargo door and the center cargo door, if installed, per Part I of Fokker Service Bulletin F28/52–51 dated September 3, 1974.

(2) Applies to F28 airplanes S/N 11021–11052, 11054–11061 and 11063–11076 inclusive, and S/N 11078, 11079, and 11191–11193 inclusive. Compliance required within six months after the effective date of this AD. Install a new safety catch and stop assembly on the rear cargo door per Part II of the service bulletin.

E. Applies to F28 airplanes S/N 11003–11081 and 11991–11993 inclusive. Compliance required within 500 flight hours time in service after the effective date of this AD. Inspect the cargo door locking mechanism per Fokker Service Bulletin F28/52–53 dated May 10, 1974.

F. Applies to F28 airplanes S/N 11003–11020 inclusive. Compliance required within 500 flight hours time in service after the effective date of this AD. Inspect and adjust the cargo door lockwarning and locking mechanism for correct functioning per Fokker Service Bulletin F28/52–54 dated July 1, 1974.

G. Applies to F28 airplanes S/N 11003–11081 and 11991–11993 inclusive. Compliance required within the next 500 flight hours time in service after the effective date of this AD. Inspect the cargo door latching mechanism and adjust, if necessary, per Fokker Service Bulletin F28/52–56 dated July 26, 1974.

H. Applies to F28 airplanes S/N 11003–11020 inclusive. Compliance required within the next 500 flight hours time in service after the effective date of this AD. Install a safety catch on the rear cargo door per Fokker Service Bulletin F28/52–61 dated May 21, 1975.

I. Applies to F28 airplanes S/N 11003–11110 and 11991–11993 inclusive. Compliance required within the next 500 flight hours time in service after the effective date of this AD. Modify the shape of the secondary guide rails at fuselage station 3870 (if in post SB F28/52–55, Part I Configuration) and at station 4610 per Fokker Service Bulletin F28/52–66 dated April 12, 1976.

J. Applies to F28 airplanes S/N 11003–11112, 11115, 11116, 11120, and 11991–11993. Compliance required within the next 500 flight hours time in service after the effective date of this AD. Modify the actuating mechanism of the cargo door lock warning switches per Fokker Service Bulletin F28/52–80, Revision 1, dated October 23, 1978.

K. Applies to F28 airplanes forward and center cargo doors—S/N 11003–11081, 11991–11993, and 11082–11101 inclusive if S/B F28/52–51 has been incorporated; rear cargo door—S/N 11053, 11062, 11077, 11080, and 11081 if S/B F28/52–51 has been incorporated and S/N 11090–11093, 11108–11112, and 11114–11116 inclusive, and S/N 11118, 11120–11124, and 11126–11128 inclusive, S/N 11130–11133, 11135, and 11138–11141 inclusive. Compliance required within the next 500 flight hours time in service after the effective date of this AD. Reinforce the cargo door locking handle access panels per Fokker Service Bulletin F28/52–81 dated October 1, 1977.

L. Applies to F28 airplanes S/N 11003–11016 inclusive. Compliance required within 500 flight hours time in service after the effective date of this AD. Reinforce the speed brake accumulator brackets per Fokker Service Bulletin F28/53–4 dated May 19, 1970.

M. Applies to F28 airplanes S/N 11003—11020 inclusive and S/N 11991. Compliance required within 500 flight hours time in service after the effective date of this AD. Install a plastic separation screen and add ventilation provisions per Fokker Service Bulletin F28/53–21 dated October 11, 1971.

N. Applies to F28 airplanes S/N 11003 through 11037 and 11991 through 11994. Compliance required within 500 hours time in service after the effective date of this AD. Inspect for cracks and rework if necessary the speedbrake attach hinge fitting per Fokker Service Bulletin F28/53–26, Revision 1, dated January 2, 1975.

O. (1) Applies to F28 airplanes S/N 11020–11055, 11057–11061, and 11063–11071 inclusive, and S/N 11073, 11075, 11078, and 11991–11993 inclusive. Compliance required within 500 hours time in service after the effective date of this AD and at intervals of 250 flight hours thereafter until the modification in paragraph 2 has been carried out. Inspect the PLI washers in the rear cargo compartment latch brackets for correct installation per Part I of Fokker Service Bulletin F28/53–54, Revision 3, dated October 11, 1976. If one or more washers per latch fitting are incorrectly installed, proceed with paragraph 2 of this AD within the next ten hours time in service.

(2) Applies to F28 S/N 11020–11090 inclusive, 11092, and 11991–11993 inclusive. Compliance required within the next 1000 hours time in service after the effective date of this AD or within ten hours time in service if required by paragraph O. (1), above. Install MS washers and bolts in the cargo door latch fittings per the service bulletin.

(3) Applies to F28 airplanes S/N 11003–11055, 11057–11061, and 11063–11071 inclusive, and S/N 11073, 11075, 11078, and 11991–11993 inclusive. Compliance required within the next 500 hours time in service after the effective date of this AD. Install MS washers and shorter bolts in the forward and center cargo door latch fittings per the service bulletin.

P. Applies to F28 airplanes S/N 11003–11091 and 11991–11993 inclusive. Compliance required within 500 hours time in service after the effective date of this AD. To ensure the proper torquing of the MS 21250 bolts in the main entry door latch fittings, replace the dural washers with MS 20002 washers per Part V of Fokker Service Bulletin F28/51–10, Revision 1, dated July 11, 1975.

Q. Applies to F28 airplanes S/N 11003–11025 inclusive and S/N 11991, 11992, and 11994. Compliance required within 500 flight hours after the effective date of this AD. To prevent stringer cracks, install connecting angles in the stabilizer torsion box at rib station 3800 per Fokker Service Bulletin F28/55–8, Revision 1, dated October 16, 1972.

R. Applies to F28 airplanes S/N 11003–11064 and 11991–11993 inclusive. Compliance required within six months after the effective date of this AD. To ensure proper functioning of the horizontal stabilizer hinge bearings, inspect the bearings per Part I of Fokker Service Bulletin F28/55–14, Revision 1, dated March 15, 1974. If relative rotation does not occur between the bearings ball and the outer ring, modify the hinge bearing installation per Part II of the service bulletin within nine months of the inspection. If relative rotation does occur between the ball and the outer ring, the Part II modification must be accomplished within two years after the effective date of this AD.

S. Applies to F28 airplanes S/N 11003–11020, 11022–11025, and 11991–11993 inclusive. Compliance required within six months after the effective date of this AD. To prevent stress corrosion cracks, install bronze bushings in the stabilizer hinge brackets per Fokker Service Bulletin F28/55–17 dated October 27, 1975.

T. Applies to F28 airplanes as follows: S/N 11003–11145 inclusive and S/N 11147, 11150, 11151, 11991, and 11992. Compliance required within six months after the effective date of this AD. To prevent the loss of the stabilizer hinge bolts if the nut has backed off, install an additional retaining device per Fokker Service Bulletin F28/55–21 dated May 19, 1980.

U. Applies to F28 airplanes S/N 11003–11038, 11040, and 11991–11994 inclusive. Compliance required within six weeks after the effective date of this AD. Balance the aileron servo tabs per Fokker Service Bulletin F28/57–33, Revision 1, dated February 24, 1972.

V. Applies to F28 airplanes S/N 11003–11123 inclusive, 11126, 11991, and 11992 which have accumulated 15,000 landings. Compliance required within two months after the effective date of this AD. To detect cracks in wing rear spar brackets, inspect per Fokker Service Bulletin F28/57–58, Revision 3, dated October 9, 1979. Repair cracks in accordance with the service bulletin.

W. Applies to F28 airplanes S/N 11003–11123 inclusive and S/N 11126, 11991, and 11992. Compliance required within six months after the effective date of this AD. To minimize the chance of cracking bracket lugs, install chromium plated bolts and bronze bushings and inspect left-hand and right-hand rear spar bracket lugs per Fokker Service Bulletin F28/57–59 dated July 25, 1979. Repair cracked lugs in accordance with the service bulletin.

X. Applies to F28 airplanes S/N 11111–11145 inclusive and S/N 11147, 11148, 11150, and 11151. Compliance required within three months after the effective date of this AD. To prevent performance deterioration, reseal the butt straps and boundary layer fences on the wing leading edge sections per Fokker Service Bulletin F28/57–61 dated April 14, 1980.

2. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

This amendment becomes effective August 23, 1982.

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

Note.—For the reasons discussed earlier in this rulemaking action, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since it involves few, if any, small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on July 9, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82-19763 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 81-AGL-44]

Alteration of Transition Area; Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal Action is to withdraw the rule as published on Page 56165 of the **Federal Register** dated November 16, 1981, which revoked the Janesville, Wisconsin, transition area, and to replace that rule with a rule which reinstates in part the previously designated Janesville, Wisconsin, transition area.

The intended effect of this action is to reinstate the transition area designated for Rock County Airport, Janesville, Wisconsin, and for Beloit, Wisconsin Airport while at the same time revoking the transition area associated with Wagon Wheel Airport, Rockton, Illinois.

In addition, this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions.

EFFECTIVE DATE: September 2, 1982.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The intent of Airspace Docket 81-AGL-16 was to revoke only the transition area associated with Wagon Wheel Airport and to maintain the transition area designated for Rockton County Airport and Beloit Airport. As published, the rule revoked all of the transition area. Therefore, this rule is necessary to reinstate that transition area required for both Rockton County Airport and Beloit Airport.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 17306 of the **Federal Register** dated April 22, 1982, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area airspace near Janesville, Wisconsin. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3 dated January 29, 1982.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, September 2, 1982, as follows:

The Janesville, Wisconsin, transition area as published on page 56165 of the **Federal Register** dated November 16, 1981, is revoked.

The following transition area is reinstated and amended to read:

Janesville, Wisconsin

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Rock County Airport, Janesville, Wisconsin (latitude 42°37'12" N., longitude 89°02'28" W.), and within a 6-mile radius of the Beloit, Wisconsin, Airport (latitude 42°29'51" N., longitude 88°58'05" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)) and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on July 1, 1982.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 82-19764 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-13-

14 CFR Part 73

[Airspace Docket No. 82-AEA-7]

Special Use Airspace; Alteration of Restricted Area—Oswego, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of Restricted Area R-5203, located in the Oswego, NY, area, by changing the time of designation from continuous to local time. This action indicates the actual utilization periods on a real time basis.

EFFECTIVE DATE: July 22, 1982. Comments must be received on or before August 23, 1982.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 82-AEA-7, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

This action is in the form of a final rule. Because it makes airspace available to users by changing the time of designation from "continuous" to local time for Restricted Area R-5203 without any negative effect on other persons, it would be contrary to the public interest to delay implementation by notice and public procedure. However, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the rule that might suggest the need to modify the rule. Send comments on environmental and land use aspects to: Director, Eastern Region, Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

The rule

The purpose of this amendment to § 73.52 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to change the time of designation for Restricted Area R-5203 from continuous to local time.

Section 73.52 of Part 73 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

Since this amendment merely changes the time of use for R-5203 from continuous to local time and thus reflects the actual time of utilization and does not impose a burden on the public, I find, therefore, that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective upon publication in the **Federal Register.**

List of Subjects in 14 CFR Part 73

Restricted area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 73.52 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, effective 0901 GMT, July 22, 1982, as follows:

R-5203 Oswego, NY [Amended]

Under time of designation by deleting the word "Continuous" and substituting the words "From 0800 to 2100 local time, Monday through Friday; from 0800 to 1600 local time, Saturdays. Other times by NOTAM 24 hours in advance."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on July 14, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc 82-19761 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3007]

Bayer AG, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on January 15, 1980, 45 FR 9894, (February 14, 1980) by deleting Paragraphs I-IV from the Order, so as to relieve respondent of the requirement of divesting assets used to manufacture allergenic extracts. Accordingly, the portion of Paragraph VII concerning respondent's divestiture efforts has also been deleted.

DATES: Final Order issued Jan. 15, 1980. Modifying Order issued July 6, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/C, Thomas J. Campbell, Washington, D.C. 20580, (202) 523-3601.

SUPPLEMENTARY INFORMATION: In the Matter of Bayer AG, a corporation, Rhinechem Corporation, a corporation,

and Miles Laboratories, Inc. (formerly Rhinechem Laboratories, Inc.), a corporation. The prohibited trade practices and/or corrective actions, codified under 16 CFR Part 13 at 45 FR 9894, are deleted. The following codification is added: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements.

List of Subjects in 16 CFR Part 13

Allergenic extracts.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

The Reopening and Modification of Order Docket No. C–3007 is as follows:

In the matter of Bayer AG, a corporation, Rhinechem Corporation, a corporation, and Miles Laboratories, Inc. (formerly Rhinechem Laboratories, Inc.), a corporation. Reopening and modification of Order Docket No. C–3007.

By petition filed on February 26, 1982, respondent Miles Laboratories, Inc. ("Miles"), requests on behalf of itself, Bayer AG, and Rhinechem Corporation that the Commission's order in Docket No. C–3007 be modified so that Miles no longer would be required to divest assets used to manufacture allergenic extracts. Pursuant to Section 2.51 of the Commission's Rules of Practice the petition was placed on the public record and Mr. Stanford Yates, representing Kallestad Laboratories, Inc., and Dr. Raymond Rosdale filed comments.

Miles previously had petitioned the Commission to modify the order. However, the Commission by a letter dated May 22, 1981 denied the earlier petition but granted a year's extension of the time in which Miles was required to divest its allergenic extracts assets.

Upon consideration of Miles' petition and supporting material and the public comments, the Commission now finds that due to a Food and Drug Administration proposal to eliminate Category III(A) as a classification for biologics, Miles is unable to sell its allergenic extracts business as a complete, viable competitor. In denying Miles' previous petition, the Commission noted that the proposed elimination of Category III(A) might constitute a changed circumstance sufficient to warrant modification of the order. Events since then have established that modification is now warranted. For this reason the Commission has determined that the order should be modified.

Accordingly,

It is ordered, that the proceeding be, and it hereby is, reopened.

It is further ordered, that the order to cease and desist be, and it hereby is, modified by deleting Paragraphs I–IV of the order and so much of Paragraph VII as relates to reports of Miles' divestiture efforts. Paragraph VII will now read:

It is further ordered that respondents shall annually, on the anniversary date of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which each or every respondent intends to comply, is complying or has complied with the order.

By direction of the Commission.

Issued: July 6, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82–19812 Filed 7–21–82; 8:45 am]

BILLING CODE 6750–01–M

---

16 CFR Part 13

[Docket 9140]

Russell Stover Candies, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order requires a Kansas City, Mo. manufacturer, seller and distributor of candy products to cease, among other things, entering into, maintaining, or enforcing any agreement, understanding or arrangement to fix resale prices for its products; suggesting resale prices, by any means, without clearly stating that they are merely suggested; and seeking information relating to recalcitrant retailers. The company is prohibited from terminating, suspending or taking any other adverse action against retailers who fail to conform to company's suggested prices; and required to reinstate those retailers who had been terminated for non-conformance to designated prices. The order additionally requires the company to pay for a survey to ascertain what percentage of its products is sold at manufacturer-designated prices, and to cease suggesting resale prices if that percentage is more than 87.4%.

DATES: Complaint issued July 1, 1980. Final order issued July 1, 1982.[1]

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Concurring Statement of Commissioner Clanton, Dissenting Statement of Chairman Miller and the Final Order filed with the original document.

FOR FURTHER INFORMATION CONTACT: FTC/CS–6, Eugene Kaplan, Washington, D.C. 20580. (202) 724–1668.

SUPPLEMENTARY INFORMATION: In the Matter of Russell Stover Candies, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers. Supart—Combining or Conspiring: § 13.425 To enforce or bring about resale price maintenance; § 13.433 To fix prices; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–35 Employment of independent agencies; 13.533–40 Furnishing information to media. Subpart—Cutting Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.655 Threatening disciplinary action or otherwise. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.677 Delaying or failing to deliver goods. Subpart—Maintaining Resale Prices: § 13.1130 Contracts and agreement; § 13.1150 Penalties; § 13.1155 Price schedules and announcements; § 13.1160 Refusal to sell § 13.1165 Systems of espionage.

List of Subjects in 16 CFR Part 13

Candy.

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

The Final Order, including further order requiring report of compliance therewith, is as follows:

Commissioners:

James C. Miller III, Chairman
David A. Clanton
Michael Pertschuk
Patricia P. Bailey

[Docket No. 9140]

Final Order

In the matter of Russell Stover Candies, Inc., a corporation.

This matter having been heard by the Commission upon the appeal of Complaint Counsel from the initial decision, and upon briefs and oral argument in support thereof, and in opposition thereto, and the Commission, for reasons stated in the accompanying opinion, having granted the appeal:

It is ordered that the order dismissing the complaint entered by the administrative law judge is vacated, and the following cease and desist order is entered.

Order

For purposes of this Order, the following definitions shall apply:

"Product" means any candy items which Russell Stover manufacturers or sells to retailers.

"Retailer" means each location of any person, partnership or corporation, not owned by Russell Stover, which purchases candy directly from Russell Stover for resale to the public.

"Prospective retailer" means each location of any person, partnership or corporation, not owned by Russell Stover, which requests or indicates a desire to purchase any product from Russell Stover for resale to the public.

"Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula, margin of profit or any other technique for pricing any product at retail.

"Designates" or "designated" means the selection by Russell Stover of the prices at which it desires that its retailers sell Russell Stover products.

I

It is ordered that Russell Stover Candies, Inc. ("Russell Stover"), a corporation, through its successors, assigns, officers, directors, employees, agents, representatives, licensees, subsidiaries, divisions or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist directly or indirectly from:

A. Entering into, establishing, exacting assurances to comply with, continuing, enforcing or announcing the terms of any contract, combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce the resale price at which any retailer or prospective retailer may advertise, offer for sale or sell any product.

B. Communicating, publishing, circulating, disseminating, or providing by any means, not intended for and not likely to be seen by consumers, any resale price unless it is clearly and conspicuously stated on each page of any list, advertisement, or other document or communication where any resale price appears:

"THIS [THESE] RETAIL PRICE[S] IS [ARE] SUGGESTED ONLY. YOU ARE COMPLETELY FREE TO DETERMINE YOUR OWN PRICE."

C. Communicating, publishing, circulating, disseminating, or providing by any means, intended for or likely to be seen by consumers, any resale price, unless it is clearly and conspicuously stated:

"SUGGESTED PRICE OPTIONAL WITH RETAILER."

except that any resale price communicated by preticketing a product by tag, ticket, label, sticker, or other comparable marking must clearly and conspicuously state:

"SUGGESTED PRICE ONLY."

D. Representing that any action may or will be taken against any retailer because of the resale price at which that retailer has advertised, offered for sale or sold any Russell Stover product, or because of the resale price at which that retailer may advertise, offer for sale or sell any Russell Stover product.

E. Terminating, suspending, delaying shipments to, or taking any other action against any retailer because of the resale price at which that retailer has advertised, offered for sale or sold any Russell Stover product.

F. Soliciting, gathering or transmitting data concerning the resale price at which any specific retailer has, or was alleged to have, advertised, offered for sale or sold any Russell Stover product.

II

It is further ordered that Russell Stover shall:

A. Within sixty (60) days from the date on which this Order becomes final, mail or deliver to every Russell Stover retailer and obtain a receipt for, an appropriate notice approved in advance by the Bureau of Competition explaining the provisions imposed by Part I of this Order.

B. For five (5) years from the date on which this Order becomes final, mail or deliver and obtain a receipt for an appropriate notice, approved in advance by the Bureau of Competition, explaining the provisions imposed by Part I of this Order to any new retailer that purchases any product from Russell Stover. The mailing or delivery required by this paragraph shall occur before the first purchase by the retailer.

C. Within ninety (90) days from the date on which this Order becomes final, have printed an advertisement containing an appropriate notice explaining the provisions imposed by Part I of this Order in two successive issues of trade publications that are generally circulated to Russell Stover retailers. The advertisements shall be no less than one-half page. The contents of the advertisements and the trade publications in which they appear shall both be approved in advance by the Bureau of Competition.

D. Within sixty (60) days from the date on which this Order becomes final, mail or deliver and obtain a receipt for an appropriate notice and an offer of reinstatement, both approved in advance by the Bureau of Competition, to each retailer that was terminated by Russell Stover and to each retailer with whom Russell Stover refused to deal, at any time after January 1, 1976, in while or in part because of the resale price at which it advertised, offered for sale or sold any Russell Stover product or at which Russell Stover believed its products would be advertised, offered for sale or sold. Russell Stover may refuse to open these retailers that request reinstatement only if the refusal is wholly for reasons not related to resale price.

E. Provide copies of this Order to all present and future Russell Stover officers and sales personnel.

III

A. It is further ordered that Russell Stover shall pay for a survey to ascertain the percentage of Russell Stover products sold at resale prices designated by Russell Stover. The survey will be conducted by Louis Harris & Associates, Inc., or a similarly qualified organization chosen by the Bureau of Competition, using the same procedures and techniques utilized in the Louis Harris survey conducted in April 1980, referred to in paragraph 23 of the stipulated record in this matter. Upon request from the Bureau of Competition, Russell Stover shall submit within ten (10) days a printed list of the names and addresses of its current retailers. The survey will be conducted during the second year following the date upon which this Order becomes final at a time not known in advance by Russell Stover and chosen at the sole discretion of the Bureau of Competition. If the results of the survey establish that more than 87.4% of Russell Stover products are sold by retailers at Russell Stover's designated resale prices, then the following provision shall take effect immediately upon receipt by Russell Stover of written notice from the Bureau of Competition and shall expire three (3) years thereafter:

It is ordered, that Russell Stover, through its successors, assigns, officers, directors, employees, agents, representatives, licensees, subsidiaries, divisions or any other corporate or other device, in connection with the manufacture, advertising offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist directly or indirectly from designating and communicating any resale price to any person by price list, discount schedule, invoicing procedure, advertisement, promotional material, preticketing or other prepricing of products, or by any other means.

B. At any time within one year from the date on which this Order becomes final, Russell Stover may request that the Bureau of Competition direct that a survey identical to that specified in paragraph III(A) be conducted, to be paid for by Russell Stover. The Bureau of Competition shall cause the survey to be conducted within six (6) months after receipt of the request. If the results of the survey establish that 87.4% or less of Russell Stover products are sold by retailers at Russell Stover's designated resale prices, Russell Stover need not comply further with paragraph III(A) of this Order.

IV

It is further ordered that Russell Stover shall:

A. Notify the Commission at least thirty (30) days prior to any proposed change in Russell Stover such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of this Order.

B. Within sixty (60) days from the date on which this Order becomes final, and annually each year for five (5) years thereafter, file with the Commission a written report setting forth in detail the manner in which Russell Stover has complied with each of the provisions of this Order; and include with its

annual reports or as supplements thereto such documentation as may be required in writing by the Bureau of Competition.

By the Commission. Chairman Miller dissenting.

Issued: July 1, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-19800 Filed 7-21-82; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[Docket No. C-3093]

American Motors Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Southfield, Mich. motor vehicle manufacturer and its subsidiary to cease, among other things, failing to disclose that the Jeep CJs handle and maneuver differently from ordinary passenger cars under certain reasonably expected driving conditions; and that sharp turns or abrupt maneuvers on pavement may result in loss of control or an accident. The order requires the company to place a prescribed sticker on the windshield of all new Jeep CJs warning owners of the Jeep's handling and maneuvering limitations; provide all existing Jeep CJ owner's manuals with an informational supplement concerning on-pavement driving and update the owner's manual to include this supplemental information. The company is also required to provide its dealers with a point-of-sale display designed to call attention to the Supplement, and with a sufficient quantity of the Supplement to enable dealers to make it available to each person who requests it. The order further requires the company to send to current registered owners of Jeep CJs since 1972, the sticker and the Supplement, together with a letter advising the owner to affix the sticker to his/her Jeep.

DATE: Complaint and order issued July 6, 1982.[1]

FOR FURTHER INFORMATION CONTACT: Leroy C. Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243-EB Federal Bldg., 26 Federal Plaza, New York, N.Y. 10278; (212) 264-1207.

[1] Copies of the Complaint and the Decision and Order filed with the original document.

SUPPLEMENTARY INFORMATION: On Friday, Dec. 4, 1981, there was published in the **Federal Register**, 46 FR 59258, a proposed consent agreement with analysis In the Matter of American Motors Corporation, a corporation, and Jeep Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-25 Displays, in-house; 13.533-45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparable data or merits; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1890 Safety; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Motor vehicles, Motor vehicle safety.

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

Carol M. Thomas,

Secretary.

[FR Doc. 82-19814 Filed 7-21-82; 8:45 am]

BILLING CODE 6750-01-M

---

16 CFR Part 13

[Docket No. 8928]

Beltone Electronics Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: This order dismisses the complaint charging a leading hearing aid manufacturer and three company officials with imposing territorial and customer restrictions, and exclusive dealing requirements upon its dealers. The Commission reversed the 1980 decision of the Administrative Law Judge, finding that Beltone's distributional practices do not adversely affect competition between manufacturers or between dealers.

DATES: Complaint issued May 8, 1973. Dismissal Order issued July 6, 1982.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-1, Joseph Brownman, Washington, D.C. 20580. (202) 724-1679.

SUPPLEMENTARY INFORMATION: In the Matter of Beltone Electronics Corporation, a corporation, and Sam Posen, David H. Barnow, and Chester K. Barnow, individually and as officers or directors of said corporation.

List of Subjects in 16 CFR Part 13

Hearing aids.

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

The Final Order is as follows:

Final Order

This matter has been heard by the Commission upon the appeal of respondent from the initial decision and order certifying the record on remand and upon the briefs and oral arguments in support of and in opposition to the appeal. For the reasons stated in the accompanying Opinion, the Commission has determined to reverse the initial decision. Respondent's appeal is granted. Accordingly,

It is ordered that the complaint is dismissed.

It is also ordered that all motions pending in this matter and not resolved in the accompanying Opinion, with the exception of various motions for extended *in camera* treatment of data which are responded to in a separate Order, are hereby denied.[2]

By the Commission.

Issued: July 6, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-19815 Filed 7-21-82; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Concurring Statement of Commissioner Bailey and the Final Order filed with the original document.

[2] On October 15, 1981, after the oral argument on the appeal from remand, respondent filed a motion seeking (a) to supplement the record with a consultant's report on the hearing aid industry, (b) to have referred to an administrative law judge a question regarding discovery of the aforementioned consultant's report and (c) to reargue the appeal. Complaint counsel filed timely responses to each portion of respondent's motion. The Commission has considered each of the motions and, finding that respondent has not been prejudiced by any matter raised by those motions and that the questions raised therein are mooted by this Opinion and Order, denies the motions.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6413; 34-18842; 35-22547; IC-12504; FR-2; File No. S7-906]

Instructions for the Presentation and Preparation of Pro Forma Financial Information and Requirements for Financial Statements of Businesses Acquired or To Be Acquired

Correction

In the Federal Register of Friday, July 16, 1982, on page 30967 there was a correction to a document that appeared on July 9, 1982 (page 29832). The correction, however, should be disregarded as the document was correct as originally printed.

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations Tangible Properties Licensing Policy

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations to provide a licensing procedure for the sale and disposition of tangible property that is currently blocked because of an interest of Iran in the property. The purpose of the amendment is to prevent the property from physically deteriorating and declining in value, to halt the accrual of storage charges, and to permit the satisfaction of certain claims against the property. The new licensing policy will permit the authorized sale of such property in appropriate cases following the review of license applications on their individual merits on a case-by-case basis.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: The new statement of licensing policy provides a mechanism for the disposition of blocked Iranian tangible property held by United States exporters, purchasing agents and others. It also provides for the satisfaction of certain claims out of the proceeds of a licensed sale of such property and for the transfer of any net proceeds in excess of such claims to Iran.

The disposition of tangible property in which Iran has an interest is governed by the provisions of sections 535.201 and 535.215 of the Regulations. Section 535.215 authorizes and directs the transfer of "properties . . . owned by Iran or its agencies, instrumentalities or controlled entities" as directed by the Government of Iran or its agent. However, § 515.333 of the Regulations provides that term "properties" as used in § 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran. Among other matters, the section provides:

> (b) Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens on such properties (not including attachments, injunctions and similar orders) are discharged.

Among other properties subject to the foregoing provisions are tangible properties as to which Iran does not possess complete or uncontested ownership rights under applicable provisions of U.S. law because of failure to pay the purchase price and other related charges. The referenced provisions implement the provisions of paragraph 9 of the Declaration of the Government of the Democratic and Popular Republic of Algeria which obligates the United States to arrange the transfer to Iran of "Iranian properties" (other than bank deposits or financial assets) "subject to the provisions of U.S. law applicable prior to November 14, 1979 * * *"

Tangible property in which Iran has an interest which is exempt from transfer to Iran under § 535.215 by virtue of § 535.333 of the Regulations remains subject to the blocking provisions of § 535.201. Section 535.201 prohibits, among other matters, the U.S. holder of such property from exercising any lien or set off against such property as a means of satisfying claims. Also, the prohibitions and nullifications in § 535.218 apply to such property even if it is exempt from transfer to Iran under § 535.215 by virtue of § 535.333. Further, such claims are suspended for purposes of seeking satisfaction out of such property through any action in a U.S. court (e.g., judicial creation or enforcement of a lien) by § 535.222.

In order to better formulate a licensing policy regarding Iranian tangible property, on May 24, 1982, the Office initiated a census of such property under § 535.625. Reports on Form TFR-625 were due July 1, 1982. Any person subject to the reporting requirement who has not submitted the report, which is mandatory, should do so immediately.

Under the new policy, the applicant holding property and wishing to dispose of it through public sale must establish that reasonable efforts have been made to obtain payment from Iran and that neither payment nor adequate assurance of payment has been received. The applicant must have, under provisions of law applicable prior to November 14, 1979, a right to sell, or a right to reclaim and sell such property by methods not requiring judicial proceedings.

The applicant must agree to indemnify the United States against liability in the Iran-United States Claims Tribunal in an amount equal to 150% of the proceeds of a licensed sale.

In the event that the applicant elects to use the license to exercise a lien against the property to satisfy a claim out of the proceeds of the sale, the applicant must post a bond or establish a standby letter of credit in favor of the United States in the amount of the proceeds of the sale in order to back up the indemnity. The applicant may elect to hold all or a part of the proceeds in a blocked, interest-bearing account at a domestic bank to the extent they constitute contested property under § 535.333. In the event that the entire proceeds are so held, no bond or standby letter of credit is required. Any proceeds which are un-contested and non-contingent are subject to § 535.215 and must be transferred to Iran.

Reasonable costs of administration of a licensed sale will be licensed to be deducted from the proceeds in any case. A full report to the Office of Foreign Assets Control on the conduct of the sale will be required.

List of Subjects in 31 CFR Part 535

Iran, Foreign assets control.

31 CFR Part 535 is amended as follows:

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

Section 535.540 is added as follows:

§ 535.540 Disposition of certain tangible property.

(a) Specific licenses may be issued in appropriate cases at the discretion of the Secretary of the Treasury for the public sale and transfer of certain tangible property that is encumbered or contested within the meaning of § 535.333 (b) and (c) and that, because it is blocked by § 535.201, may not be sold or transferred without a specific license.

provided that each of the following conditions is met:

(1) The holder or supplier of the property has made a good faith effort over a reasonable period of time to obtain payment of any amounts owed by Iran or the Iranian entity, or adequate assurance of such payment;

(2) Neither payment nor adequate assurance of payment has been received;

(3) The license applicant has, under provisions of law applicable prior to November 14, 1979, a right to sell, or reclaim and sell, such property by methods not requiring judicial proceedings, and would be able to exercise such right under applicable law, but for the prohibitions in this part, and

(4) The license applicant shall enter into an indemnification agreement acceptable to the United States providing for the applicant to indemnify the United States, in an amount up to 150 percent of the proceeds of sale, for any monetary loss which may accrue to the United States from a decision by the Iran-U.S. Claims Tribunal that the United States is liable to Iran for damages that are in any way attributable to the issuance of such license. In the event the applicant and those acting for or on its behalf are the only bidders on the property, the United States shall have the right to establish a reasonable indemnification amount.

(b) An applicant for a license under this section shall provide the Office of Foreign Assets Control with documentation on the points enumerated in paragraph (a) of this section. The applicant normally will be required to submit an opinion of legal counsel regarding the legal right claimed under paragraph (a)(3) of this section.

(c) Any sale of property licensed under this section shall be at public auction and shall be made in good faith in a commercially reasonable manner. Notwithstanding any provision of State law, the license applicant shall give detailed notice to the appropriate Iranian entity of the proposed sale or transfer at least 30 days prior to the sale or other transfer. In addition, if the license applicant has filed a claim with the Iran-U.S. Claims Tribunal, the license applicant shall give at least 30 days' advance notice of the sale to the Tribunal.

(d) The disposition of the proceeds of any sale licensed under this section, minus such reasonable costs of sale as are authorized by applicable law (which will be licensed to be deducted), shall be in accordance with either of the following methods:

(1) Deposit into a separate blocked, interest-bearing account at a domestic bank in the name of the licensed applicant; or

(2) Any reasonable disposition in accordance with provisions of law applicable prior to November 14, 1979, which may include unrestricted use of all or a portion of the proceeds, provided that the applicant shall post a bond or establish a standby letter of credit, subject to the prior approval of the Secretary of the Treasury, in favor of the United States in the amount of the proceeds of sale, prior to any such disposition.

(e) For purposes of this section, the term "proceeds" means any gross amount of money or other value realized from the sale. The proceeds shall include any amount equal to any debt owed by Iran which may have constituted all or part of a successful bid at the licensed sale.

(f) The proceeds of any such sale shall be deemed to be property governed by § 535.215 of this part. Any part of the proceeds that constitutes Iranian property which under § 535.215 is to be transferred to Iran shall be so transferred in accordance with that section.

(g) Any license pursuant to this section may be granted subject to conditions deemed appropriate by the Secretary of the Treasury.

(h) Any person licensed pursuant to this section is required to submit a report to the Chief of Licensing, Office of Foreign Assets Control, within ten business days of the licensed sale or other transfer, providing a full accounting of the transaction, including the costs, any payment to lienholders or others, including payments to Iran or Iranian entities, and documentation concerning any blocked account established or payments made.

(Sec. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; and E.O. No. 12294, 46 FR 14111)

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary.

[FR Doc. 82-19897 Filed 7-20-82; 11:53 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 13-82-08]

Water Festival Regatta; Willamette River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes an area of controlled navigation on the Willamette River on July 24 and July 25, 1982. This is due to scheduled speed boat races for this time period as a part of the Portland Water Festival, Outboard Performance Craft Races. Through this action the Coast Guard intends to ensure the safety of spectators and participants in this event.

EFFECTIVE DATES: This regulation is effective from July 24, 1982 through July 25, 1982.

FOR FURTHER INFORMATION CONTACT: LCDR B. W. Mills, Commander(bb), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174, (206) 442–7355.

SUPPLEMENTARY INFORMATION:

Discussion

This is the first race sponsored by the Oregon Marine Trade Association on the Federal navigable portion of the Willamette River in Portland, Oregon. The event is expected to draw a large number of spectators to the beaches and waters surrounding the race course. A sizeable portion of the spectators are expected to watch the event from a significant number of pleasure craft anchored near the race course. To ensure the safety of both the spectators and the participants, a special navigational regulation providing Coast Guard personnel with the authority to control and coordinate general navigation in the waters surrounding the race course during the event is herewith established.

Procedure

This regulation has been promulgated as an emergency Final Rule without any prior announcement or Notice of Proposed Rulemaking since this event has already received wide advertisement throughout the Portland area and the surrounding community and the event is scheduled to occur in less than 30 days. Over the past few months representatives of the major Willamette River user groups have participated with the sponsor in planning this event in order to limit

interference with the commercial users of the river and pleasure craft. Therefore, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule-making, and opportunity for public participation are considered unnecessary. Nevertheless, interested persons wishing to comment may do so by submitting written comments to the office listed under "FOR FURTHER INFORMATION CONTACT" in this preamble. Commenters should include their names and addresses, identify the docket number for the rulemaking, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The principal persons involved in the drafting of this proposal are LCDR B. W. Mills, USCG, Project Office, Commander(bb), Thirteenth Coast Guard District, and LCDR R. R. Clark, USCG, Project Attorney, Commander(dl), Thirteenth Coast Guard District.

Summary of Evaluation

This final regulation has been reviewed under the provisions of Executive Order 12291 and the guidelines set forth in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.00 of 5–22–80). It is considered to be nonsignificant. An economic evaluation of this notice has not been conducted since its impact is expected to be minimal. This regulation affects a short section of the Willamette River with only light commercial traffic and will be in effect for only two (2) days, those days being Saturday and Sunday. In addition the scheduling of commercial traffic on this section of the river has already been coordinated with the effected users. Also, the Patrol Commander will allow commercial traffic to transit the area between race heats. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164) it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This is clear from the limited, if any, impact on commercial marine traffic that will occur as a result of this final rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a new § 100.1311, to read as follows:

§ 100.1311 Willamette River/1982 Water Festival.

(a) On July 24 and July 25, 1982, this regulation will be in effect each day from 0900 Pacific Daylight time until one hour after the conclusion of the last race.

(b) The area in which the Coast Guard will restrict general navigation and anchorage by this regulation during the hours it is in effect is:

(1) On chart 18526, the waters of the Willamette River from a line perpendicular to the northern end of the ARCO fuel pier at statute mile 4.8, upstream to the Burlington Northern Railroad Bridge at Portland, Oregon.

(c) The Coast Guard patrol of the area described in paragraph (b) of this section is under the direction of the Coast Guard Patrol Commander. He is empowered to control the movement of vessels in the area described in paragraph (b).

(d) Vessels underway in the area described in paragraph (b) of this section during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, i.e., seven (7) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

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

(46 U.S.C. 454; 33 CFR 100.35)

Dated: July 9, 1982.

C. F. DeWolf,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 82–19750 Filed 7–21–82; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD 81–107]

Drawbridge Operation Regulations; Snohomish River, Steamboat Slough, and Ebey Slough, Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Washington State Department of Transportation, the Coast Guard is changing the regulations governing the state highway drawbridges across the Snohomish River, Steamboat Slough, and Ebey Slough between Everett and Marysville, Washington, by requiring that one hour advance notice of opening be given for the Ebey Slough bridge and the existing advance notice for the Snohomish River and Steamboat Slough bridges be reduced to one hour. This change is being made because of an increase in the navigational usage of the Snohomish River. This action will relieve the Washington State Department of Transportation of the burden of having a person in constant attendance at the Ebey Slough bridge while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment becomes effective on August 23, 1982.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174, telephone (206) 442–5864.

SUPPLEMENTARY INFORMATION: On January 28, 1982, the Coast Guard published a proposed rule (47 FR 4095) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated January 26, 1982. Interested parties were given until February 28, 1982 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: John E. Mikesell, Chief, Bridge Section, Thirteenth Coast Guard District, and LT James R. Woeppel of the Thirteenth Coast Guard District Legal Officer's staff.

Discussion of Comments

Eight responses were received, five were from federal and state agencies who routinely respond to Coast Guard public notices. Of the five, two offered no objection and three offered no comment. Three responses were received from navigation interests. One offered comments in support of the proposal, one had no objection, but offered a recommendation that the bridges involved be equipped with VHF radio for communication with commercial tugs, and one expressed a desire that the Ebey Slough bridges be manned at least during every high tide for the convenience of waterway users. It is felt that the regulation amendment

will adequately cover these points and provide an overall higher level of service than is presently available. An economic evaluation has not been prepared because the proposed amendment would have only minimal economic impacts. The requirement for one hour advance notification would not result in significant costs to commercial waterway users or small businesses, would improve service for recreational traffic, and would not significantly increase costs to the bridge owner. The reference to the "Burlington Northern Corporation" appearing in the proposed rule has been changed to read "Burlington Northern Railroad Company" because of a recent change in the official name of that organization. The wording "one hours advance" appearing in the proposed rule at § 117.805(e)(5)(i) has been changed to "one hour advance notice" for clarity.

These final regulations have been reviewed under provisions of Executive Order 12291 and have been determined not to be a major rule. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). As explained above, an economic evaluation has not been conducted. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a subtantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising § 117.805(e)(5) to read as follows:

§ 117.805 Snohomish River, Steamboat Slough, and Ebey Slough, Washington; bridges

* * * * *

(e) * * *

(5) The bridges to which this paragraph applies, and the special regulations applicable in each case, are as follows:

(i) The State of Washington, Department of Transportation, bridges across the Snohomish River north of Everett; Steamboat Slough bridges north of Everett; and the Ebey Slough bridge at Marysville, shall open on signal if at least one hour advance notice is given: *Provided,* That during freshets a drawtender shall be kept in constant attendance at the Snohomish River bridges upon order of the District Commander. Notice shall be given by marine radio, telephone, or other means, on weekends, to the drawtender at the Snohomish River bridges, and on weekdays, to the drawtender at the Ebey Slough bridge.

(ii) The State of Washington, Department of Transportation, bridge across the Snohomish River at the foot of Hewitt Avenue, Everett, shall open on signal if at least four hours advance notice is given: *Provided,* That during freshets a drawtender shall be kept in constant attendance upon order of the District Commander.

(iii) The Burlington Northern Railroad Company bridge across Steamboat Slough north of Everett shall open on signal if at least four hours advance notice is given.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: July 9, 1982.

C. F. DeWolf,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 82–19688 Filed 7–21–82; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD 09–82–07]

Drawbridge Operation Regulations; Wolf River, Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Wisconsin Department of Transportation the Coast Guard is revising the regulations governing the operation of the Winneconne Highway bridge, mile 2.43, across the Wolf River in Winneconne, Wisconsin, by requiring that advance notice for opening of the draw be given during certain periods of time. This change is being made because of few openings for the period of time between 11 p.m. and 7 a.m. during the navigation season and all shifts during the winter months. This action will relieve the bridge owner of the burden of having a person on duty at the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment becomes effective on August 23, 1982.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199 (216) 522–3993.

SUPPLEMENTARY INFORMATION: On April 29, 1982, the Coast Guard published a Proposed Rule in the **Federal Register** (47 FR 18373) concerning this amendment. The Commander, Ninth Coast Guard District, also published this proposal as a Public Notice dated 17 May 1982. Interested parties were given until June 14, 1982, and June 16, 1982, respectively, to submit comments.

Drafting Information

The principal persons involved in drafting this Final Rule are: Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, and Project Attorney, LCDR Michael D. Gentile, Assistant Legal Officer, Ninth Coast Guard District.

Discussion of Comments

No comments were received from the **Federal Register** or Public Notice.

This final regulation has previously been determined to be non-major under Executive Order 12291, and also to be nonsignificant under the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). The final regulation has been certified under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), at 47 FR 18373 (April 29, 1982). No information has been received which changes those determinations and certifications. An economic evaluation has not been conducted. Since this rule allows the bridge owner to remove bridgetenders only during times when navigation on the Wolf River is negligible and during times when the U.S. Locks on the Wolf and Lower Fox Rivers are closed for the winter months, small entities in the area will not be economically impacted.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.643a immediately after § 117.643 to read as follows:

§ 117.643a Wolf River, Wisconsin.

(a) The Winneconne Highway bridge shall open on signal except that:

(1) From May 1 through October 31, from 11 p.m. to 7 a.m., the draw shall open on signal if at least 2 hours notice is given.

(2) From November 1 through April 30 the draw shall open on signal if at least 12 hours notice is given.

(b) Public vessels of the United States, state and local government vessels used for public safety and vessels in distress,

shall be passed through the draw of this bridge as soon as possible at all times.

(c) The owner of or agency controlling this bridge shall keep conspicuously posted on both the upstream and downstream sides of the bridge, in such a manner that it can be easily read at all times, a copy of the regulations in this section, together with a notice stating exactly how the representative of the bridge owner may be reached during times an advance notice is required.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: July 13, 1982.

Henry H. Bell,

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

[FR Doc. 82-19849 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Provider Reimbursement Review Board: Expedited Administrative Review

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: Current Medicare regulations permit providers of services to appeal reimbursement decisions of Medicare fiscal intermediaries to the Provider Reimbursement Review Board. Following the Board's decision, the provider may also request judicial review of that decision (and of any action by the Secretary with respect to that decision). These amendments to our regulations permit the provider to obtain expedited administrative review when the Board determines that it lacks authority to decide a question of law, regulation, or HCFA ruling relevant to the case. The question of whether authority is lacking may be raised by the provider or on the Board's own motion. The regulations eliminate the current requirement for a Board hearing before judicial review when the Board lacks authority to decide an issue, and they establish time limits within which the Board must act.

These rules implement section 955 of the Omnibus Reconciliation Act of 1980, Pub. L. 96-499.

DATES: These regulations are effective July 22, 1982. The regulations are being published in final for reasons described in the Supplementary Information below. However, we will consider any written comments mailed by August 23, 1982, and revise the regulations, if necessary.

ADDRESSES: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-136-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Stanley Katz, (301) 594-9595.

SUPPLEMENTARY INFORMATION:

Background

Under the Medicare program, the amount paid to a provider of services is the reasonable cost of items and services furnished to beneficiaries. To be reimbursed for services covered by the program, providers must file cost reports with their fiscal intermediaries. These cost reports are used by the intermediaries to determine the amount of reimbursement. If a provider is dissatisfied with the amount of reimbursement (or if the intermediary does not make its determination within 12 months after receiving a cost report), the provider has the right to request a hearing before the Provider Reimbursement Review Board, if the amount in controversy is $10,000 or more (42 CFR 405.1835). (See section 1878 of the Social Security Act, 42 U.S.C. 1395oo, and 42 CFR Part 405, Subpart R.)

The statute authorizes the Secretary to reverse, affirm, or modify a decision of the Board. (See section 1878(f) of the Act, 42 U.S.C. 1395oo(f).) (This authority has been delegated to the Administrator of the Health Care Financing Administration (HCFA), the agency now administering Medicare. The Administrator in turn delegated this authority to the Deputy Administrator.) If a provider is dissatisfied with the decision of the Secretary (where there is a review) or the Board, the provider may request judicial review of the final agency decision by a United States district court. A determination or decision made at any level in this process is "final" unless it is appealed within specified time limits. (See 42 CFR 405.1841, 405.1871, and 405.1877.)

The Board decides all questions relating to its jurisdiction to grant a hearing (see 42 CFR 405.1873). The Board, however, may grant a hearing under section 1878 of the Act only with respect to those matters for which providers have a right to review by the Board. In general, these are cases in which the amount in controversy is $10,000 or more, the provider is dissatisfied with the intermediary's determination or has not received a timely determination, and the provider has met specified time limits for filing an appeal.

When a provider files a request for a hearing, the Board notifies both the provider and intermediary of the acceptance or nonacceptance of the request. If the Board accepts the request, it notifies the provider and the intermediary and asks them to work together to clarify and simplify the issues involved, make stipulations as to the facts and issues, and prepare their respective position papers. These position papers are expected to present fully the positions and conclusions of the provider and the intermediary as to the issues, facts, evidence, and argumentation concerning supporting law, regulations, and HCFA rulings. Upon receipt of these materials, the Board may schedule a prehearing conference for the purpose of defining the issues more clearly. The Board is required to inform the parties to the hearing of the time and place of the hearing at least 30 days in advance. (See 42 CFR 405.1849 and 405.1853.)

In the exercise of its review authority, the Board may decide factual disputes and determine the applicability of Medicare law, regulations, and HCFA rulings to the matter at issue. In doing so, the Board may accept any evidence presented by the parties and may enter findings of fact on any criterion relevant to the intermediary's decision that is provided in the controlling authority (law, regulations or HCFA rulings). The Board, however, may not reverse or overrule the applicable authority, since these authorities are binding on the Board (42 CFR 405.1867).

There are some cases, however, for which the Board has jurisdiction, but for which a hearing would not resolve the matter at issue. This occurs when the sole issue to be resolved is the validity of the governing law, regulations or HCFA rulings, which the provider challenges. Thus, there may be no factual issues to be resolved by the Board and no legal issues within the authority of the Board to decide. The provider may, however, wish to challenge HCFA's legal position in court. To do so, the provider was previously required under section 1878 of the Act to bring the matter before the Board, even though the Board would have the authority only to affirm the determination of the intermediary. The effect of this process was to delay the resolution of controversies for extended periods of time and to require providers to pursue a time-consuming and unproductive administrative review merely to have the right to seek judicial review. (House Report No. 96–1167, 96th Congress, 2d Session, July 21, 1980; p. 394)

Changes in the Statute

Section 955 of Pub. L. 96–499, the Omnibus Reconciliation Act of 1980, amended section 1878(f)(1) of the Social Security Act. The amendment makes it possible for a provider that requests and has the right to obtain a hearing by the Board under section 1878(a) of the Act to bypass the hearing and obtain judicial review of any action of the fiscal intermediary that involves a question of law or regulations relevant to the matters in controversy, whenever the Board determines that it is without authority to decide the question. The Board may determine that it does not have the authority to decide a question either on its own motion or upon the request of a provider.

The amendment does not in any way change the scope of the Board's jurisdiction; the Board has jurisdiction over no more and no fewer types of issues now than before the law was enacted. If a provider requests and may obtain a Board hearing under section 1878(a) of the Act (that is, the Board accepts jurisdiction of the case), the provider may request expedited review; i.e., a determination by the Board of the Board's authority to decide the question of law or regulation relevant only to the matters that the Board has accepted for a hearing. (We refer to this determination as an "expedited review determination" in this preamble.)

Once the provider has requested an expedited review determination, the Board has 30 days in which to issue the determination in writing. The 30 days begins after receipt of the request, accompanied by whatever documents and other materials the Board requires to make the determination.

A provider may bring a civil action with respect to the matters for which the Board grants expedited review. If the Board does not make a determination either granting or denying expedited review within 30 days after receipt of a provider's request with accompanying documents, the provider may bring suit with respect to the matter in controversy contained in the request. There is no provision for bringing civil suit on the Board's determination not to grant expedited review.

The provider must bring the civil action within 60 days of the date of the Board's determination, or, if the Board fails to make the determination within 30 days after receipt of a provider's appropriately documented request, within 60 days following the end of the 30-day period.

The law provides that an expedited review determination by the Board will be considered final and not subject to the Secretary's review.

The law applies equally to all providers, regardless of whether HCFA or another organization serves as fiscal intermediary.

Provisions of the Regulation

These amendments implement section 955 of Pub. L. 96–499 by adding a new § 405.1842 to 42 CFR Part 405, Subpart R, Medicare regulations on Provider Reimbursement Review Board responsibilities and procedures.

The amendments parallel the statutory changes, with clarifying or implementing policy as discussed below.

A. *Application of Regulations to HCFA Rulings.* Current regulations at 42 CFR 405.1867 provide that the Board is bound by applicable Medicare law, regulations and HCFA rulings. The statutory amendment addresses the right of the provider to judicial review when the validity of a regulation or the law is in question. However, since HCFA rulings are binding on the Board (see 42 CFR 405.1867) and are used effectively for clarifying policy issues that arise in the implementation of the law and existing regulations, we believe the question of the validity of HCFA rulings should also be subject to expedited review. Therefore, we have included this provision in the new regulations.

The HCFA rulings to which we refer are the *Health Care Financing Administration Rulings*, published under the authority of the Administrator of HCFA for the purpose of making available to the public, official rulings relating to the Medicare, Medicaid, Professional Standards Review Organizations and other programs under HCFA's jurisdiction.

The rulings include materials required to be made public by the Freedom of Information Act (5 U.S.C. 552(a)(2)): That is, final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases; statements of policy and interpretations adopted by HCFA or one of its components and not generally published in the **Federal Register**. HCFA may, at its discretion, publish individual rulings in the **Federal Register**, or as a separate publication, or both.

The HCFA rulings are the continuation of the system the Social Security Administration has had for several years for issuing formal rulings; that Administration issued rulings for the Medicare program before HCFA was created.

B. *The Request and Accompanying Documents.* To obtain an expedited review proceeding, the provider must file its request and accompanying documents in writing with the Board and send a copy of its request and documents to the intermediary.

A request to the Board for a determination concerning its authority to decide an issue must—

(a) Identify the issues and the controlling law, regulation, or HCFA ruling for which the Board is to make a determination;

(b) Allege and demonstrate that there are no factual issues in disputes;

(c) Contain an explanation of why the provider believes the Board cannot decide the legal issue or issues that are in dispute; and

(d) Include all other information or details that support the request.

If the request does not contain enough information for the Board to make a determination, the Board will request more information from the provider. A request is not considered complete until all of the statements noted above, and any additional information the Board may request, have been received. Thus, the 30-day time period does not begin until the Board has notified the provider that it has accepted jurisdiction of the case and the request is complete. If the additional information the provider sends in response to the Board's request is still inadequate, the Board will determine not to grant expedited review.

We encourage providers to send all the required and any supplementary information with the initial request for an expedited review determination to avoid requests from the Board for additional information.

We are requesting providers to include the words "EXPEDITED REVIEW" in a prominent place on the envelope. This will help alert the Board and intermediary to the presence of material that must be handled quickly.

C. *Intermediary Participation.* When the intermediary receives its copy of the provider's request, it will review the issue and send the Board and the provider any comments it has. Since the intermediary cannot know if the Board will accept the initial request as complete and thus how much time there will be to comment, the intermediary should send its comments as soon as possible. The Board may consider the comments at any time before it issues its determination.

If the Board receives intermediary comments that raise questions about the provider's request for an expedited review determination, the Board may find it necessary to request additional information from the provider. This will extend the 30-day time period for making a determination, as discussed more fully in "D. Timing of the Request and Accompanying Materials" below.

D. *Timing of the Request and Accompanying Materials.* The request for an expedited review determination may either accompany or follow the provider's request for a Board hearing. However, the 30 days which the Board has to make a determination will not begin until (1) the Board has accepted jurisdiction of the case, and (2) the provider has filed an appropriately documented request for such a determination, if this was not submitted with the request for a hearing.

Under current regulations (42 CFR 405.1841), the Board, after receiving a request for a hearing, examines and develops the request as necessary to determine whether it has jurisdiction. This examination and development is distinct from the Board's review of a provider's request for an expedited review determination. The jurisdiction determination generally takes 30 days. In our view, it would not always be reasonable to expect the Board to act on a request for an expedited review determination within the required 30-day period at the same time it is deciding whether it has jurisdiction in the case.

The provision that the Board consider the provider's request for an expedited review determination after its request for a hearing has been accepted is consistent with the statutory amendment, which clearly intends that the provider first establish its right to obtain a Board hearing. The law reads,"If a provider may obtain a hearing under subsection (a) (of section 1878 of the Act) and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority * * *" In order to determine whether a provider "may obtain a hearing," the Board has to decide whether it has jurisdiction under section 1878(a) of the Act. We are therefore interpreting "may obtain a hearing" as meaning the Board has accepted the request and jurisdiction of the case and thus has established the provider's right to a hearing.

The 30-day period during which the Board must issue an expedited review determination will begin on the date of receipt by the Board of a complete request (as defined above in B) or on the date indicated on the Board's written notification to the provider that the Board has jurisdiction of the issue or issues, whichever is later.

When the Board requests more information, the start of the 30-day period which the Board has to make its expedited review determination automatically begins on the date the additional information is received. The Board may set a time limit on the provider's response so that the case is kept active.

There are a number of possible combinations of requests and time frames for expedited review determinations. Following are several examples of possible circumstances and the Board's actions:

- The provider requests a hearing and expedited review at the same, or about the same time, and provides all necessary information. In this case, the Board can notify the provider that it has accepted jurisdiction of the case and can make the expedited review determination simultaneously.
- The provider requests a hearing and expedited review at the same time (or requests the latter before jurisdiction is established), but the request for a hearing does not contain enough information for the Board to determine whether it has jurisdiction. In this case, the Board cannot make an expedited review determination until after it has accepted jurisdiction. The Board would request more information to determine jurisdiction and, assuming it accepts jurisdiction, make its expedited review determination within 30 days after it has accepted jurisdiction.
- The provider requests a hearing and an expedited review determination simultaneously, but does not send enough information for the Board to make an expedited review determination. Assuming the Board accepts jurisdiction of the case, the Board will request more information about the request for an expedited review determination and make its determination within 30 days after it receives that information.
- The provider requests a hearing and an expedited review determination simultaneously, but the Board does not make its expedited review determination until 30 days after it has accepted jurisdiction of the case. The case may be too complex to decide quickly, because, for instance, there may be several issues for which the provider has requested an expedited review.
- The provider requests an expedited review determination after the Board has notified it of acceptance of the provider's request for a hearing. The Board will make its determination within 30 days after the date of actual receipt of the request for an expedited review determination (or upon receipt of additional information if requested by the Board).

The date of the receipt of documents mailed by the provider will be established by the date-time stamp the Board uses for incoming mail or the date established by the use of "return receipt requested" mail, if the provider chooses to mail the material this way. On the other hand, the Board will always use "return receipt requested" mail when it is necessary to establish the day the provider receives mail from the Board.

E. *Effect of the Board's Determination.* The Board's determination to grant expedited review, or its failure to issue a determination within 30 days from the date of receipt of a request upon which action can be taken, will allow the provider to seek judicial review without any intervening Secretary's review. However, there is no provision in the law for judicial review of a Board determination not to grant expedited review. Therefore, if the Board determines not to grant expedited review, it will follow its normal hearing procedures on the substantive issue, and the hearing determination will be subject to the Administrator's review and judicial review, as under current procedures.

When the applicability of a law, regulation, or HCFA ruling on a particular issue is within the authority of the Board to decide, a provider may not obtain expedited review since the Board hearing or the subsequent Secretary's review of the hearing decision could resolve the issue of applicability entirely in the provider's favor. Therefore, if there are factual or legal matters within the authority of the Board to decide on the particular issue, the Board will not grant the expedited review and will proceed with a hearing. The hearing

determination will be subject to the Secretary's review and judicial review.

There may be cases in which a provider requests an expedited review determination on more than one issue and the Board determines that it has the authority to decide one or more issues, but not all of them. The provider may seek judicial review of the issues for which the Board has determined it does not have the authority to decide. The Board will follow regular Board hearing procedures for other issues. The Board has the discretion to decide when two (or more) issues are too entwined to separate for purposes of an expedited review determination on one (or more) of them and a hearing on the other or others.

If the Board fails to make an expedited review determination within the prescribed 30 days, it will proceed as though it had the authority to decide the issue (for example, it would schedule a hearing) until the provider notifies the Board that it is seeking judicial review. The Board will not hold a hearing on the issue or issues for which the provider is seeking judicial review. Therefore, we are requesting the provider to notify the Board when it files for judicial review.

If there is to be judicial review of a given case, HCFA will review the provider's and intermediary's materials and the Board's determination. Our review may lead us to request the court to remand the case to the Board, if we find any unresolved factual issues.

F. *Limitation on Extent of Applicability of Regulations.* Section 955 of the Omnibus Reconciliation Act applies only to those matters that are subject to the Board's review under section 1878 of the Act, as described in the Background section above. However, the Secretary has assigned other responsibilities and administrative appeals to the Board. One example is the Board's review of an intermediary determination that denies payment of amounts claimed for certain capital expenditures, based on the Medicare exclusion (under section 1122 of the Act) of costs attributable to capital expenditures that are not approved by the State health planning agency (42 CFR 405.1890). The Board's review in this instance is a reconsideration under section 1122(f) of the Act, rather than a hearing within the meaning of section 1878. Section 1122(f) of the Act and 42 CFR 405.1890(c)(2) and (d) specifically state that a determination by the Secretary under section 1122 of the Act "* * * *shall not* be subject to [other] administrative or judicial review" (emphasis added). Therefore, we are excluding Board actions under 42 CFR 405.1890 pertaining to matters under section 1122 of the Act from the expedited proceedings the new regulations cover.

Previous Federal Register Publication on Expedited Judicial Review

On February 4, 1980, we published a notice of proposed rulemaking (NPRM) (45 FR 9953) containing extensive changes we wished to make to clarify and improve the effectiveness of the Board's hearing procedures and the Administrator's review process. We received a large number of comments which we are considering in connection with preparing final regulations.

One of the proposed changes, however, was quite similar to the provisions enacted by section 955 of Pub. L. 96–499. In § 405.1853(d) of the NPRM, we proposed a means of expediting cases, when the provider wished to challenge HCFA's legal position, by shortening the Board hearing and permitting the challenge to be taken directly to Federal court. The expediting procedure would have been initiated by a stipulation between HCFA and the provider setting forth their agreement concerning (1) the controlling facts in the case; (2) the fact that there are no factual issues for the Board to resolve; (3) the applicable statutes, regulations and HCFA rulings; and (4) the fact that there are no legal issues within the authority of the Board to decide. Thus, the stipulation would have made it clear that the only issue to be resolved was the provider's challenge to the validity of the governing HCFA policy.

We received 30 comments from 29 commenters on that proposed provision. Ten comments supported the basic provision, and most of the others have been resolved by the recent legislation. Several are no longer pertinent.

A comment not covered by the legislation was a request to clarify that the expedited procedure could permit a challenge to HCFA rulings, as well as to the law and regulations. We have accepted the comment and have written §405.1842 accordingly.

In addition, there was another comment that is relevant to the new section. One commenter indicated that the proposal did not provide a method of tracking the various time periods provided for in the proposed rule. This is a valid point. We adopted the comment and included it in § 405.1842 as discussed above under section C.

Waiver of Proposed Rulemaking

Pub. L. 96–499 was enacted on December 5, 1980, and became effective on that date. In order to have regulations in place as close as possible to the effective date of the law, we must publish these regulations in final form as soon as possible. Because of this, and because we published a substantially similar provision as part of a notice of proposed rulemaking on February 14, 1980, we believe that publication of a new notice of proposed rulemaking is unnecessary and would be contrary to the public interest. We therefore find good cause to waive notice of proposed rulemaking and our normal 30-day delay in effective date. We will, however, consider any comments on this rule that are mailed by the date specified above in the "Dates" section and make any further changes that may be necessary.

Executive Order 12291

The Secretary has determined that these regulations do not meet the criteria for a "major rule," as defined by section 1(b) of Executive Order 12291. That is, the regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies or any geographic regions; or
- Have significant adverse effects on composition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The only costs we have identified with implementing these regulations are those of hiring two employees (one professional and one clerical) and purchasing the necessary office equipment these employees will need for a total of $56,200. We anticipate that the Board will receive 75 to 98 cases per year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires (5 U.S.C. 604) a Federal agency to prepare, and to make available to the public, a final regulatory flexibility analysis when a final rule is published that has an effect on small businesses and other small entities.

As defined by the Regulatory Flexibility Act, the term "small entities" includes "small governmental jurisdictions". The latter term is defined as local governments (cities, counties, towns, townships, villages, school districts, or other special districts) with a population of less that fifty thousand persons.

As explained above, these regulations will permit providers to obtain expedited review when the Board

determines it does not have the authority to decide an issue. These regulations do affect some providers that are small enough to meet the definition of "small entity". However, the regulations have no significant economic effect on any providers. These regulations will benefit providers, and the economic impact on both HCFA and providers will take advantage of the provisions of these regulations, we project that the number of providers that do will be insignificant (compared to total number of providers); further, the number of providers that are "small entities" will be even less significant. Therefore, the Secretary certifies pursuant to section 605(b), that the regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), End-stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Chapter IV, Part 405, Subpart R, is amended as follows:

1. The Table of Contents is revised by adding § 405.1842 as follows:

Subpart R—Provider Reimbursement Determinations and Appeals

* * * * *

Sec.

405.1842 Expediting Board proceedings.

* * * * *

Authority: Secs. 1102, 1861(v), 1871, and 1878, 49 Stat. 647, as amended, 79 Stat. 322, as amended, 79 Stat. 331, as amended, 86 Stat. 1421 (42 U.S.C. 1302, 1395hh, 1395oo, 1395x(v)).

2. A new § 405.1842 is added as follows:

§ 405.1842 Expediting Board proceedings.

(a) *Basis and purpose.* This section implements section 1878(f)(1) of the Social Security Act, as amended by section 955 of Pub. L. 96–499 (42 U.S.C. 1395oo(f)(1)). The amendment provides an opportunity for providers to obtain expedited administrative review when the Board determines that it does not have the authority to decide a question of law, regulation, or HCFA ruling relevant to the case.

(b) *Basic rule.* (1) Except as provided in paragraph (b)(4) of this section, a provider may submit a written request to the Board, with supporting documentation, to determine whether the Board has the authority to decide a question of law, regulations, or HCFA rulings relevant to and controlling upon an issue to be reviewed by the Board. The Board is required to make an expedited review determination in writing, either denying or granting the request, within 30 days after the date of receipt of the request, as defined in paragraph (h) of this section. The Board may also issue a determination on its own motion that it lacks authority to decide a question of law, regulations or HCFA rulings.

(2) The Board must determine that the provider is entitled to a hearing under section 1878(a) of the Act before making the determination described in paragraph (a)(1) of this section. Thus, the provider must file (or have already filed) a written request for a Board hearing that meets the requirements in § 405.1841. The information and documentation required with respect to the filing of a request for a hearing is used by the Board to determine jurisdiction under section 1878(a) of the Act.

(3) A provider's request for an expedited review determination cannot be considered to be filed with the Board, nor can the 30-day time period during which the Board is required to make an expedited review determination begin, until such time as the Board accepts jurisdiction of the case.

(4) Proceedings conducted by the Board under an authority other than section 1878(a) of the Act and §§ 405.1835 through 405.1873 of this subpart are not hearings for purposes of this section and are not subject to the expedited Board proceedings set forth in this section. For example, proceedings concerning reimbursement for capital expenditures conducted under section 1122(f) of the Act and § 405.1890 of this subpart are not hearings for purposes of this section. (Section 1122(f) specifically bars any administrative or judicial review.)

(c) *Provider requests.* (1) If a provider seeks an expedited Board proceeding, it must—(i) File its appropriately documented request in writing with the Board; and

(ii) Send a copy of the request and documentation simultaneously to the intermediary.

(2) The request to the Board for an expedited review determination must—(i) Identify the issues and the controlling law, regulation or HCFA ruling for which the Board is to make a determination;

(ii) Allege and demonstrate that there are no factual issues in dispute;

(iii) Contain an explanation of why the provider believes the Board cannot decide the legal issue or issues that are in dispute; and

(iv) Include all other information or details that support the request.

(3) If the information in the provider's request is insufficient for the Board to determine whether it has the authority to decide an issue, the Board will request more information from the provider. Such a request will affect the 30-day time limit as provided in paragraph (h) of this section. If the provider does not send more information or sends inadequate information, the Board will determine that it has the authority to decide the issue and will begin the regular procedures for a hearing.

(d) *Intermediary participation.* After receiving a copy of the provider's request for an expedited review determination, the intermediary may send comments to the Board on the provider's request and supporting documentation. The intermediary will send a copy of its comments to the provider simultaneously.

(e) *Criteria for a Board determination.* The Board will review all documentation forwarded by the provider and the intermediary relevant to the request for a Board determination concerning the Board's authority to decide an issue. In its review, the Board will consider—

(1) The controlling facts in the case;

(2) The applicability of law, regulations, or HCFA rulings;

(3) Whether there are factual issues for the Board to resolve; and

(4) Whether there are legal issues within the authority of the Board to decide.

(f) *Board determination.* (1) Within 30 days after the date of receipt (as defined in paragraph (h) of this section) of a provider's request and all necessary documentation the Board will issue a determination concerning its authority to decide the question of law, regulations, or HCFA rulings relevant to the issues identified by the provider in its request.

(2) The Board will promptly notify the provider in writing of its determination

and will send a copy of the determination to the intermediary.

(3) The Board's determination concerning its authority or its lack of a determination is not subject to the Secretary's review under § 405.1875.

(g) *Effect of a Board decision.* (1) The Board's determination, issued on its own motion or at the request of a provider, that it lacks authority to decide a question of law, regulations or HCFA rulings is a final decision permitting a provider to seek judicial review with respect to the matter or matters in controversy contained in the determination, within 60 days of the date of the Board's determination.

(2) After the Board has determined that it does not have the authority to decide an issue, the provider will not be granted a hearing on the same issue.

(3) If the Board fails to issue an expedited review determination within 30 days of the date of receipt of a complete request (as determined under paragraph (h) of this section), the provider may, within 60 days from the end of that period, seek judicial review of the matters for which it requested the Board's determination.

(4) If the Board fails to make an expedited review determination within the required 30 days, it will begin regular hearing procedures as though it has the authority to decide the issue.

(5) If the provider seeks judicial review because the Board fails to make a determination as provided in paragraph (f)(1) of this section, it should notify the Board at the time it files for judicial review. The Board will not hold a hearing, even if one has been scheduled, on the matter or matters for which the provider is seeking judicial review.

(6) The Board's determination does not affect the right of the provider to a Board hearing for issues for which the provider did not request expedited review, or for which the Board determines it does have the authority to decide, or for which the Board did not make a determination and the provider did not request judicial review.

(h) *Date of receipt.* For purposes of this section, the date of receipt of the provider's request is the later of—

(1) The actual date of receipt by the Board of the information required under paragraph (c)(2) of this section, or of additional information requested by the Board under paragraph (c)(3) of this section, whichever the Board receives later; or

(2) The date indicated on the Board's written notification to the provider that the Board has accepted jurisdiction of the case.

(i) *Examples.* Below are examples showing when a provider may expect to receive an expedited review determination, in relation to various circumstances affecting its request for the determination.

(1) The provider requests a hearing and expedited review at or about the same time. If all information is complete, the Board could send notification that it has accepted jurisdiction of the case and the expedited review determination simultaneously.

(2) The provider requests both a hearing and an expedited review determination, and supplies complete information. The Board accepts jurisdiction but, for example, because of the complexity of the case, the Board makes its expedited review determination within 30 days after it has accepted jurisdiction.

(3) The provider requests both a hearing and an expedited review determination, but the request for a hearing does not contain enough information for the Board to determine jurisdiction. The Board would request more information to determine jurisdiction and would make its expedited review determination within 30 days after it has accepted jurisdiction.

(4) The provider requests both a hearing and an expedited review determination, but does not send enough information for the Board to make an expedited review determination. Assuming the Board accepts jurisdiction, the Board would request more information about the request for expedited review and make its determination within 30 days after it receives the additional information.

(5) The provider requests an expedited review determination after the Board has accepted jurisdiction. The Board would make its determination within 30 days after receipt of an appropriately documented request for an expedited review determination.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medicare Insurance)

Dated: April 30, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 30, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-19861 Filed 7-21-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6294

[CA 7523]

California; Partial Revocation of Public Water Reserve No. 157

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order affecting 40 acres in California withdrawn for public watering purposes. This action will restore 20 acres to full operation of the public land laws and all the lands to location for nonmetalliferous minerals. The balance of 20 acres will remain segregated from operation of the public land laws generally for the Monache-Walker Pass National Cooperative Land and Wildlife Management Area.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, 916-484-4431.

SUPPLEMENTARY INFORMATION: 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. Executive Order No. 6867 of October 5, 1934, which withdrew lands for Public Water Reserve No. 157, is hereby revoked insofar as it affects the following described lands in California:

Mount Diablo Meridian

T. 28 S., R. 35 E.,
Sec. 15, W½SE¼NW¼, W½NE¼SW¼.

The area described contains 40 acres in Kern County.

2. The W½SE¼NW¼ will remain segregated from operation of the public land laws generally, for the Monache-Walker Pass National Cooperative Land and Wildlife Management Area, by Public Land Order No. 2594 of January 22, 1962.

3. At 10 a.m. on August 20, 1982, the W½NE¼SW¼ 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. on August 20, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The lands will be open to location for nonmetalliferous minerals at 10 a.m. on August 20, 1982. They have been and

will continue to be open to location for metalliferous minerals and to applications and offers under the mineral leasing laws.

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

Garrey E. Carruthers,

Secretary of the Interior.

July 15, 1982.

[FR Doc. 82–19801 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6295

[M–025412]

Montana; Partial Revocation of Secretarial Order Dated January 31, 1936

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial order which withdrew 2.50 acres in Montana for use of the Department of Commerce in the maintenance of air navigation facilities. This action will restore the land to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406–657–6291.

SUPPLEMENTARY INFORMATION: 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. Secretarial Order dated January 31, 1936, which withdrew the following described public land use of the Department of Commerce in the maintenance of air navigation facilities, is hereby revoked as far as it applies to the land described below. Public Land Order No. 3980, dated April 11, 1966, transferred jurisdiction of the land back to the Department of the Interior.

Principal Meridian

T. 9 N., R. 8 W.,
Sec. 8, SE¼NE¼NW¼SW¼.

The area described contains 2.50 acres in Powell County.

2. At 8 a.m. on August 20, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the above described land shall be open to operation of the public land laws generally. All valid applications received at or prior to 8 a.m. on August 20, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 8 a.m. on August 20, 1982, the land will be open to nonmetalliferous mineral location under the mining laws. The lands have been and continue to be open to metalliferous mineral location under the mining laws and to applications under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Secretary of the Interior.

July 15, 1982.

[FR Doc. 82–19838 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Orders; 6296

[C–8840]

Colorado; Public Land Order No. 6141; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects an order entitled "Colorado: Powersite Restoration No. 678; Partial and Total Revocation of Powersite Reserve Nos. 27, 50, 254, and 495; Release of Section 24 Restriction on Certain Patented Lands." This order describes 120 acres of patented lands erroneously omitted from Public Land Order No. 6141.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office; 303–837–2535.

SUPPLEMENTARY INFORMATION: 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:

The description of lands in Public Land Order No. 6141 of February 5, 1982, in FR Doc. 82–4154 appearing on pages 6854–6855 in the issue of Wednesday, February 17, 1982, is hereby corrected to include the following described lands:

1. Page 6854, column 3, paragraph 3, Powersite Reserve No. 27, T. 51 N., R. 1 E. New Mexico Principal Meridian, the following line should be added "Section 22, NE¼SE¼, S½SE¼."

These patented lands are hereby relieved of the restrictions of Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

Dated July 15, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82–19835 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6297

[I–9100]

Idaho; Revocation of Public Land Order No. 5592

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a withdrawal affecting 37.50 acres of public land in Idaho withdrawn by the Bureau of Land Management for use as a recreation site. This action involves record clearing only. The lands would not be restored to operation of the public land laws or the mining laws, since they remain closed by a classification made under the Recreation and Public Purposes Act.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office; 208–334–1597.

SUPPLEMENTARY INFORMATION: 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. 1914, it is ordered as follows:

1. Public Land Order No. 5592 of July 6, 1976, which withdrew the following described lands, is hereby revoked in its entirety:

Boise Meridian, Idaho

T. 50 N. R. 5 W.,
Sec. 4, lot 13.

The area described contains 37.50 acres in Kootenai County.

2. The lands described remain closed to all forms of appropriation under the public land laws, including the mining laws, because of a classification action made under the Recreation and Public Purposes Act of June 14, 1926. The lands have been and continue to be open to the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau

of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 15, 1982.

[FR Doc. 82-19642 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6298

[C-18861]

Colorado; Amendment of Public Land Order No. 6087; Powersite Cancellation No. 319, Partial Cancellation of Powersite Classification Nos. 219 and 357

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order amends Public Land Order No. 6087 of November 16, 1981 relating to Colorado, which partially revokes two Secretarial orders which withdrew lands for Powersite Classification Nos. 219 and 357. The 80 acres described herein will be restored to national forest status.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office; 303-837-2535.

SUPPLEMENTARY INFORMATION: 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, and pursuant to the determination of the Federal Power Commission (now Federal Energy Regulatory Commission) by DA-506 Colorado, dated August 30, 1977, it is ordered as follows:

1. Public Land Order No. 6087 of November 16, 1981, FR Doc. 81-33727 in the issue of Monday, November 23, 1981, on page 57289, Powersite Classification 219 is hereby amended to include the following described land:

San Juan National Forest

T. 37 N., R. 5 W. (partially surveyed),
Sec. 19, N½NW¼.

The land described contains 80 acres in Hinsdale County.

2. At 10 a.m. on August 20, 1982, the land described shall be open to such forms of disposition as may by law be made of national forest land.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 15, 1982.

[FR Doc. 82-19639 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6299

[M 40934]

Montana; Revocation of Secretarial Order Dated March 30, 1932

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order which withdrew public lands in Montana for use as a stock driveway. This action will restore the lands to operation of the public land laws generally.

EFFECTIVE DATE: August 20, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office; 406-657-6291.

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

1. Secretarial Order dated March 30, 1932, which withdrew the following described lands for Stock Driveway No. 229, Montana No. 14, is hereby revoked:

Principal Meridian

T. 31 N., R. 39 E.,
Sec. 35, lots 3 and 4, NE¼ and N½SE¼.

The area described contains 317.37 acres in Valley County.

2. At 8 a.m. on August 20, 1982, the lands 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 8 a.m. on August 20, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands have been and continue to be open to location under the mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 15, 1982.

[FR Doc. 82-19640 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6300

[NEV-051797]

Nevada; Modification of Legal Description; Public Land Order No. 898

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will modify the existing Nevada boundary description of PLO No. 898, published as FR Document 53-5428 on June 19, 1953, 18 FR 3540. The new description will conform to the approved survey and protraction diagrams for the area. The original boundaries remain unchanged.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office; 702-784-5703.

SUPPLEMENTARY INFORMATION: 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 portion of PLO No. 898 describing Target No. 17 is hereby redescribed as follows:

Mount Diablo Meridian, Nevada

T. 16 N., R. 33 E.,
Sec. 2, SW¼, W½SE¼;
Sec. 3, S½;
Sec. 4, S½SW¼, SE¼;
Sec. 5, E½SW¼SE¼, SE¼SE¼;
Sec. 8, E½, SE¼NW¼, E½SW¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, S½NE¼, W½NW¼NE¼, W½, SE¼;
Secs. 12 to 17, inclusive;
Secs. 20 to 28, inclusive;
Sec. 29, NE¼;
Sec. 33, NE¼;
Secs. 34 to 36, inclusive.

T. 16 N., R. 33¼ E. and a portion of T. 16 N., R. 34 E., unsurveyed, more particularly described as:
Beginning from the northeast corner of section 12, T. 16 N., R. 33 E; thence easterly 2 miles; thence southerly 5 miles; thence westerly 2 miles to the southeast corner of sec. 36, T. 16 N., R. 33 E., thence a distance of 5 miles along the east lines of secs. 36, 25, 24, 13 and 12, T. 16 N., R. 33 E., to the point of beginning.

2. The remainder of PLO No. 898 shall continue as originally published.

Inquiries concerning the land should be addressed to the Chief, Division of Operations, Nevada State Office, Branch of Lands and Minerals

Operations, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 15, 1982.

[FR Doc. 82-19843 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6301

[C-27445]

Colorado; Public Land Order No. 6102; Correction

AGENCY: Bureau of Land Managment, Interior.

ACTION: Public land order.

SUMMARY: This order will correct an error in the heading of Public Land Order No. 6102 of January 28, 1982 pertaining to Colorado, which cites Powersite Restoration No. 758 instead of Powersite Cancellation No. 345.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office; 303-837-2535.

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

The heading in Public Land Order No. 6102 of January 28, 1982, in FR Doc. 82-3065 in the issue of Friday, February 5, 1982, at page 5416, column two which reads "Colorado; Powersite Restoration No. 758" should be changed to read "Colorado; Powersite Cancellation No. 345".

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 15, 1982.

[FR Doc. 82-19841 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket No. 82-14; Notice 1]

Temporary Exemption From Federal Motor Vehicle Safety Standards

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

ACTION: Final rule.

SUMMARY: This notice amends the temporary exemption regulations to require that the certification label affixed to exempted vehicles include certification of compliance with the Federal bumper standard, 49 CFR Part 581. Since it is a minor amendment to conform to the requirements of 49 CFR Part 567, it is being made effective 90 days after publication without notice or opportunity to comment.

EFFECTIVE DATE: October 19, 1982.

FOR FURTHER INFORMATION CONTACT: Z. Taylor Vinson, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-9511).

SUPPLEMENTARY INFORMATION: This notice updates the certification requirements for exempted vehicles to include Federal bumper requirements. Under the current regulation, 49 CFR Part 555.9, manufacturers of vehicles or vehicles manufactured in two or more stages, who have been exempted from compliance with one or more safety standards, are required to affix temporary and permanent labels to their products listing the standards from which the vehicle is exempted, and certifying compliance with the rest. When 49 CFR Part 581, *Bumper Standard,* became effective on September 1, 1978, the vehicle certification requirements of 49 CFR Part 567 were amended to include certification of compliance with the bumper standard is required by Section 105(c)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1915(c)(1)).

The agency has assessed the economic and other impacts of this final rule and determined that it is neither a major rule within the meaning of Executive Order 12291 nor a significant one under the Department of Transportation regulatory policies and procedures. Further, the agency concludes that the economic and other consequences of this final rule are so minimal as not to require preparation of a full regulatory evaluation. The impact is minimal because this amendment requires only a minor wording change in a label already required by law. For the same reason, the agency finds that this amendment will have no significant environmental impact. The requirement under the Regulatory Flexibility Act to prepare regulatory flexibility analyses is not applicable to this acition. That Act does not apply to rules for which notice and comment are not required by 5 U.S.C. 553. As explained below, notice and comment are not required for this action. Accordingly, the agency has not prepared any regulatory flexibility analysis. If the Regulatory Flexibility Act were applicable, the agency would certify that there would be no substantial economic impact on a significant number of small entities in view of the negligible cost impact on manufacturers and purchasers of vehicles.

The agency finds for good cause that prior notice and opportunity for comment on this amendment are unnecessary. The notice requires only a minor change of several words on a label already required by Part 567. Further, this minor, essentially technical amendment affects only two manufacturers at present. Since only two manufacturers are affected, it is being made effective October 20, 1982.

List of Subjects in 49 CFR Part 555

Administrative practice and procedure, Labeling, Motor vehicle safety, Motor vehicles.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, Title 49 Code of Federal Regulations Part 555, *Temporary Exemption From Motor Vehicle Safety Standards,* is amended as follows:

Sections 555.9 (c)(1) and (c)(2) are revised in pertinent part:

§ 555.9 Temporary exemption labels.

* * * * *

(c) * * *

(1) Instead of the statement required by § 567.4(g)(5) of this Chapter, the following statement shall appear:

This vehicle conforms to all applicable Federal motor vehicle safety and bumper standards in effect on the date of manufacture shown above * * *.

(2) Instead of the statement required by § 567.5(c)(7)(iii) of this Chapter, the following statement shall appear:

This vehicle conforms to all applicable Federal motor vehicle safety and bumper standards in effect in * * *.

* * * * *

The author of this notice is Z. Taylor Vinson, Office of Chief Counsel.

(Secs. 114, 119 Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1403, 1408); Sec. 3, Pub. L. 92-548, 86 Stat. 1159, (15 U.S.C. 1410); Secs. 102, 105, Pub. L. 92-513, 56 Stat. 947 (15 U.S.C. 1912, 1915); delegation of authority at 49 CFR 1.50)

Issued on July 2, 1982.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 82-19576 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 2505-90]

Foreign Fishing, Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 82-17237 appearing at page 27862 in the issue for Monday, June 28, 1982, please make the following corrections:

(1) On page 27864, near the middle of the page, the heading for Part 672 should have read "Groundfish of the Gulf of Alaska".

(2) In § 672.20, Table 1, for Pollock, eastern area, under "Reserve" the figure "1,882" should be "1,992".

(3) Also in § 672.20, Table 1, for Pacific cod, western area, under "DAH", the number "18,880" should have been "1,880.

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 47, No. 141
Thursday, July 22, 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 932

[Docket No. AO F&V 352-A4]

Olives Grown in California; Recommended Decision and Opportunity To File Written Exceptions To Proposed Further Amendment of the Marketing Agreement and Marketing Order (Partial)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on the proposed amendment of the marketing agreement and order program for olives grown in California. The proposed amendment would permit handlers to credit expenses for brand advertising of olives against a portion of their annual assessment obligation. The intent of the proposed change is to improve the effectiveness of the program.

DATE: Exceptions to this recommended decision must be filed by August 6, 1982.

ADDRESSES: Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Two copies of all exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding: Notice of Hearing, issued November 13, 1981, and published in the November 18, 1981 issue of the **Federal Register** (46 FR 56620); and Recommended Decision (partial) issued May 7, 1982, and published in the May 13, 1982 issue of the **Federal Register** (47 FR 20593), and Decision on Proposed Further Amendment of Marketing Agreement and Order, issued June 14, 1982, and published in the June 18, 1982, issue of the **Federal Register** (47 FR 26394).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is not subject to the requirements of Executive Order 12291.

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 result in only minimal costs being incurred by the regulated handlers.

It has been determined that a comment period of less than 60 days is warranted. The proposed amendment, if adopted, should be effective as soon as possible because implementation of the creditable advertising provisions would require issuance of rules and regulations—a process which could take several months to complete. Also, any changes in advertising and promotion activities generally require a substantial period of time for preparation. Thus, handlers need to know of any changes promptly so they can plan their operations accordingly.

Preliminary Statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed further amendment of the marketing agreement and Order No. 932, regulating the handling of olives grown in California, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from the Hearing Clerk or Richard P. Van Diest, Officer-In-Charge, Fresno Marketing Field Office, AMS, F&V, USDA, Room 3114, 1130 "O" Street, Fresno, California 93721, telephone (209) 487-5175.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR 900).

This proposed amendment was formulated on the record of a public hearing held in Fresno, California, on December 8 and 9, 1981. The hearing notice was published in the November 18, 1981, issue of the **Federal Register** (46 FR 56620). That notice contained proposals submitted by the Olive Administrative Committee and the Fruit and Vegetable Division, AMS.

Material Issues: The material issues of record are as follows:

(1) Authorize crediting of part of a handler's assessment obligation for brand advertising expenditures.

(2) Make conforming changes.

The above material issues are in addition to those presented in the recommended decision published in the May 13, 1982 issue of the **Federal Register** (47 FR 20593) which contained findings and conclusions on other material issues presented on the record of the aforesaid public hearing.

Findings and Conclusions: The following findings and conclusions on these additional material issues are based on the record of the hearing:

(1) The marketing order on California olives currently includes authority for generic advertising. Such advertising is conducted by the Olive Administrative Committee (the agency which administers the order), and is funded by assessments levied on olive handlers. In 1980, the Agricultural Marketing Agreement Act of 1937 was further amended to include olives as a commodity for which crediting the pro rata expense assessment obligation of a handler with all or any portion of the handler's direct expenditures for marketing promotion, including paid advertising, as may be authorized by the marketing order. The proponents testified that the order should be amended to include such authority for paid brand advertising.

The hearing record indicates that this additional authority is intended to supplement, not replace, committee funded advertising and public relations activities. Since the 1968-69 crop year the committee has undertaken a wide scope of advertising and public relation activities. These activities are seen as contributing to the substantial increase in olive sales.

The generic advertising conducted by the committee is financed by means of assessments on olive handlers. In addition, at any given time some handlers may be conducting advertising programs with their own private

brand(s), while others may not. Those handlers who spend monies on their own private brand promotions believe that they may be bearing more than their share of the total industry advertising and promotion expenses because these handlers also pay assessments that are used in part for the committee's generic program. Proponents believe that handler brand advertising has also contributed to increases in olive sales. Therefore, inclusion of authority for crediting certain brand advertising expenditures against program assessment obligations may relieve some of the financial burden for handlers who brand advertise. In addition, this authority may provide handlers the opportunity to tailor promotion activities to their particular needs. With this option available to handlers, a more efficient and effective total industry advertising effort may result. This amendment, however, would not compel any handler to advertise a private brand. Rather, the proponents suggested that inclusion of the additional authority in the marketing order could lead to an increase in olive sales to the benefit of olive growers and handlers.

Authorization and language for such crediting should be included in the order, and any guidelines or specific criteria and operating procedures should be established in administrative rules and regulations recommended by the committee and approved by the Secretary. This approach is appropriate because as marketing conditions change, a high degree of flexibility is necessary. This objective is best accomplished through rules and regulations rather than through the order amendment process.

Section 932.45 currently contains the authority for production research and marketing research and development projects, including generic advertising. This section should be amended, as hereinafter set forth, to establish that the committee, with the approval of the Secretary, may provide for crediting the pro rata expense assessment obligations of a handler with a portion of such handler direct expenditures for paid brand advertising. Such expenditures may include, but are not limited to, money spent for advertising space in magazines, newspapers, outdoor media and transit, or time charges for radio and television.

It was testified at the hearing that magazine space is usually measured on a full page or portion of a page basis. In newspapers, space is usually measured on a lineage basis, that is, according to the number of lines per inch, or columns per page. Radio and television time for advertising is usually purchased in terms of length of time that a commercial runs (e.g. a five-second, ten-second, or 60-second spot announcement), or total sponsorship of a complete radio or television program. In such total sponsorships, there might be other costs over and above the actual time costs of the commercial message. Outdoor media is usually defined as billboards. Billboard space is generally purchased for a certain period of time. Transit advertising usually means advertising which appears on buses, cabs, and cars, or other public vehicles. Handlers buy space on a vehicle for specified periods of time. The above are the generally accepted media forms. The committee should not be precluded from prescribing, with the approval of the Secretary other appropriate media forms.

Proponents testified that initially the committee may wish to limit creditable advertising costs to money spent by handlers for actual advertising time and space costs. Thus, other costs such as production, travel, and costs relating to pre-testing of advertising, test marketing, directory advertising, point-of-sale materials, and premiums might not be included under the initial rules. However, it is intended that the authority in § 932.45(a)(2) be broad enough to include these costs as creditable if so recommended by the committee and approved by the Secretary.

Credit should be allowed only for a handler's "direct expenditures" (e.g. costs payed by the handler for that handler's own brand advertising activities). Thus, a definition of "direct expenditure" should be contained in any rules and regulations. Proponents testified that such a definition might not include as "direct expenditures" the advertising by retail food stores involving only indirect payments by a handler. On the other hand, "direct expenditures" might include costs paid by a handler for joint advertisements with another branded commodity or product which are similar to those currently conducted by the committee under its generic advertising program.

In order to qualify for creditable advertising, each advertisement must be published, broadcast or displayed during the fiscal year for which credit is requested. However, this provision should not prevent a handler from publishing, broadcasting, or displaying the same advertisement more than once in a year, or in subsequent years and receiving appropriate credit if such assessment credit is authorized. The order should empower the committee to establish, with the approval by the Secretary, other requirements for creditable advertisements including, but not limited to, appropriate rules and regulations which specify the necessary proof of performance required of handlers when submitting claims to the committee for crediting. Proof of performance could entail invoices and other documents which demonstrate the advertisement's execution, content, and the handler's direct expenditures. The rules and regulations also should specify the date by which handlers must file with the committee claims for credit for advertising in a fiscal year, and an applicable assessment payment schedule for those assessments available for crediting but not credited to the handler.

Operations under § 932.45(a), which authorize the committee's generic advertising program and the assessment crediting for handler brand advertising, should conform to the guidelines for such activities as the Secretary may require. Currently approved guidelines include the requirements that no promotion or advertising disparage the quality, use, value, or sale of any other agricultural commodity or product, and that no false or unwarranted claims be made in conjunction with an advertised product. There also may be other applicable guidelines which might from time to time be communicated by the Secretary to the committee. In addition, the rules and regulations for creditable brand advertising may include other guidelines recommended by the committee and approved by the Secretary.

The order should provide that no handler shall receive credit in excess of such handler's pro rata share of the total monies alloted for creditable brand advertising. With respect to setting the total amount of brand advertising credit available to all handlers, the hearing record indicates that the committee should consider the same factors as it does now for establishing the level of expenditure for its generic program. Those factors include, among others, the overall need for an advertising program, the potential dollar value of the olive crop, the size of the crop, and the anticipated level of expenditures for brand advertising by handlers. The committee would then recommend the total amount available for its generic program and for handler creditable advertising. For example, the committee might determine that an advertising expenditure of $1,000,000 is advisable for a given year. Then, it might determine that of that amount, 50

percent might be made available for creditable advertising, and 50 percent for the committee's program of generic advertising. Thus, handlers would know that $500,000 would be available for assessment crediting. The committee would calculate the portion of the total assessments for the fiscal year which could be made available for crediting to handlers for brand advertising and recommend to the Secretary the corresponding assessment rate and/or total amount available. Continuing the example, if $500,000 were allocated for crediting for a given year, and Handler A handled ten percent of the assessable olives for such year, then that handler's maximum credit in that year would be $50,000. The proponents testified that each handler should be notified by the committee by December 15 and given the total amount of assessment available for crediting by that handler in the fiscal year which begins the following January 1.

Section 932.39 provides that each handler pay assessments to the committee for its maintenance and functioning. In order to implement § 932.45(a), as revised, § 932.39 should be revised to provide that each handler who first handles olives during a fiscal year shall pay the committee on demand such assessments, less any amounts credited pursuant to § 932.45. This change is to eliminate the possibility that handlers who have received asssessment credit might be required to remit assessments, of which a part would subsequently be refunded to them by the committee.

The order provides a procedure for accounting for assessment funds which are in excess of expenses incurred. Any such excess funds shall be refunded to handlers on a pro rata basis, used by the committee to defray expenses for the first five months of the subsequent year, or carried over as a reserve (as long as funds already in the reserve do not equal approximately one year's expenses). The record indicates that, with respect to assessments which are available for crediting but not creditied, these funds should be treated as any other excess assessment funds. Thus, they may be carried over as a reserve and used for generic advertising or any other purpose authorized under the order.

With respect to conforming changes, there was some discussion at the hearing concerning the need to specify report and recordkeeping authority in conjuction with handler creditable advertising. As proponents noted, any implementing administrative rules and regulations would prescribe the documents necessary to establish a handler's proof of performance. If the committee cannot determine the handler's performance from the documentation submitted, it should have the authority to request further information before granting assessment credit to the handler. Authority to require reports and other information to enable the committee to administer the brand credit program should be contained in a new § 932.60(c). Any such reporting requirement shall be recommended by the committee, and approved by the Secretary. Also, there is no specific authority to require handlers to maintain such records and to authorize committee verification of such reports on handlers' premises. Since the handler must submit information showing that advertising has been done to obtain credit against program assessments, there may be no need to require that a handler retain such records beyond the time the committee approves the assessment credit. However, future circumstances may occur whereby maintenance of such information could be advisable. Therefore, permissive authority should be included in the order whereby the Committee could recommend and the Secretary approve appropriate recordkeeping requirements. Thus, §§ 932.61 and 932.62 should be revised to provide that the committee, with the approval of the Secretary, may prescribe rules and regulations to require appropriate recordkeeping, and authorize verification of reports at handlers' premises, respectively, with respect to advertising and promotion activities under the order.

(2) Some of the proposed amendatory actions herein cause the need to make certain conforming changes, as hereinafter set forth, in the provisions of the order, so that the order, as proposed to be amended, will be in conformity with those actions. Such changes are discussed in material issue (1) and should be incorporated herein.

General Findings: Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition to, the provious findings and determinations which were made in connection with the issuance of the marketing agreement and order and a previously issued amendment thereto. Except when such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed:

(2) The marketing agreement and order, as amended and hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effecutate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amemded, regulate the handling of olives in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed ot be further amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of olives produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of olives produced in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affect such commerce.

Rulings on Brief of Interested Persons: At the end of the hearing, the Administrative Law Judge fixed January 25, 1982, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence presented at the hearing. Briefs were filed by the Olive Administrative Committee and the Olive Growers Council of California.

Each point included in the briefs was carefully considered, along with evidence in the record, in making the findings and reaching the conclusions contained herein. To the extent that any suggested findings or conclusions contained in any of the briefs or arguments are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the recommended decision.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

PART 932—OLIVES GROWN IN CALIFORNIA

Recommended Amendment of the Marketing Agreement and Order: The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. Section 932.39(a) is amended by revising the first sentence to read:

§ 932.39 Assessments.

(a) As each handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal year, each handler who first handles olives during the current crop year shall pay to the committee, upon demand, assessments less any amounts which may be credited pursuant to § 932.45, on all olives to be used in the production of packaged olives, including olives to be used in canned ripe olives of the "tree-ripened" type or green olives when such are regulated as packaged olives pursuant to § 932.52.

* * * * *

2. Section 932.45(a) is revised to read:

§ 932.45 Production research and marketing research and development projects.

(a) The following activities of the committee are authorized under this section.

(1) The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of California olives. Such projects may provide for any form of marketing promotion including paid advertising. The expenses of such research and projects shall be paid from funds collected pursuant to § 932.39 or from voluntary contributions. Voluntary contributions may be accepted by the committee only to pay the expenses of such projects: *Provided,* That the committee shall retain complete control over the use of such contributions which shall be free from any encumbrances.

(2) The committee, with the approval of the Secretary, may provide for crediting a portion of a handler's direct expenditures for paid brand advertising for olives. Such expenditures may include, but are not limited to, money spent for advertising space in magazines, newspapers, outdoor media and transit or time charges for radio and television. No handler shall receive credit in excess of such handler's pro rata share of the total monies allotted by the committee for brand advertising credit. Each advertisement must be published, broadcast or displayed during the fiscal year for which credit is requested. Before any creditable brand advertising may be undertaken pursuant to this subparagraph, the Secretary upon recommendation by the committee, shall prescribe appropriate rules and regulations as are necessary to effectively regulate such activity.

* * * * *

3. Section 932.60 is amended by revising the title and adding a paragraph (c) to read:

§ 932.60 Reports of acquisitions, sales, uses, shipments and creditable brand advertising.

* * * * *

(c) Each handler shall file such reports of creditable brand advertising as recommended by the committee and approved by the Secretary.

4. Section 932.61 is revised to read:

§ 932.61 Records.

Each handler shall maintain such records of olives acquired, held, and disposed of by such handler as may be prescribed by the committee and needed by it to perform its functions under this subpart. Such records shall be retained for at least two years beyond the crop year in which the transaction occurred. The committee, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail advertising and promotion activities which the committee may need to perform its functions under § 932.45(a).

5. Section 932.62 is revised to read:

§ 932.62 Verification of reports.

For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such time to: (a) Inspect such premises and any olives held by such handler, and any and all records of the handler with respect to such handler's acquisition, sales, uses and shipments of olives; and (b) Inspect any and all records of such handler with respect to advertising and promotion activities subject to § 932.45(a) and maintained by the handler pursuant to § 932.61. Each handler shall furnish all labor and equipment necessary to make such inspections.

Signed at Washington, D.C., on July 19, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-19896 Filed 7-21-82; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This action amends Farmers Home Administration (FmHA) regulations regarding the rescheduling or reamortizing of Operating Loans (OL), Farm Ownership (FO), Economic Emergency (EE), and certain Emergency (EM) loans at the lesser of either the interest rate on the existing loan or at the current interest rate.

This action is needed because of the severe economic hardship farmers are experiencing due to high interest rates, low product prices, natural disasters and escalating operating costs reducing net farm income. The intended effect of this action is to improve the creditworthiness of FmHA borrowers and greatly increase the number of farmers able to obtain commercial credit through improved cash flow objectives, resulting from maintaining the lower interest rates on rescheduled or reamortized FmHA loans. The maintaining of the lower interest costs resulting from this regulation amendment would permit borrowers to devote more of their own funds, derived from net income, to future operating and capital needs, thus increasing the borrowers' ability to obtain credit elsewhere, and reducing the demand for FmHA loan funds.

DATE: Comments must be received on or before August 2, 1982.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Michael Chiavetta, Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, Room

5322, South Agriculture Building, Washington, D.C., 20250, telephone (202) 447–2288.

SUPPLEMENTARY INFORMATION: This revision must be implemented immediately if it is to be effective in helping borrowers who are starting to plan for the repayment of their loans. A further delay will force additional farmers out of business due to their inability to meet debt repayment plans at the current high interest rates. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553, with respect to such rules. Compliance with the usual 60 day comment period following this proposed rulemaking announcement would greatly decrease the effectiveness of this change and would be contrary to the public interest. This proposed action has been reviewed under U.S. Department of Agriculture procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be nonmajor.

This proposed action has been determined nonmajor since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no 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 since it will affect FmHA loan eligibility or loan servicing requirements in a positive way.

This action does not directly affect any FmHA programs or projects that are subject to A–95 clearinghouse reviews.

FmHA has reviewed the proposed changes and determined that they are cost-effective since they will afford farm borrowers the opportunity to be able to maintain their original interest rates by rescheduling or reamortizing the loan to enable them to repay in a reasonable manner.

This proposed change affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans, 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans, 10.428—Economic Emergency Loans.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Major Alternative Actions Considered

(1) Continue to reschedule or reamortize farmer program loans at the current interest rate in effect at the time of the action. The rescheduling or reamortizing of loans at higher interest rates has been ineffective because the resulting increased interest burden decreases borrowers' net income sufficiently to trigger a return to delinquent status and, in some cases, a larger default. The borrowers' loan accounts will be current, only temporarily.

(2) Carry farm borrowers delinquent. Do not reschedule or reamortize FmHA farm loans. The Agency's farm loan borrowers will appear to be in very poor financial condition. The FmHA delinquency rate will increase greatly, indicating to outside concerned people that the Agency is not adequately servicing loans and that borrowers are in a dangerous financial situation.

(3) Permit the rescheduling and reamortizing of the farmer program loans at the lesser of either the interest rate on the existing loan or at the current interest rate.

This option will improve the creditworthiness of FmHA borrowers and will increase the number of farmers able to obtain commercial credit through improved cash flow projections resulting from maintaining the lower interest rates on rescheduled FmHA loans. This change will also increase the number of farmers that can be served by FmHA programs resulting from the decrease in per-capita loan demand. The maintaining of the reduced interest costs, resulting from the proposed revision, would permit borrowers to devote more of their own funds, derived from net income, to future operating and capital needs, thus increasing FmHA subordination capabilities.

This option will reduce the number of FmHA foreclosures and debt settlements resulting from the borrowers' inability to repay current high interest rates and lower the FmHA Farmer Programs' delinquency rate.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

Therefore, FmHA proposes to amend Subpart A of Part 1951, Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

1. In § 1951.33 paragraph (c), the title of paragraph (d) and paragraph (d)(10) are revised and (d)(11) is added to read as follows:

§ 1951.33 Deferral, consolidation and rescheduling of OL, and EM and EE loans made for Subtitle B purposes.

* * * * *

(c) *Consolidating and/or rescheduling OL loans.* An OL loan secured by real estate will not be consolidated or rescheduled, unless the County Supervisor reviews the Government's real estate lien priority and value of security and determines such an action will be in the best interests of the Government and the borrower. OL loans will be consolidated only with other OL loans. The amount or outstanding accrued interest on the date of consolidation or rescheduling will be added to principal. The "date of consolidation or rescheduling" as used in this section means the date the new Form FmHA 1940–17 "Promissory Note", is signed. Consolidated and rescheduled OL loans will be repaid in accordance with the borrower's repayment ability, but never in excess of seven years from the date of consolidating or rescheduling.

(1) The interest rates for consolidated OL loans will be the following:

(i) Regular OL loans. The interest rate will be the current interest rate in effect on the date of consolidation. When a subsequent loan is made in combination with a consolidation, the interest rate will be the subsequent loan rate as set out on Form FmHA 1940–1.

(ii) Limited resource OL loans. The actual limited resource interest rate to be charged must be in accordance with the borrower's repayment ability. The interest rate may not be more than the current OL loan rate set out in Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) or not less than the current limited resource interest rate on the date of consolidation. When a subsequent loan is made in combination with a consolidation, the interest rate will be the subsequent loan rate as set out on Form FmHA 1940–1.

(2) The interest rates for rescheduled OL loans will be the following:

(i) Regular OL loans. The interest rate will be the current interest rate in effect

on the date of rescheduling or the interest rate on the Promissory Note to be rescheduled, whichever is less.

(ii) Limited resource OL loans. The actual limited resource interest rate to be charged must be in accordance with the borrower's repayment ability. The interest rate may not be more than the current OL loan rate set out in Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) or not less than the current limited resource interest rate or the interest rate on the Promissory Note to be rescheduled.

(d) *Consolidating and/or rescheduling EE and EM loans.*

* * * * *

(10) The interest rates for consolidated loans will be the following:

(i) For EE loans. The interest rate will be the current interest rate in effect on the date of consolidation, as specified in Subpart A of Part 1810 of this Chapter (FmHA Instruction 440.1, Exhibit B, available in any FmHA Office). When a subsequent loan is made in combination with a consolidation, the interest rate will be the subsequent loan rate as set out on Form FmHA 1940–1.

(ii) For EM actual loss loans. The interest rate will not be changed from the rate in the original note.

(iii) For EM annual operating loans or EM major adjustment loans for Subtitle B (operating) purposes. The interest rate will be the current interest rate in effect on the date of consolidation, as specified in Subpart A of Part 1810 of this Chapter (FmHA Instruction 440.1, Exhibit B, available in any FmHA Office). When a subsequent loan is made in combination with a consolidation, the interest rate will be the subsequent loan rate as set out on Form FmHA 1940–1.

(11) The interest rates for rescheduled loans will be the following:

(i) For EE loans. The interest rate will be the current interest rate in effect on the date of rescheduling, as specified in Subpart A of Part 1810 of this Chapter (FmHA Instruction 440.1, Exhibit B, available in any FmHA Office) or the interest rate on the Promissory Note to be rescheduled, whichever is less.

(ii) For EM actual loss loans. The interest rate will not be changed from the rate in the original note.

(iii) For EM annual operating loans or EM major adjustment loans for Subtitle B (operating) purposes. The interest rate will be the current interest rate in effect on the date of rescheduling, as specified in Subpart A of Part 1810 of this Chapter (FmHA Instruction 440.1, Exhibit B available in any FmHA Office) or the interest rate on the Promissory Note to be rescheduled, whichever is less.

* * * * *

2. In § 1951.40 paragraph (d)(1) is revised to read as follows:

§ 1951.40 Deferment and reamortization of FO, SW, RL, EE or EM loans made for real estate purposes.

* * * * *

(d) *Interest.*

(1) The interest rate for other than limited resource loans will be the current interest rate in effect on the date of reamortizing, or the interest rate on the Promissory Note to be reamortized, whichever is less, except for EM actual loss loans in which case the interest rate will not be changed.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: July 2, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82–19847 Filed 7–21–82; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Issuance of Quarterly Report on the NRC Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of the NRC Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission has issued the July 1982, Regulatory Agenda. The Agenda, which is a quarterly summary of all rules on which the NRC has proposed or is planning action and all petitions for rulemaking which have been received by the Commission and are pending disposition by the Commission, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda July 1982, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Requests for single copies of the report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Office of Administration, Telephone 301–492–7086, Toll free number 800–368–5642.

Dated at Bethesda, Maryland, this 15th day of July 1982.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 82–19852 Filed 7–21–82; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82–ANE–24]

Airworthiness Directives; General Electric Company CF6–45 Series and CF6–50 Series Model Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) which would require inspection for front flange cracking of the high pressure turbine (HPT) spacer/impeller in CF6–45 and CF6–50 series model engines. The AD is needed to detect cracks in the front flange of the spacer/impeller which may result in rupture of the spacers and engine failures.

DATES: Comments on the proposed rule must be received on or before August 13, 1982. Proposed effective date October 1, 1982.

ADDRESSES: Send comments on the proposed rule in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attn: Rules Docket No. 82–ANE–24, 12 New England Executive Park, Burlington, Massachusetts 01803.

The applicable Service Bulletin, (CF6–50, –45) 72–748, Revision 1, dated June 9, 1982, may be obtained from General Electric Company, Neumann Way, Cincinnati, Ohio 45215.

Copies of the Service Bulletin are contained in the Rules Docket at the above FAA address.

FOR FURTHER INFORMATION CONTACT: Arthur W. Nelson, Transport Engine Section, ANE–141, Engine Certification Branch, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Information on the economic, environmental, and energy impact that might result because of adoption of the proposed rule is requested. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Periodic inspection of CF6–45 and CF6–50 series model engine HPT spacer/impellers have identified at least eight instances of cracking in the front flange. Although none of the cracks propagated through the flange, they have extended up to 22" circumferentially and pose a potential threat to the integrity of the HPT rotor. Because this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require inspection for front flange cracking of HPT spacer/impellers in CF6–45 and CF6–50 series model engines.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FARs) (14 CFR 39.13) by adding the following new AD.

General Electric Company. Applies the CF6–45 series and CF6–50 series model turbofan engines.

Compliance required as indicated.

Perform fluorescent penetrant inspection of the high pressure rotor spacer/impeller, part numbers 9045M59P07, P08, P10, P12; 9173M55P01, P02, P03; 9198M92P01, P02, P03, P04, P05, P06, P07, P08, P09, P10; and 9190M82P02 in accordance with General Electric CF6–50/–45 Service Bulletin 72–748, Revision 1, dated June 9, 1982, or later revision approved by the Chief, Engine Certification Branch, FAA, New England Region, Burlington, Massachusetts 01803, per the following schedule:

1. Spacer/impellers must be inspected prior to the accumulation of 5,000 cycles in service, or within 3,000 cycles since last inspection, or within the next 100 cycles, whichever occurs later.

2. Inspect spacer/impellers thereafter at intervals not to exceed 3,000 cycles.

3. Established life limits for the part are not to be exceeded.

Spacer/impellers with crack indications must be removed from service prior to further flight.

Airplanes may be ferried in accordance with the provisions of Federal Aviation Regulation 21.197 to a base where the AD can be accomplished. Upon request of the operator, an equivalent means of compliance with the requirements of this AD may be approved by the Chief, Engine Certification Branch, FAA, New England Region.

The manufacturer's specifications and procedures identified and described in this directive may be obtained upon request to General Electric Company, Neumann Way, Cincinnati, Ohio 45215. These documents may also be examined at the FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts. A historical file on this AD is maintained by the FAA, New England Region Office, Burlington, Massachusetts.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because the rule will affect only domestic air carriers of B–747, DC–10, and A300 aircraft in which the CF6–45, –50 engines are installed, none of which are believed to be small entities. A draft regulatory evaluation prepared for this document is contained in the public docket, and copy may be obtained by writing to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. 82–ANE–24, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on July 12, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82–19162 Filed 7–21–82; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 82–AGL–16]

Proposed Revocation of Control Zone; Marion, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the existing designated control zone serving Marion Municipal Airport, Marion, Indiana, due to non-availability of required weather observations. The intended effect of this action is to return designated airspace to a non-controlled status.

The most recent action involving this control zone, excluding Notices to Airmen, was accomplished in Airspace Docket No. 75–GL–12 issued February 28, 1975.

DATES: Comments must be received on or before August 22, 1982.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL–7, Attention: Rules Docket Clerk, Docket No. 82–AGL–16, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace within the perimeter of the area currently described as the Marion control zone will be raised from the surface to 700 feet above the surface. No changes will be required to any existing instrument approach procedures, but the minimum descent altitudes associated with those procedures may no longer be contained within controlled airspace. The control zone information will be removed from aeronautical charts and maps.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regluatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental,

and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-AGL-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone near Marion, Indiana.

Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3 dated January 29, 1982.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Marion, Indiana

Revoked.

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

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on June 29, 1982.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 82-19765 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Rules and Practices Governing Conflicts of Interest; Request for Public Comment

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of Proposed Rulemaking and Request for comment.

SUMMARY: The Commodity Futures Trading Commission is seeking public comment on the adequacy of existing contract market rules and practices designed to prevent actual or apparent conflicts of interest from improperly influencing market or other actions taken by various governing bodies of designated contract markets. The Commission believes that exchange rules and practices which are intended to ensure that contract market actions are conducted in the best interests of the entire marketplace are necessary to ensure public confidence in the efficacy of self-regulation. The Commission's review of existing exchange rules and practices pertaining to conflicts of interest, however, has found actual rules to be limited in scope, with most exchange practices concerning conflicts of interest governed only by informal, unwritten policies. As such, the Commission is not convinced that current exchange rules and procedures are the most effective means of assuring the public that exchange actions affecting the markets will be consistent with the exchanges' obligations to maintain the integrity of these public marketplaces.

DATE: Comments must be received on or before September 20, 1982.

ADDRESS: Interested persons should submit comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention: Office of the Secretariat, Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Theodore W. Urban, Esq., Deputy Director or David Gelfand, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

Background

The Commodity Futures Trading Commission ("Commission") has been reviewing the rules and practices of the various exchanges currently designated as contract markets insofar as those rules and practices attempt to ensure against the presence of potential or actual conflicts of interest when their governing boards and committee members are considering self-regulatory actions. A summary of each exchange's rules and practices is provided below. The Commission staff's analysis has determined that in the few instances in which contract markets have written rules, the rules are limited in scope and give little guidance to contract market members or other governing board or committee members in the event situations arise which may present a conflict of interest question. Even where such rules do exist they often apply only to specify committees (*e.g.*, the Business Conduct Committee but not the Board of Directors) and only to certain situations (*e.g.*, review of disciplinary matters but not a vote on a market emergency action).

Market events within the last few years have heightened public awareness of the important role served by governing boards and committees of futures exchanges in ensuring the integrity of the marketplace. Allegations

of self-dealing and self-interest by various individuals on exchange governing boards involved in the decision-making process have aroused public concern over the exhanges' role in the maintenance of fair and orderly markets.[1] Some of these allegations are currently the subject of litigation against certain exchanges, among other parties.[2] Moreover, the question of whether the adoption of certain emergency rule changes in various markets have been improperly influenced by positions held by members of the exchanges' governing boards also has arisen during the conduct of a number of Congressional hearings.[3] Finally, the existence of continuing serious concerns by market participants as to the integrity of the self-regulatory process—regardless of whether the concerns are justified—in itself can jeopardize the effectiveness of self-regulation and may provide additional cause for exchanges to make greater efforts to avoid even the potential for impropriety.

In light of the foregoing concerns, the Commission believes the adequacy of existing exchange rules and policies designed to assure public trust in the self-regulatory governance of the nation's exchanges warrant further examination, with particular focus upon what measures exchanges may take in the future to avoid actual or potential improprieties in the conduct of governing boards and member committees where situations involving possible conflicts of interest may arise.

[1] *See, e.g.*, "Who Guards Whom at the Commodity Exchange", Fortune, July 28, 1980, at 38; "The Insider Issue in Silver Futures," Business Week, July 7, 1980, at 25–26; "Pro & Con: Directors' Positions a Conflict," Chicago Tribune, September 28, 1980; "A Power Play in Wheat: U.S. to Review Role of Chicago Board Official, New York Times, March 23, 1979, Sec. D, at 1.

[2] *See e.g., Republic National Monetary Corp.* v. *Commodity Exchange, Inc., et al.*, S.D.N.Y., No. 80 Civ. 5397 (September 24, 1980); and *Gordon* v. *Hunt et al.*, S.D.N.Y., No. 82 Civ. 1318 (March 4, 1982).

[3] *Hearings before the House Committee on Agriculture on March Wheat Trading on the Chicago Board of Trade*, 96th Cong., 1st Sess. 81 (1979); *Hearings before the Senate Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition, and Forestry on Price Volatility in the Silver Futures Market*, 96th Cong., 2d Sess. 192, 600–603 (1980); *Hearings before the Senate Committee on Banking, Housing and Urban Affairs on Margin Requirements for Transactions in Financial Instruments*, 96th Cong., 2d Sess. 3, 346–347, 575, 581, 594–601 (1980); and *Hearings before the House Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations on Silver Prices and the Adequacy of Federal Actions in the Marketplace, 1979–1980*, 96th Cong., 2d Sess. 282–283 (1980). *See also*, "Report to the Congress in Response to Section 21 of the Commodity Exchange Act, Pub. L. No. 96–276, 96th Cong., 2d Sess. Section 7, 94 Stat. 542 (June 1, 1980); "which was submitted to Congress on May 29, 1981.

Summary of Current Exchange Rules and Practices

The policies and procedures of the eleven exchanges currently designated as contract markets concerning conflicts or potential conflicts of interest are discussed below. The discussion does not address conflicts procedures governing disciplinary actions inasmuch as exchanges already are required to abide by Commission regulations in that area.[4] This information, unless otherwise noted, was derived either from exchange responses to a request by the Director of the Division of Trading and Markets in letters dated August 28 or 29, 1980, examination of exchange rules, or through recent rule enforcement reviews, which have examined certain exchanges' procedures regarding conflicts of interests. The exchanges' policies and procedures are as follows:

1. The Chicago Board of Trade ("CBT") has stated that although it has not defined the term "conflicts of interest", "[a]ll meetings of the Board and of members are governed by the established practices of parliamentary law, by reason of [CBT] Rule 130.00. It is an established practice of parliamentary law 'That it is a general rule that no one can vote on a question in which he has a direct personal or pecuniary interest.' Robert's Rules of Order, Sec. 456 (75th Ann. Ed.)." Moreover, Exchange rule 542.00 requires that a member of the Business Conduct Committee "may be required to recuse himself from a matter if it is determined that his participation would be improper", although there is no parallel rule governing the Board of Directors.[5] Of the 21 individuals on the CBT's Board of Directors, three are public directors.

2. The Chicago Mercantile Exchange ("CME") has no formal policy for dealing with conflicts or potential conflicts of interest of its Board or committee members. While members of a decision-making body are excused from the deliberative process when a conflict or potential conflict may exist, no standard or procedure for determining when such a conflict exists is articulated in the CME rules nor in the minutes of its committees. The Exchanges stated that the ordinary practice is to ask members of the Board and the Business Conduct Committee whether a conflict or potential conflict might exist. In addition, the Exchange represented that "the CME ordinarily makes it a practice of monitoring the positions of the individuals and of the clearing houses with which they are associated so that the potential for conflict is known in advance of any meeting or decision."[6] Three of the 24 members of CME's Board of Governors are public governors.

3. The Commodity Exchange, Inc. ("Comex") does not define a potential conflict of interest. Rather, "[g]enerally, the wisdom and good judgment of the Board of Governors of Comex ("Board") dictates whether they have a conflict of interest which requires that they absent themselves from a Board meeting or abstain from deliberation and voting."[7] Two of the 25 members of Comex's Board of Governors are public governors.[8]

4. The Coffee, Sugar and Cocoa Exchange, Inc. ("CSCE") has an unwritten policy concerning conflicts of interest. Each member is required to disclose whether he has a position in the market under review, and if so, whether he is long or short. If feasible (*i.e.*, a quorum would remain), the interested member will be excluded from the meeting for the discussion immediately preceding any vote and the actual vote.[9] One of the 17 members of CSCE's Board of Managers is a public director.[10]

[4] *See* Commission regulations 8.17(a)(1) and 8.19(b); 17 CFR 8.17(a)(1) and 8.19(b) (1981).

[5] Letter dated September 23, 1980 from Robert K. Wilmouth, President, CBT to John L. Manley, Director, Division of Trading and Markets. *See also* Rule Enforcement Review of the Board of Trade of the City of Chicago, Part V, April 12, 1982.

[6] Letter dated September 11, 1980 from Clayton Yeutter, President, CME to John L. Manley. *See also* Rule Enforcement Review of the Chicago Mercantile Exchange, Appendix B, May 17, 1982.

[7] Letter dated September 25, 1980, from Lee H. Berendt, President, Comex, to John L. Manley.

[8] It should be noted that Comex's Board consists of 25 persons, with membership comprised of seven representatives from each of the following groups: Trade, Commission House, and Floor; two representatives from the registered General group (which consists of Exchange members who are not Floor Members, representatives of Trade Houses or representatives of Commission Houses), and two persons who may be either non-members of the Exchange or representatives from the General group. All Board members are elected by their respective registered groups except the two non-member Governors, who are elected by the Board. Comex By-Law Section 102.

In addition, Comex's Control Committee, which also has market surveillance responsibilities, is now organized into four distinct subcommittees (gold, silver, copper and financial instruments). Each subcommittee consists of three members who are not involved in trading the commodity over which the particular subcommittee has jurisdiction in an attempt to eliminate potential conflicts of interest. *See generally* Rule Enforcement Review of the Commodity Exchange, Inc., Part IV, September 29, 1981.

[9] Rule Enforcement Review of the Coffee, Sugar and Cocoa Exchange, Inc., at 16, February 13, 1982.

[10] To prevent potential conflicts of interest in the Exchange's market surveillance activities and as a result of the Division's 1981 Rule Enforcement Review, the CSCE revised By-Law Section 314 to prohibit the Chairman of the Board from acting as a member or Chairman of the Control Committee. In addition, amended Rule 2.05 now grants the Control Committee the power to direct market surveillance activities in the coffee, sugar and cocoa markets, while excluding from subcommittee membership

5. The New York Cotton Exchange's rules do not explicitly place any restrictions on participation by interested members in Exchange actions. One of 22 of the Cotton Exchange's Board of Managers is a public director.

6. The Kansas City Board of Trade ("KCBT") also does not have a written definition or policy regarding conflicts of interest. Rather, it is KCBT's position that: "because the policy makers and decision-makers come from all segments of the trade, healthy debate can occur, and knowledgeable users can decide issues based on the overall good of the market. Any normal leanings are thus cancelled out, and, of course, no one can decide a specific case involving himself or his firm".[11] The KCBT has no public members on its governing board.[12]

7. The Mid-America Commodity Exchange ("MACE") has stated that "[b]ecause of members' awareness of each others' situations abetted by MACE's knowledge of clearing house data, MACE experiences a minimal number, if any, of situations involving particularized conflicts wherein a member attempts to vote on a matter involving the conflict. To a large degree the Exchange relies in these matters on the integrity of the members to police themselves * * *. There is no formal policy nor should there nor can there be when dealing with the multifarious circumstances and conditions involved in proceedings before the Board and Exchange committees."[13] Two of the 15 directors on MACE's Board of Directors are public directors.

8. The New Orleans Commodity Exchange's (NOCE") rules provide no guidance with respect to situations where conflicts of interest may arise. Two of the 19 members of NOCE's Board of Directors are public directors.

9. New York Mercantile Exchange ("NYME") rule 24.01 provides in part that the chairman may appoint a member to any committee ad interim whenever a member of a committee is "unable to attend, disqualifies himself and whenever it appears to the Chairman that the member replaced has an interest in the subject matter or might not be able to serve impartially." Three of the 17 members of NYME's Board of Governors are public governors.

10. Minneapolis Grain Exchange ("MGE") rule 509 disqualifies interested members from serving on the Business Conduct Committee; rule 510 authorizes the Business Conduct Committee to request the President to appoint alternate members when it is determined that it would be improper for a regular member to serve on that committee. There are no parallel provisions, however, to resolve conflicts of interest on the Board of Directors. Three of the 17 members of MGE's Board of Directors are public directors.

11. The New York Futures Exchange ("NYFE") does not formally define a potential conflict of interest. Nevertheless, NYFE has stated that "[i]f a potential conflict of interest is identified, the facts regarding such potential conflict of interest would be examined to determine whether the conflict is real. If the conflict is determined to be real and involves a Director or committee member, the interested party would be obligated to act in a manner consistent with New York Business Corporation Law Section 717 and Exchange Rules. That is, such person would be required to act in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances."[14] Six of the 24 members of NYFE's Board of Directors are public directors.

Commission Staff's Examination of Conflict of Interest Issues

The Commission's staff recently has had occasion to examine closely the conflicts of interest provisions of three exchanges. The Commission's Division of Trading and Markets (the "Division") examined the issue of conflicts in rule enforcement reviews of the Comex, the Chicago Board of Trade and the Chicago Mercantile Exchange.[15] In each case the Division reviewed major emergency rules adopted by those exchanges without prior Commission approval, pursuant to section 5a(12) of the Commodity Exchange Act (the "Act") and Commission regulation 1.41(f). In each instance, the Division found that those actions were not arbitrary, capricious or an abuse of discretion and were not lacking a reasonable basis in fact. The Division found no evidence which would cause it to conclude that the exchange actions were taken in bad faith.[16]

The Division's reviews indicated, however, that these exchanges resolved conflict of interest questions in an evidently *ad hoc* manner, and have not adopted rules or policies of general applicability which address in sufficient detail issues raised by the involvement of market participants in the promulgation of temporary emergency rules or other actions which may have a market impact.

The Division did not recommend during the course of these reviews that the Commission require any exchange to implement measures as mandatory conditions for continuing compliance with Section 5a(8) of the Act and regulation § 1.51. Rather, the Division suggested that the exchanges themselves take appropriate action in order to reduce the possibility that potential or actual conflicts of interest would be present in the voting process. The Division invited each exchange to tailor the Division's suggestions to specific circumstances or situations on that exchange and noted that the manner in which each exchange addressed these issues would not necessarily be valid for all exchanges.

First, the Division suggested that each exchange seek to reduce the possibility that potential or actual conflicts of interest would be present in the voting process, prior to the consideration of any temporary emergency rule or margin rule. The Division noted that this could entail requiring each member of the applicable decision-making panel to disclose whether he or his affiliated firm has any position in the market which would be affected and, if so, to abstain from voting on any proposal resulting from such consideration and recuse

---

those Control Committee members who are deemed "identified with" the particular market being examined.

[11] Letter dated September 10, 1980 from W. N. Vernon, III, Executive Vice President and Secretary, KCBT, to John L. Manley.

[12] *See* note 20 *infra*.

[13] Letter dated September 15, 1980, from David H. Morgan, President, MACE, to John L. Manley.

[14] Letter dated October 3, 1980, from Agnes M. Gautier, Vice President for Regulation and Surveillance, NYFE, to John L. Manley.

[15] The Rule Enforcement Review of the Commodity Exchange, Inc., dated September 29, 1981, the Rule Enforcement Review of the Chicago Board of Trade, dated April 12, 1982; and the Rule Enforcement Review of the Chicago Mercantile Exchange, dated May 17, 1982.

[16] The Commission is responsible for reviewing all such emergency actions and determining whether an exchange met the procedural and substantive requirements of Commission regulation § 1.4(f), which concerns the implementation by an exchange of a temporary emergency rule without prior Commission approval. According to standards of review set forth in a memorandum to the Division of Trading and Markets from the Office of the General Counsel, a contract market's determination that an emergency exists, as well as its selection of remedial action to meet the emergency, would constitute a violation of Commission regulation § 1.41(f) if its determinations are found to be "(1) arbitrary, capricious or an abuse of discretion, (2) lacking a reasonable basis in fact, or (3) taken in bad faith by the contract market or its officials." (CCH) Comm. Fut. L. Rep. ¶ 20,860 at p. 23,528 (July 25, 1979). In this regard, whether the members of the applicable decision-making panel may have actual or potential conflicts of interest generally has been a basis to question whether an emergency action may have been taken in bad faith.

himself from attendance at least during the vote. If implementation of such procedures would jeopardize an exchange's ability regularly to achieve a voting quorum or deprive it of knowledgeable people in the decision-making process, the Division suggested that the exchange should consider appropriate plans to restructure its Board to provide reasonable assurance that a quorum of directors without potential conflicts of interest always would exist or to define those instances in which it might be necessary to permit members with an interest in the subject commodity to vote.

With respect to the availability of market expertise, the Division suggested that staff, or committees composed of members who are not market participants, be delegated exclusive responsibility to compile raw surveillance data and additional responsibility to propose alternative courses of action to the governing board. The Division noted that if staff or committees made up of members who are not market participants were given exclusive responsibility to analyze position information and more responsibility to make recommendations based on their analyses, concerns about access of market participants to market sensitive information would be diminished significantly. Moreover, the Division expressed its view that such individuals might be better entrusted to compile complete, unexpurgated analyses of the market, and therefore would be able to advise the decision-making body fully on reasonable courses of action. In such case, the governing board would be insulated further from charges of impropriety and would be in a better position to demonstrate that there was a reasonable basis in fact for any action taken.

The Division noted in each review its belief that even though the exchanges' consideration and adoption of temporary emergency rules and the relation of conflicts of interest to such rules have substantial public impact, they are matters for which a self-regulatory organization should bear primary responsibility. For this reason, the Division suggested that it would be appropriate for the Commission to provide the exchanges with the first opportunity to institute any necessary procedural reforms. The exchanges were informed that any proposal for further Commission action would depend in large part on the response by the exchanges to the Division's recommendations. If each exchange acts in a responsible manner to address the conflict of interest issues discussed above, there would be no need for any further action by the Commission.

Issues Raised by the Exchange Rules

As disclosed by the summaries of exchange rules presented above and the Division's review of emergency actions taken by three exchanges, a common omission from each exchange's rules or policies which address the conflict issue is an attempt to define the types of situations which an exchange would view as raising conflicts of interest. The Commission recognizes that the adoption of a formal definition which would cover all situations presents considerable difficulty. Whatever difficulties may be present in attempting to identify situations where potential conflicts of interest may arise, however, should not prevent the exchanges from considering what financial, personal, or other interests may cause a participant in a self-regulatory determination to benefit from such determination and the degree of any possible benefit. Thus, in the commodities industry, one area of immediate concern relevant to the definitional aspects of the conflicts issue is whether distinctions may or should be drawn on the basis of the type of position held (*e.g.*, outright, spread, personal, house, customer) or the nature of any related financial interest (*e.g.*, futures, options, cash, forward, or leverage contracts) which may cause a benefit to inure to the party involved in making the self-regulatory determination.

The Commission believes that exchange consideration of such definitional issues is important to the adoption of each exchange's rules or policies for addressing conflict of interest situations in that the exchange's ability to distinguish whether a board or committee member has a conflict, or possibly the degree of such a conflict, may be relevant to whether or to what extent that individual participates in further deliberations of the board or committee on the matter at issue. In recognizing the complexity of the issues involved, the Commission does not believe that an exchange can comfortably afford to address these conflict of interest issues on an *ad hoc*, case-by-case basis as they arise, without formulating its general procedures for confronting these issues beforehand.

Instead of attempting to formulate their own procedures with respect to conflict of interest situations, some exchanges have relied on state corporation statutes insofar as those state laws provide remedies against acts of corporate bodies which are the result of voting by governing board members who have conflicts of interest. Under prevailing state law, corporate directors, including exchange directors, generally have a duty to avoid voting on corporate matters in which they have a conflicting personal interest. Corporate directors are clearly fiduciaries who have a duty of loyalty to the corporation. While the Commission recognizes the value of state corporate statutes and related provisions as a starting point for addressing conflict of interest issues among exchange directors, the Commission is not convinced that such statutes provide sufficient guidance for exchange directors to rely upon when confronting the unique conflict of interest questions which arise in a self-regulatory context.

Some exchanges also have expressed the view that there is no truly effective way to control the attitudes of the public concerning accusations of "potential" or "apparent" conflict of interests. These exchanges note that one's perception is personal and dependent on one's attitude towards a particular decision-making event as well as the effect of that event on such person. Accordingly, these exchanges saw effective steps available only to reduce the risks of "actual" conflicts of interest as opposed to those of a "potential" or "apparent" nature.

The Commission believes, however, that the mere presence of potential or actual conflicts of interest among board members can have debilitating effects. Most important, potential conflicts of interest compromise the public perception of the objectivity of board actions and thereby cast doubt on the integrity of exchange governance in general. While the Commission recognizes that "public perception" may not always be an appropriate criterion by which to measure whether a self-regulatory organization has acted in the public interest, nonetheless, public perception is a factor which an exchange cannot afford to ignore entirely in the exercise of its self-regulatory responsibilities. Over the longer term, futures exchanges require public confidence to assure the public participation which is vital to the marketplace. Public confidence is also an essential precondition for the Commission's transfer of functions to self-regulatory organizations. Toward this end, the Commission believes that the appearance of integrity can be as important as integrity itself.

A possible alternative discussed by some exchanges in lieu of addressing conflict of interest issues through more specific rules or policies is the

structuring or exchange governing boards or committees to adequately represent each of the diverse constituencies which participate in the futures markets.[17] Similarly, the addition of public governors as members of the governing body was cited by many exchanges as a measure to ensure the participation of disinterested persons in the decision-making process.[18] Although there is no explicit statutory requirement that commodity futures exchanges assure fair representation of market participants or include public directors on their governing boards,[19] ten of the eleven exchanges currently have at least one public member on their governing board.[20] The Commission notes further that the contract markets have greatly increased public representation on their boards since 1976. In that year a total of 4 public directors were represented on the governing boards of the nation's exchanges. By 1982, however, 26 out of a total of 217 directors were representative of the public. The Commission notes, however, that even with reliance upon an increasing number of public directors in the exercise of self-regulatory functions, concerns with respect to conflicts of interest will remain. Moreover, while public directors may be more readily viewed as lacking partiality in making decisions affecting the marketplace, they may lack the market expertise comparable to that possessed by active participants in making immediate and critical decisions about the marketplace.

Request for Comments on Exchange Conflicts of Interest Rules and Policies

In view of the concerns discussed above, the Commission invites interested persons to analyze existing exchange rules or policies regarding the prevention of actual or potential conflicts of interest and to comment on the benefits and deficiencies of those rules and policies, as well as on the exchanges' reliance upon existing state law and parliamentary procedures with respect to conflicts. The Commission also invites discussion of specific alternative measures commentators believe may remedy particular shortcomings which they perceive in the current exchange rules and policies. In particular, interested persons are requested to address their comments to the following issues:

1. *Definition of Conflict of Interest*—Should each exchange define conflicts of interest for use in determining the participation of board or committee members in making self-regulatory decisions? If so, what form should such definitions take?

a. For example, what distinctions, if any, should an exchange make between types of positions held by a board or committee member (*e.g.*, spot month, distant month, spread, or hedge)?

b. What distinctions, if any, should an exchange make depending on the relation of the board or committee member to the position held (*e.g.*, personal, house, customer or held by a person related to the individual board or committee member)?

c. What related financial interests should be considered in determining whether a board or committee member has a potential conflict of interest (e.g., related futures, options, cash, forward, or leverage contracts; or related positions existing in another market)?

d. Further, would it be possible for an exchange to formulate a definition which reasonably can be applied to all self-regulatory deicisions in which a board or committee member may be called upon to participate or should the definition vary depending upon the situation? For example, should the same definition apply to board or committee determinations to change the margin level on a contract as would apply if the board or committee is considering the adoption of a market emergency action?

2. *Effect of Identifying a Potential Conflict of Interest*—Once a board or committee member determines that a potential or actual conflict of interest exists, what action should an exchange require the member to take?

a. Should the existence of a potential conflict without exception require the member of the board or committee to rescue himself from all further deliberations on the instant matter?

b. If not recused, to what extent should a member with a potential conflict of interest participate in the deliberations? For example, should the member be permitted to lend his expertise by participating in discussions, but be prohibited from voting? To what extent should a member be permitted to attend board or committee deliberations if he is not participating?

c. To what extent, if any, should the effect of a potential conflict of interest depend upon the nature of the exchange action under consideration? For example, should an exchange apply different standards in situations where its governing board is considering emergency actions as opposed to rule changes which are subject to prior Commission review pursuant to section 5a(12) of the Act?

d. Under what circumstances should the potential conflict of interest be disclosed to other members of the board or committee if the member does not recuse himself from all deliberations?

e. What procedures should the exchange's rules, policies or guidelines concerning conflicts of interests permits a board or committee member to follow if the uniform application of its standards would result in the loss of a board or committee quorum? The Commission recognizes that this could be a significant problem on exchanges where a single or limited number of contracts are traded and the exchange lacks a broad diversity of members.

f. Who should be the final arbiter of whether a board or committee member has a conflict of interest which should prevent him from participating in a particular matter? Should such determination be entrusted, for example, to the individual member or to the board or committee on which he sits?

3. *Alternative Measures.*—One means which exchanges may employ to minimize problems arising from the possibility of conflicts of interest or the public perception of such conflicts is through increased reliance upon broadly representative boards or committees or the introduction of greater public representation into exchange self-regulation.

a. Some exchanges have asserted that the existence of broadly representative deliberative bodies (i.e., a board composed of all segments of market participants—commercials, commission house, floor traders, as well as public representatives) mitigates the need for strict application of conflict of interest provisions, particularly where non-emergency actions are being considered. To what extent should an exchange permit such a "balancing of conflicting interests" to supersede the application of specific conflict of interest provisions to individual board or committee members? Regardless of the need for exchanges to adopt specific conflict of

---

[17] *See e.g.*, Comex Bylaw Section 102, discussed above at note 8.

[18] Public directors may not necessarily be disinterested, however, since few exchanges expressly prohibit a director from trading on its contract markets. The primary qualification for a public director, in most instances, is simply that the individual not be a member of the exchange.

[19] *Cf.*, section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(6) (1976)) which prohibits an exchange from being registered as a national securities exchange unless:

"(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer."

[20] Although the governing board of the Kansas City Board of Trade has no public members, its Executive Vice President is a non-member who sits on that Exchange's Board.

interest provisions which address market emergency situations, should the Commission consider requiring exchanges to assure a broad representation of market participants in the exercise of exchange self-regulatory functions?

b. To what extent may an exchange avoid or minimize entanglement in conflict of interest questions by including non-exchange members who are not market participants in the self-regulatory process? Should the Commission consider a requirement that each exchange increase the public representation on its board? Should the Commission encourage exchange efforts to entrust significant market actions exclusively to exchange-selected public representatives?

c. To the extent that an exchange includes public representatives on its governing board or committees, what standards, if any, should be applied to determine whether an individual qualifies as a "public" board member?

d. Opinion on the proper role and responsibility of public directors is not uniform. At least two theoretically distinct views exist. One school holds active involvement by public members in board decision-making paramount. Under this view, appropriate compensation for public directors as well as legal liability for board decisions is argued to encourage such active involvement by public directors. The other view focuses on the willingness of individuals to serve in public directorships. It holds that in order to attract the most distinguished and accomplished persons, it is necessary to limit the legal liability of public directors. The Commission requests comments directed to the applicability of either of these views, or others, to the governance of contract markets.

e. Finally, to what extent does an exchange board or committee's reliance upon its professional staff's analysis and recommendations concerning various regulatory situations—particularly potential market emergencies—insulate the board or committee from potential conflict of interest concerns?

* * * * *

In view of the foregoing, the Commission hereby gives notice of its request for comments on exchange rules and procedures for protecting against abuses stemming from conflicts of interests which may occur on their governing boards or control committees. Any person interested in submitting views or arguments on the matter of conflicts of interest should send his comments by September 20, 1982, to Ms. Jane K. Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

List of Subjects for 17 CFR Part 1

Commodity exchanges, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

Issued in Washington, D.C. on July 15, 1982.

By the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-19298 Filed 7-21-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 123

Customs Form 7533; Invitation to the Public To Comment

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to Customs proposal to eliminate Customs Form 7533 (Inward Cargo Manifest For Vessel Under Five Tons, Ferry, Train, Car, Vehicle, Etc.) and develop a new standardized form to be used nationwide. A document inviting the public to comment on the petition was published in the **Federal Register** on April 21, 1982, (47 FR 17072). Comments were to have been received on or before June 21, 1982. A request has been received from a railway association to extend the period for the submission of comments claiming that additional time is needed to submit thorough comments from its members. Customs believes that the request has merit. Accordingly, the period of time for the submission of written comments is extended to August 21, 1982.

DATE: Comments must be received on or before August 21, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Patricia Anson, Cargo Processing Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-5354).

Dated: July 19, 1982.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 82-19820 Filed 7-21-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 760, 761, 762, 764, 765, and 769

Areas Unsuitable for Surface Coal Mining; Cancellation of Public Hearing on Proposed Rule

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 one of the public hearings scheduled on the proposed rule governing areas unsuitable for surface coal mining because no requests were received to testify at that hearing within the specified time period (3) working days before the date of the hearing). See 47 FR 25278. The Director of the Office of Surface Mining has determined that no hearings are necessary and, in the interest of cost savings, is hereby cancelling the hearing which was scheduled for July 22, 1982, in Denver, Colorado.

This notice cancels the public hearing but does not alter the comment period during which interested persons may submit written comments on the proposed rule.

DATES: The following hearing is cancelled: The public hearing on the proposed rule amending 30 CFR Chapter VII, Subchapter F, scheduled for July 22, 1982, in Denver, Colorado.

ADDRESS: Written comments should be mailed or hand delivered to: Carl C. Close, Special Assistant, Office of Surface Mining, U.S. Department of the Interior, Administrative Record (SPA-04), Room 5315, 1100 L Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: (202) 343-4225.

SUPPLEMENTARY INFORMATION: On June 10, 1982, the Office of Surface Mining published a proposed rule in the **Federal Register** which would revise 30 CFR Chapter VII, Subchapter F, regulations governing areas unsuitable for surface coal mining. 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 3 working days before the appropriate hearing date, that hearing would be cancelled. As of 3 days before the hearing scheduled for Denver, Colorado, no persons contacted OSM indicating that they wished to testify. Therefore, in the interest of cost savings, the Director of OSM is cancelling that hearing.

While there will be no public hearing in Denver, Colorado, interested persons may still submit written comments on the proposed rule. Written comments must be received on or before 4:00 p.m., on August 25, 1982, to be considered.

Dated: July 19, 1982.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82-20022 Filed 7-21-82; 10:12 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-18-82]

Filing of Life-Nonlife Consolidated Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing concerning the notice of proposed rulemaking relating to the filing of a consolidated return by an affiliated group of corporations composed of at least one life or mutual insurance company and one or more different companies.

DATES: The extended deadline for submission of comments and requests for a public hearing is September 15, 1982.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (LR-18-82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Donald K. Duffy of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, D.C. 20224, 202-4336, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking published in the **Federal Register** for Tuesday, June 8, 1982 (47 FR 24737), comments and requests for a public hearing with respect to the proposed rules were to be delivered or mailed to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-18-82), Washington, D.C. 20224, by August 2, 1982. The date by which comments or requests must be delivered or mailed is hereby extended to September 15, 1982.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive on 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. 82-19848 Filed 7-19-82; 4:58 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 952

Abandoned Mine Land Reclamation Program

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

ACTION: Proposed rule.

SUMMARY: On June 10, 1982, the Hopi Tribe submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the Tribe's Plan. The purpose of this submission is to determine both the intent and capability of the Hopi Tribe to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Land Reclamation (AMLR) Program.

DATES: Written comments on the Plan will be accepted until further notice.

ADDRESSES: Copies of the full text of the proposed Plan are available for review during regular business hours at the following locations:

Office of Surface Mining, New Mexico State Office, 219 Central Avenue, N.W., Suite 216, Albuquerque, New Mexico 87102;

Office of Surface Mining, Administrative Record, Room 5315, 1100 "L" St., N.W., Washington, D.C. 20236.

Written comments should be sent to Robert H. Hagen, State Director, Office of Surface Mining, New Mexico State Office, 219 Central Avenue, N.W., Suite 216, Albuquerque, New Mexico 87102.

The Administrative Record will be available for public review at the State Office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert Hagen, State Director, Office of Surface Mining, New Mexico State Office, Telephone 505/766-1486.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 et seq., establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under tribal or Federal law.

Title IV provides that if the Secretary determines that a State or Tribe has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State or Tribal legislation to implement the provisions of Title IV, the Secretary may approve the State or Tribal program and grant to the State or Tribe exclusive responsibility and authority to implement the provisions of the approved program.

OSM received a proposed abandoned mine land reclamation plan from the Hopi Tribe. The purpose of this submission is to determine both the intent and capability of the Hopi Tribe to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Land Reclamation (AMLR) Program (30 CFR Chapter VII, Subchapter R) as published in the **Federal Register** (FR) on October 25, 1978, 43 FR 49932-49952.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Secretary's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State or Tribal AMLR Plan are found in 30 CFR 884.13 and 884.14 (43 FR 49948). Additional information may be found under corresponding sections of the preamble

to OSM's AMLR Program Final Rules (43 FR 49932–49940).

The receipt of the Hopi Tribe's Plan is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands on the Hopi Reservation.

By submitting a proposed Plan, the Hopi Tribe has indicated that it wishes to be primarily responsible for this program. If the submission as hereafter modified, is approved by the Secretary, the Hopi Tribe will have primary responsibility for the reclamation of abandoned mine lands on the Hopi Tribe Reservation. If the program is disapproved and the Tribe does not choose to revise the Plan, a Federal AMLR Program will be implemented and OSM will have primary responsibility for these activities.

The Secretary has determined that the public was provided adequate notice and opportunity to be heard on the Plan and that the record does not reflect any major unresolved controversies. Therefore, a public hearing will not be held.

Representatives of OSM's State office or of the Division of Abandoned Mine Land Reclamation will be available to meet at the request of members of the public to receive their advice and recommendations concerning the proposed Hopi AMLR Plan. To arrange for such meetings contact the person listed above under "For Further Information Contact."

The Department intends to continue to discuss the Hopi Tribe's proposed Plan with representatives of the Tribe throughout the review process. All contacts between OSM personnel and representatives of the Tribe will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 FR 54444.

Pursuant to 30 CFR 884.14, OSM will continue the period of review of the proposed Crow Tribe Plan until a decision is made by the Secretary of the Interior on his authority to approve the abandoned mine land reclamation program submissions of the Tribes.

The Office of Surface Mining has examined this proposed rulemaking under Section 1(b) of Executive Order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Office of Surface Mining has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Office of Surface Mining has determined that the Hopi Tribe - Abandoned Mine Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the Tribe's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual 5162.3(A)(1), the Office's decision on the Hopi Plan is categorically excluded from the National Environmental Policy Act process. As a result no Environmental Assessment or Environmental Impact Statement has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with approval of the Pub. L. 95–87 Title IV abandoned mine land regulations. Moreover, an environmental analysis or an environmental impact statement will be prepared for the approval of the grants for the abandoned mine land reclamation projects under 30 CFR Part 886.

The Hopi Tribe Reclamation Plan for Abandoned Mine Lands can be approved if:

1. The Secretary finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The Tribe has the legal authority, policies and administrative structure to carry out the Plan.

4. The Plan meets all the requirements of the OSM AML Program provisions.

5. The Tribe has an approved Regulatory Program.

6. It is determined that the Plan is in compliance with all applicable State/Tribe and Federal laws and regulations.

The following constitutes a summary of the contents of the Hopi Reclamation Plan submission:

The Hopi Tribal Office of Natural Resources has been designated by the Chairman of the Hopi Tribe to implement and enforce the Abandoned Mine Land Reclamation Program in accordance with SMCRA (Pub. L. 95–87). Contents of the Tribe's Plan submission include:

(a) Designation of authorized Tribal Agency to administer the program.

(b) Tribe's General Counsel's opinion that the designated Agency has the legal authority to operate the program in accordance with the requirements of Title IV of the SMCRA, 30 CFR Subchapter R and the Tribal Reclamation Plan.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives;

(2) Project ranking and selection procedures;

(3) Coordination with other reclamation programs;

(4) Land acquisition, management and disposal;

(5) Reclamation on private land;

(6) Rights of Entry; and

(7) Public participation in the program.

(d) Description of the Administrative and Management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program;

(2) Personnel staffing policies;

(3) Purchasing and procurement systems and policies; and

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the Plan.

(f) A general description of activities to be conducted under the Reclamation Plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including one or more maps as required;

(2) General description of the problems identified and how the plan proposes to deal with them;

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses;

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the Plan; and

(5) General description of the social, economic and environmental conditions

in the different geographic areas where reclamation is planned, including;

(i) The economic base;

(ii) Sociologic and demographic characteristics;

(iii) Significant aesthetic, historic or cultural, and recreational values;

(iv) Hydrology including water quality and quantity problems associated with past mining;

(v) Flora and fauna including endangered or threatened species and their habitat;

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction; and

(vii) Anticipated benefits from reclamation.

Additional Findings

On November 12, 1981, the Office of Management and Budget exempted the Office of Surface Mining from the requirements of Sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken by OSM to approve State Reclamation Plans or amendments. Therefore, a Regulatory Impact Analysis is not required.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

Under the Department of Interior Manual (DM) 516.2.3(A)(1), the Assistant Secretary's decision on the Hopi Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment or environmental impact statement (EIA) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

List of Subjects in CFR Part 952

Coal mining, Indian lands, Surface mining, Underground mining.

Dated: July 13, 1982.

J. R. Harris,

Director, Office of Surface Mining.

Dated: July 14, 1982.

William P. Pendley,

Assistant Secretary for Energy and Minerals.

[FR Doc. 82-19751 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD8-82-02]

Anchorage Regulations; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the anchorage regulations on the Lower Mississippi River by shifting the Cedar Grove Anchorage approximately 3000 feet down river. This action is necessary because of a planned midstream loading facility in the present anchorage.

DATE: Comments must be received on or before September 20, 1982.

ADDRESS: Comments should be mailed to Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117. The comments will be available for inspection or copying at the above address. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays, Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR R. E. Ford, Port Safety Officer, Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117, Tel. (504) 589-7118.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD8-02), the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

These rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this notice are LT M. W. Brown, Project Officer, c/o Commander, Eighth Coast Guard District (mps) and LT J. C. Helfrich, Project Attorney, c/o Commander Eighth Coast Guard District (dl), Hale Boggs Federal Bldg., 500 Camp Street, New Orleans, LA 70130.

Discussion of Proposed Rule

Currently the Cedar Grove Anchorage is located at mile 70.6 to mile 71.2 above Head of Passes on the Right Descending Bank. There is a proposal now to use the area presently encompassed by this anchorage as a midstream loading facility. Mooring buoys would be installed to prevent vessels from swinging while midstream loading occurs. Such an arrangement would serve to enhance safety while facilitating cargo operations. In order to maintain general anchorage space in light of this proposal, it is necessary to relocate the anchorage area. The proposed new anchorage area would be immediately adjacent to the old one with new limits of mile 69.9 to 70.6 above Head of Passes on the Right Descending Bank and would remain the same width. Because the new location of the anchorage area would be in the way of a revetment, the western limit of the anchorage area has been relocated 400 feet from the right descending bank. The character of the river in both locations is essentially the same.

Summary of Draft Evaluation

These proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal. As an existing anchorage is merely being shifted, no new costs will be imposed. It is also certified that in accordance with section 605(b) of the Regulatory Flexibility Act, that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 reads as follows:

Authority: 33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46(c)(1); 33 CFR 1.05-1(g).

2. By revising 33 CFR 110.195(a)(8) as follows:

§ 110.195 Mississippi River below Baton Rouge, LA including South and Southwest Passes.

(a) * * *

8. *Cedar Grove Anchorage.* An area 0.7 miles in length between mile 69.9 to mile 70.6 above Head of Passes along the right descending bank of the river 700 feet wide with a western limit 400 feet from the Low Water Reference Plane on the right descending bank.

W. H. Stewart,

Rear Admiral, Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 82-19628 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82-15; Notice 1]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

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

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 209, *Seat Belt Assemblies*, sets performance requirements for seat belts used in vehicles. The standard incorporates by reference a number of recommended practices and test procedures developed by voluntary standards associations. This notice proposed to update those recommended practices and test procedures by incorporating the most recent version of them. In addition, the agency solicits comments on possible revisions to the standard that would reduce the regulatory burden imposed by the standard without diminishing vehicle safety.

DATES: Comments must be submitted not later than September 7, 1982. The proposed effective date is August 23, 1982.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590, (202-426-2242).

SUPPLEMENTARY INFORMATION: Standard No. 209, *Seat Belt Assemblies*, sets performance requirements for seat belts used in passenger cars, trucks, buses and multipurpose passenger vehicles. Several of the performance requirements incorporate recommended practices developed by voluntary standards association. In addition, the standard specifies that certain, long-established industry test procedures be used in determining whether the seat belts meet those performance requirements. Because of the lengthy and technical nature of the recommended pratices and test procedures, the standard incorporates those items by reference rather than setting out their full text within the standard.

In January 1981 (46 FR 10179, February 2, 1981), the agency granted a petition to amend Standard No. 209 to incorporate the most recent version of the American Society for Testing and Materials standard on testing the corrosion resistance of seat belt hardware. In response to that petition for rulemaking, the agency conducted a review of all the materials incorporated by reference within Standard No. 209 to determine which materials needed to be changed so that their most recent version is incorporated in the standard. The amendments proposed in this notice represent the result of the agency's review.

Test Procedures

As explained above, the standard incorporates a number of recommended practices and test procedures developed by such voluntary standards associations as the American Association of Textile Chemists and Colorists (AATCC), the American Society for Testing and Materials (ASTM) and the Society of Automotive Engineers (SAE). Based on a review of the standard, the agency now proposes the following revisions to the recommended practices and test procedures incorporated by reference. In addition to the amendments proposed below, the agency is also proposing to amend Part 571.5, matter incorporated by reference, to list the address of the AATCC. This amendment will assist interested parties in obtaining copies of the AATCC procedures.

Section 4.1(f) of Standard No. 209 specifies, in part, that a seat belt assembly shall include all hardware necessary for installation of the assembly in a motor vehicle in accordance with SAE Recommended Practice J800b, "Motor Vehicle Seat Belt Installations," September 1965. Recommended Practice J800b was revised by SAE in November 1973 and renumbered J800c. The revision provides more detailed instructions on installation of seat belt attachment hardware and revised instructions on installation of upper torso restraints. Section 4.1(k) of the standard, which sets requirements for installation instructions, also references SAE J800b. It is proposed that the references to J800b be changed to J800c in both sections 4.1(f) and 4.1(k) of the standard.

Section 4.3(a) of the standard specifies the corrosion resistance requirements for seat belt hardware. It incorporates ASTM A166-61T, "Tentative Specifications for Electrodeposited Coatings of Nickel and Chromium on Steel." ASTM discontinued A166-61T in 1967 and replaced it with B456-79. The new specification sets more stringent performance requirements for coating thickness and corrosion testing. In addition, it adds new requirements on the sulfur content of nickel, discontinuities in the chromium deposits, ductility, and adhesion. The agency proposes to adopt the new specification, ASTM B456-79, "Electrodeposited Coatings of Copper Plus Nickle Plus Chromium and Nickle Plus Chromium."

Section 5.1(a) of the standard specifies the test procedure to be used in determining the breaking strength of seat belts. It incorporates ASTM E4-64, "Standard Methods of Verification of Testing Machines." Since issuance of this tentative test method in 1964, ASTM has adopted a final test method, ASTM E4-79, "Load Verification of Testing Machines." The new test method revises the format of the former test method and adds a new accuracy assurance requirement. The agency proposes to adopt the new test method.

Section 5.1(e) of the standard specifies the test procedures for measuring the resistance to light of seat belts. In May 1980 (45 FR 29102), the agency proposed to alter the test apparatus used for the resistance to light requirements. As a part of that action, the agency proposed to update the one ASTM recommended practice (ASTM E42-64) already incorporated in the standard and to add a reference to another ASTM

recommended practice (C24–66). The agency is awaiting the completion of additional testing before taking final action on that proposal. If the amendment is adopted, the agency plans to incorporate the most recent version of both ASTM recommended practices.

Section 5.1(f) of the standard specifies the requirements for resistance to micro-organisms. It currently incorporates Section 1C1—Water Leaching, Section 1C2—Volatilization, and Section 1B3—Soil Burial Test of AATCC Tenative Test Method 30–1957T, "Fungicides, Evaluation of Textiles; Mildew and Rot Resistance of Textiles." The AATCC has issued a new test method which is a change in form and not in substance. It completely revises the editorial format of the prior test method. The new version specifies the same test method as the 1957T version currently incorporated in Standard No. 209. The agency proposes to incorporate the new version of the test method, AATCC Test Method 30–79, "Fungicides Evaluation on Textiles; Mildew and Rot Resistance of Textiles."

Section 5.1(g) of the standard specifies the test method used to measure the colorfastness to crocking of seat belts. It currently incorporates AATCC Standard Test Method 8–1961, "Colorfastness to Crocking (Rubbing)." The AATCC has issued a new test method that revises the format of the test procedure; it does not make any substantive changes to the test procedure. The agency proposes to incorporate the new version of the test method, AATCC Test Method 8–1981, "Colorfastness to Crocking: AATCC Crockmeter Method."

Section 5.1(h) of the standard specifies the test method to be used to determine the colorfastness to staining of seat belts. It currently incorporates AATCC Standard Test Method 107–1962, "Colorfastness to Water." The AATCC has issued a new test method that makes editorial changes to the format of the test method; it does not make any substantive changes to the test method. The agency proposes to incorporate the new test method, AATCC 107–1981, "Colorfastness to Water."

Section 5.2(a) of the standard specifies the test procedure for determining the corrosion resistance of seat belt hardware. It currently incorporates ASTM B117–64, "Standard Method of Salt Spray (Fog) Testing." ASTM has revised the format of that test method; however, there are no substantive differences between the old and new version. The agency proposes to incorporate the current version of the test method, ASTM B117–73, "Salt Spray (Fog) Testing."

In addition to incorporating the new ASTM corrosion resistance test procedure, the agency is proposing a minor change to the corrosion resistance test procedure. The ASTM procedure specifies that the seat belt hardware is to be "suitably cleaned" prior to testing. To clarify the extent of cleaning necessary, the agency is proposing to specify that any temporary coating placed on the seat belt hardware shall be removed prior to testing. The purpose of this proposed change is to prevent the use of a coating material on the hardware during the corrosion resistance test that would aid the hardware to meet the corrosion resistance requirement, but which would not be found on the hardware when it is in actual in-vehicle use. Coatings which are applied permanently to the hardware will not be removed.

Section 5.2(b) of the standard specifies temperature resistance requirements for seat belt hardware. It currently incorporates procedure IV of ASTM D756–56, "Standard Methods of Test for Resistance of Plastics to Accelerated Service Conditions." ASTM has revised the format of D756. There are no substantive differences between the new and old version. The agency proposes to incorporate procedure D of the new version of the standard practice, ASTM D756–78, "Determination of Weight and Shape Changes of Plastics under Accelerated Service Conditions."

Section 5.2(k) of the standard sets the test procedure for determining the performance of seat belt retractors. As a part of the procedure, the retractor is tested under dusty conditions. Section 5.2(k) currently incorporates the coarse grade dust specifications of SAE Recommended Practice J726a, "Air Cleaner Test Code." This Recommended Practice was completely revised by SAE in April 1979. The specification on coarse grade dust, however, is identical to that currently incorporated in section 5.2(k) of the standard. The agency proposes to incorporate the most current version of the Recommended Practice entitled, SAE Recommended Practice J726, Sep 79, "Air Cleaner Test Code."

To further assist the public in commenting on the proposed revisions, copies of the recommended practices and test procedures currently incorporated in the standard and of the versions that would be incorporated under this proposal are available for public inspection in the general reference section of the docket for this notice.

Review of Requirements

As a part of its regulatory review of all the standards, the agency is evaluating each of the performance requirements of Standard No. 209 to determine if they were still necessary and appropriate. The agency solicits comments, information and data from the public concerning current requirements of the standard which impose a regulatory burden and have a negligible or inconsequential impact on safety. Based on its review and the comments received in response to this notice, the agency may begin additional rulemaking to reduce or eliminate regulatory burdens imposed by the standard.

Executive Order 12291

The agency has evaluated the economic and other effects of these proposed amendments and determined that they are neither major as defined by Executive Order 12291 nor significant as defined by the Department of Transportation's regulatory policies and procedures. The proposed amendments only update references to recommended practices and test methods incorporated by reference in Standard No. 209. Because the economic and other effects of this proposal are minimal, no regulatory evaluation is necessary.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Based on that evaluation, the Administrator certifies that the proposed amendments to Standard No. 209 will not have a significant effect on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

Only a few of the vehicle and parts manufacturers required to comply with Standard No. 209 are small businesses as defined by the Regulatory Flexibility Act. Small organizations and governmental jurisdictions which purchase fleets of motor vehicles would not be significantly affected by the proposed amendments. The proposed amendments merely update references to test methods and recommended practices incorporated by reference in Standard No. 209. They should not impose any cost or other burdens.

National Environmental Policy Act

The agency has also analyzed this proposed action for the purposes of the National Environmental Policy Act. The agency has determined that the proposed amendments to Standard No.

209 will not have any significant effect on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which condifential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, the following amendments are proposed to Title 49, Chapter V, § 571.209, *Seat Belt Assemblies,* and § 571.5, *Matter incorporated by reference:*

§ 571.209 [Amended]

1. The first sentence of S4.1(f) would be revised to read as follows:

* * * * *

S4.1 * * *

(f) *Attachment hardware.* A seat belt assembly shall include all hardware necessary for installation in a motor vehicle in accordance with Society of Automotive Engineers Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973. * * *

* * * * *

2. The last sentence of § 4.1(k) would be revised to read as follows:

* * * * *

S4.1 * * *

(k) *Installation instructions.** * * The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973.

* * * * *

3. The second sentence of S4.3(a)(1) would be revised to read as follows:

* * * * *

S4.3 * * *

(a) *Corrosion resistance,* (1) * * * Alternatively, such hardware at or near the floor shall be protected against corrosion by at least a electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware shall be protected by a electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with American Society for Testing and Materials B456–79, "Standard Specification for Electrodeposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Chromium," but such hardware shall not be racked for electroplating in locations subjected to maximum stress.

* * * * *

4. The first sentence of S5.1(b) would be revised to read as follows:

* * * * *

S5.1 * * *

(b) *Breaking strength.* Webbing from three seat belt assemblies shall be conditioned in accordance with paragraph (a) of this section and tested for breaking strength in a testing machine of capacity verified to have an error of not more than one percent in the range of the breaking strength of the webbing in accordance with American Society for Testing and Materials E4–79, "Standard Methods of Load Verification of Testing Machines."

* * * * *

5. The first sentence of S5.1(f) would be revised to read as follows:

* * * * *

S5.1 * * *

(f) *Resistance to microorganisms.* Webbing at least 20 inches or 50 centimeters in length from three seat belt assemblies shall first be preconditioned in accordance with Appendix A (1) and (2) of American Association of Textile Chemists and Colorists Test Method 30–79, "Fungicides Evaluation on Textiles; Mildew and Rot Resistance of Textiles," and then subjected to Test I, "Soil Burial Test" of that test method.

* * * * *

6. Paragraph (g) of S5.1 would be revised to read as follows:

* * * * *

S5.1 * * *

(g) *Colorfastness to crocking.* Webbing from three seat belt assemblies shall be tested by the procedure specified in American Association of Textile Chemists and Colorists Standard Test Method 8–181, "Colorfastness to Crocking: AATCC Crockmeter Method."

* * * * *

7. Paragraph (h) of S5.1 would be revised to read as follows:

* * * * *

S5.1 * * *

(h) *Colorfastness to staining.* Webbing from three seat belt assemblies shall be tested by the procedure specified in American Association of Textile Chemists and Colorists (AATCC) Standard Test Method 107–1981, "Colorfastness to Water," except that the testing shall use (1) distilled water, (2) the AATCC perspiration tester, (3) a drying time of four hours, specified in section 7.4 of the AATCC procedure, and (4) section 9 of the AATCC test procedures to determine the

colorfastness to staining on the AATCC Chromatic Transference Scale.

* * * * *

8. The first sentence of S5.2(a) would be revised to read as follows:

* * * * *

S5.2 *Hardware.—*

Corrosion resistance. Three seat belt assemblies shall be tested in accordance with American Society for Testing and Materials B117–73, "Standard Method of Salt Spray (Fog) Testing." * * *

9. Paragraph (a) of S5.2 would be amended by adding a new sentence after the first sentence to read as follows:

* * * * *

S5.2 *Hardware.*

(a) * * * Any surface coating or material not intended for permanent retention on the metal parts during service life shall be removed prior to preparation of the test specimens for testing. * * *

* * * * *

10. The first sentence of S5.2(b) would be revised to read as follows:

* * * * *

S5.2 *Hardware.*

* * * * *

(b) *Temperature resistance.* Three seat belt assemblies having plastic or nonmetallic hardware or having retractors shall be subjected to the conditions prescribed in Procedure D of American Society for Testing and Materials D756–78, "Standard Practice for Determination of Weight and Shape Changes of Plastics under Accelerated Service Conditions." * * *

* * * * *

11. The eighth sentence of S5.2(k) would be revised to read as follows:

* * * * *

S5.2 * * *

(k) * * * Then, the retractor and webbing shall be subjected to dust in a chamber similar to one illustrated in Figure 8 containing about 2 pounds or 0.9 kilogram of coarse grade dust conforming to the specification given in Society of Automotive Engineering Recommended Practice J726, "Air Cleaner Test Code" Sep 1979. * * *

In § 571.5, paragraph (b) (5) would be redesignated (b)(6) and a new paragraph (b)(5) would be added to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(5) *Test methods of the American Association of Textile Chemists and Colorists.* They are published by the American Association of Textile Chemists and Colorists. Information and copies can be obtained by writing to: American Association of Textile Chemists and Colorist, Post Office Box 886, Durham, NC.

(6) * * *

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 15, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82–19577 Filed 7–21–82; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 47, No. 141
Thursday, July 22, 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.

CIVIL RIGHTS COMMISSION

New York 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 press conference to be conducted by the New York Advisory Committee will convene at 9:00a and will end at 1:00p, on August 13, 1982, at the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278. At this press conference the Committee will release a statement on equal employment opportunity in New York City.

Persons desiring additional information should contact the Chairperson, Robert J. Mangum, 420 East Twenty-Third Street, New York, New York, 10010, (212) 420–3935 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278, (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 19, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-19802 Filed 7-21-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-047]

Elemental Sulphur From Canada: Final Results of Administrative Review and Partial Revocation of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Partial Revocation of Antidumping Finding.

SUMMARY: On April 27, 1982 the Department of Commerce published the preliminary results of its administrative review and intent to partially revoke the antidumping finding on elemental sulphur from Canada (47 FR 18016). The review covered 3 of the 40 known exporters of this merchandise to the United States currently covered by the finding and the period December 1, 1980 through September 15, 1981. All sales by Home Oil Company, Ltd., Sulconam, Inc., and Irving Oil, Ltd. were made at not less than fair value during the above period. Interested parties were provided an opportunity to submit written comments or request disclosure and/or a hearing. We received no comments.

EFFECTIVE DATE: July 22, 1982.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5255).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, a dumping finding with respect to elemental sulphur from Canada was published in the **Federal Register** as Treasury Decision 74–1 (38 FR 34655). On September 15, 1981, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its first administrative review and tentative determination to partially revoke the finding (46 FR 45789). The tentative determination applied to Home Oil Company, Ltd., Sulconam, Inc., and Irving Oil, Ltd. On April 5, 1982, the Department published the final results of that administrative review (47 FR 14507). On April 27, 1982, the Department published the preliminary results of its second administrative review regarding the three firms covered by the tentative determination of September 15, 1981 and intent to revoke with regard to those 3 firms (47 FR 18016).

The Department has now completed its administrative review of the finding with respect to the three firms.

Scope of the Review

Imports covered by the review are shipments of elemental sulphur, currently classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of a total of 40 exporters of elemental sulphur from Canada to the United States currently covered by the finding, three of which are covered by this notice. The three firms are Home Oil Company, Ltd., Sulconam, Inc., and Irving Oil, Ltd. This review covers the period December 1, 1980 through September 15, 1981, the date of the Department's tentative determination to revoke the finding with respect to the three firms.

Final Results of Review

Interested parties were invited to comment on the preliminary results and intent to revoke. The Department received no comments or requests for disclosure or a hearing. Therefore, the final results of our review are the same as those presented in the preliminary results of review. However, the Department is postponing action on Home Oil's application for revocation. Home Oil is a shareholder member in Cansulex. an organization from which the Department has been unsuccessful in obtaining information concerning third-country sales. That information is necessary in order for the Department to review entries made by Mobil Oil Canada and Union Oil Company of Canada. It is the Department's policy not to exclude any Cansulex member company from the finding until Cansulex complies with our long-standing requests for information.

Determination

As a result of this review, the Department revokes the antidumping finding on elemental sulphur from Canada with respect to Sulconam, Inc., and Irving Oil, Ltd. This partial revocation applies to all unliquidated entries of this merchandise by Irving and Sulconam entered, or withdrawn from warehouse, for consumption on or after September 15, 1981. Since all sales by all three companies between December 1, 1980 and September 15, 1981 were made at not less than fair value, the Department shall instruct the Customs Service to liquidate all entries in that period without regard to dumping

duties. The Department will issue assessment instructions directly to the Customs Service.

Since the calculated rate for Home Oil for the period is zero, the Department shall not require a deposit of estimated antidumping duties, as provided for by section 353.48(b) of the Commerce Regulations, on any shipments of sulphur from Home Oil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, partial revocation, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and sections 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

July 16, 1982.

[FR Doc. 82-19644 Filed 7-21-82; 8:45 am]

BILLING CODE 3510-25-M

Litharge, Red Lead and Lead Stabilizers from Mexico; Initiation of Countervailing Duty Investigations

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigations.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If the investigations proceed normally, we will announce our preliminary determinations on or before September 15, 1982.

EFFECTIVE DATE: July 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Import Administration Specilist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230, (202) 377-1279.

SUPPLEMENTARY INFORMATION:

Petition

On June 22, 1982, we received a petition from counsel for the Committee for Litharge, Red Lead and Lead Stabilizers, on behalf of the U.S. industry producing litharge, red lead and lead stabilizers. In compliance with the filing requirements of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in Mexico receive bounties or grants from the government of Mexico. Section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) ("the Act"), applies to these investigations.

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and certain of the merchandise at issue here (litharge and red lead) is dutiable, the domestic industries are not required to allege that, and the U.S. International Trade Commission ("ITC") is not required to determine whether imports of these products cause or threaten material injury to the U.S. industries in question. Similarly, with respect to the merchandise which is nondutiable (lead stabilizers including lead compounds not specifically provided for ("NSPF") and pigments containing lead NSPF), no injury determination is required by the ITC because there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require such a determination for nondutiable merchandise from Mexico.

Initiation of Investigations

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on litharge, red lead and lead stabilizers from Mexico, and we have found that it meets these requirements.

Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Mexico of litharge, red lead and lead stabilizers as described in the "Scope of the Investigation" section of this notice, receive benefits that constitute bounties or grants. If our investigations proceed normally, we will make our preliminary determinations by September 15, 1982.

Scope of the Investigations

The merchandise covered by these investigations consists of litharge, red lead and lead stabilizers which includes lead compounds NSPF and pigments containing lead NSPF from Mexico. The imported merchandise is currently classifiable in Tariff Schedules of the United States ("TSUS") under the following numbers: litharge under TSUS number 473.52, red lead under TSUS number 473.56, lead stabilizers including lead compounds NSPF under TSUS number 419.04, and pigments containing lead NSPF under TSUS number 473.90.

Litharge is a lead oxide which is manufactured through the simple process of oxidizing refined lead. It is used primarily in lead storage batteries. The merchandise under investigation is also used in the manufacture of special glass such as television and optical glass, ceramics, plastics as a stabilizer, chemicals, protective coatings, sonar devices, and other special applications.

Allegations of Bounties or Grants

The petition alleges that producers and exporters of litharge, red lead and lead stabilizers receive the following benefits that constitute bounties or grants: tax certificates under the Certificado de Devolucion de Impuesto ("CEDI") program on exports; tax certificates under the Certificates of Fiscal Promotion ("CEPROFI") program for "priority" industrial activities; and preferential financing under the Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX").

Dated: July 12, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19645 Filed 7-21-82; 8:45 am]

BILLING CODE 7020-02-M

Withdrawal of Application for Duty-Free Entry of Scientific Article

The Medical College of Wisconsin has withdrawn Docket Number 82-00212, an application for duty-free entry of an electron microscope. Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-19846 Filed 7-21-82; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Grant of Limited Exclusive Patent License

Notice is hereby given that the National Technical Information Service (NTIS), U.S. Department of Commerce, granted to Bio-Systems Research, Incorporated a limited exclusive right in the United States for the manufacture, use and sale of the process and products embodied in U.S. Patent 4,293,567 (dated October 10, 1981) "Anti-Feedant for Boll Weevils."

The limited exclusive license granted by NTIS is a royalty-bearing license for a term of ten years from the effective date of the license agreement. The license may be revoked in accordance with 41 CFR 191–4.104.5.

Dated: July 14, 1982.

George Kudravetz,

Program Manager, Office of Government Inventions and Patents.

[FR Doc. 82–19789 Filed 7–21–82; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 13, 1982.

The USAF Scientific Advisory Board TAC Cross-Matrix Panel will meet at Langley AFB, Virginia, September 1 and 2, 1982. The purpose of the meeting will be to update the TAC staff on preliminary findings of the Scientific Advisory Board Summer Study on Electronics and to review Joint Tactical Air Force and Army concepts and doctrine. The meeting will convene at 8:30 a.m. and adjourn at 5:30 p.m. on the 1st and will convene at 8:30 a.m. and adjourn at 1:00 p.m. on the 2nd.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82–19794 Filed 7–21–82; 8:45 am]

BILLING CODE 3901–01–M

Corps of Engineers; Department of the Army

Intent; To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Deep-Draft Navigation Improvements for Oakland Inner Harbor Channel, Alameda County, California.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent To Prepare a DEIS.

SUMMARY:

1. The proposed action consists of:

a. Deepening navigation channels between the entrance to Oakland Inner Harbor via the Bar Channel and the Clay Street Piers at project mile 4.3 in the Inner Harbor from −35 feet, MLLW to −43 feet, MLLW.

b. Widening the north side of the Inner Harbor entrance reach and the bend at project mile 3.0.

c. Disposal of about 6.8 million cubic yards of sediments at the designated, open water Alcatraz disposal site by barge.

2. Four plans were considered initially:

a. No-action.

b. The proposed plan-optimum plan of improvement.

c. Deepen and widen the 4-mile channel reach plus widening as in the proposed plan. The dredging would be accomplished with hydraulic dredge with disposal by pipeline to a bay fill at the outer harbor.

d. Deepen and widen a 6-mile channel reach from the entrance to the Fortman turning basin. Disposal by barge at the designated Alcatraz disposal site.

The last two plans were eliminated from further detailed study for environmental and economic reasons.

3. Scoping Process:

a. The public involvement program began in November 1979 with a notice of study initiation. The initial public meeting was held in February 1980. This public meeting identified several concerns including need to improve channels for deep-draft navigation, impacts upon transportation, wetland protection, air and water quality, cultural resources and the Bay's natural resources.

b. Significant issues to be analyzed in the DEIS include: (1) water quality, (2) benthos, (3) energy, (4) hydrography, (5) commercial shipping, (6) navigation safety, and (7) endangered species.

4. Scoping meeting: A second public meeting was held on 14 July 1982 to review alternatives and respond to questions from local citizens and concerned agencies and groups.

5. The DEIS is expected to be available to the public by October 1982.

Dated: July 13, 1982.

Thomas J. Edgerton,

Major, CE, District Engineer.

[FR Doc. 82–19787 Filed 7–21–82; 8:45 am]

BILLING CODE 3710–FS–M

Office of the Secretary

Advisory Committee Charter; Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents

Notice is hereby given that the Office of the Secretary of Defense has established the following charter for the Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents:

1. Authority: a. Defense Dependents' Education Act of 1978, section 1409, Pub. L. 95–561, 20 U.S.C. 927.

b. Education for All Handicapped Children Act of 1975, section 5(a), Pub. L. 94–142, 20 U.S.C. 1413(a)(12).

c. Federal Advisory Committee Act, as amended, Pub. L. 92–463 and Pub. L. 94–409, 5 U.S.C. Appendix I.

2. Official Designation: Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Dependents (the Panel).

3. Objectives and Scope: The Panel, among other duties, (a) advises the Director, DoDDS of unmet needs within the system for the education of handicapped children, (b) comments publicly on an Office of Dependents Schools (ODS) rules or standards regarding the education of handicapped children, and (c) assists ODS in matters that have been identified as areas of concern by the Director, DoDDS.

4. Time Required to Carry Out the Purpose of the Panel: In accordance with 32 CFR Part 57 DoD Instruction 1342.12), the Panel shall continue in existence for the effective period of the Instruction.

5. Official to Whom the Panel Reports: The Panel reports to the Director, DoDDS.

6. Agency Responsible for Providing Support Services: The Department of Defense provides support services to the Panel.

7. Structure: The Panel shall consist of members appointed by the Secretary of Defense, or designee. Membership shall include at least one representative from each of the following groups:

(1) Handicapped persons.

(2) DoDDS special education teachers.

(3) DoDDS regular education teachers.

(4) Parents of handicapped children.

(5) DoDDS headquarters.

(6) DoDDS regional offices.

(7) DoDDS special educational program administrators.

(8) Military Departments and overseas commands, including providers of related services.

(9) Other appropriate persons.

8. Functions and Procedures of the Panel: The Panel shall:

(1) Review information regarding improvements in services provided to handicapped students in DoDDS.

(2) Receive and consider the views of various parent, student, and professional groups, and handicapped individuals.

(3) When necessary, establish committees for short-term purposes composed of representatives from

parent, student, and professional groups and handicapped individuals.

(4) Review the findings of fact and decision of each impartial due process hearing conducted pursuant to 32 CFR Part 57 (DoD Instruction 1342.12).

(5) Assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties under 32 CFR Part 57 (DoD Instruction 1342.12).

(6) Make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and procedure.

(7) Comment publicly on rules or standards regarding the education of handicapped children.

(8) Submit an annual report of its activities and suggestions to the Director, DoDDS by July 31 of each year.

(9) Perform such other tasks as may by requested by the Director.

9. Length of Term: The term of the office of each member of the Panel appointed shall be 2 years, provided that one-half of the members first appointed under this Charter shall have a term of 1 year. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

10. Estimated Annual Operating Cost: The estimated annual operating cost for the Panel is $12,000, which includes travel and per diem for members, but excludes staff support.

11. Number and Frequency of Meetings: The Panel shall meet as often as necessary.

FOR FURTHER INFORMATION CONTACT:

Dr. Diane L. Goltz, Chief, Special Education Section, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, VA 22331, telephone 202–325–7810.

Dated: July 8, 1982.

M. S. Healy,

OSD Federal Register Liasion Officer, Department of Defense.

July 8, 1982

[FR Doc. 82–18870 Filed 7–21–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Women in the Services (Dacowits); Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., 17 August 1982 in MRA&L Conference Room #3E794, The Pentagon, and from 9:30 a.m. to approximately 12:00 noon, 18 August 1982 in MRA&L Conference Room #3E794, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the responses to the recommendations/requests for information/continuing concerns made at the 1982 Spring Meeting, discuss current issues relevant to women in the Services, and plan the itinerary/program for the next Semiannual Meeting scheduled for 7–11 November 1982 in Fayetteville, North Carolina.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Captain Mary J. Mayer, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs, and Logistics), Room 3D769, The Pentagon, Washington, D.C. 20301, telephone (202) 697–2122 no later than 10 August 1982.

M.S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

July 16, 1982.

[FR Doc. 82–19813 Filed 7–21–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204 (e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective August 1, 1982. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, Room 4121, Washington, D.C. 20461, Telephone: (202) 633–9710.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	3.97
Arizona [1]	3.85
Arkansas [1]	3.75
California	3.77
Colorado [2]	3.85
Connecticut [1]	3.82
Delaware [1]	3.95
Florida	3.96
Georgia	4.03
Idaho [2]	3.85
Illinois [1]	3.78
Indiana [1]	3.78
Iowa [1]	4.01
Kansas [1]	4.01
Kentucky [1]	3.78
Louisiana [1]	3.75
Maine	3.76
Maryland [1]	3.95
Massachusetts [1]	3.82
Michigan	3.75
Minnesota	3.96
Mississippi	4.03
Missouri [1]	4.01
Montana [2]	3.85
Nebraska [1]	4.01
Nevada [1]	3.85
New Hampshire [1]	3.82
New Jersey	3.74
New Mexico	3.26
New York [1]	3.95
North Carolina [1]	4.04
North Dakota [1]	4.01
Ohio	3.59
Oklahoma	3.67
Oregon [1]	3.85
Pennsylvania [1]	3.95
Rhode Island [1]	3.82
South Carolina [1]	4.04
South Dakota [1]	4.01
Tennessee [1]	4.04
Texas	3.57
Utah [2]	3.85
Vermont [1]	3.82
Virginia [1]	4.04
Washington [1]	3.85
West Virginia	3.70
Wisconsin [1]	3.78
Wyoming [2]	3.85

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79–21.

[2] Region based price computed as the weighted average price of Regions E, F, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fule oil landed in the greater New York City Metropolitan area during May 1982 was $38.70 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of Btu's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective August 1, 1982, is $8.67 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of March 1982, April 1982, and May 1982.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective August 1, 1982, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, March 1982, April 1982, May 1982. Reported prices for sales in March 1982 were adjusted by the percent change in the nationwide volume-weighted average price from March 1982 to May 1982. Prices for April 1982 were similarly adjusted by the percent change in the nationwide volume-weighted average price from April 1982 to May 1982. The volume-weighted 3-month average of the adjusted March 1982 and April 1982, and the reported May 1982 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions idenfified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales druing one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million Btu's).

There were no reported sales in Region G for the months of March, April, and May 1982. The alternative fuel price ceilings for the States in Region G were determined by calcuating the volume-weighted average price ceilings for Region E, Region F, and Region H.

(4) *Lag Adjustment.* the EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for whch ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 sulfur residual fuel oil for the ten trading days ending July 14, 1982, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of May 1982. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G Combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dokota
Minnesota	

[1] Large Industrial User—A person/firm which purchases No. 6 fule oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Issued in Washington, D.C., July 19, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 82-19901 Filed 7-20-82; 12:15 p.m.]

BILLING CODE 6450-01-M

Presurvey Consultation Program

AGENCY: Energy Information Administration, DOE.

ACTION: Request for Presurvey Consultation Comments on Proposed DOE Annual Report of Natural and Supplemental Gas Supply and Disposition, Form EIA-176.

SUMMARY: As part of its continuing effort to reduce paperwork burden, the Department of Energy (DOE), through its Energy Information Administration (EIA), conducts a presurvey consultation program which provides for public comment in the early development stages of new or revised reporting forms. This program is designed to ensure that requested data can be provided in the desired format, the cost of reporting is minimized, reporting forms are designed to be clearly understood, and reporting burden estimates accurately reflect the impact of the collection requirements on respondents.

Previously, these presurvey consultations were conducted primarily by mail or telephone with a sample of potential respondents and with various industry associations, public interest groups, and other government agencies. In order to extend the opportunity for commenting to a larger audience, EIA is now publishing proposed forms and instructions in the **Federal Register.** However, when EIA needs comments quickly, or where the target population is relatively narrow, it may conduct these presurvey consultations by mail, telephone, and/or personal visit.

At this time, EIA is requesting comments on the "Annual Report of Natural and Supplemental Gas Supply and Disposition" form. The proposed form is reproduced following this Notice. Interested persons are asked to review the form and instructions and provide comments in the format prescribed below.

DATE: Comments by August 23, 1982.

FOR FURTHER INFORMATION CONTACT: James W. McCarrick, Jr., Natural Gas Division, Office of Oil and Gas, Energy Information Administration, Room BE-012, 1000 Independence Avenue, S.W, Washington, D.C. 20585, (202) 252-6198.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with provisions of the Department of Energy Organization Act (Public Law 95-91), the Energy Information Administration is responsible for carrying out a comprehensive, centralized energy data program including the collection and dissemination of economic and statistical information. In keeping with these mandated responsibilities and in an effort to minimize respondent reporting burden, the EIA has developed Form EIA-176, "Annual Report of Natural and Supplemental Gas Supply and Disposition" to replace the original Form EIA-176, "Supply and Disposition of Natural Gas."

EIA believes the revised Form EIA-176 will provide the basic data needed, when supplemented by data collected on Forms EIA-627, "Annual Quantity and Value of Natural Gas Report," EIA-64, "Natural Gas Liquids Operation Report," EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production," EIA-759 "Monthly Power Plant Report," and FPC-423, "Monthly Report of Cost and Quality of Fuels for Electric Plants," for an integrated natural gas supply, price, interstate movement, storage, and disposition data system.

The proposed "Annual Report of Natural and Supplemental Gas Supply and Disposition" form was designed by EIA to continue, with certain modifications, the annual supply and disposition of natural gas survey initially conducted by the Department of Interior, Bureau of Mines (BOM) beginning with 1910. With the creation of the Department of Energy, the EIA assumed responsibility for conducting the survey. The Forms 6-1340-A and 6-1341-A developed by the BOM were consolidated and superseded by the original Form EIA-176, "Supply and Disposition of Nautral Gas."

The original EIA-176 form was essentially the same as the BOM forms in both format and content except for the addition of certain data elements. During the 1980 and 1981 report cycles, a substantial portion of the total burden upon respondents and EIA resources was a direct result of respondents misunderstanding the specific data to be reported and/or the manner in which specific data elements were to be reported. The proposed revised Form EIA-176 was developed to more clearly and precisely describe and define the data to be reported in order to increase the reliability and usefulness of the information collected while reducing the additional burden upon respondents of compiling and submitting revised reports due to misunderstanding the reporting instructions.

In addition to the changes in format and expanded instruction for clarification purposes, the revised Form EIA-176 would collect certain classification, operation, and cost information to enhance the value of the data formerly collected and eliminate the collection of certain data with limited usefulness.

II. Comment Procedures

The proposed Form EIA-176 is reproduced following this notice. EIA invites the public to provide comments on the form within 30 days of publication of this notice and provides the following general guidelines to assist in the preparation of responses.

As a potential data provider:

1. Are the instructions and definitions clear and sufficient?

2. Can the data be submitted using definitions included in the instructions?

3. Can the data be submitted in accordance with the response time specified in the instructions?

4. How many hours, including time for research, computation, preparation, and administrative review, will it take your firm to complete and submit the form for the first year of reporting—including time to design and implement ADP processing programs?

5. How many hours will it take your firm for subsequent years of reporting?

6. Estimate the annual cost of completing the forms, including direct and indirect costs associated with the data collection for the first year and for subsequent years of reporting. Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP, and other administrative costs.

7. How can the form be improved?

As a potential data user:

a. Do you need data at the levels of detail indicated on the forms; that is, do the products, frequency, market categories, and geography reflect your needs?

b. For what purposes would you use these data? (Be specific.)

c. What are the "costs" involved in not having these data available?

d. How could the form be improved to better meet your specific data needs?

e. Are there alternative sources of data and do you now use them? What are their strong points? What are their deficiencies?

Comments provided on the forms will be included in EIA's submission to the Office of Management and Budget and will become a matter of public record.

Issued in Washington, D.C., July 15, 1982.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

Department of Energy, Energy Information Administration

Annual Report of Natural and Supplemental Gas Supply and Disposition EIA–176 (Rev. 1982)

Instructions

I. *Purpose.* Form EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition," was designed to collect data on natural, synthetic, and other supplemental gas supplies and disposition, and the associated costs and revenues, by State pursuant to Section 5(b)(9) of the Federal Energy Administration Act of 1974 (FEA Act), Public Law 93–275, requiring the collection, evaluation, and analysis of energy information on reserves, production, demand, and related economic data. This report is mandatory under the FEA Act. Late filing, failure to file, failure to keep records or failure otherwise to comply with those instructions, may result in criminal fines, civil penalties, and other sanctions as provided by law.

The data obtained from this survey are compiled and combined with data obtained from State and Federal agencies, gas processing plant operators, and business firms participating in other Energy Information Administration surveys to develop annual gas supply/disposition balances by State and associated average cost and price information. The compiled and combined data are published in the Energy Information Administration "Natural Gas Annual." The data base generated is used as input to the State Energy Data System which reports quantity and value of consumption by product, by economic sector, and by State.

The information collected in this survey will also be used by the Department of Energy as baseline information for State and Regional studies and forecasts of natural gas supply, demand, and prices.

II. *Who must Submit.* Report must be completed by:

(1) Interstate natural gas pipeline companies.

(2) Intrastate natural gas pipeline companies.

(3) Publicly and privately owned natural gas distributors.

(4) Underground natural gas storage operators.

(5) Synthetic natural gas plant operators.

(6) Field, well, or processing plant operators that deliver natural gas directly to consumers (including their own industrial facilities) other than for lease or plant use.

(7) Field, well, or processing plant operators that transport gas to, across, or from a State border through field or gathering facilities.

III. *When to Submit.* Completed Form EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition," reports are to be filed with the EIA on or before the first day of March following the close of the calendar report year. Requests for extension of the filing deadline of up to 30 days may be granted, upon good cause shown, provided that written requests are received at the address below no later than five working days before the due date.

IV. *Where to Submit.* Mail complete form(s) to: Energy Information Administration, EI–441; Mail Station BF–118 FORSTL, U.S. Department of Energy, Washington, D.C. 20585, Attn.: Form EIA–176.

Reports may be hand delivered to: Room BF–118, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

V. *General Description of the Report.* The "Annual Report of Natural and Supplemental Gas Supply and Disposition," survey form is divided into six parts. Part I is for reporting responding company and report identification information. Part II is for certification of the information submitted or an explanation of the reason a report is not required. Part III is a checkoff list for describing the type of company responding and the nature of its operations within each report State. Part IV is for reporting the total supply of natural and supplemental gas from all sources within each report State. Part V is for reporting the total disposition of natural and supplemental gas within each report State. Part VI is a continuation sheet to be used, as needed, to report particulars of large purchases, receipts, sales, and/or deliveries or to report information where insufficient space was provided in Parts IV and V.

VI. *General Instructions.* A separate report must be completed for each State in which: (1) gas (natural and commingled natural and supplemental gas) was transported utilizing respondent operated facilities other than field or gathering lines, (2) gas was transported to, from, or across a State border utilizing respondent operated field or gathering lines, (3) gas was delivered directly to consumers utilizing respondent operated facilities other than field, well, or plant operators delivering solely for lease and plant use, (4) gas was stored in respondent operated underground storage reservoirs, and/or (5) synthetic natural gas was produced in respondent operated facilities.

A separate report must be filed by, or for, each company subsidiary or affiliate operating within a State.

A State, for the purpose of this report, includes adjacent offshore Federal Domain areas.

All information must be provided on a calendar year basis.

All reporting must be on the basis of physical possession in respondent operated facilities. Information concerning respondent owned production, purchases and usage are to be reported only when and where the gas physically enters or leaves the respondent's transportation, storage or distribution system, or synthetic natural gas plants.

Respondents operating separate and distinct systems within a State are to report on a combined basis.

Complete only those spaces applicable to your operations. Leave all other spaces blank.

All volumes are to be reported in thousand cubic feet (Mcf) at the pressure base of 14.73 pounds per square inch absolute at 60 degrees Fahrenheit.

All cost and revenue quantities are to be rounded to the nearest whole number of dollars.

No changes are to be made to the report form.

Definitions of the terms used in the instructions and on the form are provided in Appendix A.

VII. Specific Instructions. Part I: Identification—Check mailing label for accuracy.

1.0 Control No.: Enter six digit control (ID) number from upper left of mailing label.

2.0 Name: Enter company name as abbreviated on the mail label. If correction is necessary, abbreviate to limit length to 24 spaces.

3.0 Report for operations in: Enter name of State covered by the report (Report State). A separate report must

be submitted for each State for which your company is required to file.

4.0 Report is: Check appropriate "Original" or "Resubmittals" block and enter date (Month, Day, Year; e.g., enter April 3, 1983 as 040383) if report is a resubmission.

If a resumbmission, enter only those data elements to be added or corrected. Enter the word "delete" in the appropriate space if a data element previously reported is to be deleted.

5.0 Name and/or address change or correction: Enter correct information if mailing label is incorrect. Abbreviate, if necessary, to limit lines to 24 spaces.

6.0 Contact person: Enter name, title, and telephone number, including area code and extension, of the person to contact concerning the information shown on this report.

Part II: Certification. Check the appropriate box to certify the information reported or the reason a report is not required from your company in the State covered. For example, "My company is a producer that does not transport, store, or deliver gas to end-users within the State."

Note.—A report is not required as a transporter in any State in which all transportation was through field or processing plant gathering lines or systems, unless gas was delivered to, received at, or transported across a State line. Nor is a report required of field or well operators if all gas delivered to end-users within the State was for lease or processing plant fuel.

Complete and sign the certification block.

Part III: Company classification and gas activities operated within State.

1.0 Company classification: Check the box that best describes your company's overally gas operations. The classification should represent the reporting entities' operations. For example, a producer subsidiary of an interstate pipeline should be classified as a producer.

2.0 Gas operations within report state: Check appropriate box(es) best describing the gas activities operated by your company in the State. Do *not* check activities in which your company owns an interest but are operated by others.

Part IV: Total supply of natural and supplemental gas received within or transported into report State.

Report in this Part the total volumes and, where indicated, costs of natural and supplemental gas physically received or produced and taken into your company's transportation, storage, or distribution facilities located in the State. Volumes are to be reported based upon physical possession regardless of ownership.

Offsystem production, i.e., production sold to others directly from the wellhead, field, or tailgate of a plant is *not* to be reported. (Such production is to be reported as "Received from producers, gatherers, and/or processing plant operators" by the company physically receiving the gas.)

Field or well operators delivering gas directly to end-users are to report only that supply utilized to serve such users.

Supply sources (produced, purchased from producers, received from pipelines, distributors, and/or storage operators, etc.) are to be determined based upon the point at which the gas physically entered your company operated transportation, storage or distribution system, or facilities. For example, offsystem production or purchases transported to your system by others should be reported as "Exchange, transportation, and/or storage receipts" (Part IV, 3.2) in the State in which the gas finally enters your system.

Synthetic natural gas and other supplemental supplies are to be reported separately *only* when produced, received, or introduced into your system in an unmixed stream. (Commingled natural and supplemental gas are to be reported in Part IV, 3.1, 3.2, 4.0, 5.0, or 7.1 as appropriate.)

1.0 Produced onsystem. Report gross company owned production, after lease separation (including royalty and overriding royalty interest), and the booked cost of such production (including production, severance, or similar taxes) taken directly into your system at the wellhead, field, or tailgate of a processing plant within the report State whether produced from wells operated by your company or by others. Do *not* include offsystem production. (Offsystem sales to others are not to be reported. Offsystem production delivered to your system by others is to be reported in Part IV, 3.2).

2.0 Received from producers, gatherers, and/or processing plant operators. Report volumes of gas first received in your company's system within the report State from producers, gatherers, and/or processing plant operators at the wellhead, field, or plant tailgate.

2.1 Purchased gas received. Report total volume of gas purchased and received in your system within the report State and the cost of such purchases, including all production, severance, or similar taxes and any adjustments for treating, dehydration, heat content, gathering, compression, etc.

2.2 Received for the account of others. Report volume first received into your system from producers, gatherers, and/or processing plants within the report State, for the account of others, under exchange, storage, or transportation agreements. Include volumes transported to processing plants for the account of producers, i.e., the difference between the volume delivered to the plants and the residue redelivered where the gas was processed for the producer's account.

3.0 Received within report State from pipelines, distributors, and/or storage operators. Report the volume of gas, including commingled supplemental gas, physically received in your system within the State from interstate pipelines, intrastate pipelines, distributors, and/or storage operators. These volumes should represent receipts after transportation (other than gathering) and/or storage by others.

3.1 Purchased gas received. Report the total volume of gas purchased and received within the report State and the total cost of gas purchased from pipelines and/or distributors. If your company purchased 1,000,000 Mcf (one billion cubic feet) or more from any individual pipeline or distribution company or companies, report the name or names of the seller(s) and the volume(s) purchased on Part VI, Continuation Sheet. (See instructions for completing Part VI).

3.2 Exchange, transportation, and/or storage receipts. Report the total volume of gas received within the report State under exchange, transportation, and/or storage agreements. Include offsystem production and purchases transported to your system by others and company-owned gas received from storage facilities operated by others. If your company received 1,000,000 Mcf (one billion cubic feet) or more from any individual pipeline, distribution, or storage company or companies under such agreements, report the name of the delivering company(ies) and volume(s) received on Part VI, Continuation Sheet. (See instructions for completing Part VI.)

4.0 Transported into report State from: Report the volume of gas, including commingled supplemental gas, transported into the State through company operated gathering, distribution, or transmission facilities and the name of the bordering State or Country from which it was transported. If insufficient space is provided, continue on Part VI, Continuation Sheet.

5.0 Received at State line or U.S. border from: Report the name of the company from whom gas, including commingled supplemental gas, was received at the report State line or U.S. Border, the name of the bordering State or foreign Country from which received

and the volume received. If insufficient space is provided, continue on Part VI, Continuation Sheet.

6.0 Synthetic natural gas received. Report only those volumes of synthetic natural gas produced or received in unmixed streams. (Quantities received commingled with natural gas are to be reported in 3.1, 3.2, 4.0 or 5.0, as appropriate.)

6.1 Produced. Report the volumes of synthetic natural gas produced in plant(s) operated by your company within the State and the booked cost of such gas.

6.2 Purchased and received in unmixed streams. Report the volume of synthetic natural gas purchased and received in unmixed streams directly from a plant or from a synthetic natural gas pipeline within the report State and the cost of such gas.

6.3 Other unmixed receipts. Report the volume of synthetic natural gas received in unmixed streams for the account of others under exchange, transportation, and/or storage agreements.

7.0 Withdrawn from company operated storage facilities. Report the volume of gas withdrawn from underground or liquefied natural gas storage facilities operated by your company within the State. Report total gas withdrawn during the year, including gas owned by others. (Do *not* include gas owned by your company withdrawn from facilities operated by others. Such volumes are to be reported under Part IV, 3.2).

7.1 From underground storage. Report the total volume withdrawn from underground storage reservoirs operated by your company within the report State.

7.2 From liquefied natural gas storage. Report the total gas phase volume of liquefied natural gas withdrawn from peakshaving or base load facilities operated by your company within the report State. Include quantities withdrawn in the liquid phase for shipment by truck, rail, or barge.

8.0 Other sources of supply (specify). Report any other source or sources of natural or supplemental gas supply received or introduced into your system within the report State and the volume or volumes of each. Other sources would include, for example, withdrawals from gas holders, liquefied or compressed gas received by truck, rail or barge, and reduction in line pressure. Supplemental gas supplies would include, for example, propane-air injection, air injection for Btu stabilization, coke oven gas, and refinery gas.

9.0 Total supply within report State. Report the total supply of natural and supplemental gas received into your system within the report State.

Part V: Disposition of natural and supplemental gas delivered, used, removed, lost within, or transported out of report State.

Report in this Part the total volume of natural and supplemental gas used, delivered, stored in company operated facilities, or otherwise disposed of within the State or delivered to bordering States or foreign Countries. The type of disposition (used, delivered, stored, transported, etc.) is to be determined based upon the physical possession of the gas within your company operated onsystem production, transportation, storage, or distribution facilities at the point of disposition. Report booked cost of gas used or gross revenues received, including all taxes and/or surcharges imposed at the point of sale and all price adjustments, where indicated.

1.0 Used in lease operations. Report total volume and cost of gas used in your company's onsystem lease operations. (Volumes delivered to others for such use should be included in Part V, 9.3). The volume reported should be directly attributable to the operations resulting in the onsystem production reported in Part IV, 1.0.

2.0 Returned to oil or gas reservoirs. Report the volume of gas delivered directly from your system to oil or gas fields located within the report State for repressuring, pressure maintenance, and/or cycling operations.

3.0 Used, removed, or lost in processing or treating plants. Report volumes used, removed, vented, flared, or lost in processing or treating plants from which gas was received directly into your system within the State.

3.1 Company operated plants.

3.1.1 Volume delivered to company operated plants. Report total volume of gas processed or treated in onsystem processing plants operated by your company within the report State. Note that this is not an element of disposition but is to be reported as a weighting factor for the elements below.

3.1.2 Consumed as fuel. Report volume of gas utilized as fuel in your company operated plants. If fuel use was not measured, provide your best estimate. Denote estimated volume by inserting an "E" immediately after the quantity entered.

3.1.3 Gas phase volume of extracted liquids. Report the estimated gas phase volume of liquids extracted in company operated plants in the report State. The following conversion factors should be used to estimate the gas phase volume by component or product. Estimate mixed streams on a proportional basis.

Ethane: 1.558 Mcf/Bbl
Propane: 1.499 Mcf/Bbl
Isobutane: 1.245 Mcf/Bbl
n-butane: 1.288 Mcf/Bbl
Isopentane: 1.095 Mcf/Bbl
Heavier Products: 0.940 Mcf/Bbl

3.1.4 Nonhydrocarbon gas removed. Report the volume of nonhydrocarbon gas, such as hydrogen sulfide, carbon dioxide, and nitrogen, removed in processing or treating plants operated by your company within the report State. Provide your best estimate, if not measured. Denote estimated volume by inserting an "E" immediately after the volume entered.

3.1.5 Vented, flared, and/or lost. Report the volume of gas vented, flared, and/or lost in processing or treating plants operated by your company within the State. Provide your best estimate, if not measured. Denote estimated volume by inserting an "E" immediately after the quantity entered.

3.1.6 Total used, removed, or lost in company operated plants. Report the total volume of gas used, removed, or lost, i.e., the difference between the quantity of raw gas delivered to company operated onsystem plants and the quantity of residue gas redelivered into your system from such plants.

3.2 Plants operated by others. Report total volume of gas delivered for processing or treating in plants operated by others and the total reduction in volume across the plant.

3.2.1 Volume delivered to plants operated by others. Report the total volume physically delivered from your system to processing or treating plants operated by others for processing or treating and redelivery within the report State.

3.2.2 Volume used, removed, and/or lost. Report the total volume of gas used, removed, and/or lost in plants operated by others to which gas was delivered from your system for treating or processing and redelivery to your system. The volume reported should represent the difference between the volume of raw gas delivered and residue gas redelivered. (Volumes sold to plant operators or delivered for redelivery of residue to others should be reported in Part V, 5.1, 5.2 or 9.3, as appropriate.)

4.0 Used as pipeline and/or distribution system compressor fuel. Report the volume and booked cost of gas consumed as compressor fuel in your company's pipeline, storage, and/or distribution facilities operated within the report State. (Gas used by your company for other purposes are to be included in Part V, 1.0, 2.0, 3.1.2, 9.2, 9.3, or 9.4, as appropriate.)

5.0 Delivered within report State for resale or redelivery.

5.1 Sales for resale delivered. Report the total volume of gas sold for resale with deliveries made from points on your system within the report State and gross revenue received. (Offsystem sales for resale should *not* be included.) Grass revenues reported should reflect all taxes, surcharges, and adjustments included in the delivered price. If your company sold and delivered 1,000,000 Mcf (one billion cubic feet) or more to any individual company or companies, report the name(s) and volume(s) delivered on Part VI, Continuation Sheet. (See instructions for completing Part VI.)

5.2 Exchange, transportation, and/or storage deliveries. Report the total volume of gas delivered from points on your system within the report State under exchange, transportation, and/or storage agreements. (Offsystem production or purchases first delivered to others for transportation to your system should *not* be included.) If your company delivered 1,000,000 Mcf (one billion cubic feet) or more to any individual company or companeis, report the name(s) and volume(s) delivered on Part VI, Continuation Sheet. (See instructions for completing Part VI.)

6.0 Transported out of report State to: Report the name(s) of the bordering State(s) or foreign Country(ies) to which your company transported gas through company operated facilities and the volume of gas transported across the State line or U.S. borders. Gas moved across the State line through gathering facilities are to be included. The volume(s) reported must agree with the volume(s) reported as received on your company's report for the bordering State(s). Export or intransit gas transported into or through foreigh Countries through your company's facilities are to be included. If insufficient space is provided, continue on Part VI.

7.0 Delivered at the State line or U.S. border to: Report the name(s) of the company(ies) to whom gas was delivered, the name(s) of the State(s) or Country(ies) to which delivered, and the volume(s) of gas delivered where deliveries were made at the State line or U.S. border. Deliveries for export and deliveries at the U.S. border for redelivery into the U.S. are to be reported. If insufficient space is provided, continue on Part VI.

8.0 Added to storage in company operated facilities. Report the total volume addedd to storage facilities operated by your company within the report State. (Volumes of company-owned gas added to storage in facilities operatd by others are to be reported in Part V, 5.2.)

8.1 Injected into underground storage. Report total volume injected into underground storage reservoirs. Include all volumes injected for others as well as company-owned gas. Volumes of supplemental gas, e.g., synthetic natural gas, are to be included whether injected in an unmixed or commingled stream.

8.2 Liquified natural gas added to storage. Report total gas phase volume of liquefied natural gas added to company operated storage facilities. Include LNG received in the liquid phase by truck, rail, barge, or tanker for storage.

9.0 Delivered directly to consumers. Report the average number of residential, commercial, industrial, and electric utility consumers served directly from your facilities during the year, the volumes delivered to such consumers, and the revenues received. Deliveries for consumption in your company operations other than for lease use (1.0), processing or treating plant fuel (3.1.2), or compressor fuel (4.0) are to be included. Also include deliveries directly to your company-owned industrial or electric utility facilities. (Do *not* include sales where final deliveries to consumers are made by others for the account of your company.)

The average number of consumers during the year, for the purpose of this report, is the sum of the number of consumers attached at the end of each month divided by twelve.

Each individually metered dwelling, building, plant, establishment, or location is to be counted as a separate consumer, for the purpose of this report, whether or not centrally billed and whether or not provided with more than one type of service, e.g., firm and interruptible service.

Multiple use or combination consumers such as apartment buildings with commercial establishments, retail stores with attached dwellings, or industrial plants with on-site office space or buildings, served from a common meter are to be classified based upon the predominate volumetric usage.

Revenues reported are to be gross revenues, including all local and State taxes, surcharges, and/or adjustments billed to consumers. Also include revenues attributable to gas delivered for the account of others. For gas used in your company operations or delivered to your own industrial or electric utility facilities include the booked cost.

9.1 Residential. Residential customers, for the purpose of this report, include single and multifamily dwellings and apartments using gas for heating, air-conditioning, cooking, water heating, and other residential uses.

9.2 Commercial. Commercial customers, for the purpose of this report, are nonmanufacturing establishments or agencies primarily engaged in the sale of goods or services. Included are establishments such as hotels, restaurants, wholesale and retail stores, and other service enterprises; establishments engaged in agriculture, forestry, and fisheries; and local, State, and Federal agencies engaged in nonmanufacturing activities. (Note: Local, State, and Federal agencies were formerly classified as "Other Consumers." The "Other Consumers" classification has been discontinued.) Gas used by your company from your system in office buildings, appliance sales outlets, etc., are to be included in this category.

9.3 Industrial. Industrial customers, for the purpose of this report, are establishments engaged in a process which creates or changes raw or unfinished materials into another form or product. Deliveries to company-owned industrial facilities, not reported elsewhere on this report, are to be included in this category. Generation of electricity, other than by electric utilities, is included.

9.4 Electric utility. Electric utilities, for the purpose of this report, are establishments primarily engaged in the generation, transmission, and/or distribution of electricity for sale or resale. (Firms generating electricity for use within their own industrial or commercial facilities are *not* to be classified as electric utilities). Electric utility operations by your company are to be included.

10.0 Average heat content of gas delivered to consumers. The average heat (Btu) content should be computed by summing the total Btu delivered each month (volume delivered multiplied by average Btu content per unit volume) and dividing by the total volume delivered during the year. The average Btu content for each month should be that used for billing purposes where billing was on a therm (100,000 Btu) or decatherm (1,000,000 Btu) basis. If billing was on a volumetric basis and your company did not measure the Btu content, contact your supplier for the information. If the Btu content was not measured at any point, enter a "U" for Unknown.

11.0 Other disposition (specify). Report any disposition of gas which is not described in the instructions for completing 1.0 through 9.4 of this Part.

This would include, but not be limited to, such disposition as: increase in line pressure, storage additions other than underground or LNG, e.g., in gas holders, gas liquefied or compressed for shipment by truck, rail or barge, and gas lost from ruptured line. Provide estimates of the volume involved, if not measured and denote such estimates by inserting an "E" immediately after the volume reported. If insufficient space is provided, continue on Part VI.

12.0 Total disposition accounted for with report State. Report the total volume of natural and supplemental gas disposition reported in 1.0 through 11.0 of this Part.

13.0 Supply (+) or disposition (−) unaccounted for. Enter the difference between "Total supply" (Part IV, 9.0) and "Total disposition accounted for" (Part V, 12.0). A positive entry indicates supply in excess of accounted for disposition and a negative entry (denoted by a minus sign preceding the entry) indicates accounted for disposition in excess of supply reported.

Part VI: Continuation sheet.

Use the Part VI, Continuation Sheet, if needed, to report individual purchases, receipts, sales, and/or deliveries of 1,000,000 Mcf (one billion cubic feet), or more included in the totals reported on:

Part IV: 3.1, Purchased gas received (Report seller's name and volume received).

Part IV: 3.2, Exchange, transportation, and/or storage receipts (Report delivering company's name and volume received).

Part V: 5.1, Sales for resale delivered (Report purchaser's name and volume delivered).

Part V: 5.2, Exchange, transportation, and/or storage deliveries (Report receiving company's name and volume delivered).

and/or to report additional companies, States, foreign Countries, supply sources, and/or other disposition, and the associated volumes, where insufficient space is provided on:

Part IV: 4.0, Transported into report State from:

Part IV: 5.0, Received at report State line or U.S. border from:

Part IV; 8.0, Other sources of supply (specify).

Part V: 6.0, Transported out of report State to:

Part V: 7.0, Delivered at the State line or U.S. border to:

Part V: 11.0, Other disposition (specify).

Enter reference Part and item Number (for example: IV–3.1), descriptive information specified for the item, and the associated volume. Use additional continuation sheets, as needed, and number sequentially (Sheet 1 of 3, Sheet 2 of 3, etc.) in the spaces provided.

VIII. *Provisions of Confidentiality.*

The information contained in this form may be information which is exempt (1) from disclosure to the public under the exemption for trade secrets and confidential commercial information specified in the Freedom of Information Act (5 USC 552(b)(4)) (FOIA), or (2) from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the respondent must make a showing satisfactory to the Department concerning its confidential nature. Therefore, the respondent should state briefly and specifically (on an element by element basis if possible), in a letter accompanying the submission of the form, why he considers the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential by this company and the industry, and the type of competitive harm that would result to the company from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.

If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should not be released to the public, DOE will assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new writen justification need not be sumitted each time the EIA–176 is submitted if:

a. your views concerning information items identified as privileged or confidential have not changed; and

b. a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available, upon request, to the Congress or any committee of Congress, and to the General Accounting Office.

Appendix A

Definitions

Booked Costs—Costs allocated or assigned to interdepartmental or intracompany transactions, such as onsystem or SNG production and company owned gas used in gas operations, and recorded in company books or records for accounting and/or regulatory purposes.

Btu—One British thermal unit, or Btu, is $\frac{1}{180}$ of the heat required to raise the temperature of one pound of water from 32° to 212° F.

Citygate—A point or measuring station at which a distributing gas utility receives gas from a natural gas pipeline company or transmission system.

Company—Any individual, company, association, partnership, business trust, corporation, municipality, or unincorporated organization engaged in the production, gathering, treating, processing, transportation, storage, and/or distribution of natural gas or in the production of synthetic natural gas.

Except as indicated otherwise by the context, company, company operated, and company-owned refer to the responding entity.

Compressor Station—Any combination of facilities which supplies the energy to move gas in transmission or distribution lines or into storage by increasing the pressure.

Consumer—Any individually metered dwelling, building, establishment, or location utilizing natural gas, synthetic natural gas, and/or mixtures of natural and supplemental gas for feedstock or as fuel for any purpose other than in oil or gas lease operations; natural gas treating or processing plants; or pipeline, distribution, or storage compressors.

Cycling—The practice of producing natural gas for the extraction of natural gas liquids and returning the dry residue to the producing reservoir to maintain reservoir pressure and increase the ultimate recovery of natural gas liquids. The reinjected gas is produced for disposition after cycling operations are completed.

Decatherm—Ten therms or 1,000,000 Btu.

Delivered—The physical transfer of natural, synthetic, and/or supplemental gas from facilities operated by the responding company to facilities operated by others or to consumers.

Disposition—The removal of natural, synthetic, and/or supplemental gas, or any components or gaseous mixtures contained therein, from the responding company's facilities within the report State by any means or for any purpose including the transportation of such gas out of the report State.

Distributor—A company primarily engaged in the sale and delivery of natural and/or supplemental gas directly to consumers through a system of mains. Except for the purpose of Company Classification (III, 1.0), distributor includes both privately and

publicly (municipally) owned companies.

Exchange Agreement—A contractual arrangement whereby one company agrees to deliver gas either directly or through intermediates to another company at one location, or in one time period, in exchange for the delivery by the second company to the first company of an equivalent volume or heat content at a different location or time period. Such agreements may or may not include the payment of fees in dollar or volumetric amounts.

Gatherer—A company primarily engaged in the gathering of natural gas from well or field lines for delivery, for a fee, to a natural gas processing plant or central point. Gathering companies may also provide compression, dehydration, and/or treating services.

Heat Content—(Also Btu content or Gross heating value) The number of British thermal units (Btu) produced by the combustion, at constant pressure, of the amount of the gas which would occupy a volume of one (1) cubic foot at a temperature of 60° F, if saturated with water vapor and under a pressure of 14.73 psia and under standard gravitational force (980.665 cm sec^{-2}) with air of the same temparature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

Lease Operations—Any well, lease, or field operations related to the exploration for or production of natural gas prior to delivery for processing or transportation out of the field. Gas used in lease operations include usage such as for drilling operations, heaters, dehydrators, field compressors, and net used for gas lift.

Liquefied Natural Gas (LNG)—Natural gas cryogenically reduced to the liquid phase. At atmospheric pressure and −259° F, liquefied natural gas occupies 1/600 of the volume it occupies in the vapor state. It remains a liquid at −116° F and 673 psia.

Mains—A system of pipes for transporting gas within a distributing gas utility's retail service area to points of connection with consumer service pipes.

Mcf—One thousand cubic feet at 14.73 psia and 60° F.

Municipality—A village, town, city, county, or other political subdivision of a State.

Natural Gas—A mixture of hydrocarbon compounds and various nonhydrocarbons existing in the gaseous phase or in solution with crude oil in natural underground reservoirs at reservoir conditions. The principal hydrocarbon in natural gas is methane with lesser quantities of ethane, propane, butane, pentanes, and heavier compounds. Typical nonhydrocarbon gas which may be present in reservoir natural gas are carbon dioxide, helium, hydrogen sulfide, and nitrogen.

Nonhydrocarbon Gas—Nonhydrocarbon gases most commonly contained in reservoir natural gas in concentrations high enough to require or warrant removal are carbon dioxide, hydrogen sulfide, helium, and nitrogen.

Offsystem—Any point *not* on, or directly interconnected with, a transportation, storage, and/or distribution system operated by the responding company within the report State.

Onsystem—Any point on, or directly interconnected with, a transportation, storage, and/or distribution system by the responding company within the report State.

Operated—Exercised management responsibility for the day-to-day operations of natural gas production, gathering, treating, processing, transportation, storage, and/or distribution facilities and/or a synthetic natural gas plant.

Operator—The company responsible for the management and day-to-day operations of natural gas production, gathering, treating, processing, transportation, storage, and/or distribution facilities and/or a synthetic natural gas plant.

Pipeline—A continuous pipe conduit, complete with such equipment as valves, compressor stations, communication systems, and meters for tranporting natural and/or supplemental gas from one point to another, usually from a point in or beyond the producing field or processing plant to another pipeline or to points of utilization. Also refers to a company operating such facilities.

Processing Plant—A surface installation designed to separate and recover natural gas liquids from a stream of produced natural gas through the processes of condensation, absorption, adsorption, refrigeration, or other methods and to control the quality of natural gas marketed and/or returned to oil or gas reservoirs for pressure maintenance, repressuring, or cycling.

Producer—A company engaged in the production and sale of natural gas from gas or oil wells with delivery generally at a point at or near the wellhead, the field, or the tailgate of a gas processing plant. For the purpose of company classification, a company primarily engaged in the exploration for, development of, and/or production of oil and/or natural gas.

Purchased—Receipts into transportation, storage, and/or distribution facilities within a report State under gas purchase contracts or agreements whether or not billing or payment occurred during the report year.

Received—Gas physically transferred into the responding company's transportation, storage, and/or distribution facilities.

Receipts—See Received.

Report State—The State, including adjacent offshore continental shelf areas in the Federal domain, in which the responding company operated natural gas gathering, transportation, storage, and/or distribution facilities or a synthetic natural gas plant covered by the individual report.

Report Year—Calendar year, January 1 through December 31, for which data are reported.

Respondent—The company required to complete and return the report.

Storage Agreement—Any contractual arrangement between the responding company and a storage operator under which gas was stored for, or gas storage service was provided to, the responding company by the storage operator, irrespective of any responding company ownership interest in either the storage facilities or stored gas.

Supplemental Gas—Any gaseous substance introduced into or commingled with natural gas which increased the volume available for disposition. Such substances include, but are not limited to, propane-air, refinery gas, coke oven gas, still gas, manufactured gas, bio-mass gas, or air or inerts added for Btu stabilization.

Supply—Natural, synthetic, and supplemental gas produced within, introduced into, and/or received into facilities operated by the responding company within the report State for disposition during the report year.

Supply Source—The source of natural, synthetic, and/or supplemental gas supply used, removed, lost, delivered, or otherwise disposed of during the report year.

Synthetic Natural Gas (SNG)—(Also referred to as substitute natural gas.) A manufactured product, chemically similar in most respects to natural gas, resulting from the conversion or reforming of petroleum hydrocarbons which may easily be substituted for or interchanged with pipeline quality natural gas.

System—An interconnected network of pipes, valves, meters, storage facilities, and auxiliary equipment utilized in the tranportation, storage, and/or distribution of natural gas or

commingled natural and supplemental gas.

Tailgate—The outlet of a natural gas processing plant at which point dry residue gas is delivered or redelivered for sale or transportation.

Therm—One hundred thousand (100,000) Btu.

Transport—Movement of natural, synthetic, and/or supplemental gas between points beyond the immediate vicinity of the field or plant from which produced except for movements through well or field lines to a central point for delivery to a pipeline or processing plant within the same State or movements from a city gate point of receipt to consumers through distribution mains.

Transportation Agreement—Any contractual agreement for the transportation of natural and/or supplemental gas between points for a fee.

Treating Plant—A plant designed primarily to remove undesirable impurities from natural gas to render the gas marketable.

Underground Storage—The storage of natural gas in underground reservoirs at a different location from which it was produced.

BILLING CODE 6450-01-M

EIA-176
(Rev. 1982)

U.S. Department of Energy
Energy Information Administration

Form Approved:
OMB No.:
Expires:

ANNUAL REPORT OF NATURAL AND SUPPLEMENTAL GAS SUPPLY AND DISPOSITION

Report Year ____

This report is mandatory under the Federal Energy Administration Act of 1974. Late filing, failure to file, failure to keep records or failure otherwise to comply with those instructions, may result in criminal fines, civil penalties, and other sanctions as provided by law. See instructions for confidentiality statement.

PART I: IDENTIFICATION

1.0 Control No. | 2.0 Name | (Mailing Label)

3.0 Report for operations in: (Report State) /__/

4.0 Report is:
(a) /__/ Original
(b) /__/ Resubmittal
(c) Date of resubmittal: (M, D, Y) _____

5.0 Name and/or address change or correction
(a) Name: _____
(b) Street or P.O. Box: _____
(c) City, State, Zip: _____
(d) Attention: _____

6.0 Contact person
(a) Name _____ (b) Title _____
(c) Telephone Number (Area Code, Number, Extension) (___) _____ _____

PART II: CERTIFICATION

I certify that:
(a) /__/ the information provided herein and appended hereto is true and accurate to the best of my knowledge.
(b) /__/ my company is not required to complete and submit PARTS IV, V, and VI for the report State for the following reason.

/__/

DRAFT

1.0 Name | 2.0 Title

3.0 Signature | 4.0 Date (M, D, Y)

PART III: COMPANY CLASSIFICATION AND GAS OPERATIONS WITHIN REPORT STATE

1.0 Company classification (Check one)

(a) /__/ Integrated oil and gas company
(b) /__/ Producer
(c) /__/ Gatherer
(d) /__/ Processor
(e) /__/ Interstate pipeline
(f) /__/ Intrastate pipeline
(g) /__/ Underground storage operator
(h) /__/ SNG plant operator
(i) /__/ Distributor
(j) /__/ Municipality
(k) /__/ Other (specify)
_____

2.0 Gas operations within report State (Check all that apply)

(a) /__/ Produced
(b) /__/ Gathered
(c) /__/ Processed
(d) /__/ Transported interstate
(e) /__/ Transported intrastate
(f) /__/ Stored underground
(g) /__/ Stored liquefied natural gas
(h) /__/ Injected propane-air
(i) /__/ Produced synthetic natural gas
(j) /__/ Distributed
(k) /__/ Imported
(l) /__/ Exported
(m) /__/ Sold for resale
(n) /__/ Sold direct to consumers
(o) /__/ Other (specify)
_____

Control No.	Name	Report State
		/_/_/

PART IV: SUPPLY OF NATURAL AND SUPPLEMENTAL GAS RECEIVED WITHIN OR TRANSPORTED INTO REPORT STATE

		Volume (Mcf)	Cost (Dollars)
1.0	Produced onsystem		
2.0	Received from producers, gatherers, and/or processing plant operators:		
	2.1 Purchased gas received		
	2.2 Received for the account of others		
3.0	Received within report State from pipelines, distributors, and/or storage operators:		
	3.1 Purchased gas received ..... (List individual purchases over 1,000,000 Mcf on PART VI, Continuation Sheet)		
	3.2 Exchange, transportation, and/or storage receipts ..... (List individual transactions over 1,000,000 Mcf on PART VI, Continuation Sheet)		
4.0	Transported into report State from: (State or foreign Country)		
	_____ ..... /_/_/		
	_____ ..... /_/_/		
	_____ ..... /_/_/		
	(Check here /_/ and continue on PART VI, if necessary)		
5.0	Received at report State line or U.S. border from: (Name of company) (State or foreign Country)		
	_____ _____ /_/_/		
	(Check here /_/ and continue on PART VI, if necessary)		
6.0	Synthetic natural gas received:		
	6.1 Produced		
	6.2 Purchased and received in unmixed streams		
	6.3 Other unmixed receipts		
7.0	Withdrawn from company operated storage facilities:		
	7.1 From underground storage		
	7.2 From liquefied natural gas storage		
8.0	Other sources of supply (specify): (Source or kind of fuel)		
	_____ /_/_/		
	_____ /_/_/		
	_____ /_/_/		
	(Check here /_/ and continue on PART VI, if necessary)		
9.0	Total supply within report State		

Control No.	Name	Report State
		/ / /

PART V. DISPOSITION OF NATURAL AND SUPPLEMENTAL GAS DELIVERED, USED, REMOVED, LOST WITHIN, OR TRANSPORTED OUT OF REPORT STATE

		Volume (Mcf)	Cost or Revenue (Dollars)
1.0	Used in lease operations		
2.0	Returned to oil or gas reservoirs		
3.0	Used, removed, or lost in processing or treating plants:		
	3.1 Company operated plants:		
	3.1.1 Volume delivered to company operated plants (Mcf)		
	3.1.2 Consumed as fuel		
	3.1.3 Gas phase volume of extracted liquids		
	3.1.4 Nonhydrocarbon gas removed		
	3.1.5 Vented, flared, and/or lost		
	3.2 Plants operated by others:		
	3.2.1 Volume delivered to plants operated by others (Mcf)		
	3.2.2 Volume used, removed, and/or lost		
4.0	Used as pipeline and/or distribution system compressor fuel		
5.0	Delivered within report State for resale or redelivery:		
	5.1 Sales for resale delivered (List individual sales over 1,000,000 Mcf on PART VI, Continuation Sheet)		
	5.2 Exchange, transportation, and/or storage deliveries (List individual transactions over 1,000,000 Mcf on PART VI, Continuation Sheet)		
6.0	Transported out of report State (State or foreign Country)	/ / /	
	(Check here / / and continue on PART VI, if necessary)		
7.0	Delivered at the State line or U.S. border to: (Name of Company) (State or foreign Country)	/ / /	
	(Check here / / and continue on PART VI, if necessary)		
8.0	Added to storage in company operated facilities:		
	8.1 Injected into underground storage		
	8.2 Liquefied natural gas added to storage		
9.0	Delivered directly to consumers:	(Number of Consumers)	
	9.1 Residential		
	9.2 Commercial		
	9.3 Industrial		
	9.4 Electric Utility		
10.0	Average heat content of gas delivered to consumers (Btu per cubic foot)		
11.0	Other disposition (specify)	/ / /	
	(Check here / / and continue on PART VI, if necessary)		
12.0	Total disposition accounted for within report State		
13.0	Supply (+) or disposition (-) unaccounted for		

Control No.	Name	Report State
		///

PART VI: CONTINUATION SHEET Sheet /// of ///

Part	Item	EIA Use	Description of Other sources of supply, Other disposition, or Name of company and/or State or Country	Volume (Mcf)

[FR Doc. 82-19827 Filed 7-21-82; 8:45 am]
BILLING CODE 6450-01-C

Office of Energy Research

Multiprogram Lab Panel; Energy Research Advisory Board; Meeting

Notice is hereby given of the following meeting:

Name: Multiprogram Lab Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770).

Date and Time: August 26, 1982, 9 a.m. to 4 p.m.

Place: Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW, Washington, DC 20585.

Contact: Mary Gant, Energy Research Advisory Board, Department of Energy, Forrestal Building, ER–6, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202/252–8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: Discussion of the draft of final report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 16, 1982.

J. Ronald Young,

Director of Management, Office of Energy Research.

[FR Doc. 82–19829 Filed 7–21–82; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of June 25 Through July 2, 1982

During the week of June 25 through July 2, 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.

July 15, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 25 through July 2, 1982]

Date	Name and location of applicant	Case No.	Type of submission
June 28, 1982	State of Michigan, Lansing, Michigan	HEG–0020	Petition for Special Redress. If granted: The June 18, 1982, Consent Order issued to Permian Corporation by the Office of Special Counsel would be modified as to the disposition of refunds of overcharges in the State of Michigan.
Do	Wyoming Energy Conservation Office, Cheyenne, Wyoming.	HEE–0035	Exception to the Conservation Program. If granted: The State of Wyoming 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.
June 29, 1982	State of Alaska, Anchorage, Alaska	HEE–0036	Exception to the Energy Conservation Program. If granted: The State of Alaska would receive an exception from the provisions of 10 CFR 455, the Institutional Conservation Program regarding the use of Administrative funds under Cycle IV.
June 30, 1982	Hudson Oil Company, Kansas City, Kansas	HRD–0064	Motion for Discovery. If granted: Discovery would be granted to Hudson Oil Company in connection with the Statement of Objections submitted in response to the March 22, 1982, Proposed Remedial Order (Case No. HRO–0043 issued to Hudson Oil Company.
Do	Thomas P. Reidy, Houston, Texas	HRS–0013	Request for Stay. If granted: Thomas P. Reidy would receive a stay of its obligation to file the Statement of Objections in response to a Proposed Remedial Order (Case No. HRO–0062) pending a final determination on a Motion for Discovery which the firm intends to file.
July 1, 1982	State of New Jersey, Trenton, New Jersey	HEG–0021	Petition for Special Redress. If granted: The June 18, 1982, Consent Order issued to Permian Corporation by the Office of Special Counsel would be modified as to the disposition of refunds of overcharges in the State of New Jersey.
July 2, 1982	State of New York, Albany, New York	HRD–0065	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 June 1, 1982, Proposed Remedial Order (Case No. HRO–0027) issued to Atlantic Richfield Company.

REFUND APPLICATIONS RECEIVED

[Week of June 25 to July 2, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
June 28, 1982	OKC Corp./McCall Service Stations, Inc..	RF13–6.
Do	OKC Corp./Mico Oil Company.	RF13–7.
Do	OKC Corp./Fisca Oil Company.	RF13–8.
Do	OKC Corp./Highway Oil Company.	RF13–9.

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 25 to July 2, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
Do	OKC Corp./Air Transport Assoc. of America.	RF13–10.
June 15, 1982	Tenneco/Henoch Oil Company.	RF7–85.
May 28, 1982	Tenneco/Larrison Coal & Fuel Oil.	RF7–86.
June 15, 1982	Tenneco/Seaboard Service	RF7–87.
May 28, 1982	Tenneco/Liberty Fuel Oil Company.	RF7–88.

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 25 to July 2, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
Do	Tenneco/Eastern of New Jersey, Inc.	RF7–89.
June 15, 1982	Tenneco/W. A. Fluhr, Inc.	RF7–90.
May 28,1982	Tenneco/Cofelli & McCormick.	RF7–91.
Do	Tenneco/Clements Brothers, Inc.	RF7–92.
Do	Tenneco/Cagney & Byk, Inc.	RF7–93.

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 25 to July 2, 1982]

Date	Name of refund proceeding/ name of refund applicant	Case No.
June 15, 1982	Tenneco/Superior Oil Service.	RF7-94.
May 28, 1982	Tenneco/John Duffy Fuel Company.	RF7-95.
June 15, 1982	Tenneco/Edgerley & Gilson	RF7-96.
Do	Tenneco/Joe Nitti & Son	RF7-97.
Do	Tenneco/Rettig Coal Company, Inc.	RF7-98.
July 2, 1982	OKC Corp./Suter & Chafin Oil, Inc.	RF13-18.

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 25 to July 2, 1982]

Date	Name of refund proceeding/ name of refund applicant	Case No.
Do	OKC Corp./Curts Oil Company.	RF13-19.
June 30, 1982	OKC Corp./Bestway Marketing Company.	RF13-11.
Do	OKC Corp./Growmark Inc.	RF13-12.
Do	OKC Corp./Sun Company, Inc.	RF13-13.
Do	OKC Corp./W. E. Allford, Inc.	RF13-14.

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 25 to July 2, 1982]

Date	Name of refund proceeding/ name of refund applicant	Case No.
Do	OKC Corp./Williams Chemical Company.	RF13-15.
Do	OKC Corp./Champlin Petroleum Company.	RF13-16.
Do	OKC Corp./Town & Country Markets, Inc.	RF13-17.
July 2, 1982	OKC Corp./Leo's Winsteads Inc.	RF13-20.
Do	Panhandle/I. V. Cole Petroleum Co., Inc.	RF15-1.
Do	Upham/Pedigo Oil Company, Inc.	RF16-1.

[FR Doc. 82-19834 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of May 17 through May 21, 1982

During the week of May 17 through May 21, 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

Miller & Chevalier, 5/17/82, HFA-0052

The law firm of Miller & Chevalier filed an Appeal from a partial denial by the Disclosure Officer of the Office of Special Counsel (OSC) of a request for information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that since there was a significant possibility that additional unidentified, responsive documents existed, the matter should be remanded to the OSC for another search. The DOE also found that the OSC properly withheld certain requested material under Exemption 5 of the FOIA. Important issues that were considered in the Decision and Order were: (i) whether the determination letter adequately described the withheld material and (ii) whether the withheld material constituted predecisional, deliberative inter-agency memoranda, or attorney work-product. These types of material are exempt from mandatory disclosure under Exemption 5.

Remedial Orders

Argo Petroleum Corp., et al., 5/20/82, DRO-0146, BRD-0104

Argo Petroleum Corporation objected to a Proposed Remedial Order which the Director of Enforcement of DOE Region IX issued to the firm on November 2, 1978. In the Proposed Remedial Order, Region IX found that during the period September 1973 through October 1976 Argo violated 10 CFR 212.72, 212.73, and 212.74. The DOE rejected Argo's contentions and concluded that the Proposed Remedial order should be issued as a final Order. The important issues discussed in the Decision and Order include (i) regulatory treatment of "load oil" and "fracing" (ii) offsetting undercharges against overcharges and (iii) interest rates on overcharges.

Dan Crookston, d/b/a Crookston Plaza Arco, Dan Crookston, d/b/a Shelter Ridge Arco, Dan Crookston, d/b/a Shelter Ridge Arco, 5/17/82, BRO-1497, BRO-1456, BRO-1498

Dan Crookston filed Statements of Objections to three separate Proposed Remedial orders issued to two retail outlets which he operates. In the Proposed Remedial Orders, the Economic Regulatory Administration found that Crookston sold motor gasoline at retail outlets at prices in excess of those permitted under 10 CFR 212.93(a)(2). After considering Crookston's objections, the DOE determined that the findings contained in the Proposed Remedial Order were correct and that they should be issued as final Remedial Orders of the Department of Energy. The DOE also determined that the Proposed Remedial orders should be modified so that interest is assessed on the overcharges at the rate of one percent per month. The important issue considered in the Decision and Order was the validity of the July 1979 amendments to the retailer price rule.

Buchanan Shell, Jim Campbell Shell, Village Parkway Shell, 5/20/82, BRO-1492, BRO-1499, BRO-1493

Buchanan Shell, *et al.* objected to Proposed Remedial Orders that were issued to the firms by the DOE Office of Enforcement. In the Proposed Remedial Orders, the Office of Enforcement found that the objecting firms had charged prices higher than those permitted by 10 CFR 212.93(a)(2). After considering the firms' objections, the DOE determined that the Proposed Remedial Orders should be issued as final Remedial Orders. The DOE also determined that the Proposed Remedial Orders should be modified to require that payment of the overcharges be deposited into the U.S. Treasury. The important issues discussed in the Decision include: (i) whether charging a combined cents-per-gallon price for gasoline and service in excess of the maximum lawful selling price permitted by DOE regulations violates 10 CFR 212.93(a)(2), and (ii) the procedural and substantive validity of 10 CFR 210.62(d)(1).

Interlocutory Order

Southland Royalty Company, 5/21/82, HRZ-0006

Southland Royalty Company filed a motion for an order deeming as established certain allegations made in its Statement of Factual Objections (SFO) to a May 1, 1979 proposed Remedial Order (PRO) issued to Gulf Oil Corporation by the Office of Special Counsel for Compliance. Southland sought to have allegations it made concerning undercharges on two leases cited in the Gulf PRO deemed admitted. OSC had not responded to these allegations in its Response to Southland's SFO because it claimed that Southland's claims were raised as a defense to the PRO's allegations concerning extrapolated overcharges, which the Office of Hearings and Appeals (OHA) at a July 9, 1979 hearing, ruled would be deferred for future consideration. OHA found OSC was incorrect in claiming that Southland's undercharge claims were raised prematurely. However, OHA determined that it would not deem Southland's undercharge assertions admitted because the ruling issued at the July 9, 1979 hearing was ambiguous and OSC's incorrect interpretation of that ruling was made in good faith. OSC was instead permitted to amend its Response to Southland's SFO to enable it to respond to Southland's undercharge assertions. Accordingly, Southland's motion was dismissed without prejudice.

Petition for Special Redress

Eldon Spencer Oils, Inc., 5/21/82, BEG-0060

Eldon Spencer Oils, Inc. (Spencer) filed with the Office of Hearings and Appeals (OHA) a Petition for Special Redress and a Motion to Strike in connection with its Statement of Objections to a Proposed Remedial Order issued to the firm by the DOE Central Enforcement District on June 12, 1980 (Case No. BRO-1273). Both the petition and the motion sought to expunge from the record all filings submitted by the Administrative Litigation Division of the DOE Office of General Counsel, which represents the Office of Enforcement of the Economic Regulatory Administration before the OHA in

remedial order proceedings. Spencer argued in both submissions that Administrative Litigation lacks specific authority to participate in remedial order proceedings, and therefore should be barred from submitting any pleadings. In considering both submissions the DOE noted that the issue of Administrative Litigation's authority to represent the Office of Enforcement before the OHA in remedial order proceedings had already been analyzed in *Taylor Oil Co.*, 8 DOE ¶ 82,645 (1981), and that arguments precisely the same as Spencer's had been conclusively rejected. Accordingly, both Spencer's Petition for Special Redress and Motion to Strike were denied.

Motions for Discovery

Brock Exploration Corporation, 5/19/82, BRD–0190, DRH–0190

Brock Exploration Corporation (Brock) filed Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order that the ERA's Southwest District Office of Enforcement issued to Brock and another firm on March 19, 1982. In its Motion for Discovery, Brock requested the following: (1) administrative record discovery of the regulation defining the term "property" and the rulings related to that definition, (2) contemporaneous construction discovery of the property definition, and (3) discovery of all documents concerning the ERA's audit and investigation of the firm, and (4) a deposition of an ERA auditor. Although the DOE denied the Motion in most respects, it ordered the ERA to provide Brock with the following: (1) All documents authored, approved, or authorized by responsible agency officers generated in the period between August 17, 1973 and January 31, 1978, that discuss the effect of state designation or recognition of producing entities or other state regulatory action under the property definition, (2) all documents authored, approved, or authorized by responsibile agency officers generated in the period between August 17, 1973 and August 17, 1976, that discuss (a) the effect of producer development or production practices or requirements including phased development or selection under the property definition or (b) the narrower issue of the effect of a paramount agreement under the property definition, and (3) unless already provided, a table showing the ERA's calculation of the overcharge attributed to Brock and the worksheets from which the table was prepared. With respect to Brock's Motion for Evidentiary Hearing, the DOE determined that Brock had not demonstrated that the eight issues identified in Brock's Motion were relevant and material issues of fact whose resolution would be substantially assisted by an evidentiary hearing. Accordingly, the Motion for Evidentiary Hearing was denied. The DOE also determined, however, that Brock should be permitted, at the conclusion of discovery, to renew its Motion for Evidentiary Hearing on the issues upon which contemporaneous construction discovery had been granted.

Laketon Asphalt Refining, Inc., 5/18/82, HED–0047, HEH–0047

Laketon Asphalt Refining, Inc. (Laketon) filed a Motion for Discovery and a Motion for Evidentiary Hearing in which the firm requests that the DOE produce information which the firm contends is material to the resolution of a pending Motion for Reconsideration, the firm requests that the DOE rescind a Decision and Order which reviewed the level of entitlements exception relief Laketon received during its 1980 fiscal year finding that the firm had received $3,484,245 in excessive relief, and which ordered Laketon to refund that amount. Laketon contends that the firm's entitlements purchase obligation arising from the fiscal year end review is solely attributable to the decontrol of heavy crude oil in late 1979 and the subsequent failure of the Entitlements Program to equalize access to price-controlled crude oil for small refiners such as Laketon, which are dependent on heavy crude oil for their feedstock. In its Motions for Discovery and Evidentiary Hearing, the firm seeks information pertaining to (1) the relationship of crude oil grade and quality differentials to the Entitlements Program, and (2) the effect of heavy crude oil decontrol on post-entitlements crude oil costs of refiners in general. In considering the request, the DOE found that Laketon had failed to demonstrate how information concerning the relationship of crude oil quality differentials to the Entitlements Program would materially advance the firm's Motion for Reconsideration. In addition, the DOE found that data relating to the general impact of heavy crude oil decontrol could not be dispositive of Laketon's individual request for exception relief, nor did such data relate to issues in dispute between Laketon and the DOE. Accordingly, the Motions for Discovery and Evidentiary Hearing were denied.

Protective Order

Office of Special Counsel, 5/18/82, HRJ–0012–0016

The Office of Special Counsel sought a protective order limiting the dissemination of three assertedly privileged documents which it had inadvertently released to six firms in connection with its response to a discovery order entered by the Office of Hearings and Appeals. The firms that had received the documents informed the OHA that they had disseminated the documents to third parties prior to the filing of the OSC's request. The OHA denied the request for a protective order.

Supplemental Order

The 341 Tract Unit of the Citronelle Field, 5/21/82, HEX–0028

In a December 31, 1980 Interim Decision and Order, the DOE approved exception relief to the Citronelle Unit in the amount of $63.8 million in order to enable the ownership interest to implement a tertiary recovery project on the Citronelle Field. *The 341 Tract Unit of the Citronelle Field*, 7 DOE ¶ 81,140 (1980). After a review of the periodic reports submitted by the special trustee appointed to monitor this case, the DOE determined that revenues realized from the sale of the tertiary crude oil produced from the Citronelle Unit should also be utilized to fund the enhanced crude oil recovery project. Accordingly, Citronelle was directed to place all future tertiary revenues into the escrow account.

Petitions for Implementation of Special Refund Procedures

Office of Enforcement/Fagadau Energy Corp., Liquid Products Recovery Inc., Worldwide Energy Corp., and Gas Engine & Compressor Service, 5/17/82, BEF–0029, BEF–0030, BEF–0049, BEF–0054.

The Office of Enforcement Economic Regulatory Administration, filed Petitions for Implementation of Special Refund Procedures relating to Consent Orders in the matters of Fagadua Energy Corporation, Liquid Products Recovery, Inc., Worldwide Energy Corporation, and Gas Engine and Compressor Service. The Decision and Order grants the Office of Enforcement's Subpart V Petition and establishes a mechanism by which refunds of moneys obtained pursuant to the Consent Orders can be made to those who may have been injured by the alleged regulatory violations.

Office of Enforcement/Panhandle Eastern Pipeline Co., PVM Oil Associates, Inc., Loveladdy Oil Co., Armstrong & Associates, Ethyl Corp., 5/20/82, DEF–0041, DEF–0042, DEF–0067, DEF–0069, DEF–0070.

The Office of Enforcement filed a Petition for Implementation of Special Refund Procedures in the Matters of Panhandle Eastern Pipeline Company, PVM Oil Associates, Inc., Loveladdy Oil Company, Armstrong & Associates, and Ethyl Corporation in connection with consent orders or decrees entered into by each of the firms in order to settle claims of alleged violations of DOE regulations between 1973 and 1975. The DOE determined that a two-stage refund procedure would be implemented. In the first stage, applications for refund will be accepted from all claimants that can affirmatively demonstrate that they have been injured by the violations alleged in the consent orders or decree. Applications for Refund must be postmarked no later than ninety days from the date of publication of the Decision and Order in the **Federal Register**. Specific information which must be included in the Application is discussed in the Decision. No determination was reached regarding the second-stage distribution process, since the most appropriate disposition of remaining funds can be determined only after ascertaining the amount of money remaining after first-state refunds are made. Further comments on the second stage were solicited.

Dismissals

The following submissions were dismissed without prejudice:

Name and Case No.

Frank Rowland Auto Service Center, BRO–1536
Mobil Oil Corp., HRS–0012
OE/Eastern of New Jersey, Inc., BEF–0078
UCO Oil Company, DEL–2787

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.

July 15, 1982.

[FR Doc. 82-19826 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangements; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing, 24 irradiated fuel assemblies, containing 9,384 kilograms of uranium, enriched to 1.2% in U-235, and 92 kilograms of plutonium from the Ikata Nuclear Power Station Unit No. 1. This subsequent arrangement is designed as RTD/EU(JA)-46.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: July 16, 1982.

George Bradley,

Principal Deputy Assistant Secretary, Office of International Affairs.

[FR Doc. 82-19821 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 70 irradiated fuel assemblies, containing 12,833 kilograms of uranium, enriched to 1.22% in U-235, and 105 kilograms of plutonium from the Hamaoka Nuclear Power Station, Units 1 and 2. This subsequent arrangement is designated as RTD/EU(JA)-51.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: July 16, 1982.

George Bradley,

Principal Deputy Assistant Secretary, International Affairs.

[FR Doc. 82-19822 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing, 68 irradiated fuel bundles, containing 12,508 kilograms of uranium, enriched to 1.48% in U-235, and 92 kilograms of plutonium from the Hamaoka Nuclear Power Station Units 1 and 2. This subsequent arrangement is designated as RTD/EU(JA)-50.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: July 16, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs

[FR Doc. 82-19823 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 28 irradiated fuel bundles, containing 10,777 kilograms of uranium, enriched to 1.1% in U-235, and 102 kilograms of plutonium from the Genkai Nuclear Power Station Unit No. 1. This subsequent arrangement is designated as RTD/EU(JA)-49.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: July 16, 1982.

George Bradley,

Principal Deputy Assistant Secretary, Office of International Affairs.

[FR Doc. 82-19824 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 28 irradiated fuel assemblies, containing 10,957 kilograms of uranium, enriched to 1.2% in U-235, and 107 kilograms of plutonium from the Ikata Nuclear Power States Unit No. 1. This subsequent arrangement is designated as RTD/EU(JA)-47.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: July 16, 1982.

George Bradley,

Principal Deputy Assistant Secretary, Office of International Affairs.

[FR Doc. 82-19825 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement Between U.S. and Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Australia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale: Contract Number S-AU-15, to the Australian Radiation Laboratory, 5 Milligrams of thorium-230, for use in research studies concerning

the atomic shell properties of the inner shells of heavy elements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 6, 1982.

For the Department of Energy.

Dated: July 19, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-19832 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of the following material: Contract Number S-EU-739, to Kraftwerk Union AG, Frankfurt, the Federal Republic of Germany, one gram of uranium-234, for use in fission ionization chambers for power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 6, 1982.

For the Department of Energy.

Dated: July 19, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-19830 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale: Contract Number S-EU-740, to V.G. Isotopes, Cheshire, England, one gram of uranium containing less than 0.02% U-235, and 13 grams of uranium enriched to an average of 50.2% in U-235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 6, 1982.

For the Department of Energy.

Dated: July 19, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-19831 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

European Atomic Energy Community; Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community and U.S. and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (ERATOM) Concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Japan to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing, 24 irradiated fuel assemblies, containing 9,241 kilograms of uranium, enriched to 1.1% in U-235, and 88 kilograms of plutonium from the Genkai Nuclear Power Station Unit No. 1. This subsequent arrangement is designated as RTD/EU(JA)-48.

The Department of Energy has received letters of assurance from the Government of Japan that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than August 6, 1982 and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: July 16, 1982.

George Bradley,

Principal Deputy Assistant Secretary, Office of International Affairs.

[FR Doc. 82-19833 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Submission of Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Submission of Rate Order—Pick-Sloan Missouri Basin Program.

SUMMARY: The Notice published in the **Federal Register** on July 2, 1982 (47 FR 28992) should have included the Rate Order for the Pick-Sloan Missouri Basin Program, No. WAPA-12.

Dated: July 14, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

June 28, 1982.

In the Matter of: Western Area Power Administration—Pick-Sloan Missouri Basin Program Power Rates Rate Order No. WAPA–12.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 458h(c), and acts specifically applicable to the Pick-Sloan Missouri Basin Program (P–SMBP) for the Bureau of Reclamation (Bureau), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979 (43 FR 60636, December 28, 1978), last amended March 19, 1981 (46 FR 25426, May 7, 1981), the Secretary of Energy delegated to the Assistant Secretary, Conservation and Renewable Energy, the authority to develop power and transmission rates, acting by and through the Administrator of the Western Area Power Administration (Western), and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approved on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary and the rate adjustment procedures at 10 CFR part 903.

Background

Existing and Provisional Rates

The provisional rates which are the subject of this order supersede existing P–SMBP rates as shown below.

EASTERN DIVISION

Class of power	Existing rate	Provisional rate
Wholesale Firm Power (Existing rate schedule UM–F2, effective June 1, 1977):		
Demand Charge, $/kW-month	1.20	1.35
Energy Charge, mills/kWh up through 60% monthly load factor	3.17	3.62
Above 60% monthly load factor	5.18	7.00

EASTERN DIVISION—Continued

Class of power	Existing rate	Provisional rate
Peaking Power (Existing rate schedule UM–FP3, effective June 1, 1977):		
Demand Charge, $/kW-month	1.20	1.35
Energy Charge, mills/kWh	3.33	3.62
Maintenance Energy (No formal rate schedule) Energy Charge, mills/kWh	10.00	12.00

WESTERN DIVISION

Class of power	Existing rate	Provisional rate
Wholesale Firm Power (Existing rate schedule LM–F2, effective June 1, 1977):		
Demand Charge, $/k/W-month	1.34	1.43
Energy Charge, mills.kWh	4.0	4.30
Peaking Power (Existing rate schedule LM–FP2, effective June 1, 1977):		
Demand Charge, $k/W-month	1.34	1.43
Energy Charge, mills/kWh	4.0	4.3
Transmission Charge (No existing rate schedule):		
Firm service	1.0 mills/kHw	1.1 mills/kWh or $9.60/kW-year 1.1
Nonfirm service, mills/kWh	1.0	

A comparison of the existing and provisional composite yields is tabulated below:

	Existing designed firm yield	Provisional designed firm yield
Eastern Division, mills/kWh	5.15	5.80
Western Division, mills/kWh	6.55	7.20
P–SMBP (overall), mills/kWh	5.45	6.10

Existing Schedule UM–P12, titled, "Schedule of Rates for Commercial Irrigation and/or Drainage Pumping Service and for Wholesale Firm Power Service When Supplied in Conjunction Therewith," is no longer being used. Therefore, Schedule UM–P12 will expire on August 1, 1982.

Public Notice

The FY 1980 P–SMBP Power Repayment Study indicated that existing power rates would not be sufficient to achieve project repayment during the study period. An overall firm power rate increase of 0.65 mills/kWh, for sales from both the Eastern and Western Divisions, with other rate adjustments, was found to be necessary to provide the additional revenues required.

Public proceedings on the proposed rate adjustment were initiated on December 29, 1981, with a mailing to all firm power customers and other interested persons of a draft customer brochure explaining the need for increases and announcing a series of informal customer meetings. These meetings were conducted at four different locations from January 18 through January 21, 1982. At these preliminary meetings, Western's representatives explained the need for the increases and answered questions from interested persons.

A 90-day customer consultation and comment period was initiated with an announcement of the proposed rate adjustment published in the **Federal Register** at 47 FR 6705 (February 16, 1982). This notice also announced four public information forums conducted March 1, through March 4, 1982, and four public comment forums conducted April 5 through April 8, 1982. This announcement was later amended at 47 FR 10899 (March 12, 1982) to add locations and telephone numbers where records could be examined. The information forums were advertised with a February 16, 1982, press release and a February 18, 1982, mailing of a final customer brochure. The comment forums were further advertised with a March 22, 1982, press release and customer mailing. At the information forums Western's representatives again explained the need for the rate increase and answered questions from interested persons. The comment forums were conducted to give the public an opportunity to comment for the record.

In addition to these public meetings and forums, representatives of one customer met with Western's personnel on February 25, 1982, to discuss the FY 1980 Power Repayment Study. During this meeting, they asked for and received several items of backup information involved in the preparation fo the study, plus copies of some of the repayment studies done in previous years.

Also, after the April 8, 1982, customer comment forum, one customer met informally with Western's representatives and requested and received some backup material to the FY 1980 Power Repayment Study.

Although the 90-day comment period closed on May 17, 1982, all comments received before the rate order was written have been considered in the preparation of this rate order.

Project History

The Missouri River Basin Project was initially authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, Public Law 534, 78th Congress, 2nd Session), which approved the general comprehensive plan set forth in Senate Document 191 and House Document 475, as revised and

coordinated by Senate Document 247, 78th Congress. The comprehensive plan has been funded through numerous appropriation acts with the intention of development of the water resources in the Missouri River Basin.

The Missouri River Basin Project, later renamed Pick-Sloan Missouri Basin Program to honor its two principal authors, has been under construction since 1944. The project encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri Rver Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Montana, North Dakota, South Dakota, Wyoming, and Colorado. Electric transmission facilities have also been constructed in those States, as well as in Minnesota, Iowa, Missouri, and Nebraska. In addition to the multipurpose water development projects which were authorized by section 9 of the 1944 Flood Control Act, certain older existing projects have been intergrated with the P–SMBP for power marketing and operational purposes. Four projects, Colorado-Big Thompson, Kendrick, Shoshone, and Riverton, were combined with the P–SMBP in 1954 for marketing, operation, and repayment purposes, and the fifth, North Platte, was combined in 1959. These projects are known as the "Integrated Projects" of the P–SMBP, Western Division. The Riverton Project was reauthorized as a unit of the P–SMBP by Pub. L. 91–409 on September 25, 1970. The Flood Control Act of 1944 also authorized integration of the Fort Peck Project (initially operated in 1943) with the P–SMBP for operations and repayment purposes.

The P–SMBP has been heralded since its authorization as a pioneer in comprehensive basinwide multipurpose development. All functions of the project were maximized within the water resource with some functions assisting others in repayment beyond the ability of the beneficiary. An innovative feature of the program was its basinwide (rather than individual project) financial management plan which affected the scope of financial assistance to irrigation and established that cost allocations and repayment of all features be based on ultimate development of the program.

Power, flood control, and navigation are the most advanced features and have been providing benefits to the basin states for many years. Upper basin states have received hydropower since 1943, and downstream states have received flood control and navigation benefits. Yet to be advanced to a comparable status of development are some of the Federal irrigation projects which were included in the comprehensive plan to replace land lost to project reservoirs in the upper basin states.

The planning, development, and operation of the P–SMBP has been successfully carried out for almost 40 years by the Departments of the Interior and Army, and most recently, the Department of Energy. The success of the program can be attributed to sound financial management, wherein power rates and revenues have been carefully monitored to meet program and repayment obligations.

The Western Area Power Administration was established on December 21, 1977, pursuant to section 302 of Pub L. 95–91, the Department of Energy Organization Act, dated August 4, 1977. Western is responsible for the Federal electric power marketing and transmission functions in 15 Central and Western States encompassing a 1.3-million-square-mile geographic area.

Western activities associated with the P–SMBP are administered by two Area Offices, one located in Billings, Montana, and the other in Fort Collins, Colorado. There are two separate large power systems in the P–SMBP. The Eastern Division operates in Montana, east of the Continental Divide, North Dakota, South Dakota, western Minnesota, western Iowa, the eastern two-thirds of Nebraska, and into the northwest corner of Missouri. The Western Division operates in Wyoming, Colorado, and the western one-third of Nebraska. The Eastern and Western Divisions have total generator nameplate ratings of 2,273,000 kW and 528,000 kW (including the 270,000 kW in the Western Division integrated projects), respectively. Firm commercial sales from the two divisions amounted to over 9.3 billion kWh in FY 1980. Although both the Eastern and Western Division systems have terminals at Yellowtail Dam in Montana, and are interconnected at a point near Stegall, Nebraska, they are separate, distinct systems and for several technical reasons, cannot be fully integrated at this time. The two divisions have generating plants located on different river systems, separate allocations of firm power, and separate rate structures. Nevertheless, they are both part of one financially integrated project (P–SMBP), and both must contribute revenue to repay project investments. Therefore, it is necessary to make a single power repayment study to determine the financial position of the project.

Discussion

Power Repayment Studies

The Power Repayment Studies for the P–SMBP are prepared by Western with the cooperation of the Bureau and the Corps of Engineers (Corps). Basic river basin hydrology, water depletions, power generation, and project development data are among the many items the Bureau and the Corps contribute to the studies.

The Power Repayment Studies are prepared in accordance with P–SMBP authorizing legislation and with DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. The studies array historic income, expense, and investment to be repaid from power revenues, along withestimates for future years. They also portray repayment of nonpower costs assigned to power. The studies show, among other items, estimated revenues and expenses year by year over the project repayment period, the estimated amount of Federal investment which will be repaid during each year, and the total estimated amount of Federal investment remaining to be repaid. The studies do not deal with rate design.

Special Study B–5, documented in the "Report on Financial Position, Missouri River Basin Project, December 1963," was submitted to Congress and set forth a broad statement of repayment. Basic guides and criteria established therein have been incorporated in the annual Power Repayment Studies. Beginning in FY 1966, payout criteria and interest rates have been based on those principles endorsed in the legislative history of the Garrison Diversion Unit Authorization Act of August 5, 1965. Our current studies reflect the resource, marketing, operation and maintenance (O&M), replacement, payment to the Integrated Projects, investment, and irrigation development data available as of FY 1980.

The repayment study consists of three main parts. These are: (1) Capability and energy quantities converted to annual revenue, (2) annual revenue deductions, and (3) repayment of investment. The capability and energy quantities are based on the latest hydrology depletion and marketing projections for the P–SMBP. These quantities are converted to annual power revenues by the application of appropriate rates. The program is designed to repay the investment carrying the highest interest rate as quickly as possible and still remain within the repayment period for each investment.

Interest rates of 2½ and 3 percent are used on existing and authorized

transmission facilities and on existing generating facilities in accordance with provisions of the Garrision Diversion Act of August 5, 1965. New investments beyond the scope of that act are subject to the current interest rate (8.5 percent in studies based on FY 1980 data).

The FY 1972 Power Repayment Study and previous studies forecast future replacement costs based on the original installed cost of the facility. Starting withe the FY 1973 Power Repayment Study, forecast replacement costs have been indexed to current levels, and have been treated as capital investments with repayment periods equal to the expected service lives, up to a maximum of 50 years.

The P–SMBP's future investments in the power system were based on the official cost estimates in the FY 1982 budget justifications through the budget period; thereafter, estimates of other future power investment and irrigation investment were indexed to 1980 cost levels.

Periods for repayment of reimbursable investments in the current analysis were as follows:

1. Costs of each unit, division, or separable feature, including the integrated projects, allocated to commercial power were repaid within 50 years from the date when the unit, division, or separable feature was placed in service and/or became revenue-producing.

2. Costs relating to specific irrigation units (including main stem and other reservoir storage and irrigation pumping power cost assignments, if appropriate) constructed or under construction on June 30, 1964, were repaid within the earliest practicable time period after completion of repayment of interest-bearing commercial power investment but prior to projects constructed after that date.

3. Costs relating to new (after June 30, 1964) and future irrigation units, divisions, or irrigation blocks (including main stem and other reservoir storage and irrigation pumping power cost assignments, if appropriate) were repaid within 50 years following an allowable development period (usually 10 years) after an individual unit, division, or irrigation block became benefit-producing.

In accordance with repayment criteria, the repayment study first applies all revenue from each of the revenue-producing functions to payment of annual O&M, wheeling, purchased power, and interest costs. An annual credit from P–SMBP accounts is made to the Western Division Integrated Projects which is sufficient to cover the O&M and replacements, repay the interest-bearing power investment, and make the aid to irrigation payments within their established repayment periods. These annual payments are treated as an operating expense by the P–SMBP. Remaining revenues are applied to repayment of P–SMBP investment. In the case of commercial power, costs of each unit, division, or separable feature allocated to commercial power are repaid with interest on the unpaid balance. In no case does the repayment period exceed 50 years from the date when the unit, division, or separable feature became revenue-producing. After repayment of these investments, revenues will be utilized to assist in the repayment of P–SMBP costs allocated to irrigation.

In 1954, the Colorado-Big Thompson, Kendrick, Shoshone, and Riverton Projects, and in 1959, the North Platte Project were integrated into the Western Division of the P–SMBP. The Riverton Project was reauthorized as a unit of P–SMBP on September 25, 1970, by Pub. L. 91–409. Basically, the integration combined the five projects' powerplants and transmission systems for operational, marketing, and repayment purposes. Irrigation development of the Integrated Projects was completed in accord with plans contemplated in the individual pieces of authorizing legislation. Long-term contracts established the share of the costs allocated to irrigation that the irrigation districts would repay. The remaining irrigation development costs are assigned to be repaid from power revenues.

Costs of the multipurpose elements of the plan have been allocated by the agency having construction jurisdiction in keeping with the practice established by interagency agreement in 1954. The "Separable Costs-Remaining Benefits" method of allocation has been used on multipurpose reservoirs in the Eastern Division. Federally financed alternative costs have been used for determining the annual cost of the single-purpose power alternative in cost-allocation procedures in accordance with the procedure approved by the 89th Congress as presented to it in the "Report on Financial Position, Missouri River Basin Project, December 1963." This is also consistent with the statement of "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources," approved by the President on May 15, 1962, and printed as Senate Document No. 97, 87th Congress, 2nd Session.

The legislative history of the P–SMBP, principally Senate Document No. 191, recognized that portions of the power-producing capacity of the project would be used for Federal project irrigation and drainage pumping service. The Power Repayment Study is based on the "ultimate development" concept, with 19.9 percent of the power facilities being reserved for irrigation pumping (500,700 kW of ultimate pumping requirements divided by 2,521,000 kW of total P–SMBP system capacity). The suballocated costs of these facilities are interest free and are scheduled for repayment with the associated irrigation project. In addition, certain joint-use facilities associated with navigation and flood control are nonreimbursable.

Major Changes From the FY 1974 Study

Existing power rates for the P–SMBP are based on an FY 1974 power repayment study. Therefore, it is appropriate to note some items that are treated differently in the FY 1980 study than they have been in the past.

The P–SMBP provides for the application of excess municipal and industrial (M&I) water revenues to repayment of irrigation investment which is beyond the irrigators' ability to repay. In past power repayment studies, such excess revenues have included the proceeds from M&I option contracts. However, beginning with the 1980 study there is no application of such revenues, because the option contracts for M&I water have expired. When future M&I sales are made, power will be credited with revenue adequate to cover the cost of purchasing an amount of energy equivalent to the lost generation. The balance of the revenue will be credited to irrigation repayments.

Effective with the current rate analysis, future hydroelectric powerplant development will be eliminated from the study. Original P–SMBP legislation envisioned ultimate development of hydroelectric generating capacity of about 1,155 megawatts, about 500 megawatts of which would be devoted to providing seasonal irrigation pumping requirements. Those original goals for generating capacity have been exceeded. Total installed capacity within the P–SMBP system now exceeds 2,500 megawatts, about 80 percent of which is provided by the Corps of Engineers (Corps) Missouri River powerplants. A letter dated December 9, 1981, from the Bureau to Western concluded,

> Thus, since the spirit and intent of the original legislation has been met, it is logical to assume that future legislation will determine the final capacity of the P–SMBP.

Elimination of future powerplants results in changing the suballocation to interest-free investment from 16.8 percent as used in FY 1974 study to 19.9 percent.

The Bureau completed a depletion study for Western's Post-FY 85 Marketing Plan. The depletions which resulted from that study are the basis for the data used in the FY 1980 repayment study. Figure 3 of the February 1982 customer brochure compares the level of depletion forecasts which have been used in selected previous analyses.

Public Comments

Additional Steps in Energy Rate

One customer requested that we consider additional steps in the rate design, with even higher firm power rates than are now proposed for energy taken at monthly load factors that are above 60 percent. The customer was willing to pay more per kWh as his energy use increased if Western would guarantee that the energy would be available. Existing arrangements give Western the option of placing a ceiling on a customer's energy use on 3-year's notice. Western responded that because of the 3-year notice provision, an energy limitation could not be effected before the probable start of the next rate adjustment proceedings, and on that basis, further graduations in our energy rate are not considered necessary at this time. Western did agree to consider this proposal during future rate adjustment proceedings.

Special Repayment Studies

Western received certain requests during the customer consultation and comment period to prepare additional power repayment studies designed to analyze special interest items. Among these were requests for separate studies on repayment of the P–SMBP's transmission system, and studies using a 5-year cost evaluation period rather than the ultimate development concept. Western does not have the manpower and time to run power repayment studies that are inconsistent with existing P–SMBP authorizing legislation and supporting legislative history, and declines to do so at this time. The one project, ultimate development concept, is discussed in further detail in the next section of this order.

Ultimate Development Concept

Several customers questioned Western's 100-year repayment study period and cited DOE Order No. RA 6120.2 as providing for a normal 5-year cost evaluation period.

At least one customer commented that:

> The 1980 repayment study shows the critical year to be approximately 2053 when revenues will not cover the required repayment amount * * * the year 2053 is seventy-one years in the future.

Western's authorization for basing repayment of the P–SMBP on the concept of ultimate development is probably most clearly evidenced in the legislative history of the enactment of section 4(b) of the Garrison Diversion Unit (Act of August 5, 1965, 79 Stat. 433, 435). That subsection reads as follows:

> (b) From and after July 1, 1965, the interest rate on the unamortized balance of the investment allocated to commercial power facilities constructed or under construction on June 30, 1965, by the Department of the Army in the Missouri River Basin, the commercial power from which is marketed by the Department of the Interior, and in the transmission and marketing facilities associated therewith, shall be 2½ per centum per annum.

The change in the interest rate, noted above, was one of the principal recommendations made to the Congress by the Department of the Interior in December 1963, in a document entitled "Report of Financial Position, Missouri River Basin Project." The purpose of the report was to present a financial plan which would put the P–SMBP in a sound financial position.

Of the costs allocated to the power function, a portion is suballocated to irrigation pumping based upon the pumping demand under conditions of ultimate development. These costs are repaid without interest. The remaining power investment is repaid with interest. The Secretary's report indicated (at that time) that about 81 percent of the power investment was allocated to interest-bearing commercial power with about 19 percent suballocated to noninterest-bearing irrigation pumping, based upon ultimate development.

The Secretary's financial report and the Department's recommendations were transmitted to the Congress by the Assistant Secretary of the Interior on December 17, 1963. In his transmittal letter, the Assistant Secretary explained the relationship between ultimate development and project investment:

> Comprehensive utilization of the damsites and most economic program of development require, however, that ultimate needs for irrigation storage be recognized and that the purpose be provided for in the designs. Accordingly, substantial investment costs in irrigation storage and pumping power facilities have been made for the ultimate benefit of irrigation undertakings that are not yet in being and will not be revenue producing, in certain cases, for many years.

The report itself clearly shows how the repayment policy proposed to the Congress took into account irrigation projects not under construction at the time.

> The scale of irrigation development included in current analyses and for which repayment of reimbursable costs is sought to be demonstrated consists of those unts and divisions in the Bureau of Reclamation program which have either been constructed or will be under construction as of June 30, 1964, plus units which are shown to be economically justified in the most recent economic analysis.

As provided in section 4(b) of the Garrison Act, the interest rate on the investment allocated to commercial power in Corps facilities constructed or under construction on June 30, 1965, was reduced from 3 to 3⅛ percent. The purpose in reducing the interest rate was to make ⅛ percent interest savings available over the years to assist in the repayment of irrigation facilities included in the plan of ultimate development.

The report of the House Committee explained that the enactment of the interest amendment, i.e., 4(b), showed Congressional acceptance of the Secretary's financial report:

> In addition to reauthorizing the initial stage of the Garrison Diversion Unit, the approval of this legislation will indicate acceptance by the Congress of the Department's recommendations with respect to the overall financial position of the Missouri River Basin Project. H.R. Rept. No. 282, 89th Cong., 1st Sess. 8 (1965).

The Senate committee report also acknowledged that Section 4(b) was enacted to carry out major recommendations of the Secretary's financial plan. (S. Rept. No. 4670 (on S. 34), 89th Cong., 1st Sess. 4 (1965).)

At least one entity has formally agreed with Western's methodology. A letter dated May 19, 1982, prepared on behalf of the Mid-West Electric Consumers Association, was received that was supportive of the above position.

It is true that Departmental Order RA 6120.2 provides for a cost evaluation period, which normally is five years. However, the purpose of RA 6120.2 is to establish uniform financial procedures and methodology for the power marketing agencies.

> * * * except where deviations therefrom are specifically approved by the Secretary, authorized by statute, or identified and explained in a transmittal memorandum or in the footnotes to the reports.

In other words, the Order RA 6120.2 attempts to establish uniform procedures in the absence of legislation which authorizes deviations. The legislation and the congresssional purpose underlying the legislation sanction a departure from the five-year limitation in the case of the P–SMBP.

Another aspect of the discussion is whether cost allocations should be based on the ultimate development concept or a current use concept. Power Repayment Studies and cost allocations should both use the same concept; to do otherwise would be illogical and inconsistent. Audits and reports by the General Accounting Office and the Inspector General concerning the P–SMBP have suggested and even recommended that the cost allocations should be based on a current-use concept. In a June 13, 1973, memorandum to the Commissioner of Reclamation, the Assistant Solicitor, Branch of Water and Power, Department of the Interior, stated,

> * * * we are of the view that Congressional approval would be necessary before the Secretary could make such a change.

Section 302 of the August 4, 1977, DOE Act (42 U.S.C. 7152(a)(3)) says in part,

> * * * Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

And an October 14, 1980, memorandum to the Commissioner from the Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, Department of the Interior, concerning a July 1978 audit report, included this statement:

> We have reviewed the audit report, the legislation authorizing the Pick-Sloan Missouri Basin Program, and legislative history that accompanied it. We conclude that the use of the ultimate development cost allocation method in the P–SMBP is based in law and that Congressional approval would be necessary before the Secretary could change the basis for suballocation from ultimate use to current use.

It has consistently been Western's position (and likewise the Bureau's) that changing from the ultimate development concept to a current-use concept would require congressional approval because such a change would negate the congressional policy to treat the P–SMBP as a whole for cost allocation and repayment purposes.

After Western had responded in writing to a question concerning use of the ultimate development concept for determining P–SMBP rates, two customers took exception to Western's position for three reasons:

1. Power ratemaking based on ultimate development is so unusual that one would expect Congress to expressly support the concept in legislation, but Congress has not done so;

2. The requirement for repayment within 50 years would not seem to support use of the ultimate development concept; and

3. Congress has, by statute, made clear that no new P–SMBP construction may begin unless it is authorized or reauthorized by Congress (and some of the features included in determining the present rate increase have not been so reauthorized).

Power ratemaking based on "ultimate development" might be viewed as an unusual approach by someone who is familiar with utility ratemaking practices, but to a Congress which is concerned about authorizing a major river basin development, it is not unusual to insist that power rates be adequate to pay all the costs of the authorized project which are assigned to power for repayment. We do not believe that Congress views marketing of power produced at multi-purpose Federal developments as a utility operation; even the Federal Power Act defines an electric utility as,

> * * * any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.

It was precisely because P–SMBP power rates were not adequate to pay the costs of authorized (existing and future) features assigned to power for payment, and because the rates at that time could not be increased much without being priced out of the market, that Congress undertook financial remedies while it was developing the Garrison Diversion Act. Four remedies came out of that Act and the associated legislative history:

1. Firm power rates for the Eastern Division were increased 5 percent;

2. The interest rate for powerplants constructed or under construction by the Corps of Engineers as of June 30, 1965, and associated transmission and marketing facilities was reduced from 3 percent to 2½ percent;

3. The repayment period for irrigation features constructed or under construction as of June 30, 1964, was changed so that the costs of such features are to be repaid within the shortest practicable time after completion of repayment of interest-bearing commercial power investment, but prior to repayment of irrigation features constructed after that date; and

4. The cost of a federally financed alternative, rather than a privately financed alternative, was used in determining the allocation of costs.

With these remedies, the repayment requirements for authorized features, both existing and future, could be met based on cost levels at that time. Basically this meant,

> * * * that commercial power and municipal and industrial water investments would be repaid with interest in not to exceed 50 years * * * (from their commercial service dates) * * * and that irrigation investments would be repaid within 50 years plus any authorized development period, * * * (after they become benefit producing) * * * including that portion to be repaid from power revenues. H. R. Rept. No. 282, 89th Cong., 1st Sess. 8 (1965), (parens added).

With a sound financial position resorted, Congress could proceed with reauthorization of the Garrison Diversion Unit.

Authorization or Reauthorization of Future Construction

There has been cocern expressed about the fact that no new P–SMBP construction can be undertaken unless it is first authorized or reauthorized. (S. Rep. 470, 89th Cong., 1st Sess., 3 (1965)). It has long been recognized that in establishing this requirement, Congress did not deauthorize previously authorized features. Thus, although the power rates are based on requirements to pay the costs of authorized (existing and future) features of the program, it is acknowledged that some of those features have to be reauthorized before they may be constructed. Congress is aware of how P–SMBP power rates are set and would have to approve a departure from that methodology. Any such departure would also entail a change in the suballocation of power costs to irrigation, and perhaps a change in the allocation of joint costs, particularly if it were decided that any feature not authorized or reauthorized since 1964 is to be treated as if it is not authorized.

Irrigation Units Included in the Study

One customer asked for a list of all projects included in the FY 1980 Power Repayment Study that would not be operational by the end of 1985. Western referred this customer to Table 8 of the February 1982 customer brochure. With the exception of the "existing units," and the Grass Ropes Unit, all of the projects shown on Table 8 are scheduled for completion after 1985.

CRSP Wheeling

Two customers questioned the propriety of charging a fee to deliver Colorado River Storage Project (CRSP) power over the Western Division transmission system. Questions arose concerning: the average cost of transmission in the Western Division; the impact to P–SMBP customers if a wheeling fee were not charged for the delivery of CRSP power; what, if any, is the added cost to P–SMBP of delivering CRSP power; what major expenditures Western has made to its transmission system that would justify imposing a transmission charge for the delivery of CRSP power; the difference, if any, between the cost of delivering Federal power and non-Federal power; whether the rates for transmission service were arbitrarily chosen; and the past use of the P–SMBP transmission system for delivery of CRSP power.

Transmission investment and associated replacements are not segregated from powerplant investments in the repayment study. However, using data from financial records, Western has determined the approximate annual transmission costs of the Western Division P–SMBP to be $9.608 million, including repayment of investment, operation, maintenance, and replacements. To the extent that revenues from firm and nonfirm wheeling arrangements do not offset these annual costs, the costs are recovered from the firm power and other nonwheeling revenues. Using data from the repayment study, the annual estimated wheeling revenues are:

Western Division Auxiliary Energy Wheeling	$2,282,600
Colorado River Storage Project Wheeling	1,402,500
Western Division Nonfirm Wheeling	1,100,000
Total	4,785,100

The FY 1980 Power Repayment Study included the above revenue projections. Wheeling CRSP power is expected to yield about $1.4 million per year. If these revenues were to be excluded, the difference would have to be made-up in firm power revenues. It is estimated that an increase of 0.15 mills per kWh in the composite firm power yield from both divisions would be required to furnish the $1.4 million per year.

The General Marketing Criteria for Colorado River Storage Project published in the **Federal Register** on February 9, 1978 (43 FR 5559), specifically referred to transmission charges by other Federal projects. On page 5564 of the **Federal Register** notice, first column, paragraph 10(D) states:

> WAPA will transmit CRSP power to customers over existing transmission systems of other projects to the extent that capacity is determined to be available. Capacity in these other project transmission systems to the extent possible will be available for the term of the CRSP contracts involved. No additional charges will be imposed unless additional substation or switching station capacity is required or where utilization of another project's system would delay project repayment beyond the point in time which would othewise be the case. *At some future date, the Secretary may charge for transmission service for delivery of CRSP power over other Federal Systems such as the Parker-Davis and Pick-Sloan Missouri Projects.* The customer will pay for such service at a rate determined by the Secretary which may be assessed as early as 1978 but shall not be later than the termination date of the customer's existing power sales contracts as they may be amended, or in any event, by October 1, 1989 (Emphasis added.)

This issue was raised during proceedings held in connection with the Parker-Davis Project rate increase. Western believes it is proper to charge those customers in the Northern Division of the CRSP for transmission of CRSP energy over the P–SMBP system. Those receiving the benefits of the service should defray the costs of service. It would not be equitable for those CRSP customers utilizing the P–SMBP system to continue receiving transmission service for their CRSP entitlement at no cost, at the expense of the other users of the P–SMBP system.

Delivery of CRSP power over the P–SMBP transmission system does not in itself increase the cost of operating and maintaining the transmission system. However, it is obvious that delivery of CRSP power requires that alternative wheeling revenues must be foregone. The failure to collect such revenues, in the absence of an increase to the P–SMBP firm power rate, would cause repayment to be delayed. Such delayed repayment, or impact on the P–SMBP firm power rate, is the criteria for assessing a charge to other projects for use of the P–SMBP transmission system.

As to the question of what major transmission enhancement expenditures Western has made in Colorado, Wyoming, and Nebraska, which would justify the imposition of a transmission charge for delivery of CRSP power and energy on the P–SMBP system, such expenditures are not the basis for the charge. The criteria are that a charge shall be imposed for transmission service at such time as rendering the service, without charge, would cause P–SMBP repayment to be delayed, or would otherwise adversely impact firm power rates. CRSP deliveries over the P–SMBP transmission system deny use of the system for revenue-producing energy transfers, as discussed in the preceding paragraph. The fact that others have investments in transmission which, by virtue of interconnection with P–SMBP's system, enhance the P–SMBP's system capability is not germane; such benefits are reciprocal.

There is no difference between the cost of delivery of Federal and non-Federal power on the P–SMBP transmission system; however, any costs not paid by revenues from wheeling would have to be paid by firm power revenues, thus increasing the firm power rate.

Transmission rates on the P–SMBP system are not based on cost of service; nor is the 1.1 mill/kWh rate arbitrarily set. Initial non-Federal use of the P–SMBP transmission system in the Western Division was for delivery of non-Federal power and energy related to exchange agreements for delivery of Federal power to preference entities on third parties' systems. The 1 mill/kWh rate for this service was mutually established with the involved third parties reflecting the then prevalent rate for transmission services. For the most part, these third parties provided more service and delivery of Federal loads than the Federal transmission served for the third parties. Any upward adjustment of the rate at which we agreed to deliver power for each other would have resulted in greater costs to the United States. This 1 mill rate was continued in later years when other non-Federal use such as auxiliary load service developed.

The decision to increase the rate for transmission services at this time reflects Western's desire to ensure a more equitable sharing of project costs. The increase in the transmission service rate from 1.0 to 1.1 mills per kWh is consistent with the general overall increase proposed for the firm power rates.

A question was asked about the amount of CRSP power that has been delivered over the P–SMBP Western Division transmission system. Since FY 1966 (the beginning of CRSP sales), 16,149 GWH have been transmitted over the Western Division system of the P–SMBP. The following table shows the annual billed energy to CRSP customers on the P–SMBP Western Division system.

Fiscal year	Gigawatt-hours	Fiscal year	Gigawatt-hours	Fiscal year	Gigawatt-hours
1966	11.5	1972	853.5	1977	1667.4
1967	71.8	1973	1085.8	1978	1713.0
1968	106.9	1974	1302.8	1979	1826.9
1969	209.9	1975	1549.8	1980	1953.7
1970	403.0	1976	1609.4	1981	1828.5
1971	579.7	TQ	505.8		
Total					17,279

Billed quantities include 7 percent losses.

To adjust for losses: 17,279 GWH*1.07=16,149 GWH delivered.

One Western Division customer commented that there is no provision in its contract to require it to pay wheeling for the CRSP power it receives over the P–SMBP system. If the comment is correct, the power repayment study assumes wheeling revenues which may not materialize for the term of that contract. In the event this turns out to be the case, the effect is less than one one-hundredth of a mill/kWh in the firm power rate. The term of this customer's contracts through September 1989. Depending upon the outcome of the formulation of the CRSP post-1989 marketing plan, Western may require payment for wheeling of CRSP power over the Western Division system as a condition of any sale of CRSP power.

Rate Levels

Comments were received from one private utility customer which were intended to emphasize the low price the Government is receiving for P–SMBP power. Western acknowledges that rates for power from alternative sources have risen faster than hydropower rates have risen in recent years. However, the rates being proposed are in keeping with the legislative intent for repayment of the P–SMBP investments.

Rate Design

There been very few comments on the rate design for the proposed increase. However, the subject is addressed in some detail in the February 1982 customer brochure.

Further Discussion

Two customers expressed a desire to meet with Western's representatives to further discuss the proposed increase. A meeting was subsequently held on May 13, 1882. During this meeting a request was made to extend the end of the comment period from May 17, 1982, to June 17, 1982. Written requests for the same extension of the time period were also received. Because no relevant new issues were cited as a basis for these requests, Western denied the requests for an extension of the comment period.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA) and DOE regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694), Western conducted an environmental evaluation of this proposed rate adjustment.

Section D of the above guidelines states that for rate adjustments for power marketing administrations, the level of scrutiny and documentation under NEPA depends upon the size of the rate increase as it relates to the rate of inflation since the last rate increase.

Western made a determination of the size of this rate increase. If, as in this provisional increase, the provisional rate increase does not exceed the rate of inflation since the last rate increase, no further NEPA documentation is required. In such cases, a memorandum is typically prepared explaining the basis for that determination and an administrative determination made that no further documentation under NEPA is required. A memorandum dated February 22, 1982, to that effect is on file in Western's offices.

Public Utility Regulatory Policies Act (PURPA) of 1978 (Pub. L. 95–617)

The purposes of Public Law 95–617 are to encourage: (1) Conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use of facilities and resources by electric utilities; and (3) equitable rates to electric consumers.

The PURPA requires that each State regulatory authority and each unregulated electric utility consider the six standards presented in section III and make a determination whether or not it is appropriate to implement such standards to carry out the purposes of title I of the act. Western has considered the standards. The discussion of each standard and determination whether or not it is appropriate to implement each standard is found in the February 1982 customer brochure.

Availability of Information

Information regarding this rate adjustment, including studies, comments, transcripts, and other supporting material, is available for public review in the Billings Area Office, Western Area Power Administration, 2525 4th Avenue North, Billings, Montana 59101; in the Office of the Administrator, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Director of Power Marketing Coordination, Department of Energy, 12th and Pennsylvania Avenue, NW., Washington, DC 20461.

Submission to FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approved on an interim basis, effective the first day of the first full billing period beginning on or after August 1, 1982, Rate Schedules P–S ED–F1, P–S ED–FP1, P–S WD–F1, P–S WD–FP1, P–S WD–T1, and P–S WD–T2 and a rate for maintenance energy of 12 miles per kWh (no formal rate schedule). These rates shall remain in effect pending the FERC confirmation and approval of them, or substitute rates, on a final basis, or until they are superseded.

Schedule UM–P12 will expire on August 1, 1982.

Issued in Washington, DC. June 28, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Schedule P–S ED–F1 (Supersedes Schedule UM–F2)

Pick-Sloan Missouri Basin Program, Eastern Division

Schedule of Rates for Wholesale Firm Power Service

Effective: The first day of the first full billing period beginning on or after August 1, 1982.

Available: In the area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable: To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, sixty hertz, three-phase, delivered and metered at the voltage and points established by contract.

Monthly Rate

Capacity charge: $1.35 per kilowatt of billing demand.

Energy charge: 3.62 mills per kilowatthour all energy use up to and including that associated with a 60 percent loan factor.

7.00 mills per kilowatthour for all additional energy use up to, but not in excess of, the delivery obligations under the power sales contact; *Provided, that any contract provisions regarding minimum energy purchase requirements will be modified at the customer's request to reduce said minimum to an amount associated with a 60 percent load factor.*

Billing demand: The billing demand will be the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Minimum bill: $1.35 per month per kilowatt of the effective contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overruns shall be billed at ten (10) times the above rate.

Adjustments

For character and conditions of service: Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased two percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Schedule P–S ED–FP1 (Supersedes Schedule UM–FP3)

Pick–Sloan Missouri Basin Program, Eastern Division

Schedule of Rates for Wholesale Peaking Power Service

Effective: The first day of the first full billing period beginning on or after August 1, 1982.

Available: Within and adjacent to the marketing area of the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable: To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service it is applicable only to customers with other resources enabling them to utilize it.

Character and Conditions of Service: As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltages, and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity charge: $1.35 per kilowatt of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy charge: 3.62 mills per kilowatthour for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For power factor: None. The customer will normally be required to maintain a unity power factor at the point of delivery.

Schedule P–S WD–F1 (Supersedes Schedule LM–F2)

Pick-Sloan Missouri Basin Program, Western Division

Schedule of Rates for Wholesale Firm Power Service

Effective: The first day of the first full billing period beginning on or after August 1, 1982.

Available: In the area served by the Western Division of Pick-Sloan Missouri Basin Program.

Applicable: To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, sixty hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Capacity charge: $1.43 per kilowatt of billing demand.

Energy charge: 4.3 mills per killowatthour for all energy use up to, but not in excess of, the delivery obligation under the power sales contract.

Billing demand: The billing demand will be the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Minimum bill: $1.43 per month per kilowatt of the effective contract rate of delivery.

Billings for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For character and conditions of service: Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer which result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For transformer losses: If delivery is made at transmission voltage, but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Schedule P–S WD–FP1 (Supersedes Schedule LM–FP2)

Pick-Sloan Missouri Basin Program, Western Division

Schedule of Rates for Wholesale Peaking Power Service

Effective: The first day of the first full billing period on or after August 1, 1982.

Available: Within and adjacent to the marketing area of the Western Division of the Pick-Sloan Missouri Basin Program.

Applicable: To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service, it is applicable only to customers with other resources enabling them to utilize it.

Character and Conditions of Service: As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltage and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Monthly Rate

Capacity charge: $1.43 kilowatt of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy charge: 4.3 mills per kilowatthour for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Schedule P–S WD–T1

Pick-Sloan Missouri Basin Program, Western Division

Schedule of Rates for Firm Transmission Service

Effective: The first day of the first full billing period beginning on or after August 1, 1982.

Available: In the area served by the Pick-Sloan Missouri Basin Program, Western Division.

Applicable: To firm transmission service customers where power and energy are supplied to the Western Division systems at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Western Division system specified in the service contract.

Character and Conditions of Service: Transmission service for three-phase alternating current at sixty hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission service charge: 1.1 mills per kilowatthour delivered at the point of delivery or $9.60 per kilowatt per year for each kilowatt contracted for at the point of delivery, as specified in the service contract; payable monthly at the rate of 1.1 mills per kilowatthour or $0.80 per kilowatt of effective contract rate of delivery.

Adjustments

For reactive power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed

upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Schedule P–S WD–T2

Pick-Sloan Missouri Basin Program, Western Division

Schedule of Rates for Nonfirm Transmission Service

Effective: The first day of the first full billing period beginning on or after August 1, 1982.

Available: In the area served by Pick-Sloan Missouri Basin Program, Western Division.

Applicable: To nonfirm transmission service customers where power and energy are supplied to the Western Division systems at points of interconnection with other systems and transmitted and delivered subject to the availability of transmission capacity, less losses, to points of delivery on the Western Division Systems specified in the service contract.

Character and Conditions of Service: Transmission service on an intermittent basis for three-phase alternating current at sixty hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission service charge: 1.1 mills per kilowatthour delivered at the point of delivery for each kilowatthour scheduled; payable monthly.

Adjustments

For reactive power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 82-19828 Filed 7-21-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[TSH-FRL2174-3; OPTS-53039]

Premanufacture Notices; Monthly Status Report for June 1982

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for June 1982.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E–106 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments are to be identifdied with the document control number **"[OPTS–53039]"** and the specific PMN number should be sent to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW., Washington, D.C. 20460; (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–208, 401 M Street, SW., Washington, D.C. 20460; (202–382–3746).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 stat. 2102 (15 U.S.C. 2504)), will identify: (a) PMNs received during June; (b) PMNs received previsously and still under review at the end of June; (c) PMNs for which the notice review period has ended during June; (d) chemical substances for which EPA has received a notice of commencement to manufacture during June; and (e) PMNs for which the review period has been suspended. Therefore, the June 1982 PMN Status Report is being published.

Dated: July 15, 1982.

Paul Fuschini,

Acting Director, Management Support Division.

Premanufacture Notices Monthly Status Report, June 1982

I. 76 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity and generic name	FR citation	Expiration date
82-400	Potassium N,N-bis (hydroxyethyl) cocamine oxide phosphate	47 FR 25402 (6/11/82)	Aug. 30, 1982.
82-401	Generic name: Polyvinyl starch	47 FR 25402 (6/11/82)	Do.
82-402	Generic name: Styrene-diene-substituted alkene copolymer	47 FR 25402 (6/11/82)	Do.
82-403	Ethyl acrylate-methyl acrylate copolymer	47 FR 25402 (6/11/82)	Aug. 31, 1982.
82-404	Ethyl acrylate-methyl methacrylate copolymer	47 FR 25402 (6/11/82)	Do.
82-405	Ethyl acrylate-methyl acrylate-methyl methacrylate copolymer	47 FR 25402 (6/11/82)	Do.
82-406	Ethyl acrylate-methyl acrylate copolymer	47 FR 25403 (6/11/82)	Do.
82-407	Vinyl acetate homopolymer	47 FR 25403 (6/11/82)	Do.
82-408	Generic name: Tetra tosylate porphine	47 FR 25403 (6/11/82)	Do.
82-409	Potassium N,N-bis(hydroxyethyl) tallow amine oxide phosphate	47 FR 25403 (6/11/82)	Do.
82-410	Generic name: Substituted heterocycle, amine salt	47 FR 25403 (6/11/82)	Do.
82-411	Generic name: Mixed metal hydroxide	47 FR 25403 (6/11/82)	Do.
82-412	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone, 2,9-bis(4-aminophenyl)	47 FR 25403 (6/11/82)	Sept. 1, 1982.
82-413	Generic name: Polyether polyglycol resin polymer	47 FR 25403 (6/11/82)	Do.
82-414	Generic name: Polyester polymer	47 FR 25403 (6/11/82)	Do.
82-415	Generic name: Polyester polymer	47 FR 25403 (6/11/82)	Do.
82-416	Generic name: Urethane polyol	47 FR 25403 (6/11/82)	Do.
82-417	Generic name: Polymer of alkenes and substituted alkenes	47 FR 25403 (6/11/82)	Do.
82-418	Generic name: Hydrogen bis[1-[(3,5-disubstituted-2-hydroxyphenyl)azo]-3-(N-mono-substituted)-2-naphthalenolate(2-)]chromate(1-).	47 FR 26235 (6/17/82)	Sept. 2, 1982.
82-419	Generic name: Acrylamide-acrylate copolymer	47 FR 26235 (6/17/82)	Do.
82-420	Invalid		
82-421	1-(cyclohexen-1-yl) piperidine	47 FR 26235 (6/17/82)	Sept. 5, 1982.
82-422	Generic name: Tetrasubstituted benzisoxazole	47 FR 26235 (6/17/82)	Do.
82-423	Generic name: Polyhaloalkoxyalkylphenone	47 FR 26235 (6/17/82)	Sept. 6, 1982.
82-424	Polymer of: Hexanediol, dantocol, trimethylol propane, isophthalic acid, adipic acid	47 FR 26235 (6/17/82)	Do.
82-425	Generic name: Polyester of a substituted alkanoic ester, alkanoic diols and a carbomonocyclic diacid.	47 FR 26235 (6/17/82)	Do.
82-426	Generic name: Substituted cyclopentadiene	47 FR 26235 (6/17/82)	Sept. 7, 1982.

I. 76 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
82-427	Generic name: Alkoxylated aliphatic glycol	47 FR 26235 (6/17/82)	Do.
82-428	Generic name: Acrylated alkoxylated aliphatic glycol	47 FR 26235 (6/17/82)	Do.
82-429	Generic name: Ethoxylated molybdenum amine	47 FR 26235 (6/17/82)	Do.
82-430	Generic name: Tetrasubstituted benzisoxazole	47 FR 26235 (6/17/82)	Do.
82-431	Generic name: Isocyanic acid, polymethylene polyphenylene ester polymer with modified polyalkylene glycol.	47 FR 26235 (6/17/82)	Do.
82-432	Reaction mixture containing: isobornyl acetyl-acetate, isoboryl acetate and ethylacetyl-acetate	47 FR 27610 (6/25/82)	Sept. 12, 1982.
82-433	Found to be on the Inventory		
82-434	Generic name: Polyquaternary methacrylamide ammonium acetate	47 FR 27610 (6/25/82)	Do.
82-435	Generic name: Poly[oxy(methyl-1,2-ethanediyl)] aliphatic ether amide of dialkenoic acid	47 FR 27610 (6/25/82)	Do.
82-436	Soyabean oil polymer with maleic anhydride, neopentyl glycol, tetrahydrophthalic anhydride and trimethylol propane.	47 FR 27610 (6/25/82)	Do.
82-437	Generic name: Modified polyester of a carbomonocyclic anhydride and a substituted alkanediol	47 FR 27610 (6/25/82)	Do.
82-438	Generic name: Aromatic amine ester	47 FR 27610 (6/25/82)	Do.
82-439	Generic name: Sulphonated phenyl arsine dibromide	47 FR 27610 (6/25/82)	Do.
82-440	Generic name: Copolyesters	47 FR 27611 (6/25/82)	Sept. 13, 1982.
82-441	Generic name: Alkylphenol, formaldehyde, alkanolamine, alkylene oxides reaction product	47 FR 27611 (6/25/82)	Do.
82-442	Generic name: Aromatic acids, polyether polyol alkyd	47 FR 27611 (6/25/82)	Do.
82-443	Generic name: Alkyl substituted mercaptan	47 FR 27611 (6/25/82)	Sept. 14, 1982.
82-444	Further clarification needed on chemical identity		
82-445	Withdrawn		
82-446	Generic name: Substituted imidazolidinone	47 FR 28994 (7/2/82)	Sept. 16, 1982.
82-447	Generic name: Substituted imidazolidinone	47 FR 28994 (7/2/82)	Do.
82-448	Generic name: A reaction product of phenylene-bis[[[(butane derivative)-substituted]-phenyl]azo], compound with organic acids.	47 FR 28995 (7/2/82)	Do.
82-449	1-cyclohexen-1-amine, N,N-dibutyl	47 FR 28995 (7/2/82)	Sept. 19, 1982.
82-450	Generic name: Amino akkyl alkoxy silanes	47 FR 28995 (7/2/82)	Do.
82-451	Generic name: Metal complexed disazo compound	47 FR 28995 (7/2/82)	Do.
82-452	Generic name: Benzoxazole oxazolidinone	47 FR 28995 (7/2/82)	Do.
82-453	Generic name: Benzoxazlium salt	47 FR 28995 (7/2/82)	Do.
82-454	Generic name: Saturated polyester resin	47 FR 28995 (7/2/82)	Sept. 20, 1982.
82-455	Generic name: Polyhaloalkoxyarylamide	47 FR 28995 (7/2/82)	Do.
82-456	Generic name: Isocyanate terminated polyether polyurethane prepolymer	47 FR 28995 (7/2/82)	Do.
82-457	Generic name: Alkyd derivative from fatty acids, substituted alkanoic acids, a carbomonocyclic anhydride, polyols and esters.	47 FR 28995 (7/2/82)	Do.
82-458	Generic name: Polymer of a vegetable oil derivative, alkane diols and a carbomonocyclic anhydride.	47 FR 28995 (7/2/82)	Do.
82-459	Generic name: Silicon substituted organic ester	47 FR 28995 (7/2/82)	Do.
82-460	Generic name: Dialkyl amide of an akenedioic acid	47 FR 28995 (7/2/82)	Sept. 21, 1982.
82-461	Generic name: Diacyl peroxide	47 FR 28996 (7/2/82)	Sept. 22, 1982.
82-462	Generic name: Trisubstituted benzoxazole	47 FR 28996 (7/2/82)	Do.
82-463	Generic name: Unsaturated polyester resin	47 FR 30103 (7/12/82)	Sept. 23, 1982.
82-464	Generic name: 2-hydroxy-3-naphthoic acid N-aryl amide	47 FR 30103 (7/12/82)	Sept. 26, 1982.
82-465	Generic name: Quaternary ammonium chloride	47 FR 30103 (7/12/82)	Do.
82-466	Polymer of vinyl toluene, styrene, 2 ethyl hexyl acrylate	47 FR 30103 (7/12/82)	Do.
82-467	Generic name: Aromatic aliphatic branched polyester resin	47 FR 30103 (7/12/82)	Sept. 28, 1982.
82-468	Generic name: Isocyanate terminated polyether polyurethane prepolymer	47 FR 30103 (7/12/82)	Sept. 27, 1982.
82-469	Reaction product from benzyl-1-hydroxydiphenyl ethoxylate and glycolic acid, sodium salt	47 FR 30103 (7/12/82)	Do.
82-470	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7/12/82)	Sept. 28, 1982.
82-471	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7/12/82)	Do.
82-472	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7/12/82)	Do.
82-473	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-474	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-475	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-476	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-477	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-478	Generic name: Calcium salt of a substituted amino acid	47 FR 30104 (7/12/82)	Do.

II. 75 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity and generic name	FR citation	Expiration date
82-323	Generic name: t-alkyl peroxyester	47 FR 20853 (5/14/82)	Aug. 1, 1982.
82-324	Generic name: Phenoxy ester resin	47 FR 20853 (5/14/82)	Do.
82-325	Generic name: Acrylic resin	47 FR 20853 (5/14/82)	Do.
82-326	Generic name: Substituted pyridine	47 FR 20853 (5/14/82)	Do.
82-327	Generic name: Hydroxy, amine-substituted anthraquinone	47 FR 20853 (5/14/82)	Aug. 2, 1982.
82-328	Generic name: Modified amine	47 FR 20853 (5/14/82)	Do.
82-329	Generic name: Poly[(aminoalkylamino)alkylene oxide]	47 FR 20853 (5/14/82)	Do.
82-330	Generic name: Poly(vinyl acrylate)	47 FR 20853 (5/14/82)	Aug. 3, 1982.
82-331	Generic name: Nitrophenyl amide	47 FR 20853 (5/14/82)	Do.
82-332	Generic name: Aminophenyl amide	47 FR 20853 (5/14/82)	Do.
82-333	Generic name: Polyacrylate	47 FR 20853 (5/14/82)	Do.
82-334	Generic name: 5-chloro-4-nitro-2-substituted aryloxydimethylaniline	47 FR 20853 (5/14/82)	Aug. 4, 1982.
82-335	Generic name: 5-chloro-2-substituted aryloxyaniline	47 FR 20853 (5/14/82)	Do.
82-336	Generic name: 2-chloro-4(N,N-dimethylamino)-5-substituted aryloxydiazonium tetrafluoroborate	47 FR 20854 (5/14/82)	Do.
82-337	Generic name: 5-chloro-2-substituted aryloxydimethylaniline	47 FR 20853 (5/14/82)	Do.
82-338	Generic name: Disubstituted triazolidine	47 FR 20853 (5/14/82)	Do.
82-339	Generic name: Disubstituted triazolidine salt	47 FR 20853 (5/14/82)	Do.
82-340	Generic name: Complex quaternary ammonium chloride	47 FR 22214 (5/21/82)	Aug. 5, 1982.
82-341	Generic name: Unsaturated hydrocarbons modified rosin	47 FR 22214 (5/21/82)	Do.
82-342	Generic name: Unsaturated hydrocarbons modified rosin	47 FR 22214 (5/21/82)	Do.
82-343	Generic name: Unsaturated hydrocarbons modified rosin	47 FR 22214 (5/21/82)	Do.
82-344	Generic name: Unsaturated hydrocarbons modified rosin	47 FR 22214 (5/21/82)	Do.
82-345	Generic name: Polyhalo alkoxyaryl nitrile	47 FR 22214 (5/21/82)	Aug. 6, 1982.
82-346	Generic name: Reaction product of a substituted benzene, formaldehyde and inorganic acid	47 FR 22214 (5/21/82)	August 9, 1982.
82-347	Generic name: Polyurethane of a diisocyanate and a substittued alkanediol	47 FR 22214 (5/21/82)	Do.
82-348	Generic name: Urea/carbamate elastomer	47 FR 22214 (5/21/82)	Do.

II. 75 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
82-349	Generic name: Polycyclic sulfonic acid salt	47 FR 22215 (5/21/82)	Aug. 10, 1982.
82-350	Generic name: Titanium (4) mixed alcohol complex	47 FR 22215 (5/21/82)	Do.
82-351	Generic name: Titanium (4) mixed alcohol complex	47 FR 22215 (5/21/82)	Do.
82-352	Generic name: Naphthalenedisulfonic acid, [[aminosulfohydroxy naphthalenyl]azo]-, trisodium salt..	47 FR 22215 (5/21/82)	Do.
82-353	Generic name: Substituted phenyl-pyrimidine	47 FR 22215 (5/21/82)	Aug. 11, 1982.
82-354	Generic name: Substituted phenyl-pyrimidine	47 FR 22215 (5/21/82)	Do.
82-355	Generic name: Substituted phenyl-pyrimidin bicyclic azo heterocyclic merocyanine	47 FR 22215 (5/21/82)	Do.
82-356	Generic name: Polymer of 1,4-benzenedicarboxylic acid dimethyl ester; dihydroxyalkane; 1,6-hexanediol; alpha hydro-omega hydroxy poly (oxy-1,4-butanediyl).	47 FR 22215 (5/21/82)	Do.
82-357	Generic name: 2,5-diisopropoxy-4-morpholino benzene diazonium aryl sulfonic acid salt	47 FR 23552 (5/28/82)	Aug. 12, 1982.
82-358	Generic name: Modified phenoxy—S resin	47 FR 23552 (5/28/82)	Do.
82-359	Generic name: Polyester resin	47 FR 23552 (5/28/82)	Do.
82-360	Generic name: Trisubstituted benzisoxazole	47 FR 23553 (5/28/82)	Do.
82-361	Generic name: Tetrasubstituted benezene	47 FR 23553 (5/28/82)	Do.
82-362	Generic name: Substituted benzamide	47 FR 23553 (5/28/82)	Do.
82-363	Generic name: Polyoxypropylene ester acyl caprolactam	47 FR 23553 (5/28/82)	Aug. 15, 1982.
82-364	Poly[oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-(4-nonylphenoxy)	47 FR 23553 (5/28/82)	Do.
82-365	Poly(oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-(4-nonylphenoxy)	47 FR 23553 (5/28/82)	Do.
82-366	Poly(oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-(4-nonylphenoxy)	47 FR 23553 (5/28/82)	Do.
82-367	Poly(oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-(4-nonylphenoxy)	47 FR 23553 (5/28/82)	Do.
82-368	Generic name: Alkenyl alkyl silozane alkoxy terminated	47 FR 23553 (5/28/82)	Aug. 16, 1982.
82-369	Generic name: Benzenedicarboxylic acid saturated mixed glycols copolyester	47 FR 23553 (5/28/82)	Do.
82-370	Generic name: Benzenedicarboxylic acid saturated mixed glycols copolyester	47 FR 23553 (5/28/82)	Do.
82-371	Generic name: Disubstituted alkane	47 FR 23553 (5/28/82)	Do.
82-372	Generic name: ((Substituted phenyl)azo)-dihydro-hydorxy-alkyl-oxo-pyridinecarbonitrile	47 FR 23554 (5/28/82)	Do.
82-373	Generic name: Poly(ester-urethane)	47 FR 23554 (5/28/82)	Aug. 17, 1982.
82-374	Generic name: Aklyl thiadiazole	47 FR 23554 (5/28/82)	Do.
82-375	Formaldehyde polymer with 2-furanmethanol and methyloxirane capped	47 FR 23554 (5/28/82)	Aug. 18, 1982.
82-376	Polymer of trimethylol propane, 1,6 hexanediol, neopentyl glycol, trimellitic anhydride, adipic acid, and isophthalic acid.	47 FR 23554 (5/28/82)	Do.
82-377	Generic name: Hybrid urethane	47 FR 23554 (5/28/82)	Do.
82-378	Found to be on the inventory		
82-379	Generic name: Tetrasubstituted benzisoxazole	47 FR 23554 (5/28/82)	Do.
82-380	Generic name: Disubstituted benzoxazole	47 FR 23554 (5/28/82)	Do.
82-381	Generic name: Tetrasubstituted benzisoxazole	47 FR 25400 (6/11/82)	Do.
82-382	Generic name: Polymer of alkenoic acid alkyl esters, 2-propenoic acid, and 2-propenoic acid, 2-methyl.	47 FR 25400 (6/11/82)	Aug. 19, 1982.
82-383	Generic name: Brominated xylenol	47 FR 25400 (6/11/82)	Aug. 22, 1982.
82-384	Generic name: Bis[bromo xylenol]sulfide	47 FR 25400 (6/11/82)	Do.
82-385	Generic name: Bis[xylenol]sulfide	47 FR 25400 (6/11/82)	Do.
82-386	Generic name: Metal complex of disazo aromatic acids, sodium salt	47 FR 25400 (6/11/82)	Aug. 23, 1982.
82-387	Phosphorodithioic acid, O,O', secondary buty and isooctyl mixed esters	47 FR 25401 (6/11/82)	Aug. 23, 1982.
82-388	Phosphorodithioic acid, O,O', secondary buty and isooctyl mixed esters, zinc salt	47 FR 25401 (6/11/82)	Do.
82-389	Reaction product of [[(phosphonomethyl]imino] bis-[6,1-hexanediyl-nitriobis(methylene)]] tetrakis-phosphonic acid (2,2' oxybisethanol, reaction products with ammonia; morpholine derivatives, residues).	47 FR 25401 (6/11/82)	Do.
82-390	Polymer of styrene, 2-propenoic acid, 1,1-dimethylethyl ester of 2-propenoic acid, 2-ethylhexyl ester of 2 propenoic acid, and 2-hydroxy propyl acrylate.	47 FR 25401 (6/11/82)	Do.
82-391	Invalid		
82-392	Generic name: Hydroxy ethyl ester substituted polybis imide of pyromellitic dianhydride	47 FR 25401 (6/11/82)	Aug. 25, 1982.
82-393	Amines, N-(3-aminopropyl)-N-tafloalkyltrimethylenedibis-(3-aminopropyl)-N-tallowamine	47 FR 25401 (6/11/82)	Do.
82-394	Generic name: Modified polyurethane from diisocyanate, substituted alkanol and a substittued alkane diol.	47 FR 25401 (6/11/82)	Do.
82-395	Generic name: Polymer of a vegetable oil derivative, aklane diols and a carbomonocyclic anhydride.	47 FR 25401 (6/11/82)	Do.
82-396	Generic name: Substituted oxirane reacted with polyalkylene glycol	47 FR 25401 (6/11/82)	Do.
82-397	Generic name: Tetrasubstituted benzisoxazole	47 FR 25402 (6/11/82)	Do.
82-398	Generic name: A mixture of benzamide, N-((substituted naphthyl)azo)pheny-(substituted amino-hydroxy-sulfonaphthyl)azo) and benzamide, N-((substituted naphthyl)azo)phenyl-((substituted amino-hydroxy-sulfonaphthyl)azo, compounded with organic acids.	47 FR 25402 (6/11/82)	Do.
82-399	C_{16}-$_{18}$-alkyl mercaptoacetates reaction products with dichlorodioctylstannane and trichlorooctylstannane.	47 FR 25402 (6/11/82)	Do.

III. 69 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month

[Expiration of the notice review period does not signify that the chemical had been added to the Inventory]

PMN No.	Identity and generic name	FR citation	Expiration date
82-171	Generic name: Aromatic substituted triazine disazo dye, tetrasodium salt	47 FR 10900 (3/12/82)	June 1, 1982.
82-172	Generic name: Chromophore shbstituted poly-(oxyalkylene)	47 FR 10900 (3/12/82)	June 2, 1982.
82-173	Generic name: Borate esters-mixture	47 FR 10901 (3/12/82)	Do.
82-174	Generic name: Substituted acrylamide polymer	47 FR 10901 (3/12/82)	June 1, 1982.
82-175	Generic name: Borate ester	47 FR 11957 (3/19/82)	June 3, 1982.
82-176	Generic name: Epoxy functional ploysiloxane/silica resin	47 FR 11957 (3/19/82)	Do.
82-177	Generic name: Metal salt of sulfur analog of carboxy alkyl	47 FR 11957 (3/19/82)	June 6, 1982.

III. 69 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month—Continued

[Expiration of the notice review period does not signify that the chemical had been added to the inventory]

PMN No.	Identity and generic name	FR citation	Expiration date
82-178	Generic name: Disubstituted butanamide	47 FR 11957 (3/19/82)	Do.
82-179	Generic name: Disubstituted thioic acid ester	47 FR 11957 (3/19/82)	Do.
82-180	Generic name: Disubstituted benezene	47 FR 11957 (3/19/82)	Do.
82-181	Polymers of benzoic acid, dimethylethanolamine, epoxidized soybean oil, neipenyl glycol, propylene glycol, phthalic anhydride, trimellitic anhydride.	47 FR 11958 (3/19/82)	June 7, 1982.
82-182	Polymers of bisphenol, epichlorohydrin, styrene, phelnol, formaldehyde	47 FR 11958 (3/19/82)	June 28, 1982.
82-183	Polymers of acrylic acid hydroxyethyl methacrylate, methylmethacrylate, phthalicanhydride, trimelliticanhydride, neodecanoic acid, 2,3-epoxypropyl ester..	47 FR 11958 (3/19/82)	June 7, 1982.
82-184	Invalid		
82-185	Generic name: Fatty acids, esters with a polyol	47 FR 11958 (3/19/82)	Do.
82-186	Generic name: Substituted alkyl amine	47 FR 11958 (3/19/82)	Do.
82-187	Generic name: Modified polymer of alkenoic acid, alkenoic ester and substituted alkenoic esters	47 FR 11958 (3/19/82)	Do.
82-188	Generic name: Modified polymer of alkenoic acid, alkenoic ester and substituted alkenoic esters	47 FR 11958 (3/19/82)	Do.
82-189	Generic name: Benzene 2-[(hexahydro-2,4,6-trioxopyrimidyl)azo]-5-(2-benzothiazolyl) sulfonic acid	47 FR 11958 (3/19/82)	June 8, 1982.
82-196	Generic name: Polyalkylene glycol alkyl glycidyl ether	47 FR 11959 (3/19/82)	June 9, 1982.
82-197	Generic name: Polyoxyalkylene aryl alkyl phenyl ether	47 FR 11959 (3/19/82)	Do.
82-198	Generic name: Modified polyurethane of a substituted alkene diol and a diisocyanate	47 FR 11959 (3/19/82)	Do.
82-199	Generic name: Poly-imidazoline derivative	47 FR 11959 (3/19/82)	Do.
82-200	Void		
82-201	Generic name: Dodecenyl-oleyl-capryl-succinimide	47 FR 13037 (3/26/82)	June 10, 1982.
82-202	Generic name: Dimer fatty acid, propionic acid, dicarboxylic acid, ethylene diamine, diamine polymer.	47 FR 13037 (3/26/82)	June 13, 1982.
82-203	Generic name: Bisphenol A-epichlorohydrin resin—mixed acrylic polymer	47 FR 13037 (3/26/82)	Do.
82-204	Generic name: Di-abietamide	47 FR 13037 (3/26/82)	June 14, 1982.
82-205	Generic name: Polyetherpolyol reaction with toluene diisocyanate hydroxypropyl acrylate blocked	47 FR 13038 (3/26/82)	Do.
82-206	Reaction product of (9,12 octadecadienoic acid, dimer, polymer with 2,5-furandione) with tallow diamine.	47 FR 13038 (3/26/82)	June 15, 1982.
82-207	OC-hydro-w-hydroxy-poly (oxy-1,2 ethanediyl)), polymer with 3,5-dimethyl-IH-pyrazole	47 FR 13038 (3/26/82)	Do.
82-208	OC-hydro-w-hydroxy-poly (oxy(methyl-1,2 ethanediyl)), polymer with 3,5-dimethyl-IH-pyrazole	47 FR 13038 (3/26/82)	Do.
82-209	Generic name: Polymer from disubstituted monocycle and disubstituted alkanes	47 FR 13038 (3/26/82)	Do.
82-210	Generic name: Disubstituted benezene	47 FR 13038 (3/26/82)	June 14, 1982.
82-211	Generic name: Disubstituted butanamide salt	47 FR 13038 (3/26/82)	Do.
82-212	Generic name: Disubstituted benzene	47 FR 13038 (3/26/82)	Do.
82-213	Generic name: Disubstituted benzene	47 FR 13038 (3/26/82)	Do.
82-214	Generic name: Benzoxazole carbocyamine	47 FR 13038 (3/26/82)	June 15, 1982.
82-215	Generic name: Halogenated silicon magnesium oxo-titanium alkoxides	47 FR 13038 (3/26/82)	Do.
82-216	Adduct of 1,3-bis(isocyanatomethyl)-cyclohexane with 2-ethyl-2 (hydroxymethyl)-1,3-propanediol	47 FR 13038 (3/26/82)	Do.
82-217	Generic name: 2-methoxy-1,4 naphthalenedione	47 FR 13038 (3/26/82)	Do.
82-218	Generic name: Di-arylamine	47 FR 14218 (4/2/82)	June 17, 1982.
82-219	Generic name: Polyetherpolyol reaction with isophorone diisocyanate—HEA blocked	47 FR 14218 (4/2/82)	Do.
82-220	Generic name: Polymer of linear glycols and aromatic dicarboxylic acids	47 FR 14218 (4/2/82)	Do.
82-221	Generic name: Disubstituted benzene	47 FR 14218 (4/2/82)	Do.
82-222	Generic name: Disubstituted benzene	47 FR 14218 (4/2/82)	Do.
82-223	Generic name: Polyester-urethane	47 FR 14218 (4/2/82)	June 20, 1982.
82-224	Generic name: Neutralized reaction products of fatty acid derivatives and a substituted alkyl ester	47 FR 14218 (4/2/82)	Do.
82-225	Generic name: Neutralized reaction products of fatty acid derivatives and a substituted alkylester	47 FR 14218 (4/2/82)	Do.
82-226	Generic name: Substituted phenyl, substituted naphthalenyl azo dye	47 FR 14219 (4/2/82)	June 21, 1982.
82-227	2-propenamide, N-[3-(dimethylamino)propyl]-,polymer with diethenylbenzene and 2,2-bis[(2-propenloxy)methyl]-1-butanol.	47 FR 14219 (4/2/82)	June 23, 1982.
82-228	1-propanaminium, N,N,N-trimethyl-3-[(1-oxo-2-propenyl)amino]-, chloride, polymer with diethenylbenzine and 2,2-bis[(2-propenyloxy)methyl]-1-butanol.	47 FR 14219 (4/2/82)	Do.
82-229	1-propanaminium, N,N,N-trimethyl-3-[(1-oxo-2-propenyl)amino]-, polymer with diethenylbenzene and 2,2-bis[(2-propenyloxy)methyl]-1-butanol.	47 FR 14219 (4/2/82)	Do.
82-230	1-propanaminium, N,N,N-trimethyl-3-[(1-oxo-2-propenyl)amino]-, sulfate, polymer with diethenylbenzene and 2,2-bis[2-propenyloxy)methyl]-1-butanol.	47 FR 14219 (4/2/82)	Do.
82-231	Generic name: Laurylsulfate salt of substituted p-diazo diphenylamine, polymer with formaldehyde	47 FR 14219 (4/2/82)	June 24, 1982.
82-232	Generic name: Thiophosphate	47 FR 15407 (4/9/82)	June 27, 1982.
82-233	Generic name: Organic salt of phosphorus	47 FR 15407 (4/9/82)	Do.
82-234	Generic name: Modified aromatic diisocyanate with aliphatic triol	47 FR 15407 (4/9/82)	Do.
82-235	Generic name: Allylglycidyl ether alcohol resin	47 FR 15407 (4/9/82)	June 28, 1982.
82-236	Generic name: Polymer of an alkoxylated alkyl heteromonocycle and polymethylenepolyphenylene isocyanate.	47 FR 15407 (4/9/82)	Do.
82-237	Generic name: Bis-substituted urea	47 FR 15407 (4/9/82)	Do.
82-238	N-substitutedphenyl-N,N'-dialkyl urea	47 FR 15407 (4/9/82)	Do.
82-239	Generic name: Substituted unsaturated alcohol	47 FR 15407 (4/9/82)	Do.
82-240	Generic name: Substituted unsaturated alcohol	47 FR 15407 (4/9/82)	Do.
82-241	Penta(oxy-1,2-ethanediyl), alpha-(carboxymethyl)-omega-hydroxy-, C()-(- linear primaryalkyl ethers	47 FR 15407 (4/9/82)	June 29, 1982.
82-242	Void		
82-243	Manganic acetylacetonate	47 FR 15407 (4/9/82)	June 30, 1982.
82-244	Generic name: Antimony pentafluoride-substituted amine complex	47 FR 16403 (4/16/82)	Do.
82-282	Generic name: Polyhalogenated aromatic polyacrylate	47 FR 17667 (4/23/82)	June 9, 1982.
82-283	Generic name: t-butylated triphenyl phosphate residue	47 FR 17667 (4/23/82)	Do.
82-284	Generic name: Methylated triphenyl phosphate residue	47 FR 17667 (4/23/82)	Do.
82-285	Generic name: Isopropylated triphenyl phosphate residue	47 FR 17667 (4/23/82)	Do.

IV. 40 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Chemical identification	FR citation	Date of commencement
80-155	Cyclohexanehexacarboxylic acid, penta sodium salt	45 FR 51262 (8/1/80)	June 24, 1982.
80-348	Sunflower oil, polymer with pentaerythritol phthalic anhydride, soybean oil, and trimethylolethane	46 FR 5058 (1/19/81)	June 1, 1982.
81-114	Generic name: Modified epoxy resin	46 FR 20765 (4/7/81)	June 5, 1982.
81-119	Generic name: Alkyl aluminum halide	46 FR 22260 (4/16/81)	1st quarter of 1982.
81-120	Generic name: Alkyl aluminum halide, ester	46 FR 22260 (4/16/81)	Do.
81-128	Generic name: Unsaturated alicyclic ether	46 FR 22643 (4/20/81)	June 15, 1982.
81-186	Generic name: Polyester polyurethane	46 FR 27170 (5/18/81)	May 21, 1982.
81-251	2-chloro-4-trifluoromethyl-5-thiazolecarboxylic acid, phenylmethyl ester	46 FR 35345 (7/8/81)	July 1, 1982.
81-252	Generic name: Disubstituted thiazolecarboxylic acid ester	46 FR 35345 (7/8/81)	Do.
81-266	Generic name: Polymer of alkanedioic acid and epoxy ester	46 FR 34409 (7/1/81)	June 15, 1982.
81-412	Generic name: Polymeric alkaneoic acid ester of substituted hydroxy alkyl, aryl ether	46 FR 45997 (9/16/81)	April 26, 1982.
81-441	Generic name: Mixed mono and dialkyl-dithiothiasiazoles	46 FR 47004 (9/23/81)	June 18, 1982.
81-444	Generic name: Substituted heterocyclic-phenylazo dye	46 FR 47004 (9/23/81)	Feb. 24, 1982.
81-468	4-chloronaphthalene 1,8-ducarbixtkuc acid anhydride	46 FR 24988 (9/30/81)	May 26, 1982.
81-483	4(2'-aminophenylthio) 1,8 naphthalic anhydride	46 FR 48979 (10/5/81)	May 28, 1982.
81-492	1,3-bis(1-methylethenyl) benzene	46 FR 49945 (10/8/81)	Feb. 1, 1982.
81-494	Generic name: (Alkylaminoalkyl)-(substituted)-benzotriazole	46 FR 49946 (10/8/81)	May 19, 1982.
81-508	Generic name: Benzenedicarboxylic acid saturated mixed glycol polyester	46 FR 50410 (10/13/81)	Feb. 1, 1982.
81-517	Generic name: Alkenyl tetracarboxylate	46 FR 50841 (10/15/81)	June 4, 1982.
81-547	1,4-bis(1-methylethenyl) benzene	46 FR 55001 (11/5/81)	Feb. 8, 1981.
81-573	Generic name: Polyacrylate	46 FR 56651 (11/18/81)	June 11, 1982.
81-583	Generic name: Fatty acid ester with a polyol and oleic acid	46 FR 57127 (11/20/81)	May 13, 1982.
81-594	Generic name: Mixed aromatic disazo dye	46 FR 58358 (12/1/81)	April 10, 1982.
81-617	Generic name: Substituted benzenbe sulfonic acid derivative	46 FR 60981 (12/14/81)	April 12, 1982.
81-640	Generic name: Disubstituted phenol	46 FR 62929 (12/29/81)	April 19, 1982.
81-648	Generic name: Tetrasubstituted benzenamine	47 FR 337 (1/5/82)	May 29, 1982.
81-649	Generic name: Tetrasubstituted benzene	47 FR 338 (1/5/82)	May 5, 1982.
81-651	Generic name: Tetrasubstituted benzene	47 FR 338 (1/5/82)	May 12, 1982.
82-49	Generic name: Modified polyester polyurethane	47 FR 5328 (2/4/82)	June 3, 1982.
82-50	Generic name: Polyester from am alkanedioic acid amd polyetherdiols	47 FR 5328 (2/4/82)	June 2, 1982.
82-61	Generic name: Polyoxypropylene ester acyl caprolactum	47 FR 5932 (2/9/82)	July 6, 1982.
82-90	Generic name: Siloxanes and silicones, aminoalkyl me; di-me	47 FR 8677 (3/1/82)	June 10, 1982.
82-134	Propenoic acid/methylene butanedioic acid copolymer, sodium salt	47 FR 8676 (3/1/82)	June 9, 1982.
82-135	Polymer of 2-propenoic acid and methylbutanedioic acid	47 FR 8676 (3/1/82)	June 15, 1982.
82-150	Polymer of methyl methacrylate, acrylamide, butyl acrylate, acrylic acid, methacrylic acid	47 FR 10075 (3/9/82)	June 10, 1982.
82-166	Generic name: Disubstituted-6, 13-dichloro-4, 11-tripenodioxazine disulfonic acid	47 FR 10900 (3/12/82)	June 25, 1982.
82-189	Generic name: Benzene -2-[(hexahydro-2,4,6-trioxophyrmidyl)azo]-5-(2-benzothiazolyl)sulfonic acid	47 FR 11958 (12/1/81)	June 28, 1982.
82-196	Generic name: Polyalkylene aryl phenyl ether	47 FR 11959 (3/19/82)	June 9, 1982.
82-197	Generic name: Polyoxyalkylene aryl phenyl ether	47 FR 11959 (3/19/82)	Do.
82-215	Generic name: Halogenated silicon magnesium oxo-titanium alkoxides	47 FR 13038 (3/26/82)	June 16, 1982.

V. 16 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identify and generic name	FR citation	Date suspended
80-137	Benzeneamine, 4,4'-methylene bis[*N*-(1-methylbutyidene)	45 FR 48243 (7/18/80)	Sept. 22, 1980.
80-138	Benzeneamine, 4,4'-methylene bis[*N*(1-methybutylidene)	45 FR 48243 (7/18/80)	Do.
80-146	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt.	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-147	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
80-264	Generic name: Benzeneamine, [*N*-(1-methylhexylidene)-*N*-(1-methyl butylidene)-4,4'-methylene bis]	45 FR 73127 (11/4/80)	Dec. 24, 1980.
81-534	2,3-epoxycyclohexanone	46 FR 53522 (10/29/81)	Nov. 2, 1981.
81-558	4-hydroxy-3-(5-(2-hydroxysulfonyloxy) ethylsulfonyl)-2-methoxyphenylazo)-7-succinylamino-2-naphthalenesulfonic acid disodium salt.	46 FR 55146 (11/6/81)	Jan. 27, 1982.
81-559	5-Acetylamino-4-hydroxy-3-(2-hydroxyl-4-(2-hydroxy-sulfonyl) ethylsulfonyl)-5-methyphenylazo)-2,7-naphthalenedisulfonic acid trisodium salt complex.	46 FR 55146 (11/6/81)	Do.
81-561	4-[4-[2-(hydroxysulfonyoxy)ethylsulfonyl]-5-methyl-2-methoxyphenylazo]-3-methyl-1-(3-sulfophenyl)-5-pyrazolone disodium salt.	46 FR 55146 (11/6/81)	Do.
81-643	Generic name: Cationic acrylamide copolymer	46 FR 63107 (12/30/81)	Feb. 19, 1982.
81-644	Generic name: Cationic acrylamide copolymer	46 FR 63107 (12/30/81)	Do.
81-660	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-(hydroxysulfonyloxy)ethylsulfonyl)phenylazo)-1-naphthalene sulfonic acid disodium salt.	47 FR 1021 (1/8/82)	Mar. 28, 1982.
81-661	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-(hydroxysulfonyloxy)ethylsulfonyl)phenylazo(-6-(3-sulfophenyl)amino-2-naphthalenesulfonic acid trisodium salt.	47 FR 1021 (1/8/82)	Do.
82-23	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 3595 (1/26/82)	May 12, 1982.
82-59	Generic name: Aromatic disazo dye	47 FR 5330 (2/4/82)	Apr. 20, 1982.
82-60	Generic name: Zinc, *O,O*-bis alkylphosphoro dithioate	47 FR 5932 (2/9/82)	Apr. 15, 1982.

[FR Doc. 82-19748 Filed 7-21-82; 8:45 am]
BILLING CODE 6560-50-M

[Docket No. ECAO-CD-81-2; FRL No. 2173-8]

Air Quality Criteria Document for lead

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: A series of peer-review workshops will be held in Research Triangle Park, North Carolina on August 2–3–4 and August 25–26–27, 1982, to facilitate scientific and technical evaluation of some of the preliminary working draft chapters of the *Air Quality Criteria Document for Lead.* The workshops on August 2–3–4 will be held in the Environmental Research Center Annex (Beaunit Building), Research Triangle Park, N.C. and will last from 8:30 A.M. to approximately 5:00 P.M. each day. The workshop beginning on Monday, August 2 will deal with the physical and chemical properties, sampling and analytical methodology, and sources and

emissions of lead. The workshop beginning on Tuesday, August 3 will deal mainly with the transport and transformation and environmental concentrations of lead. The workshop beginning on Wednesday, August 4 will deal mainly with the effect of lead on ecosystems. The public is invited to attend as observers.

DATE: The workshops on August 25–26–27 will be held in the main auditorium of the National institute for Environmental Health Sciences (South Campus), Research Triangle Park, N.C. The workshop beginning at 8:15 A.M. Wednesday, August 25 will deal with the clinical chemistry, metabolism, effects on the hematopoietic and immunologic systems, and the potential mutagenic and carcinogenic effects of lead. This workshop is expected to end at 5:30 P.M. The workshop beginning at 8:30 A.M. on Thursday, August 26 will deal with the effects of lead on the nervous system, on reproduction and development, and on the hepatic, cardiovascular, renal and endocrine systems. This workshop is expected to end at 5:00 P.M., with an evening session planned for 8:00–10:00 P.M. The workshop beginning at 9:00 a.m. on Friday, August 27 will deal with the epidemiological assessment of lead exposures. This workshop is expected to end at 5:30 P.M. The public is invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Dr. David Weil, Project Manager, Environmental Criteria and Assessment Office, MD–52, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, Telephone: (919) 541–4163.

SUPPLEMENTAL INFORMATION: The existing Air Quality Criteria Document for Lead (EPA–600/8–77–017) is being updated and revised pursuant to sections 108 and 109 of the Clean Air Act, as amended, 42 U.S.C. 7408 and 7409, and will be used as a basis for the review and, as appropriate, revision of the National Ambient Air Quality Standard (NAAQS) for lead. As part of this process, EPA is assembling a panel consisting of its consulting authors and contributors, EPA personnel and other scientific and technically qualified persons selected by EPA to discuss the proposed revisions and suggest ways of resolving outstanding issues.

Persons wishing to attend these workshops as observers should contact David Weil (see "Further Information" above). Copies of the preliminarily revised chapters will be provided to such observers, who will have an opportunity at the end of the meeting to make brief oral statements, should they so desire. Ample opportunity for public review of the revised chapters and submission of written comments will be provided when the first external review draft of the entire document is submitted for EPA Science Advisory Board review.

Notes on the meeting will be kept by EPA, containing a general description of key issues discussed and any conclusions reached. These notes, preliminary chapter drafts discussed at the meeting, and any other materials provided for or produced collectively at the meeting will be included in the docket established for the review of the lead document. The docket is available for inspection and copying between the hours of 8 and 4 at EPA headquarters in the Central Docket Section (A–130), Gallery 1, West Tower, Waterside Mall, 401 "M" Street, S.W., Washington, D.C. 20460. (The criteria document docket is No. ECAO–CD–81–2).

Dated: July 13, 1982.

Courtney Riordan,

Acting Assistant Administrator for Research and Development (RD–672).

[FR Doc. 82–19837 Filed 7–21–82; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

Carrier Performance Report; Information Collection Requirement

AGENCY: General Services Administration.

ACTION: Notice of Information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration plans to request the Office of management and Budget to review and approve a new information collection requirement.

DATE: Comments on this information collection must be submitted on or before July 26, 1982.

ADDRESS: Send comments to Franklin S. Reeder, OMB Desk Officer, Room 3208, NEOB, Washington, D.C. 20503, and to Anthony Artigliere, GSA Clearance Officer, General Services Administration (ORAI), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Anthony Artigliere, Acting Chief, Directives, Reports, and Publications Branch (202–566–0666).

SUPPLEMENTARY INFORMATION: a. The General Services Administration (GSA) is entering into several contracts with certain airline companies for reduced passenger fares for Government travelers on official business between selected city-pairs. These contracts require the airline companies to furnish quarterly reports on the use of the services by Government employees. GSA will use the data to determine the extent of use and whether corrective action is needed to improve the services.

b. A copy of the information collection proposal may be obtained from the Directives, Reports, and Publications Branch (ORAI), Room 3011, GS Building, Washington, D.C. 20405, telephone 566–1164.

Dated: July 13, 1982.

Clarence A. Lee; Jr.,

Director of Administrative Services.

[FR Doc. 82–19788 Filed 7–21–82; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–82–678]

Redelegation of Authority for Mortgage Sales Auctions; Director and Deputy Director, Office of Multifamily Financing and Preservation; Area Manager, Deputy Area Manager and Director of Housing, Philadelphia, Atlanta, Dallas, Chicago, and Los Angeles

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

ACTION: Redelegation of authority.

SUMMARY: The Assistant Secretary for Housing is redelegating authority to execute documents to effectuate the sale of HUD-held mortgages and deeds of trust.

EFFECTIVE DATE: July 21, 1982.

FOR FURTHER INFORMATION CONTACT: Charles J. Bartlett, Acting Assistant General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C., (202) 755–7090. This is not a toll free-number.

SUPPLEMENTARY INFORMATION: The General Deputy Assistant Secretary for Housing (Housing) and the Government National Mortgage Association (GNMA) entered into a contract, dated as of July 15, 1982, providing for GNMA's auctioning of HUD-held multifamily mortgages and deeds of trust. The contract also permits GNMA (through the Federal National Mortgage

Association (FNMA) to prepare and conduct sales closings. In addition, Housing may contract in the future with GNMA for the auctioning and closing of other mortgage and deed of trust sales. To facilitate these closings, authority to execute all necessary documents is being redelegated to HUD Area Managers in Philadelphia, Atlanta, Dallas, Chicago, and Los Angeles, their Deputies, and their Directors, Office of Housing. These are the cities in which FNMA will be conducting closings through its Regional Offices. This authority also is being redelegated to the Director and the Deputy Director of the Office of Multifamily Financing and Preservation at HUD Headquarters in Washington, D.C.

Accordingly, the Assistant Secretary redelegates his authority as follows:

a. Each HUD Area Manager, Deputy Area Manager and Director, Office of Housing in Philadelphia, Atlanta, Dallas, Chicago and Los Angeles is hereby delegated authority to execute, in the name of the Secretary of HUD, all documents necessary to effectuate the sales closings of mortgages and deeds of trust (including, but not limited to, the endorsement of such documents for mortgage insurance) auctioned pursuant to the contract, dated as of July 15, 1982, between Housing and GNMA or pursuant to any additional contract between the parties for the sale of other mortgages and deeds of trust. This authority is being delegated regardless of whether the mortgage or deed of trust being sold relates to a project which is located within the Area Manager's geographical jurisdiction.

b. The Director and Deputy Director of the Office of Multifamily Financing and Preservation are each hereby delegated authority to execute, in the name of the Secretary of HUD, all documents necessary to effectuate the sale closings of mortgages and deeds of trust (including, but not limited to, the endorsement of such documents for mortgage insurance) auctioned pursuant to the contract, dated as of July 15, 1982, between Housing and GNMA.

(Secretary's delegation of authority to redelegate published at 36 FR 5005, March 16, 1971.

Dated: July 19, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-19796 Filed 7-21-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lower Elwha Indian Reservation, Washington; Addition of Land to the Lower Elwha Indian Reservation

July 9, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. On July 9, 1982, pursuant to the authority contained in Section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the following described land, located in Clallam County, Washington, was added to and made a part of the Lower Elwha Indian Reservation.

Willamette Meridian

Tract 130–T1112:

Those portions of Lot 4 of section 27 and of the NW¼NW¼ of section 34, Township 31 North, Range 7 West, Clallam County, Washington, described as follows: Beginning at a point in the north line of said NW¼NW¼ lying north 88°36'20" east, a distance of 482.52 feet from the northwest corner of said NW¼NW¼ (said northwest corner being a 1"×10' pipe with Peterson and Associates Brass Cap); thence north 16°51'25" west, approximately 940 feet to the north line of said Lot 4; thence northeasterly along said north line to the east line of said Lot 4; thence south 2°01'53" west, along said east line approximately 1570 feet to the northeast corner of said NW¼NW¼; thence south 9°35'10" west along the east line of said NW¼NW¼, a distance of 1353.65 feet to the southeast corner thereof; thence south 89°34'34" west, along the south line of said NW¼NW¼, a distance of 330.00 feet; thence north 5°45'00" west, a distance of 915.00 feet; thence north 34°01'39" west, a distance of 210.00 feet; thence south 79°28'30" west a distance of 18.00 feet; thence north 16°51'25" west, a distance of 245.84 feet to the point of beginning, containing 33.48 acres, more or less.

Subject to all valid existing easements, reservations, and rights-of-way, of record.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-19761 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Serial No. I-04218]

Idaho; Partial Termination of Proposed Withdrawal and Reservation of Lands

Correction

On FR Doc. 82-14102, beginning on page 22418 in the issue of Monday, May 24, 1982, make the following corrections:

On page 22419, first column, in the description for Lolo-Weitas Road No. 103.2, under T. 35 N., R. 6 E., B.M. Idaho, Sec. 12, a comma was omitted. The lines should have read "Sec. 12, N½NE¼NE¼, NW¼NW¼NE¼,N½NW¼, NW¼SW¼N W¼."

In the same description, under T. 36 N., R.7 E., B.M., Idaho, Sec. 33, a comma was left out. The lines should have read "Sec 33, SE¼NE¼NE¼, SE¼NE¼, W½NE¼SE¼, W½SW¼SE¼".

BILLING CODE 1505-01-M

[Group 153]

California; Filing of Plat of Survey

July 16, 1982.

1. A plat of survey of the following described land accepted July 7, 1982, will be officially filed in the California State Office, Sacramento, California, effective at 10:00 a.m. on August 31, 1982.

Humboldt Meridian, California

T. 13 N., R. 3E.,
Sec. 37;
Sec. 38;
Sec. 39.

2. This plat representing the dependent resurvey of a portion of the east boundary of Township 13 North, Range 2 East, and a portion of the former west boundary of Township 13 North, Range 3 East, and the survey of sections 37, 38, and 39, Township 13 North, Range 3 East, Humboldt Meridian.

3. The plat will become the basic record for describing the land for all authorized purposes at and after 10:00 a.m. of the above date. Until this date and time, the plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Dated: July 16, 1982.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc. 82-19771 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

[Group 733]

California; Filing of Plat of Survey

July 16, 1982.

1. A plat of survey of the following described land accepted July 7, 1982,

will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, California

T. 9 S., R. 2 W.,
Sec. 35.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 35, Township 9 South, Range 2 West, San Bernardino Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau and the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E–2841, Cottage Way, Sacramento, California.

Dated: July 16, 1982.

Herman J. Lyttge,

Chief, Section of Records Data Management.

[FR Doc. 82–19772 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[Group 801]

California; Filing of Plat of Survey

July 16, 1982.

1. A plat of survey of the following described land accepted June 30, 1982, will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, California

T. 4 S., R. 27 E.,
Tract 45;
Tract 46.

2. This plat, representing the resurvey of a portion of the subdivisional lines and the metes and bounds survey of Tracts 45 and 46, Township 4 South, Range 27 East, Mount Diablo Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau, the U.S. Department of Agriculture, Forest Service, and Dempsey Construction Corporation.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California. 95825

Dated: July 16, 1982.

Herman J. Lyttge,

Chief, Section of Records Data Management.

[FR Doc. 82–19773 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[Group 713]

California; Filing of Plat of Survey

July 16, 1982.

1. A plat of survey of the following described land accepted June 30, 1982, will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, California

T. 33 N., R. 9 W.,
Sec. 17;
Sec. 19;
Sec. 27;
Sec. 28;
Sec. 30;
Sec. 32;
Sec. 33;
Sec. 34.

2. This plat, representing the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, and certain boundaries of mineral surveys, and the survey of the subdivision of sections 17, 19, 27, 28, 30, 32, 33, and 34, Township 33 North, Range 9 West, Mount Diablo Meridian, California.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

July 16, 1982.

[FR Doc. 82–19774 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[Group 796]

California; Filing of Plat of Survey

July 16, 1982.

1. A plat of survey of the following described land accepted July 6, 1982, will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, California

T. 11 N., R. 16 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines of Township 11 North, Range 16 East, Mount Diablo Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau and the U.S. Department of Agriculture, Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge

Chief, Section of Records and Data Management.

July 16, 1982.

[FR Doc. 82–19775 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[M 589]

Montana; Partial Termination of Proposed Withdrawal and Reservation of Lands

July 14, 1982.

The Department of Transportation filed application for withdrawal and reservation of lands from mineral entry for proposed highway construction. The application was published as **Federal Register** Document 67–641, Volume 32, No. 12, page 621 in issue of January 18, 1967. The Department has cancelled its application insofar as it affects the following described lands:

Principal Meridian

T. 6 N., R. 5 W.,
Sec. 16, unpatented portion of N½SW¼.

The area described contains approximately 32 acres in Jefferson County, Montana.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2–5(b)(1), at 8 am on September 15, 1981, such land will be relieved of the segregative effect of the above mentioned application.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–19777 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[M 8670]

Montana; Partial Termination of Proposed Withdrawal and Reservation of Land

The Forest Service, United States Department of Agriculture, filed an application for withdrawal of the following described land from operation of the public land laws including location and entry under the mining laws. The Notice of Proposed Withdrawal was published in the **Federal Register** on January 20, 1967, Volume 32, No. 13, page 678, Document No. 67–649 under M 1171 and republished on July 27, 1977, Volume 42, No. 144, page 38224 under M 8670. The applicant agency has cancelled its application in part as to the following:

Principal Meridian, Deerlodge National Forest, Main Gulch Campground

T. 5 N., R. 7 W.,
Sec. 23, W½SW¼NW¼NE¼, NW¼NW¼SW¼NE¼, SE¼NE¼NW¼, and N½NE¼SE¼NW¼.

The area described contains 22.5 acres in Jefferson County.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2–5(b)(1), at 8 am on September 15, 1982, such lands will be relieved of the segregative effect of the above mentioned application.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–19791 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[I–4376]

Idaho; Order Providing for Opening of Public Land

1. In an exchange of lands made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following land has been reconveyed to the United States:

Boise Meridian, Idaho

T. 22 N., R. 1 E.,
Sec. 24, S½SW¼.
T. 1 S., R. 6 E.,
Sec. 27, SW¼;
Sec. 28, NE¼SE¼.

The area described contains 280 acres in Idaho and Elmore Counties, Idaho.

2. The lands in T. 22 N., R. 1 E., have a moderately stocked Douglas-fir/Ponderosa Pine timber stand growing upon a northerly slope of the Little Elk Creek drainage. The slope has elevation of 4,200 to 4,900 feet above mean sea level and the soils are classified critical erosion hazard, especially when vegetation is removed. These lands are part of a key wintering area for elk and deer and provide nesting area for upland game and turkeys.

3. The lands in T. 1 S., R. 6 E., are located about twelve miles northwest of Mountain Home, Idaho. The soils on the tract are silt, clay loam desert soil on a 3 to 10 percent southwesterly slope above Mud Springs Creek. These lands were seeded to crested wheatgrass.

4. Subject to valid existing rights, provisions of existing withdrawals, and the requirements of applicable law, the following-described land is hereby open to operation of the public land laws, including the mining laws (ch. 2, Title 30 U.S.C.) and mineral leasing laws. All valid applications received at or prior to 9:00 a.m., August 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

T. 22 N., R. 1 E., B.M.,
Sec. 24, SE¼SW¼.
T. 1 S., R. 6 E., B.M.,
Sec. 27, SW¼;
Sec. 28, NE¼SE¼.

5. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described below is hereby open to operation of the public land laws. All valid applications received prior to 9:00 a.m., August 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

T. 22 N., R. 1 E., B.M.,
Sec. 24, SW¼SW¼.

6. Inquiries concerning the lands should be addressed to the Chief, Lands Section, Bureau of Land Management, 550 West Fort Street, Box 042, Boise, Idaho 83724.

William E. Ireland,

Chief, Lands Section.

[FR Doc. 82–19778 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[I–15375]

Idaho Order Providing for Opening Public Lands To Nonmetalliferous Mineral Location

July 15, 1982.

1. The Secretarial Order of Interpretation No. 186, dated June 16, 1933, of Public Water Reserve 107, is hereby revoked as to the following-described land, which does not meet the criteria of the Executive Order of April 17, 1926:

Boise Meridian

T. 12 S., R. 32 E.,
Sec. 10, NW¼SW¼.

The area described contains 40 acres in Power County.

2. At 9:00 a.m. on August 16, 1982, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on August 16, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on August 16, 1982, the land will be open to nonmetallifierous mineral location under the United States mining laws. The land has been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Clair M. Whitlock,

State Director.

[FR Doc. 82–19779 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

[Exchange CA 12957]

California, Humboldt County; Realty Action

The following described public land has been determined to be suitable for disposal under the provisions of Pub. L. 91–476, an Act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067), and Sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 10 N., R. 3 E.,
Sec. 21, SW¼SW¼.
T. 11 N., R. 2 E.,
Sec. 26, NW¼SW¼.
T. 11½ N., R. 3 E.,
Sec. 31, Lots 1, 2 and 3;
Sec. 32, Lots 1, 2, 3 and 4
Sec. 33, Lots 1, 2, 3 and 4;
Sec. 34, Lots 1, 2, 3 and 4;
Sec. 35, Lots 2, 3 and 4.
T. 12 N., R. 3 E.,
Sec. 28, NE¼NE¼.
Containing 865.44 acres.

Simpson Timber Company, P.O. Drawer V, Arcata, California 95521, has applied to acquire the above described lands in exchange for the following described privately owned lands.

Humboldt Meridian

T. 3 S., R. 1W.,
Sec. 16, SW¼.
T. 3 S., R. 2 E.,
Sec. 7, NE¼SE¼;

Sec. 8, W½SW¼, SE¼SW¼.
T. 7 N., R. 3 E.,
Sec. 2, Lots 2, 3 and 4, SW¼NE¼,SE¼;
Sec. 11E½, NW¼NE¼, SW¼SE¼;
Sec. 12, E½E½;
Sec. 14, N½NE¼,NE¼NW¼, SW¼NE¼, E½SW¼, W½SE¼.

Containing 1,361.98 acres.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface.

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consumated before the end of that period.

The value of the lands to be exchanged is approximately equal and money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of the exchange is to acquire non-Federal lands within the King Range National Conservation Area and to consolidate public land ownership for more effective management in the Scattered Blocks Planning Unit. The exchange is in conformance with Bureau planning, and in the public interest.

Detailed information concerning the exchange, including the environmental analysis and the record of non-Federal participation, is available for review at the Eureka Area Office, BLM, 1585 J Street, P.O. Box II, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification, this realty action will become the final determination of the Bureau.

Dated: July 13, 1982.

Harold R. Dietz,

Acting Chief, Lands Section, Branch of Lands and Mineral Operations.

[FR Doc. 82-19770 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

Rescind Off-Road Vehicle Closure

July 13, 1982.

Notice is hereby given that pursuant to an amendment to the 1982 Farm Bill, the Agricultural Research Service has total management responsibility for the Dubois Sheep Experiment Station in the Centennial Mountains, Montana. The **Federal Register** notice of September 26, 1978, designating these lands as either limited or closed to off-road vehicle use under the authority of the BLM is hereby rescinded. The lands are described as follows:

Principal Meridian, Montana

Blair Lake Trail

T. 15 S., R. 1, E.,
Sec. 3, lots 3, 4 and 5;
Sec. 4, lots 1 and 2.

Odell Creek Access

T. 15 S., R. 1 W.,
Sec. 18, lots 2, 3, 4, and 5 and 8.
T. 15 S., R. 2 W.,
Sec. 13, lot 4 and E½NE¼.
T. 14 S., R. 1 E.,
Sec. 25, SW¼SW¼;
Sec. 26, S½S½;
Sec. 27, S½S½;
Sec. 28, SE¼SE¼;
Sec. 32, lots 3 and 4;
Sec. 33, lots 1, 2, 3 and 4, NE¼, SE¼NW¼ and N½S½;
Sec. 34 and 35.
T. 15 S., R. 1 E.,
Sec. 1 and 2;
Sec. 3, lots 1 and 2;
Sec. 4, lots 3 and 4, N½ and N½SW¼;
Sec. 5, lots 1, 2, 3 and 4, NE¼, NE¼NW¼, S½NW¼ and NE¼SE¼;
Sec. 6, lot 3.
T. 14 S., R. 1 W.,
Sec. 31, NE¼SE¼ and S½SE¼;
Sec. 32, S½NE¼ and S½;
Sec. 33, S½SW¼ and SW¼SE¼.
T. 15 S., R. 1 W.,
Sec. 3, lots 6 and 7, N½SW¼ and SW¼SW¼;
Sec. 4, lots 2, 3 and 4, SW¼NE¼, S½NW¼ and S½S½;
Sec. 5, lots 1, 2, 3 and 4, S½N½, NW¼SW¼ and S½S½;
Sec. 6 to 10, inclusive;
Sec. 17;
Sec. 18, lots 1, 6 and 7 and NW¼NE¼.
T. 15 S., R. 2 W.,
Sec. 1 to 4, inclusive;
Sec. 5, lots 1, 4 and 5;
Sec. 9 to 12, inclusive;
Sec. 13, lots 1, 2 and 3, W½NE¼ and N½NW¼;
Sec. 14, 15, 22 and 23.

The lands are located in Beaverhead County in southwestern Montana, north of the Continental Divide which is the boundary between Montana and Idaho.

This order is effective immediately.

For further information contact either of the following Bureau of Land Management offices.

District Manager, Butte District Office, P.O. Box 3388, 106 N. Parkmont, Butte, Montana 59702; (406) 494–5059

Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725; (406) 683–2337

Demiles R. Pedersen,

Acting State Director.

[FR Doc. 82-19776 Filed 7-21-82; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Preplanning Activities for Resource Management Plan/ Environmental Impact Statement; Piceance Basin Planning Unit, White River Resource Area, Craig District

Pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management, Craig District has begun preparation for a resource management plan and environmental impact statement to guide and control future management actions on the public lands within the Piceance Basin Planning Unit of the White River Resource Area.

The Piceance Basin Planning Unit is located in northwestern Colorado, covering some 722,330 acres mainly in Rio Blanco County and a small portion of Garfield County. The 722,330 acres include 14 percent privately owned land, 4 percent state owned land, and 82 percent (589,080 acres) public land administered by BLM. The planning unit is bounded on the north by the White River, on the west by the Cathedral Bluffs, on the south by the Roan Plateau divide, and on the east by Colorado State Highway 13/789.

The resource management plan (RMP) is a comprehensive land use plan that will establish land areas for limited, restrictive, designated or exclusive uses within the planning unit. It will also identify lands for potential transfer from BLM administration. The RMP will identify allowable resource uses and levels of production or use to be maintained, resource condition goals, program constraints, and general management practices needed to achieve these objectives. The RMP will also establish a sequence of implementation, support action necessary, and the need for more detailed or specific plans.

The general issues that will be addressed by the RMP include: rangeland uses, present and future demands for minerals, land development, forestry management, recreation use, cultural resources, wilderness and wildlife areas, social and economic conditions, access rights-of-way, and soil, water and air quality.

Tentatively, a specific call for Expressions of Interest will be issued in the **Federal Register** on May 15, 1983 to determine industry interest in development of oil shale and associated minerals in Piceance Basin. This information will provide a guideline basis in the RMP planning process.

The tentative RMP schedule is as follows:

Notice of intent	Aug. 1, 1982.
Public scoping meetings	Aug. 24–26, 1982.
Written comments due	Oct. 1, 1982.
Specific call for expressions of interest	May 15, 1983.
Expressions due	July 15, 1983.
Draft RMP/EIS completed	Apr. 30, 1984.
Comment of draft due	Jun3 30, 1984.
Final RMP/EIS completed	Aug. 15, 1984.

An interdisciplinary team has been established to prepare the RMP, ensuring the integrated use of the natural and social science and the environmental design arts. Disciplinary specialists represented on this team will include:

Geologist	Archaeologist.
Realty Specialist	Sociologist.
Forester	Economist.
Range Conservationist	Fire Management Specialist.
Hydrologist	Soils Scientist.
Wildlife Biologist	Air Quality Specialist.
Engineer	Access Specialist.
Botantist	Surface Reclamation Specialist.
Wild Horse Specialist	Recreation/Wilderness/Visual Res. Spec.
Paleontologist	Transport./Noise/Net Energy Balance Spec.
Other Management and Support Positions.	

Public involvement will be an essential component of the RMP process. As a public resource management agency, BLM will make every effort to insure that attitudes, interests, and desires of local, regional and national groups are considered throughout the decision-making process. Public information meetings will be called as needed and/or requested. A newsletter will be published at least twice a year to inform the public of planning progress; dates, times and locations of meetings; and the availability of planning documents and related information.

In order to focus the direction of the RMP at the outset of the process, the public, other Federal agencies, state and local governments are encouraged to assist in identifying the issues and planning criteria that should be addressed by the RMP. Public meetings for this purpose will be held in August, 1982 in conjunction with the public meetings on the Draft Supplemental Environmental Impact Statement for the Prototype Oil Shale Leasing Program. The dates and locations of these meetings are given below and will be announced by local news media and a BLM newsletter. Future meetings will be announced by the media and newsletters as they are scheduled.

August 24, 1982 Denver
Ramada Inn Foothills, 11595 W. 6th Ave., 2:00 p.m.
August 25, 1982 Meeker
Fairfield Center, 200 Main Street, 7:00 p.m.
August 26, 1982 Grand Junction
Ramada Inn, 718 Horizon Drive, 7:00 p.m.

If you wish to discuss or review information relevant to the planning process, you may write, call, or visit: Curt Smith, Area Manager, BLM, White River Resource Area Office, P.O Box 928, 317 East Market Street, Meeker, Colorado 81641; Telephone (303) 878–3601.

Terry L. Plummer,

Acting District Manager.

[FR Doc. 82–19790 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–02–M

Montana and Wyoming; Call for Expression of Leasing Interest in the Power River Federal Coal Production Region

July 12, 1982.

SUMMARY: This call for Phase IV of the expressions of coal leasing interest for parts of the Powder River Area, Montana, is to integrate potential lessees data and need into the coal activity planning phase of the federal Coal Management Program in the Powder River Federal Production Region. The information received from this call will be used along with existing data to delineate tracts that would be considered for possible competitive leasing in a sale tentatively scheduled to begin June 20, 1984.

ADDRESS: Responses to this notice may be received until August 24, 1982.

Mr. Mike Penfold, Montana State Director (930), Bureau of Land Management, Box 30157, Billings, Montana 59107

Mr. George Mowat, Minerals Management Service, Resource Evaluation, P.O. Box 2550, Billings, Montana 59103

FOR FURTHER INFORMATION CONTACT:

Mr. J. Stan McKee, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82001; Telephone: (307) 722–2413

Mr. Bill Frey, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107; Telephone: (406) 657–6474

SUPPLEMENTARY INFORMATION: This is to advise all interested parties that Phase IV of the official call for expressions of interest in federal coal leasing for the second round of federal leasing in the Powder River Coal Region for possible lease sales, begins July 22, 1982.

Phase IV, of the call for expression of leasing interest incldues parts of the Powder River Resource Area of the BLM Miles City District, Montana, as follows:

1. Colstrip area of the South Rosebud (Planning Unit).
2. Greenleaf-Miller Area of the South Rosebud (Planning Unit).
3. Decker Area of the Decker-Birney (Planning Unit).
4. Moorehead Area of the Decker-Birney (Planning Unit).
5. Hanging Woman Area of the Decker-Birney (Planning Unit).
6. Squirrel Creek Area of the Decker-Birney (Planning Unit).
7. Otter Creek and Ashland Area of the Decker-Birney (Planning Unit).

Maps and other information on the areas acceptable for further consideration for coal leasing may be obtained from the BLM Montana and Wyoming State Offices at the address given above and from Mr. Bill Hill or Mr. Al Pierson at the BLM Miles City District Office, P.O. Box 940, Miles City, Montana 59301 (406) 232–4331.

This call for expressions of interest is the first step in activity planning for the second round of coal leasing in the Powder River Federal Coal Region under the federal coal management program. It is being made before any new tract boundaries are delineated within areas found acceptable for further consideration for coal leasing that will be used for lease sale after they have been through the tract ranking, selection, scheduling, and analysis processes that are an integral part of the federal coal management program defined in 43 CFR Subpart 3420.

Expressions of interest from small businesses and public bodies are actively invited in accordance with the provisions of 43 CFR 3420.1–4 which states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those

qualifying under the definitions of public bodies and small coal mining businesses. Entities desiring special leasing opportunities as a public body should state their intentions in their expressions of leasing interest for possible public body set-asides. Proof of public body status and evidence of qualifications as required by 43 CFR 3420.1–4(b)(1)(ii) shall be submitted with the expression of interest.

A major purpose of this call for expressions of interest is to integrate potential lessees' data and needs with the process of delineating the logical mining units prior to tract ranking, scheduling and analysis process. The BLM hopes to gain sufficient information from this call, and from its own site specific analyses, as well as using other information, to identify areas in which data are of sufficient detail to ultimately make a fair market value determination.

The proposed tracts delineated as a result of this call will be ranked and selected through the Regional Coal Team in accordance with provisions in 43 CFR 3420.4.

An expression of interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be modified or changed if there is sufficient reason to do so.

These expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

2. Quality needs (types and grades of coal) for both producers and users.

3. Coal reserve or drilling data that the company may have pertaining to the expression of interest area should be submitted to the Minerals Management Service. This request is made based on lack of total coal reserve data by the Minerals Management Service at this time. Lack of reserve data may eliminate areas for tract delineation.

4. Location:

a. Tracts desired by mining companies (narrative description with delineation on surface minerals management quad map, available for purchase from the BLM State Office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are a provided, the expression will be considered. In such cases the joint BLM/MMS delineation team will locate the tract.

5. Type of mine:

a. Surface or underground.

b. Technique of mining (i.e., longwall, room and pillar, strip mining, etc.).

6. Proposed uses of coal:

a. By mining companies.

b. By public and private industries.

7. Where coal is consumed (include extra-regional markets).

8. Transportation needs (i.e., railroads, pipelines, etc.):

a. Existing facilities.

b. Proposed facilities and development timing.

9. Available sources of coal:

a. Presently operative.

b. Contingency of other sources.

10. Information relating to mineral ownership:

a. Information on surface owner consents previously granted, e.g., a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee coal owners or for associated non-federal coal.

11. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR 3471.1–5.

Data which are considered proprietary should not be submitted as part of this expression of leasing interest.

An individual, business entity, governmental entity, or public body may participate and submit expressions of leasing interest under this call.

The call for Phase II expression of leasing interest for the Recluse Review area Wyoming scheduled to begin in April 1982 has been rescheduled for August 1982.

Demiles R. Pedersen,

Acting State Director.

[FR Doc. 82–19769 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Act that public meetings of the Santa Monica Mountains National Recreation Area Advisory Commission will be held in August 1982. These meetings will provide an opportunity for the public to comment on the Development Concept Plan for Paramount Ranch.

The Advisory Commission was established by Public Law 95–625 to provide for free exchange of ideas between the National Park Service and the public.

Members of the Commission are as follows:

Dr. Norman P. Miller, Chairperson
Honorable Marvin Braude
Ms. Sarah Dixon
Ms. Margot Feuer
Dr. Henry David Gray
Mr. Edward Heidig
Mr. Frank Hendler
Ms. Mary C. Hernandez
Mr. Peter Ireland
Mr. Robert Lovellette
Ms. Susan Barr Nelson
Mr. Carey Peck
Mr. Donald Wallace

The Advisory Commission will conduct the meetings in informal work sessions.

These meetings will be held in two locations in Los Angeles County.

The schedule and locations of meetings are as follows:

Monday, August 23, 1982 at 7:30 p.m., Taft High School, 5461 Winnetka Avenue, Woodland Hills, CA, Oral Arts room;

Saturday, August 28, 1982 at 9:30 p.m., Paramount Ranch, Northwest corner of Cornell Road/Mulholland Highway, Agoura, CA, Longhorn Building.

Persons who wish to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364. A copy of the Development Concept Plan may be obtained by writing to Nancy Fries Ehorn at the above address or calling her at 213–888–3440 after July 26, 1982.

Dated: July 13, 1982.

William Webb,

Acting Superintendent.

[FR Doc. 82–19850 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing

official, Mr. William T. Adams, at 202–395–7340.

Title: 30 CFR 826—Special Permanent Program Performance Standards-Operations on Steep Slopes.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Coal Mine Operators.

Annual Responses: 978.

Annual Burden Hours: 12,714.

Bureau Clearance Officer: Darlene Grose (202) 343–5447.

Darlene Grose,

Information Collection Clearance Officer.

[FR Doc. 82–19792 Filed 7–21–82; 8:45 am]

BILLING CODE 4310–01–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82–13369 beginning on page 21310 in the issue for Tuesday, May 18, 1982, make the following correction to MC 161732 (Applicant: R & I. Trucking, Inc.):

On page 21312, first line of the second column, the abbreviation "* * * MN * * *" should have read "* * * NM * * *".

BILLING CODE 1505–01–M

[OP2–157 A]

Motor Carriers Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: July 16, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier.

Agatha L. Mergenovich,

Secretary.

MC–F–14883, filed June 24, 1982. UNITED CARRIERS CORPORATION (Applicant), 1984 Coffman Rd., Newark, OH 43055—Continuance In Control—ELLIS EXPRESS, INC., 211B Ferris Ave., Waxahachie, TX 75165. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Applicant seeks authority to continue in control of Ellis Express, Inc., upon the institution by Ellis Express, Inc., of operations, in interstate or foreign commerce, as a motor common carrier. Applicant presently controls B & L Motor Freight, Inc., and Truck One, Inc., motor common carriers authorized in MC–123255 and MC–156327, respectively, each of which carriers is authorized to operate in all continental United States. The control of B & L and Truck One by United Carriers was approved in MC–F–14826.

Note.—Ellis Express, Inc., has filed as a directly related application, its initial common carrier application, docketed MC–162662, published in this same **Federal Register** issue.

[FR Doc. 82–19809 Filed 7–21–82; 8:45 am]

BILLING CODE 7035–01–M

[Decision Volume No. OP4–VOL–263]

Motor Carriers; Republications of Grants of Operating Rights; Authority Prior to Certification

July 16, 1982.

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 160936 (republication), filed March 9, 1982; published in the **Federal Register** issue of March 25, 1982; and republished this issue. Applicant: PRB ENTERPRISES, INC., 2609 Mockingbird Lane, Granite City, IL 62040. Representative: Steven L. Weiman,444 N, Frederick Ave., Suite 200, Gaithersburg, MD 20877, Phone: (301) 840–8565. In a decision by the Commission, Review Board Number 1,

decided June 3, 1982, and finds that performance by the applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting *metal products*, between points in Illinois, Ohio, Alabama, Tennessee, Delaware, and Michigan, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), will serve a useful public purpose, responsive to a public demand or need. Applicant is fit, willing and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include the State of Michigan in the origin territory.

MC 161126 (republication), filed March 19, 1982; published in the **Federal Register** issue of April 7, 1982; and republished this issue. Applicant: WINN STREET SERVICE, 90 Mountain Road, Burlington, MA 01903. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. In a decision by the Commission, Review board Number 1, decided June 8, 1982, and finds that performance by the applicant as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) machinery; and (2) transportation equipment, between points in the United States (except Alaska and Hawaii); will serve a useful public purpose responsive to a public demand or need. Applicant is fit, willing and able properly to perform the granted service and to conform to statutory and administrative requirements.

Note.—The purpose of this republication is to include "machinery" in the commodity description.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19807 Filed 7-21-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-180); ICC-BO-C-0039]

Rail Carriers; Baltimore & Ohio Railroad Co.—Exemption for Contract Tariff

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e) The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The Baltimore and Ohio Railroad Company (BO) filed a petition on July 1, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC BO-C-0039 to become effective on one day's notice. The contract was filed to become effective on July 28, 1982 and involves the movement of concrete pipe under joint contract rates with The Chesapeake and Ohio Railway Company, a participant in the contract.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Shipper is providing concrete pipe to be used in a public works water line project which requires early delivery to take advantage of the warm weather. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

BO's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(e) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(d) if protests are filed within 15 days of publication in the **Federal Register**.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 15, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this division for the purpose of resolving tie votes. Since there was no tie vote in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19805 Filed 7-21-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29965]

Rail Carriers; Chicago, Milwaukee, St. Paul & Pacific Railroad Co., (Richard B. Ogilvie, Trustee)—Trackage Rights Exemption—Over Escanaba & Lake Superior Railroad

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 the trackage rights agreement granting Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee) the right to operate over 48.04 miles of Escanaba & Lake Superior Railroad Company track between Green Bay and Crivitz, WI.

DATES: Exemption effective on August 22, 1982. Petitions for reconsideration must be filed on or before August 11, 1982, and petitions for stay must be filed on or before August 2, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423.

(2) Petitioner's representative: William L. Phillips, 516 West Jackson Boulevard, Suite 888—Union Station, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact TS InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call toll free (800) 424-5403, or for the D.C. metropolitan area, call 289-4357.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19811 Filed 7-21-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29968]

Rail Carriers; Pocono Northeast Railway Inc.—Exemption—Issuance of Stock

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Pocono Northeast Railway, Inc. from 49 U.S.C. 11301 for the issuance of 100,000 shares of common stock, reissuance of 300,000 shares of common stock and 250,000 shares of Class I preferred stock, and for future stock issuances under its revised capitalization up to the maximum authorized 999,900 shares of common stock and up to the additionally authorized 249,750 shares of Class I preferred stock.

DATES: This exemption is effective on July 19, 1982. petitions to reopen must be filed by August 9, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423.

(2) Petitioner's representative: Peter A. Gilbertson, Witkowski, Weiner, McCaffrey and Brodsky, P.C., 1575 Eye Street, NW., Washington, D.C. 20005.

Pleadings should refer to Finance Docket No. 29968.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of its full decision, contact T.S. InfoSystems, Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. Metropolitan area) or toll-free (800) 424–5403.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19806 Filed 7–21–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-172); ICC–UP–C–0057]

Rail Carriers; Union Pacific Railroad Co.—Exemption for Contract Tariff

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company (UP) filed a petition on June 30, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC–UP–C–0057 to become effective on one day's notice and involves the movement of frozen foodstuffs.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Advancement of the contract's effective date will allow the shipper to meet more readily the minimum volume requirements and will avoid disruption to shipper's accounting procedures. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

UP's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

> Although the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713 nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(d) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 16, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19808 Filed 7–21–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29955]

Rail Carriers; Berlin Mills Railway, Inc., James River–Dixie/Northern, Inc., James River Corp. of Virginia; Exemption

July 15, 1982.

On June 2, 1982, Berlin Mills Railway, Inc. (BMR), James River-Dixie/Northern, Inc. (JR–D/N), and James River Corp. of Virginia (JR) filed a notice of exemption from the prior approval requirements of 49 U.S.C. 11343 for the acquisition of control of Meridian & Bigbee Railroad Company (M&B) pursuant to our regulations at 49 CFR 1111.2(d)(2) and 1111.4(g).

JR–N/D, a wholly-owned subsidiary of JR, has contracted to purchase certain business assets from American Can Company (ACC) including all the capital stock of M&B (a class III rail carrier) and the pulp and paper mill, at Naheola, Alabama, served by M&B. JR also controls James River-Berlin/Gorham, Inc. (JR–B/G), which in turn controls BMR (another Class III railroad).

The present transaction is exempt under 49 CFR 1111.2(d)(2). The exemption was effective and the transaction could have been consummated after revocation of the motor carrier operating authority of JR's subsidiary Riverside Transportation, Inc. on July 1, 1982. BMR and M&B are nonconnecting class III carriers. BMR owns and operates an 11.66 mile track in New Hampshire. M&B owns and operates 50.36 miles of track, of which 30.70 miles are located in Alabama and 19.66 miles are located in Mississippi. JR has no other rail carrier in its corporate family. There is no evidence that the acquisition by JR–D/N, and ultimately by JR, of the M&B is part of a series of anticipated transactions that could connect the railroads.

The Commission has determined that the employee protective provisions found in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), satisfy the statutory requirements for the protection of employees involved in control and merger transactions. Under the *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982) such conditions must be provided if they would have been required if the transaction were not exempt.

By the Commission, Heber P. Hardy, Director, Office of Procedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19810 Filed 7–21–82; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Grand Gulf Nuclear Station Units 1 and 2; Meeting

The ACRS Subcommittee on Grand Gulf Nuclear Station Units 1 and 2 will hold a meeting on August 11, 1982, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will continue the discussion of the Mississippi Power and Light Company's request for an operating license.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1982, (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance to except for those sessions during which the Subcommittee finds it necessary to discuss proprietary and Industrial Security information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Wednesday, August 11, 1982, 2:30 p.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Mississippi Power and Light Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Herman Alderman (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. e.d.t.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary and Industrial Security information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C 552b(c)(4).

Dated: July 16, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–19859 Filed 7–21–82; 8:45 am]

BILLING CODE 7590–01–M

Consideration of Psychological Stress Issues; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of policy.

SUMMARY: On May 4, 1982, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *People Against Nuclear Energy (PANE)* v. *NRC*, No. 81–1131. By a divided vote, the court ruled that the National Environmental Policy Act requires the Commission to evaluate the effects on psychological health of operating the Three Mile Island Unit 1 facility. The Commission is directed to determine whether "significant new circumstances or information have arisen with respect to the potential psychological health effects of operating the TMI–1 facility," and if it answers that question affirmatively, to prepare a "supplemental environmental impact statement which considers not only effects on psychological health but also effects on the well-being of the communities surrounding Three Mile Island."

The time within which the Commission may seek further review of the court's decision by a petition to the Supreme Court for a writ of *certiorari* has not yet expired. Irrespective of its plans with respect to further judicial review of the decision, however, it is necessary for the Commission to provide guidance on the applicability of the decision to NEPA issues raised in proceedings other than the Three Mile Island Unit 1 restart proceeding, since the court did not provide explicit instructions to the Commission on that issue. (Indeed, the court stated expressly that it saw no need to attempt in its decision to "draw a bright line" between cognizable and non-cognizable psychological stress effects under NEPA.) The purpose of this Policy Statement is to furnish that guidance for NRC staff's own NEPA analyses, for proceedings in which NEPA psychological stress contentions have been or may be raised and for any petitions which may be submitted under 10 CFR 2.206 requesting relief on the basis of NEPA psychological stress issues.

The court's opinion states that the "issue of first impression" which it addresses is "the cognizability of post-traumatic psychological health effects under NEPA." Slip op. p. 13. Elsewhere, the court states its holding that while NEPA "does not encompass mere dissatisfactions arising from social opinions, economic concerns, or political disagreements with agency policies," the statute "does apply to post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe." Slip op. pp. 16–17. The court underlines this point with a reference to the "unique and traumatic nuclear accident" which gave rise to the fears alleged by PANE. Slip op. p. 16. The court also stated:

> We need not attempt to draw a bright line in this case. Three Mile Island is, at least so far, the only event of its kind in the American experience. We cannot believe that the psychological aftermath of the March 1979 accident falls outside the broad scope of the National Environmental Policy Act. Slip op., p. 17.

The majority opinion thus stands for the proposition that an evaluation of environmental impacts under NEPA includes evaluation of "post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe." As the Commission reads the opinion, the cognizability of psychological stress impacts under NEPA thus hinges on three elements. First, the impacts must consist of "post-traumatic anxieties", as distinguished from mere dissatisfaction with agency proposals or policies. Second, the impacts must be accompanied by physical effects. Third, the "post-traumatic anxieties" must have been caused by "fears of recurring catastrophe". This third element means that some kind of nuclear accident must already have occurred at the site in question, since the majority's holding was directed to "post-traumatic" anxieties and by fears of a "recurring" catastrophe. Moreover, the majority clearly had only serious accidents in mind, because of the use of the word "catastrophe" and its references to the "unique" Three Mile Island Unit 2 accident in the opinion. In the Commission's view, the only nuclear

plant accident that has occurred to date that is sufficiently serious to trigger consideration of psychological stress under NEPA is the Three Mile Island Unit 2 accident. Accordingly, only this accident can currently serve as a basis for raising NEPA psychological stress issues.

It is therefore the Commission's policy that adjudicatory boards, in ruling on NEPA contentions alleging psychological stress resulting from Commission-licensed activities, should assure that all of the elements described above are present. Psychological stress contentions which do not satisfy these criteria should be held inadmissible. For contentions which allege the elements described above, usual standards will apply for weighing the sufficiency of the initial filing. The NRC staff should apply the same tests in conducting its own NEPA analyses and in weighing requests for relief, filed under 10 CFR 2.206, which allege psychological harm resulting from ongoing Commission-licensed activities. The Commission believes that by adopting this approach, it can fully comply with the court's specific holding that the "psychological aftermath" of "unique and traumatic nuclear accidents" be cognizable in NRC proceedings, without at the same time so broadening the court's holding as to make the litigation of psychological stress contentions available virtually on demand in any licensing proceeding.

By adopting a literal reading of the court's decision, as far as other proceedings are concerned, the commission believes it is serving the public interest. In the conduct of licensing reviews and proceedings involving numerous complex technical issues, the Commission's resources should be devoted primarily to addressing the safety issues which are or might be the causes of psychological stress on the part of some members of the public, rather than to addressing the nature and extent of the stress itself.

Dated at Washington, D.C. this 16th day of July, 1982.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-19858 Filed 7-21-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-317]

Baltimore Gas and Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 72 to Facility Operating License No. DPR-53, issued to Baltimore Gas and Electric Company, which revised Technical Specifications for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1 located in Calvert County, Maryland. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to decrease the maximum allowable response and closure times for the Main Steam Line Isolation Valves and to correct a typographical error which occurred in the issuance of Amendment No. 71.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated June 30, 1982, (2) Amendment No. 72 to License No. DPR-53, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 13th day of July, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-19854 Filed 7-21-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. DPR-72, issued to the Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahassee (the licensees) which revised the Technical Specifications (TSs) for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida. The amendment is effective as of the date of issuance.

This amendment revises the TS requirements for overpower trip setpoints.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 21, 1979, as supplemented November 27, 1979, and February 15, 1980, (2) Amendment No. 54 to License No. DPR-72, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555,

Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 14th day of July 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-19855 Filed 7-21-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority; Availability of Safety Evaluation Report for the Watts Bar Nuclear Plant, Units 1 and 2

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of the Watts Bar Nuclear Plant, Units 1 and 2, located in Rhea County, Tennessee. Notice of receipt of Tennessee Valley Authority's application for a facility operating license for Watts Bar Nuclear Plant, Units 1 and 2, was published in the **Federal Register** on December 27, 1976 (41 FR 56244).

The report (Document No. NUREG-0847) is being referred to the Advisory Committee on Rector Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402. Copies may be purchased for $12.00 directly from NRC by sending check or money order, payable to Superintendent of Documents, to Director, Division of Technical Information and Document Control, U.S. NRC, Washington, D.C. 20555. GPO Deposit Account holders may charge their orders by calling (301) 492-9530. Copies are also available for purchase through the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 12th day of July 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-19856 Filed 7-21-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp. et. al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-43, issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensees), which revised Technical Specifications for operation of the Kewaunee Nuclear Plant (the facility) located in Kewaunee, Wisconsin. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in respect of (a) administrative controls and (b) plant staff qualifications relating to the Health Physics Supervisor.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negativwe declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated September 8, 1980 (as revised on December 9, 1980 and December 17, 1981) and August 7, 1981, (2) Amendment No. 46 to License No. DPR-43 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Kewaunee Public Library, 314 Milwaukee Street, Kenwaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of July, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-19857 Filed 7-21-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 148-2; Public Notice 813]

Under Secretary of State for Management; Amendment to Delegation of Authority

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), Delegation of Authority No. 148 of August 4, 1981 (46 FR 42395, August 20, 1981) as amended by Delegation of Authority No. 148-1 of September 9, 1981 (46 FR 50655, October 14, 1981) is further amended by adding at the end of section 3:

"However, the Under Secretary of State for Management is delegated authority to make decisions on recommendations of the Foreign Service Grievance Board under section 1107(d) of the Act which reflect settlement Agreements between a grievant and the Bureau of Personnel."

Dated: July 13, 1982.

Walter J. Stoessel, Jr.,

Acting Secretary.

[FR Doc. 82-19793 Filed 7-21-82; 8:45 am]

BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-32]

Industrial Union Department, AFL-CIO; Initiation of Investigation

On June 3, 1982, the Chairman of the Section 301 Committee received a petition from the Industrial Union Department, AFL-CIO, and others, alleging that Canada has provided subsidized financing on a contract for the sale subway cars to the New York Metropolitan Transit Authority in a manner which is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code") and is unreasonable and a burden on U.S. commerce. The petition was filed pursuant to Section 301 of the Trade Act of 1974, as amended (18 U.S.C. 2411 *et seq.*). On July 19, 1982 the United States Trade Representative decided to initiate an investigation pursuant to 19 U.S.C. 2412(a).

The text of the petition is printed below. The petition also includes a number of attachments which are available in Room 223 of the Office of the United States Trade Representative,

600 17th Street, N.W., Washington, D.C. 20506 (202) 395–3432.

Petition Filed With the United States Trade Representative Under Section 301 of the Trade Act of 1974, as Amended

In the Matter of Subsidized Export Credit to Canadian Firm Manufacturing Subway Cars

Petitioners

1. The petitions are labor organizations which are deeply concerned about Canadian Government concessional financing to a Canadian firm, Bombardier Company, enabling it to win a $663 million contract for the manufacture of subway cars from the New York Metropolitan Transit Authority. The following labor organizations are petitioning in this case:

—Industrial Union Department, AFL–CIO.
—United Automobile and Aerspace Workers.
—International Association of Machinists and Aerospace Workers.
—District 31 and District 19, United Steelworkers of America.

2. These labor organizations represent workers in the U.S. subway car manufacturing and supplier industries including the Budd Corporation and its supplier firms, which would lose an estimated 13,000 jobs if this contract were carried out by the Canadian company.

Canadian Practice Which is the Subject of the Petition

3. On January 5, 1982, proposals for the manufacture of 825 subway cars were submitted by three companies to the New York Metropolitan Transit Authority. The three companies submitting proposals were Bombardier (Canada), Francorail (France), and Budd Company (United States).

4. In order to gain the contract referred to above, the successful Canadian bidder, Bombardier Corporation, received below market financing from the Canadian Export Development Corporation which provided $563 million in financing at 9.7 percent for a period of 15 years. See Attachment I which is a synopsis of the MTA contract in question. In addition, we understand that the EDC has offered to indemnify the MTA for any penalties and legal fees it may incur as a result of this contract. See paragraphs 13 and 14 below for an explanation of how the contract violates international agreements.

5. The Canadian bid was identical in terms of price and financing to a bid submitted on behalf of a French consortium, Francorail. The French recognized that the terms of the Francorail bid clearly violated the Subsidies Code, and the OECD Arrangement. On February 2, 1982, the French export credit support agency (DREE) delivered a notice of derogation to the terms of the Arrangement to the Ex-Im Bank.

Violation of U.S. Law

6. This practice violated the following provisions of section 301 of the Trade Act of 1974, as amended:

"(a) Determinations Requiring Action—If the President determines that action by the United States is appropriate—

"(2) To respond to any act, policy, or practice of a foreign country or instrumentality that—

"(A) Is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

"(B) Is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved."

7. The Canadian laws or regulations which are the subject of the petition are the laws and regulations of the Canadian Export Development Corporation which provide for the program of low-cost financing for exports.

8. Canada is a signatory to the Code on Subsidies and Countervailing Duties and to the OECD Arrangement on Guidelines for Officially Supported Export Credits (Attachments II and III) and this petition alleges that Canadian practices violates these agreements. See paragraphs 13 and 14 below.

9. The products affected by the Canadian practice are 825 subway cars with a total value of $663 million.

Volume of Trade and Impact on U.S. Economy

10. The value of the subway car contract awarded by the New York MTA to the Canadian firm was $663 million. Press reports indicate that 30–40 percent of the value will be from assembly operations in the United States. The total value of the products entering the U.S. from Canada would be from $380–443 million.

11. The petitioning labor organizations would be affected in that an estimated 13,000 person years of employment in the U.S. subway car manufacturing and supplier industries would be lost.[1] Many of the workers holding the jobs would be members of the petitioning labor organizations.

12. The United States economy as a whole would lose federal, state, and local tax revenues as a result of loss of the above manufacturing and job opportunities.

Violation of International Agreement

13. The acts, policies and practice of the Canadian government in subsidizing export credit for the subway cars in question violate Article 9 of the Code on Subsidies and Countervailing Duties whereby export subsidies are prohibited. The Canadian practice violates both the maximum rates and minimum repayment terms under the Code as the Code refers to the OECD Arrangement on Guidelines for Officially Supported Export Credits, see Annex to Code on Subsidies and Countervailing Duties subsection (k).

14. The OECD Arrangement allows export financing at rates not greater than 11.25 percent for a period of no longer than 8.5 years, while the Canadian Government offered financing for the subway cars at 9.7 percent for 15 years.

Canadian Practice is Unreasonable

15. Even if the financing offered by the Canadian Export Development Corporation had been consistent with the Arrangement we still believe that the action is unreasonable because it would still result in a subsidy sufficient to deny the contract to the Budd Company of the United States, whose price and delivery date were more competitive. The exception created in Annex subsection (k) for official export credits was based on the expectation that the OECD Arrangement would effectively prohibit subsidized export financing by official export credit agencies. However, given the rapid increase in interest rates and the refusal of other participants in the Arrangement adequately to increase the Arrangement minimum interest rates, the Arrangement has not successfully controlled the subsidization of official export credits.

Canadian Practice Burdens and Restricts U.S. Commerce

16. The estimated subsidy of $352.8 million or $427,636 per car [2] given to the Candadian firm was more than enough to offset the competitive price and delivery date of the U.S. firm. The subsidy would result in the lost U.S. jobs and revenues mentioned above in paragraphs 10 and 11. The lowest bidder, Budd Company, of Troy, Michigan, offered a price of $770,768 per subway car (as opposed to $803,485 per car by the Canadian firm) and a delivery date of October, 1986 (seven months earlier than the Canadian bidder).

Petitioners Have Filed for No Other Relief

17. These petitioners have filed for no other forms of relief under the Trade Act of 1974 or any other provision of law.

Wherefore, petitioners request the following relief:

That the President take steps to restrict the importation of the Canadian subway cars built with the assistance of the low-cost export financing described in the petition.

Respectfully submitted,

Brian Turner,

Director for Legislation and Economic Policy, Industrial Union Dept., AFL–CIO.

June 3, 1982.

Interested parties are invited to submit their views concerning the allegations in the petition. Submissions should be filed in accordance with the procedures set forth in 15 CFR 2006.8 on or before August 20, 1982. In order to provide interested parties the opportunity to contest information submitted by other interested parties, rebuttal briefs may be filed in accordance with the requirements of 15

[1] The employment estimate is based upon an input-output model of the U.S. Economy which indicates that 25,000 jobs are involved in the production of $1 billion of output of subway cars.

[2] The subsidy estimate is based on the difference in interest costs on a $563 million loan for 15 years at 9.7 percent versus 15 percent, the rate at which current financing could be obtained in the U.S. market.

CFR 2006.8 on or before September 3, 1982.

Jeanne D. Archibald,

Chairman, 301 Committee.

[FR Doc. 82-19797 Filed 7-21-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82-070]

Port Access Route Study

AGENCY: Coast Guard, DOT.

ACTION: Final notice of study results.

SUMMARY: The purpose of this notice is to publish the results of the Port Access Route Study announced on April 16, 1979, in the **Federal Register** (44 FR 22543) and modified on January 31, 1980 (45 FR 7026). Only the results for study areas 7 through 12 are published in this notice. Generally, this area includes the coasts of Maryland, Virginia and North Carolina.

On the basis of the Port Access Route Study, no new offshore routing measures are recommended for study areas 7 to 12. The existing traffic separation scheme (TSS) in the approaches to the Chesapeake Bay is considered adequate for the foreseeable future, although voluntary changes in traffic patterns will be encouraged. The areas will be restudied in five years.

ADDRESSES: The Port Access Route Study report on which the present summary is based is available for inspection and copying at the Marine Safety Council, Room 4402, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593, between the hours of 8 a.m. and 4 p.m., Monday through Friday. The report will be filed under the docket number of this notice (CGD 82-070).

Details of the report are also available from the Fifth Coast Guard District (mps), Federal Building, 431 Crawford St., Portsmouth, VA 23705 (telephone (804) 396-6276).

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Project Manager, Office of Navigation, room 1606, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593, (202) 245-0108. Information on the details of the report is also available from the Fifth Coast Guard District office at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Fifth Coast Guard District performed the study for areas 7 to 12. Geographically, these areas extend from the coast seaward to the 1800 meter curve, between a line bearing 122° T from Fenwick Island Light (38°27.1' N, 75°03.3' W) and a line bearing 156° T from the North Carolina-South Carolina border to 32°50.0' N latitude, 78°00.0' W longitude.

Results for other study areas have been published as follows: areas 1 to 4 (coast of New England) in 47 FR 879; areas 5, 5a and 6 (New York and Delaware approaches and Long Island Sound) in 46 FR 49035; areas 13 to 20 (coast of South Carolina, Georgia and Florida) in 46 FR 48376; area 21 (Gulf of Mexico) in 46 FR 49989; areas 26 to 29 (coast of Oregon and Washington) in 46 FR 59686; areas 30 to 32 (Alaska) in 46 FR 61049; and area 22 (coast of southern California) in 47 FR 27430. Results for the remaining study areas (23 to 25 along northern California) will be published in a future **Federal Register.**

The **Federal Register** of April 16, 1979 (44 FR 22543) and the Fifth Coast Guard District Public Notice 5-430 of September 6, 1979, announced the commencement of the Port Access Route study for areas 7 to 12 and invited interested persons to comment on, and make contributions to the study. The preliminary findings of the study were published in the **Federal Register** on December 15, 1980 (45 FR 82406) and in the Fifth Coast Guard District Public Notice 5-469 of October 29, 1980. Comments from interested persons were solicited. None was received.

The study was initiated in response to a mandate in the Ports and Waterways Safety Act (PWSA) (Pub. L. 95-474; 92 Stat. 1472; 33 U.S.C. 1223). In the PWSA, Congress directed the Coast Guard to conduct a study of potential traffic density and the need for safe access routes for vessels operating in the approaches to U.S. ports and in the traditional routes between U.S. ports. Although the right of navigation in designated routing measures is to be considered paramount over all other uses, this study was to encompass those uses and, to the extent practicable, reconcile them with safe access needs.

Data for the study and information about vessel routing, possible user conflicts in the six study areas, and other navigational problems that might be encountered, was solicited from all parties having a maritime interest in maintaining safe access routes to the ports of the Fifth Coast Guard District. The parties contacted included State and local governments, Federal agencies, fishing interests, pilot associations, shipping companies, Outer Continental Shelf developers, and the general public.

Coincidentally, a study was initiated in 1979 to determine whether a Vessel Traffic Service (VTS) was needed for the entrance to the Chesapeake Bay. Although this VTS study was not originally scheduled as part of the Port Access Route Study, it addressed some of the same issues. Between the VTS and Port Access Route Studies, hundreds of ships' masters were interviewed to ascertain whether or not their voyages had been impaired by cross traffic, fixed structures or drilling vessels, or a lack of aids to navigation. The masters were also queried as to their routes through the survey area and their reasons for selecting those routes.

Conclusions and Recommendations

The conclusions of the Fifth Coast Guard District Port Access Route Study are:

a. That there is only a negligible indication of any present interference with navigation on the coastal waters of the study areas.

b. That only negligible user conflicts presently exist among the various maritime interests using the coastal waters of the study areas.

c. That there are safe offshore access routes to the ports in the study areas for the present and future projected amounts of vessel traffic using those ports. (Currently, a traffic separation scheme is established in the approaches to Chesapeake Bay. This TSS has been adopted internationally by the International Maritime Organization (IMO; formerly IMCO). It includes two sets of traffic lanes and a precautionary area.)

d. That there is no need to impose new ship routing measures, such as TSS's or shipping safety fairways where fixed structures would be prohibited, in any of the six study areas.

e. That during the next five years, the anticipated use and development of the natural resources found on that portion of the Outer Continental Shelf (OCS) located within the study areas will not interfere with the navigation on those waters, with the following exception:

Commercial development of tracts 40 through 45, Beaufort NI 18-4, of the Bureau of Land Management's OCS lease sale 56, may interfere with a large portion of vessel traffic in the southern part of study area 9 (off Morehead City, North Carolina). The Coast Guard will monitor the lease and later oil exploration of these tracts. Should commercial development prove feasible, the Coast Guard will evaluate any proposed development plan and, if necessary, take appropriate action to protect the safety of navigation. Should

any implementing regulations be required, they will be issued in accordance with section 4(c) of the Ports and Waterways Safety Act (33 U.S.C. 1223).

f. That the following practices should be encouraged for vessels transiting the entrance to the Chesapeake Bay:

(1) Passage of the CBJ buoy to port;

(2) Increased use of the south leg of the TSS;

(3) Security broadcasts upon entering inbound TSS lanes to announce on Channel 13 the vessel's name position and immediate intention.

g. That in five years the final results of this Port Access Route study should be reviewed to ensure their continued validity.

h. That methods should be explored for gathering data on the impact of offshore activities on vessel traffic, perhaps through use of platforms operated by OCS lease holders.

Implementation

The Port Access Route Study recommendations affecting vessel operations (paragraph f. above) will be implemented through notices to mariners and perhaps by chart notes. No rulemaking is considered necessary at this time.

Dated: July 12, 1982.

Peter J. Rots,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 82-19760 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Ventura and Los Angeles Counties, Calif.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for an operational improvement project on the Ventura Freeway in Ventura and Los Angeles Counties, California.

FOR FURTHER INFORMATION CONTACT: Albert J. Gallardo, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440-2804.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) will prepare an Environmental Impact Statement (EIS) on a proposal to improve the Ventura Freeway (Route 101) between the San Diego Freeway (Route 405) in the City of Los Angeles, and the Santa Clara River in the City of Oxnard. To reduce congestion, improve air quality, and reduce fuel consumption the following alternatives are being studied:

A. Add a lane in each direction between Mulholland Drive and Topanga Canyon Boulevard.

B. Ramp metering and bypass lanes.

C. Variations of high occupancy vehicle (HOV) lanes on the freeway.

D. Add a lane in each direction for all traffic between Route 405 and Moorpark Road.

E. Do nothing more than open the new lanes currently under construction in Ventura County to all traffic.

As part of the scoping process, numerous meetings have been held with staff people representing various agencies and elected officials in the corridor. Meetings have also been held with the Caltrans Transportation Advisory Committee of the Ventura County Association of Governments. Since July of 1981, public open houses have been conducted in communities adjacent to the freeway including Thousand Oaks, Woodland Hills, Camarillo, Oxnard, Canoga Park, Tarzana, and Encino.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued: July 12, 1982.

Albert J. Gallardo,

District Engineer, Sacramento, California.

[FR Doc. 82-19785 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Maritime Administration Docket No. S-716]

Atlantic Richfield Co.; Application

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Application—Extension of Comment Period.

A notice was published in the Federal Register (47 FR 26272) on June 17, 1982 for the purpose of noticing for public comment two applications filed by Atlantic Richfield Company for permission to repay the unamortized construction-differential subsidy applicable to the ARCO INDEPENDENCE and ARCO SPIRIT with appropriate interest, if any, in return for the permanent removal of the vessels' domestic trading restrictions. Comments were to be submitted not later than July 19, 1982. We have received a request from an interested party to extend the comment period. Accordingly, the deadline for comment is hereby extended. Comment from any interested person desiring to offer views concerning the applications should be submitted in triplicate to the Secretary, Maritime Administration, Room 7300-B, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 not later than August 2, 1982.

(Catalog of Domestic Assistance Program No. 11.500 construction-differential Subsidy (CDS))

By Order of the Maritime Subsidy Board/ Maritime Administration.

Dated: July 15, 1982.

Georgia Pournaras Stamas,

Assistant Secretary.

[FR Doc. 82-19753 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on October 6, 1982, to answer questions from the public and industry regarding the Agency's rulemaking, research and enforcement programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m. if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

At the October meeting, representatives of DOT will answer questions received from the industry and the public relating to NHTSA's rulemaking, research and enforcement programs (including defects). The purpose of this is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. (Questions regarding the Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions).

Questions for the October 6 meeting should be submitted in writing by

September 15 to Courtney M. Price, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, S.W., Washington, D.C. 20590. If sufficient time is available, questions received after the September 15 date may be answered at the meeting. The individual, group, or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by September 15 and the issues to be discussed will be mailed to interested persons on or before October 1, 1982, and will be available at the meeting. This list will serve as the agenda.

A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within four weeks after meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon receipt to NHTSA, Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued in Washington, D.C., on July 14, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-19823 Filed 7-21-82; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions

Correction

In FR Doc. 82-18724 beginning on page 30139 in the issue for Monday, July 12, 1982, make the following correction:

On page 30140, in the table listing "New Exemptions", the first entry under *Application No.* now reading "88" should have read "8854-N". The applicant is ETS Fauvet Girel, Neuilly-Sur-Seine, France.

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 141
Thursday, July 22, 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).

CONTENTS

1

CIVIL AERONAUTICS BOARD

[M-358 (amdt. 1); July 19, 1982]

Additions to the July 22, 1982 Board Meeting

TIME AND DATE: 10 a.m., July 22, 1982.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

10a. Air Transport Association air "slot" exchange agreement. (Memo 1382-A, BDA, OGC)
16. Negotiations with Venezuela. (BIA)
17. Negotiations with Israel. (BIA)
18. Report on Trinidad and Tobago. (BIA)
19. Implications for Negotiations of the Interagency Issues Group. (BIA)

STATUS: 10a (Open); 16-19 (Closed).

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1073-82 Filed 7-20-82; 3:31 pm]
BILLING CODE 6320-01M

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From July 22nd Open Meeting

The following item has been deleted at the request of Private Radio Bureau from the list of agenda items scheduled for consideration at the July 22, 1982, Open Meeting and previously listed in the Commission's Notice of July 15, 1982.

Agenda, Item No., and Subject

General—4—*Title:* Notice of Proposed Rule Making to provide for Emergency Position-Indicating Radiobeacon (EPIRB) for survival craft of vessels operating in the Great Lakes. *Summary:* The FCC will consider whether to adopt a Notice of Proposed Rule Making to amend Part 83 to provide for Class D and Class E EPIRB's for use on survival craft of vessels operating in the Great Lakes. These EPIRB's would operate on the frequencies 156.8 MHz and 156.75 MHz and their intended purpose is to increase the chances for rescue in a distress situation. The rule sections pertaining to Class A, Class B and Class C EPIRB's have been rewritten to separate the technical requirements for type acceptance from the operational requirements.

Issued: July 16, 1982.

William J. Tricarico,
Secretary, Federal Communications Commission.

[S-1067-82 Filed 7-20-82; 10:12 am]
BILLING CODE 6712-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 27, 1982 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:
Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, July 29, 1982 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Advisory opinions:
Draft AO 1982-45: Ann M. Dumenil, on behalf of the Salt River Project Agricultural Improvement & Power District
Draft AO 1982-46: Will Ehrle, President and General Counsel, Texas Manufactured Housing Association (TMHA—Committee For Responsible Government)
National Unity Campaign for John Anderson—Solicitation for National Unity Committee—Source of funds for repayment of non-qualified campaign expenses
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-1072-82 Filed 7-20-82; 2:55 pm]
BILLING CODE 6715-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, July 28, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: July 20, 1982.

James McAfee,
Associate Secretary of the Board.

[S-1074-82 Filed 7-20-82; 3:55 pm]
BILLING CODE 6210-01-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-82-16]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 29442, July 6, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, July 13, 1982.

STATUS: Open.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following items were added to the agenda:

Matters to be Considered:
7. *Recommendation* to the Federal Aviation Administration regarding United Control Corporation (Sundstrand) Cockpit Voice Recorders.
8. *Recommendation* to the Federal Aviation Administration regarding flight recorders on air carrier aircraft.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

July 20, 1982.

[S-1068-82 Filed 7-20-82; 12:39 pm]

BILLING CODE 4910-58-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 19, 1982 (Additional items).

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS; Open.

MATTERS TO BE DISCUSSED: *Wednesday, July 21:*

10:00 a.m.:

Discussion of ORNL Report, "Potential Precursors to Severe Core Damage" (public meeting) (additional item)

Thursday, July 22:

2:00 p.m.:

Discussion of GAO Report on Reactor Operator Capabilities (public meeting) (*Replaces* 3:00 p.m. Discussion with Licensing Board on Indian Point)

3:30 p.m.:

Affirmation/Discussion Session (public meeting) (items revised)

a. S-3 Policy Statement (Tentative)

b. Final Rule Implementing the Equal Access to Justice Act

c. Resumption of Hearing Before Commission in NFS, Erwin (Material Control and Accounting Amendment)

d. Alternative Commission Decision in Indian Point Special Proceeding

ADDITIONAL INFORMATION: On July 15 the Commission voted 5-0 to hold on short notice the Discussion of Management-Organization and Internal Personnel Matters, held that day. On July 15, the Commission voted 4-0 (Commissioner Gilinsky not present) to hold on short notice Affirmation of Three Mile Island Restart Proceeding—Appeal Board Order Requesting Authorization to Hear Issues Sua Sponte, held that day.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status of the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

July 15, 1982.

Walter Magee,

Office of the Secretary.

[S-1065-82 Filed 7-19-82; 4:04 pm]

BILLING CODE 7590-01-M

7

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISION

TIME AND DATE: 10 a.m. on August 5, 1982.

PLACE: Room 1101, 1825 K Street, N.W., 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: July 20, 1982.

[S-1070-82 Filed 7-20-82; 1:29pm]

BILLING CODE 7600-01-M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., August 19, 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: July 20, 1982.

[S-1071-82 Filed 7-20-82; 1:29 pm]

BILLING CODE 7600-01-M

9

POSTAL RATE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 31116, Friday, July 16, 1982.

DATE: Tuesday, July 20.

PLACE: Conference Room, Rm. 500, 2000 L Street, NW., Washington, D.C. 20268.

TIME: 2 p.m.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

CHANGES IN MEETING: Meeting re-scheduled for 10 a.m., Wednesday, July 21.

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, 254-3880.

[S-1066-82 Filed 7-20-82; 10:12 am]

BILLING CODE 7715-01-M

10

RAILROAD RETIREMENT BOARD

TIME AND DATE: 10 a.m., July 29, 1982.

PLACE: Board's meeting room, 8th floor, Headquarters Building, 844 Rush Street, Chicago, Illinois 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public:

MATTERS TO BE CONSIDERED: Portion open to the public.

(1) Appeal of Itel Corporation.

(2) Appeal of Rail Car Corporation.

(3) Detection and prevention of fraud, waste, and abuse at the Board—Bureau of Audit and Investigation.

(4) Survey of the Division of Disability Benefits.

(5) Annual Report of the Railroad Retirement Board.

(6) Erroneous overpayment of severance pay: Ceil Schlesinger.

(7) Proposed addition to Board Order 75-3 entitled "Policy With Regard to the Senior Executive Service (SES)".

(8) Inclusion of legislative proposals amending the RRA and RUIA to ease the administration of those Acts and to reduce the time limit to appeal a Board decision to the courts in the FY 1984 budget submission.

(9) Inclusion of the President's legislative proposal concerning the RRB in the FY 1984 budget submission.

(10) Final report of the planning taskforce recommending a plan for implementing personnel reductions in FY 1983.

(11) Staffing of Washington District/Liaison Office.

(12) Employer status of Burlington Northern (Manitoba) Limited.

(13) Procedure for handling dissents in appeals decisions.

(14) Appeal from referee's denial of spouse's dual windfall benefit, Pauline Menzie.

(15) Bruce H. Bradash appeal (availability for work).

Portion closed to the public:

A. Appeal from referee's denial of claim for a "period of disability," Leo G. Fay.

CONTACT PERSON FOR MORE INFORMATION: Beatrice Ezerski, COM No. 312-751-4920; FTS No. 387-4920.

[S-1069-82 Filed 7-20-82; 12:33 pm]

BILLING CODE 7905-01-M

federal register

Thursday
July 22, 1982

Part II

Department of Defense

Corps of Engineers, Department of the Army

Regulatory Programs of the Corps of Engineers

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 320, 321, 322, 323, 324, 325, 326, 327, 328, 329 and 330

Interim Final Rule for Regulatory Programs of the Corps of Engineers

AGENCY: Corps of Engineers, Army Department, DOD.

ACTION: Interim final rule and request for comments.

SUMMARY: We are hereby issuing final rules which govern the regulatory programs of the Corps of Engineers. On September 19, 1980, (45 FR 62732), we published proposed rules in the Federal Register which were based on legislative changes in the Clean Water Act, Executive Orders, judicial decisions and policy changes which occurred since our previous regulations were published on July 19, 1977. The major changes of these Regulations are reduction in processing time and expansion of the nationwide permit program. Because it has been nearly two years since the proposed rules were published, we are providing an additional comment period for interested parties to update their views. We will review all comments and determine whether any changes are necessary.

EFFECTIVE DATES: July 22, 1982. Comments must be received by August 23, 1982.

ADDRESS: Office of the Chief of Engineers, DAEN–CWO–N, 20 Massachusetts Ave., N.W., Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT:
Mr. Bernie Goode 202–272–0199
or
Mr. Morgan Rees, 202–697–6985.

SUPPLEMENTARY INFORMATION:

Classification

We have determined these regulation revisions not to be a major rule requiring a Regulatory Impact Analysis (RIA) under Executive Order 12291. However, because of the extensive public interest in the overall program we prepared an RIA. We submitted the RIA to the Office of Management and Budget. A copy has been placed in the agency record for this rule making and is available for public inspection. Since these revisions, for the most part, provide regulatory relief, they do not require a 30-day delay in implementation under 5 U.S.C. 553(d).

Environmental Impact Statement

We have determined that this action does not constitute a major federal action significantly affecting the quality of the human environment. Appropriate environmental documentation is prepared for all permit decisions. We prepared an environmental assessment for each of the nationwide permits in Part 330. We determined that, considering the potential impacts, required conditions, discretionary authority and best management practices, none would require preparation of an environmental impact statement.

Public Comment

We received nearly 400 public comments which covered the full range of views. On balance, the comments were favorable, but there were many strong criticisms that the regulations were too slanted towards environmental protection on the one hand and too slanted towards economic development on the other. We also held two public hearings on proposed nationwide permits, transcripts of which are on file in the Office of the Chief of Engineers. We convened a task force of experienced field and headquarters regulatory and legal personnel to review all comments, and synthesized them into major issues. Significant changes are as indicated below.

Part 320—General Regulatory Policies

Section 320.1(a): This new section discussing Corps of Engineers approach to its regulatory authorities received generally favorable support and has been adopted as proposed.

Section 320.1(b): Types of activities regulated. In the proposed regulations, we changed the definition of our Section 10 authority to add the term "physical" to the historic "course, condition, location or *physical* capacity". This was based on the judicial opinion in *National Wildlife Federation* v. *Alexander*, 613 F 2d 1054 (DC CIRC Dec 7, 79). (An incorrect cite was given in the preamble to the proposed regulations.) Since several other judicial opinions conflict and the case cited above is under appeal, we have decided not to change the regulations at this time. The word "physical" has been deleted throughout these final regulations. We also changed the language referring to outer continental shelf jurisdiction to conform to language in recent amendments to the Outer Continental Shelf Lands Act.

Section 320.3(a): This revision recognizes that Federal applicants now require state water quality certifications per revisions to Section 401 of the CWA.

Section 320.3(b): Recognition of the status of Indian tribes has been added for Coastal Zone Management Act (CZMA) consistency requirements.

Section 320.3(n): A new section has been added to recognize Corps of Engineers responsibility to review for impacts on navigation applications to EPA for point source discharge permits under Section 402 of the Clean Water Act.

Section 320.4(a): The public interest review. This is the heart of our evaluation process. It involves a weighing and balancing of all factors affecting the public interest. Many comments expressed concern that the policy statements in paragraph (b) through (o) are too broad and are subject to too wide a range of interpretation. We recognize that concern and are developing specific guidance on how each of the factors may affect the public interest balancing process based on specific citations of law, Executive policy and policies of the Corps and other Federal agencies. We have changed § 320.4(a)(2)(ii) to conform to CEQ–NEPA regulations that alternatives to proposed actions need not be investigated when there are no unresolved conflicts as to resource use. We have also made a technical change. The analysis of cumulative impacts previously required by § 320.4(a)(2)(iv) has been incorporated in § 320.4(a)(1). The potential for cumulative impacts will be considered in the evaluation of the impacts on each public interest factor rather than in a separate cumulative impact analysis which may overlook potential cumulative effects of one or more of the factors.

Several comments questioned the relationship between our public interest review and the Environmental Protection Agency Guidelines for the Specification of Disposal Sites for Dredged or Fill Material. The guidelines (40 CFR Part 230) were published in the Federal Register on December 24, 1980 pursuant to Section 404(b)(1) of the CWA. The guidelines and the public interest review go hand-in-hand. Once all aspects of the public interest have been considered, if a project does not conform to the guidelines, the permit would be denied.

Section 320.4(c): The statement on mitigation of fish and wildlife impacts has been deleted from this section as it is now incorporated in the policy for conditioning permits expressed in 33 CFR 325.4.

Section 320.4(j): Some comments were concerned that permits may be issued

without compliance with the requirements of Federal law such as water quality certification and coastal zone consistency. That is not the case. Those requirements are covered in 33 CFR Part 325. Section 320.4(j) deals with only those requirements established by local or state laws or Federal laws administered by other Federal agencies.

Section 320.4(l) and (m): Extensive comments were received on both the floodplain management and water conservation policies. However, after considering all the points of view, we have retained the policies. The floodplain policy is consistent with Executive Order 11988. With addition of language from Section 101(g) of the CWA, the water conservation policy is consistent with Federal policy. It does not infringe on the primary authority of the states to allocate water rights.

Section 320.4(n): A section has been added to recognize the national importance of energy conservation and development.

Section 320.4(o): A section has been added on navigation policy. Previously, 33 CFR Part 328 addressed Corps authority to establish harbor lines and was used as a basis for navigation policy. However, with the rescission of that part, there is a need to express navigation policy elsewhere. We also had to retain in our regulations the provision which authorizes all activities which took place shoreward of a harbor line prior to 27 May 1970, the date on which harbor lines were changed from permit authorization lines to navigational guidance lines.

Part 321—Dams and Dikes

There were no significant objections to a minor wording change to exclude weirs from Section 9 coverage and to provide an expedited decision process by processing applications concurrently with the applicant obtaining the necessary approval from either the Congress or the State Legislature.

Part 322—Structures and Work

Section 322.2(f): A provision has been added to allow general permits to be issued to avoid unnecessary duplication of the regulatory control exercised by another agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

Section 322.3(a)(1): The term "physical capacity" has been reverted to "navigable capacity" in the definition of Section 10 authority. See the discussion for § 320.1(b) above.

Section 322.4: Nationwide permits have been moved to Part 330.

Section 322.5(f): In the proposed rules, we specifically requested comments on our long standing policy of limiting our review of structures on the Outer Continental Shelf (OCS) under lease from the Department of Interior (DOI). About 10 years ago, we adopted a policy of limiting our review to navigation and national security because the DOI does a comprehensive review during its leasing procedures. There were extensive comments on both sides of the issue. Based on all the comments and in order to be responsive to Executive Order 12291, we have maintained our policy of limited review. The DOI concurred in this policy.

Section 322.5(g): We have changed this section to be consistent with the discussion under § 320.1(b) above.

Appendixes: The appendixes to Parts 322, 323, and 324 and Appendixes B and D–H to Part 325 have been deleted. They deal with internal Corps of Engineers operations and interagency agreements. They need not be incorporated in the Code of Federal Regulations. Also, we are sensitive to reducing the volume of these regulations. The interagency agreements have recently been revised and copies are available to the public.

Part 323—Discharges of Dredged and Fill Material

Section 323.2(a): In the proposed rules, we consolidated former categories 1, 2, and 3 of waters of the United States into one category. Some concerns were raised about this change. While we believe it would be a change only in form and not in substance, we did not make the change as proposed. This was to be consistent with EPA's definition found in 40 CFR Part 126.

Section 323.2(c): We received many comments on revisions to the definition of wetlands. In addition to a Corps field task force, we convened an interagency meeting to review potential improvements to the definition. Both groups, after extensive deliberation, did not provide any improvement on a technical basis. We have therefore, decided not to change the definition at this time.

Section 323.2(e) and (f): These sections were modified to combine the terms natural lake and impoundment into one term, lake. Many people commented that impoundments should not be given the same status in the review process as natural lakes. However, we believe that the evaluation of the public interest should be based on what the impacts actually are and not on whether the area in question is natural or man-made.

Section 323.2(h): The footnote for this section was changed to delete the requirement for the district engineer to notify the regional administrator of EPA when the median rather than the average annual flow is used to determine the headwaters of a stream. EPA and others expressed concern that EPA should be kept informed of these determinations. However, we know of no cases in the past where EPA has objected to such determinations. In the interests of reducing paperwork, we have deleted the notification requirement. District engineers, however, should notify EPA if EPA is known to have an interest in the area in question.

Section 323.2(n): A provision has been added to allow general permits to be issued to avoid unnecessary duplication of the regulatory control of another agency as discussed for 322.2(f), above.

Section 323.4: The nationwide permits which previously appeared in this section have been moved to Part 330. A new section has been added to describe the legislative exemptions to the program under Sections 404(f) and (r) of the CWA. The wording of § 323.4(a)(1)(i) and § 323.4(a)(1)(iii)(c)(1)(iv) have been changed slightly to recognize irrigation as a normal farming practice and to change the time for removal of stream blockages, to one year from the date of discovery, respectively. EPA has concurred with these changes and will at the next convenient opportunity amend its regulations at 40 CFR Part 230 to coincide with these modifications.

Section 323.5: A new section has been added to note the authority of EPA to transfer Section 404 programs to the states and Army support of program transfer. Many comments urged a more extensive discussion of procedural steps which the Corps intends to follow in a transfer process. However, we did not include such a discussion. EPA has published at 40 CFR Part 123 extensive transfer regulations. As we have not yet had the opportunity to discuss these with any states who have an interest in program transfer, we have not developed any transfer procedures.

Section 323.6(b): This section formerly § 323.5(b), has ben modified to be consistent with current agreements between the Corps and EPA which reflect EPA authority to veto disposal site specifications under Section 404(c) of the CWA.

Part 324—Ocean Disposal

Section 324.3(b)(2): This section was modified to note the requirement that Federal agencies must obtain Section 401 water quality certifications from the appropriate state or interstate agency to

dispose of dredged material within the territorial sea.

Part 325—Permit Processing

Section 325.1(b): This is a new provision for pre-application consultation based on regulations of the Council on Environmental Quality for agency procedural compliance with the National Environmental Policy Act (NEPA). Other Corps procedures and policies for compliance with CEQ's NEPA regulations in its regulatory programs are now found in Appendix B to 33 CFR Part 230; a number of changes and deletions have been made throughout Part 325 to reflect this.

Section 325.1(d): Many people commented that we required too much or too little information in support of an application. In deciding what should be required, we have tried to achieve a balance among various considerations such as clarity of plans for review by technical and non-technical people, cost of developing data and its utility in the review process, and to severely limit requests for additional information once an application is considered complete.

Section 325.1(d)(2): This new section would avoid piecemeal applications for work associated with the same project. Comments on this addition were very favorable.

Section 325.1(d)(6): This new section on dam safety drew extensive comment, some saying we did not go far enough, others saying that we have only duplicated existing state requirements. The intent of this section is that the district engineer must be reasonably assured that proper design standards are met. This may be done through evidence of approval by a duly established state review, design or review by appropriately qualified persons, or other reasonable means.

Section 325.1(e): This new section limits the additional information requested of an applicant to that which is essential for the district engineer's decision process.

Section 325.1(f) Fees: This was § 325.1(g) in the proposed rules. It was renumbered because the former Section 325.1(f), signature of application, was moved to § 325.1(d)(7) for format purposes. The fee for letters of permission (LOP) has been deleted on the basis that LOP's are minor and do not generate benefits to the permittee significant enough to warrant payment of a fee.

Section 325.2(a)(1) and (2): These sections were revised to reflect the requirement of Section 404(a) of the CWA that public notices be issued within 15 days of a completed application and a stipulation in a law suit involving ocean dumping, respectively.

Section 325.2(a)(6): The term "Findings of Fact" has been changed to "Statement of Findings" in this section and throughout these regulations to more properly reflect the nature of the document. This section also allows the district and division engineers to divulge recommendations on applications forwarded for higher authority decision.

Section 325.2(a)(9): This section concerning distribution of copies of permits has been moved from former § 325.2(b)(5).

Section 325.2(b): The provision for issuing joint notices with water quality certifying agencies has been moved and consolidated with other joint notice and processing authorities stated in 33 CFR 320.1(a)(5), 320.4(j)(6), and § 325.2(e).

Section 325.2(b)(1) has been expanded and clarified to describe procedures where more than one state is involved in the water quality certification process.

Section 325.2(b)(1)(ii) has been reworded for clarification.

Section 325.2(b)(2) has been expanded to cover costal zone certification procedures where Indian lands are involved.

Section 325.2(b)(5) refers to endangered species review (proposed to be in § 325.2(e). The former § 325.2(b)(5) has been moved to Section 325.2(a)(5) for format purposes.

Section 325.2(b)(6) has been deleted. The provision is a requirement of the Freedom of Information Act and need not be repeated in this regulation.

Section 325.2(d) has been revised to reduce processing time goals in accordance with comments received in response to the 1980 proposed rules. Subparagraph 4 is added to clarify that decisions will normally not be deferred pending action on other agency authorizations.

Section 325.2(e) has been added to specify alternative processing procedures available to division and district engineers. These include letters of permission, regional permits, joint procedures with other Federal, state, and local agencies and expedited review processes such as joint agency review meetings.

Section 325.2(e)(4): The authority to approve emergency processing procedures has been delegated from the Assistant Secretary of the Army to the division engineers. Many people asked for a more explicit description of emergency procedures. However, since it is impossible to determine ahead of time the nature of emergencies, division engineers are relied upon to use good judgment in establishing emergency procedures. Normally, such procedures would include expedited coordination with state and Federal agencies with an interest in any resources involved.

Section 325.3(a)(9) deletes the requirement for a statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement and adds a notice of categorical exclusion, if appropriate, in accordance with Appendix B to 33 CFR Part 230.

Section 325.3(c): The requirement which was added in the proposed rules for periodic purging of the public notice mailing list and the authority to publish notices in the local newspaper have been deleted from the final regulation. District engineers are still expected to take these actions as appropriate, but they are within the scope of normal public involvement principles and need not be expressed in the CFR.

Section 325.3(d) has been deleted from the regulation. It is an internal requirement which has been added to our internal reports system.

Section 325.4: The former section on environmental impact statements has been moved to Appendix B of 33 CFR Part 230. A new section on permit conditioning has been added. We received many comments on this section. It has been rewritten to incorporate many of those comments and to clarify the intent. The authority for bonding was moved from Part 326 of the proposed rules as it is related more to permit conditioning than to enforcement.

Section 325.5(c): This section has been revised to conform to new Section 325.2(e) on alternative processing and evaluation procedures.

Section 325.6(c) and (d): These sections have been rewritten to clarify the difference between the expiration of a permit itself and the expiration of an authorized construction period. Specification of a starting time for permitted activities is now optional. The term "revalidation" is no longer in use and has been deleted. Ocean dumping permits are limited to three years based on a stipulation agreed to in a law suit.

Section 325.7(b) and (k) have been revised to give permittees who are notified of suspension proceedings an opportunity to have an informal meeting as well as or instead of a public hearing.

Section 325.7(d) has been modified to delegate permit revocation authority from the Chief of Engineers to the authority who made the decision on the original permit.

Section 325.8(b) and (c) have been revised to conform to Memoranda of Agreement reached with other Federal agencies pursuant to Section 404(q) of

the CWA and to authorize district engineers to deny certain permits without issuing a public notice where other required authorizations have been denied or where the activity will clearly interfere with navigation.

Section 325.9 has been revoked and reserved. The former section on supervision and enforcement has been moved to Part 326, except subparagraph (e) on bonding authority which has been addressed in § 325.4.

Section 325.11 on district engineer case reports to higher authority has been deleted. It is an internal requirement of the Corps and need not be expressed in the CFR.

Appendix A. The permit form has been revised as indicated in the proposed regulations. There were no significant comments on this appendix.

1. The term "Federal Water Pollution Control Act (86 Stat. 816, PL 92–500)" has been changed to "Clean Water Act (33 U.S.C. 1344)" to reflect the new law citation.

2. The last clause of general condition "i" has been deleted and set forth as a new condition "j": "That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein." This change is to eliminate any suggestion that this provision relates to property rights.

3. General conditions "j" and "k" have been combined into a new condition "k": "That this permit may be modified, suspended or revoked in whole or in part pursuant to the policies and procedures prescribed in 33 CFR 325.7." This change eliminates present inconsistencies between the two conditions and the regulation provisions. It also avoids the necessity to revise the standard permit conditions in the future as the suspension, modification, and revocation procedures change in the regulations through rulemaking procedures.

4. General condition "o" has been revised to delete the start time dates pursuant to the change to § 325.6(c).

5. New general condition "u" has been added as follows: "That if the permittee, during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer." This notification will enable the district engineer to notify the appropriate authorities as required by historic preservation laws.

6. The last phrase of condition "b" under "Discharges of dredged or fill material into waters of the United States" relating to toxic pollutants has been changed from "in to other than trace quantities" to "in toxic amounts" to agree with the language of Section 101(a)(3) of the CWA.

7. Condition "d" under "Discharges of Dredged or Fill Material into Waters of the United States" pertaining to wild and scenic rivers has been deleted as its original inclusion as a permit condition was inappropriate.

Appendix B has been revoked and reserved. The 1967 Memorandum of Understanding with Department of Interior has been terminated. New agreements have been reached with five Federal agencies, under Section 404(q) of the Clean Water Act.

Appendix C, Procedures for the Protection of Cultural Resources, is being revised and was not yet complete for publication. The interim procedures adopted on April 3, 1980, 40 FR 66, pgs. 22112, et seq. still apply.

Part 326—Enforcement

Comments on this part were generally related to concerns that increased authority given to district engineers in determining the disposition of an enforcement case would result in greater risk to environmental quality. However, the changes are actually related only to program management. Most violations are minor, many of them resulting from lack of public understanding of Federal jurisdiction. This regulation has been advised to allow district engineers to recognize those cases and not require lengthy paperwork and processing procedures on all of them. The staff resources thereby made available would allow the district engineer to take more vigorous enforcement action and conduct greater coordination with interested parties on those cases which are potentially significant. The changes provide a focus on the substance of the violation and the need for enforcement action. It is expected that in significant cases, there will be full coordination with interested parties to develop appropriate protective or remedial measures. The full public interest balancing process has been deleted from this Part 326 but remains in the after-the-fact evaluation phase of 33 CFR Part 325 thereby eliminating the duplication of that evaluation required in the previous regulation.

Section 326.3(d) has been added to provide for cases which are not suitable for legal action and where the responsible party refuses to apply for after-the-fact authorization. The district engineer may now proceed on his own initiative giving due consideration in the processing requirements and the public interest review to the extent of information furnished by the responsible party.

Section 326.5: The former section dealing with processing after-the-fact permit applications has been deleted. The processing requirements are contained in Part 325. Former § 325.9 on supervision and enforcement has been moved to this section as it more directly related to this part than to Part 325.

Part 327—Public Hearings

The public hearing regulation has been changed to make the public hearing policies consistent under all Corps of Engineers regulatory authorities. As a standard, we adopted the policies and criteria previously applicable to Section 404 only. This part also combines the hearing file with the complete administrative record of the permit action. All the information previously required for the public hearing file was also required to be in the administrative record. This duplication has been eliminated. The requirement for a verbatim hearing transcript has been retained. The mandatory requirement for district counsel to be present at all hearings as a legal adviser to the presiding officer (§ 327.6) has been changed to a discretionary decision; the district engineer may wish to informally resolve a hearing request (§ 327.4); and § 327.5 provides that the district engineer may also appoint an appropriately qualified person other than the deputy district engineer to be a hearing officer. The intent of these changes is to provide greater flexibility in responding to requests for public hearings.

Part 328—Harbor Lines

This part has been revoked and reserved. The Corps policy on harbor lines and their impact on the public interest review process is now found at 33 CFR 320.4(o). That subparagraph also retains the authorization for activities constructed shoreward of harbor lines prior to 27 May 1970.

Part 329—Definition of Navigable Waters of the United States

Based on a court decision (Leslie Salt Co. v. Froelke, 578 F.2d 742) (9th Cir 1978) the shoreward limit of navigable waters of the United States (frequently referred to as "Section 10 waters") in coastal areas is the mean high water line on both the Atlantic and Pacific coasts (formerly the mean higher high water was used on the Pacific coast). Therefore, Part 329 has been amended to

delete the second sentence of § 329.12(a)(2).

Part 330—Nationwide Permits

Combining the nationwide permits previously found in 33 CFR 322.4 (Section 10 nationwide permits) and 33 CFR 323.4 (Section 404 nationwide permits) received very favorable response. Extensive comment was received on some aspects of the nationwide permit program and on specific nationwide permits. We conducted public hearings in Washington, DC and in St. Paul, Minnesota of obtain additional public comment. Comments from all sources ranged from strongly supportive to strongly opposed because the program was either too broad or too restrictive. We prepared environmental assessments for all proposed nationwide permits, and Section 404(b)(1) evaluations for Section 404 actions. The Chief of Engineers then reached the decision, supported by a Statement of Findings (SOF) that each of the nationwide permits contained in Part 330 is in the public interest. The decisions were based on the policies expressed in 33 CFR Part 320 and include consideration of the Clean Water Act Sections 101(b), 101(f), 404(e), and 404(q) and Executive Order 12291 which superseded E.O. 12044.

The major areas of concern are as follows:

1. *Compliance with the specific language of Section 404(e) of the CWA.* That section provides that nationwide permits may be issued for categories of activities which are similar in nature and which have individually and cumulatively minor environmental impacts. The concern was that some of the nationwide permits, particularly the ones for discharges into certain waters (§ 330.4) exceeded the Section 404(e) authority because the activities covered were considered by the respondent to not be minor and similar in nature. However, those permits and others were in effect at the time Congress adopted Section 404(e). The legislative history clearly shows Congress' intent to endorse the program in effect at the time and to encourage its expansion. Therefore, we consider that categories of activities may be based on similarities in time (§ 330.3), location (§ 330.4) and type of work (§ 330.5).

2. *State certification under Section 401 of the CWA.* In the proposed rules, we stated that we assumed all states would want to waive certification requirements except for § 330.5(a)(16), run-off from upland disposal areas. Several states responded with concerns that the nationwide permits did not take into account local and state needs. As a result, the regional conditioning authority discussed below was added to address any special concerns states may have. Even so, the State of Wisconsin took action to formally deny certification of certain nationwide permits. These permits have been so noted in the regulations.

3. *Coastal Zone Management.* Under the Coastal Zone Management Act, a state must determine if the proposed activity is consistent with its approved state coastal zone management plan. We noted in the proposed rules that the nationwide permits would comply with state coastal zone programs. A few states replied that they would need more detailed information to make a consistency determination. However, the nature of nationwide permits must be general to account for wide variations from region to region. We appreciate the concern expressed and have adopted the regional conditioning authority to deal with those concerns.

4. *Reporting on nationwide permits.* In the preamble to the proposed rules, we specifically sought comments on the need for a reporting procedure as a prerequisite for working under a nationwide permit. Reaction was great and sharply mixed. What appeared to be good for one region was not practicable for another. Some of the nationwide permits have automatic procedures whereby the Corps is informed of the activities, and others were consensus "no reporting" situations. The ones in between were difficult to handle in a uniform national fashion. Therefore, we have designed the regional conditioning authority to provide for reporting on a regional basis where the division engineer determines there is an appropriate need.

5. *Discretionary Authority/Regional Conditioning.* The discretionary authority in the proposed rules generated many comments. One major concern was the removal of discretionary authority from district engineers to the Chief of Engineers. Some people supported that concept. However, most believed that the Chief is too far removed from the local level and that the administrative process of seeking the Chief's approval would be inefficient and would thereby unduly influence a district engineer to avoid seeking discretionary authority. On the other hand, some commenters pointed out and experience has shown a need to improve the consistency of interpretation of Corps jurisdiction and policy. Accordingly, we have vested discretionary authority on a case-by-case basis with the division engineer who is closer to the problem and can provide necessary consistency. However, in order to override a nationwide permit for a entire category or geographic region, approval must be obtained from the Chief of Engineers. The nationwide permits published today go into effect immediately. Should additional regional conditions be found to be appropriate, they may be added at any time and appropriately announce to concerned parties. Work done between now and the effective date of any regional conditions would not be subject to those conditions. We considered deferring publication of the nationwide permits until the division engineers had an opportunity to develop regional conditions. However, the benefits to the regulated public and to the government administrative efforts stemming from immediate implementation appear to far outweigh any risk to public resources which may result while regional conditions are being considered. Note also that previously exercised discretionary authority under nationwide permits issued on 19 July 1977 expires four months from the date of these regulations. However, it may be reinstated after appropriate procedures have been followed.

6. *Section 330.3(a):* The nationwide permit for activities occurring before phase-in dates was issued with the July 1977 regulations. Those activities remain authorized. The section is included here to retain in the regulation that these activities have been authorized.

7. *Section 330.4:* The nationwide permits for activities occurring in certain waters drew the most comments. Some urged that we broaden the categories of water, others believed that this permit exceeds the authority of Section 404(e). Areas above the headwaters and isolated waters have never been regulated on a case-by-case basis (except for lakes greater than 10 acres) and it was clearly within the scope of the CWA to retain the nationwide permits existing at the time the legislation was enacted. Fills in the areas involved, including the expansion to include lakes of greater than 10 acres, are not usually a threat to water quality of the surface tributary system. In addition, case-by-case regulation of such areas is a more appropriate role for the states based on Sections 101(b) and 101(f) of the CWA. If there are areas where adequate state regulation is not present and there is a threat to the principles of the CWA, division engineers may assert discretionary authority as appropriate. The two nationwide permits found in § 330.4(a) (1) and (2) consolidate the four nationwide permits previously found at

33 CFR § 323.4–2(a). Conditions (b)(2) was modified to comply with the Endangered Species Act.

8. *Section 330.5:* The section describes specific nationwide permits 1 through 25. A few generated no comments but most had strong supporters and strong opponents. We attempted to incorporate all the concerns into the permit conditions, but as a result of the widely divergent views, found the task impossible. While we recognize many of the concerns raised about protection of resources, we believe that we have minimized any significant risk through the conditions and the discretionary authority, including regional conditioning. As noted above, the requirements of the regulations have been followed and it has been found that each of these nationwide permits is in the public interest.

a. *Section 330.5(a)(1):* This is an expansion of an existing nationwide permit previously found at 33 CFR 322.4(a). Only navigation aids installed by the Coast Guard were included. This revision expands the coverage to all aids and regulatory markers regulated by the Coast Guard. This permit avoids dual Federal regulatory control.

b. *Section 330.5(a)(2):* This is a reauthorization of the nationwide permit for structures in artificial canals previously found at 33 CFR 322.4(b).

c. *Section 330.5(a)(3):* This is reauthorization of the nationwide permit previously found at 33 CFR 322.4(c). The term fill material has been added. Normally, fill for repair and maintenance is exempt from regulation by Section 404(f)(1)(A). However, there are conditions in Section 404(f)(2) under which the exemption may not apply. In those cases, the nationwide permit would be operable.

d. *Section 330.5(a)(4):* Fish and wildlife harvesting activities are added to this existing nationwide permit previously found at 33 CFR 322.4(d). Such activities are or can be adequately regulated through other Federal, State and local fishing and hunting regulatory programs or they are so minor in impact as not to require any individual review.

e. *Section 330.5(a)(5):* This is a reauthorization of the nationwide permit for water testing devices previously found at 33 CFR 322.4(e).

f. *Section 330.5(a)(6):* This is a reauthorization and expansion of the nationwide permit for survey activities previously found at 33 CFR 322.4(f). Seismic operations are added to avoid unnecessary delays for geophysical survey activities.

g. *Section 330.5(a)(7)* is a new nationwide permit to avoid duplicating the regulatory control exercised by EPA under its Section 402 permitting authority. The public concern with impacts of outfall structures is generally related to what comes out of the pipe rather than to the pipe itself. Some expressed concern that EPA's scope of review is not broad enough to encompass occasionally significant environmental concerns. We believe it is. However, as an additional safeguard, discretionary authority is available should the need arise.

h. *Section 330.5(a)(8)* is a new nationwide permit to avoid duplicating regulatory control exercised on the Outer Continental Shelf by the Department of Interior, Bureau of Land Management and Geological Survey.

i. *Section 330.5(a)(9)* is a new nationwide permit to avoid duplicating controls exercised by the U.S. Coast Guard over vessel anchorage and fleeting areas. There were many concerns expressed about fleeting areas in the upper Mississippi. However, only one fleeting area has been designated by the Coast Guard and it is located in the lower Mississippi near New Orleans.

j. *Section 330.5(a)(10)* is a new nationwide permit to avoid unnecessary Federal control over private mooring buoys.

k. *Section 330.5(a)(11)* is a new nationwide permit to avoid unnecessary Federal control over temporary markers and buoys.

l. *Section 330.5(a)(12)* is an expansion of an existing nationwide permit for utility line crossings previously found at 33 CFR 323.4–3(a)(1). It now also includes bedding and backfill for outfall and intake structures.

m. *Section 330.5(a)(13)* is an expansion of an existing Section 404 nationwide permit for bank stabilization previously found at 33 CFR 323.4–3(a)(2). It now includes Section 10 authorization and some additional conditions.

n. *Section 330.5(a)(14)* is a reauthorization of an existing nationwide permit for minor road crossings previously found at 33 CFR 323.4–3(a)(3).

o. *Section 330.5(a)(15)* is an expansion of an existing nationwide permit previously found at 33 CFR 323.4–3(a)(4) for some bridge-associated fills in tidal waters where those fills are regulated by the U.S. Coast Guard as part of the bridge permit. The expansion to include non-tidal waters reduces dual Federal regulatory control for bridges crossing tidal *and* non-tidal navigable waters of the United States.

p. *Section 330.5(a)(16)* is a new nationwide permit to recognize that the return water from dredged material placed hydraulically on upland sites is administratively a 404 discharge but need not be regulated on an individual basis as long as the water quality concerns are protected through the Section 401 certification procedure. Reducing regulatory burdens on upland disposal should encourage such disposal and avoid the confusion now existing on why hydraulic disposal on the upland needs a 404 permit while non-hydraulic disposal does not.

q. *Section 330.5(a)(17)* is a new nationwide permit to avoid duplicating the regulatory control exercised by the Department of Energy, Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920 for small hydropower projects. Some people were concerned that FERC review might not fully reflect the principles of the Clean Water Act. We disagree. However, the safeguard of discretionary authority is still available.

r. *Sections 330.5(a)(18) and (19)* are new nationwide permits for very small dredging and filling activities. We had imposed a limit of five cubic yards in the proposed rules. However, we were persuaded by the comments that increasing the limit to 10 cubic yards is reasonable.

s. *Section 330.5(a)(20)* is a new nationwide permit to avoid regulatory delays associated with oil and hazardous substances containment and cleanup operations.

t. *Section 330.5(a)(21)* is a new nationwide permit to avoid duplicating the regulatory control exercised by the Department of the Interior under the Surface Mining Control and Reclamation Act of 1977. The provision for an advance review by the Corps would afford the Corps an opportunity to insure that the activity needing a Corps permit would have minimal impacts and thus qualify for the nationwide permit.

u. *Section 330.5(a)(22)* is a new nationwide permit for work associated with removal of wrecked vessels and navigational obstructions.

v. *Section 330.5(a)(23)* is a new nationwide permit to reduce duplication of effort and unnecessary paperwork concerning activities of other Federal agencies which would have only minimal individual or cumulative environmental impacts. Some concerns were raised that other federal agencies are not as aware of CWA principles as is the Corps of Engineers. We disagree, but have reserved discretionary authority should the need arise. The conditions specified in the proposed rules have been consolidated and the notification requirement has been moved from the district engineer to the Chief of Engineers in accordance with CEQ categorical exclusion procedures.

w. *Section 330.5(a)(24)* is a new nationwide permit to avoid duplications with state-administered Section 404 permit programs. Administration of the Section 404 program in waters which are navigable waters of the United States based solely on historical commercial use may be transferred to qualified states pursuant to Section 404(g) of the CWA. However, the Corps retains Section 10 permitting authority in these waters. Thus the discharge of dredged or fill material in such waters would require both a Corps Section 10 permit and State Section 404 permit. Since both EPA and the Corps have adequate control over the state 404 programs to protect the federal interest, a nationwide permit to satisfy the Section 10 jurisdictional authority would avoid paperwork, duplications, and delays. Other activities not involving the discharge of dredged and fill material in such waters would continue to be subject to Section 10.

x. *Section 330.5(a)(25)* is a new nationwide permit for placement of concrete into tightly sealed forms. This would address the situation where poured concrete used as a structural member would require a Section 404 permit whereas a structural member made of steel or wood but serving the same purpose does not require a Section 404 permit. The concrete structure itself would still require a Section 10 permit if located in navigable waters of the United States. This nationwide permit was announced in the Federal Register of May 15, 1981 and was discussed at our public hearings.

y. *Section 330.8:* A 5-year expiration date is added pursuant to Section 404(e) of the CWA.

Note 1

The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

Note 2

One purpose of these regulations is to bring up to date *all* policies which affect the Corps regulatory programs. All policy guidance issued prior to January 1, 1981 is hereby terminated. Since that time we have issued guidance letters with specific expiration dates.

List of Subjects

33 CFR Part 320

Environmental protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 321

Dams, Intergovernmental relations, Navigation, Waterways.

33 CFR Part 322

Continental shelf, Electric power, Navigation, Water pollution control, Waterways.

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 324

Water pollution control.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water pollution control, Waterways.

33 CFR Part 327

Administrative practice and procedure, Navigation, Water pollution control, Waterways.

33 CFR Part 329

Waterways.

33 CFR Part 330

Navigation, Water pollution control, Waterways.

For the reasons set forth in the preamble, Chapter II of Title 33 of the Code of Federal Regulations is amended by revising Parts 320, 321, 322, 323, 324, 325, 326, 327, and 329, removing and reserving Part 328 and adding a new part 330 to read as set forth below.

Dated: July 16, 1982.

Forrest T. Gay III,

Brigadier General, USA, Acting Director of Civil Works.

PART 320—GENERAL REGULATORY POLICIES

Sec.

Authority: 33 U.S.C. 401 *et seq.;* 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 320.1 Purpose and scope.

(a) *Regulatory approach of the Corps of engineers.* (1) The U.S. Army Corps of Engineers has been involved in regulating certain activities in the nation's waters since 1890. Until 1968, the primary thrust of the Corps' regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program evolved from one that protects navigation only to one that considers the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the "public interest balancing process" or the "public interest review." The program is one which reflects the national concerns for both the protection and utilization of important resources. It is a dynamic program that varies the weight given to a specific public interest factor in light of the importance of other such factors in a particular situation.

(2) The Corps is a highly decentralized organization. Most of the authority for administering the regulatory program has been given to the thirty six district engineers and eleven division engineers. If a district or division engineer makes a final decision on a permit application in accordance with the procedures and authorities contained in these regulations (33 CFR Parts 320–330), there is no administrative appeal of that decision.

(3) The Corps seeks to avoid unnecessary regulatory controls. The general permit program described in 33 CFR Parts 325 and 330 is the primary method of eliminating unnecessary Federal control over activities which do not justify individual control or which are adequately regulated by another agency.

(4) The Corps believes that applicants are not necessarily due a favorable decision but they are due a timely one. Reducing unnecessary paperwork and delays is a continuing Corps goal.

(5) The Corps believes that state and Federal regulatory programs should complement rather than duplicate one another. Use of general permits, joint processing procedures, interagency review coordination and authority transfers (where authorized by law) are encouraged to reduce duplications.

(b) *Types of activities regulated.* This regulation and the regulations that follow (33 CFR Parts 321–330) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army permits for various types of activities that occur in waters of the United States or the oceans. This part identifies the various Federal statutes that require Department of the Army permits before these activities can be lawfully undertaken; the related Federal laws applicable to the review of each activity that requires a Department of the Army permit; and the general policies that are applicable to the review of all activities that require Department of the Army permits. Parts 321–324 address the various types of activities that require Department of

the Army permits, including special policies and procedures applicable to those activities, as follows:

(1) Dams or dikes in navigable waters of the United States (Part 321);

(2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) Activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (Part 322);

(4) Construction of artificial islands, installations and other devices on the outer continental shelf (Part 322);

(5) Discharges of dredged or fill material into the waters of the United States (Part 323);

(6) Activities involving the transportation of dredged material for the purpose of disposal in ocean waters (Part 324); and

(7) Nationwide general permits for certain categories of these activities (Part 330).

(c) *Forms of authorization.* Department of the Army permits for the above described activities are issued under various forms of authorization. These include individual permits that are issued following a review of an individual application for a Department of the Army permit and general permits that authorize the performance of a category or categories of activities in a specific geographical region or nationwide. The term "general permit" as used in these regulations (33 CFR Parts 320–330) refers to both those regional permits issued by district or division engineers on a regional basis and to nationwide permits issued by the Chief of Engineers through publication in the **Federal Register** and applicable throughout the nation. The nationwide permits are found in 33 CFR Part 330. If an activity is covered by a general permit, an application for a Department of the Army permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general permit to satisfy requirements of law for a Department of the Army Permit.

(d) *General instructions.* The procedures for processing all individual permits and regional general permits are contained in 33 CFR Part 325. However, before reviewing those procedures, a person wanting to do work that requires a Department of the Army permit should review the general and special policies that relate to the particular activity as outlined in this Part 320 and Parts 321 through 324. The terms "navigable waters of the United States" and "waters of the United States" are used frequently throughout these regulations, and it is important from the outset that the reader understand the difference between the two. "*Navigable waters* of the United States" are defined in 33 CFR Part 329. These are waters that are navigable in the traditional sense where permits are required for certain work or structures pursuant to Sections 9 and 10 of the River and Harbor Act of 1899. "*Waters* of the United States" are defined in 33 CFR 323.2(a). These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to Section 404 of the Clean Water Act.

§ 320.2 Authorities to issue permits.

(a) Section 9 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 401) (hereinafter referred to as Section 9) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single state, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways by the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (49 U.S.C. 1155g(6)(A)). (See also 33 CFR Part 321.) A Department of the Army permit pursuant to Section 404 of the Clean Water Act is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways. (See 33 CFR Part 323.)

(b) Section 10 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands, installations, and other devices located on the outer continental shelf by Section 4(e) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)). (See also 33 CFR Part 322.)

(c) Section 11 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 404) authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads or other works may be extended or deposits made without approval of the Secretary of the Army. Effective May 27, 1970, permits for work shoreward of those lines must be obtained in accordance with Section 10 and, if applicable Section 404 of the Clean Water Act. (See § 320.4(o) of this Part.)

(d) Section 13 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency (EPA), and the States under Sections 402 and 405 of the Clean Water Act, respectively (33 U.S.C. 1342 and 1345). (See 40 CFR Parts 124 and 125.)

(e) Section 14 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 408) provides that the Secretary of the Army on the recommendation of the Chief of Engineers may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter referred to as Section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the waters of the United States as specified disposal sites. See 33 CFR Part 323. The selection and use of disposal sites will be in accordance with

guidelines developed by the Administrator of EPA in conjunction with the Secretary of the Army and published in 40 CFR 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation of such a prohibition in reaching his decision. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas (See 40 CFR Part 230).

(g) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as Section 103) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of disposal in the ocean where it is determined that the disposal will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The selection of disposal sites will be in accordance with criteria developed by the Administrator of the EPA in consultation with the Secretary of the Army and published in 40 CFR Parts 220–229. However, similar to the EPA Administrator's limiting authority cited in paragraph (f) of this section, the Administrator can prevent the issuance of a permit under this authority if he finds that the disposal of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. (See also 33 CFR 324.)

§ 320.3 Related laws.

(a) Section 401 of the Clean Water Act (33 U.S.C. 1341) requires any applicant for a Federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification from the State in which the discharge originates or would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected waters at the point where the discharge originates or would originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)), requires Federal agencies conducting activities, including development projects, directly affecting a State's coastal zone, to comply, to the maximum extent practicable, with an approved State coastal zone management program. Indian tribes doing work on Federal lands will be treated as a Federal agency for the purpose of the Coastal Zone Management Act. The Act also requires any non-Federal applicant for a Federal license or permit to conduct an activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the non-Federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's coastal zone management program. (See also 15 CFR Part 930.)

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1432), authorizes the Secretary of Commerce, after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or of the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations * * *". (See Appendix B of 33 CFR Part 230.)

(e) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, *et seq.*), the Migratory Marine Game-Fish Act (16 U.S.C. 760c–760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and other acts express the will of Congress to protect the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal agency that proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State.

(f) The Federal Power Act of 1920 (16 U.S.C. 791a *et seq.*), as amended, authorizes the Department of Energy (DOE) to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydro-power project. However, where such structures will affect the navigable capacity of any navigable waters of the United States (as defined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the DOE for the inclusion of appropriate provisions in the DOE license rather than the issuance of separate Department of the Army permit under 33 U.S.C. 401 *et seq.* As to any other activities in navigable waters not constituting construction, operation and maintenance of physical structures licensed by the DOE under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 *et seq.* remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposal in

ocean waters, Section 404 or Section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for such listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 *et seq.*), which amends the Act of June 27, 1960. By this Act, whenever a Federal construction project or Federally licensed project, activity or program alters any terrain such that significant historical or archeological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project.

(h) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 U.S.C. 1701(3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires Department of the Army authorization, the Property Report is required by Housing and Urban Development regulation to state whether or not a permit for the development has been applied for, issued, or denied by the Corps of Engineers under Section 10 or Section 404. The Property Report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act (16 U.S.C. 1531 *et seq.*) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act requires that Federal agencies in consultation with the US Fish and Wildlife Service and the National Marine Fisheries Service use their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized, funded or carried out by the Agency is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary of the Interior or Commerce, as appropriate, to be critical. (See also 50 CFR Parts 17 and 402.)

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all Federal authorizations required for the ownership, construction, and operation of a deepwater port, including applications for Section 10, Section 404 and Section 103 permits which may also be required pursuant to the authorities listed in § 320.2 and the policies specified in § 320.4 of this Part.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 *et seq.*) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.

(m) The Ocean Thermal Energy Conversion Act of 1980, (42 U.S.C. Section 9101 *et seq.*) establishes a licensing regime administered by the Administrator of NOAA for the ownership, construction, location and operation of ocean thermal energy conversion (OTEC) facilities and plantships. An application for an OTEC license filed with the Administrator constitutes an application for all Federal authorizations required for ownership, construction, location and operation of an OTEC facility or plantship, except for certain activities within the jurisdiction of the Coast Guard. This includes applications for Section 10, Section 404 and other Department of Army authorizations which may be required.

(n) Section 402 of the Clean Water Act authorizes EPA to issue permits under procedures established to implement the National Pollutant Discharge Elimination System (NPDES) program. The administration of this program can be and, in many cases, has been delegated to individual states. Section 402(b)(6) states that no NPDES permit will be issued if the Chief of Engineers, acting for the Secretary of the Army and after consulting with the US Coast Guard, determines that navigation and anchorage in any navigable water will be substantially impaired as a result of a proposed activity.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for Department of the Army permits. Additional policies specifically applicable to certain types of activities are identified in Parts 321–324.

(a) *Public interest review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be

considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work:

(ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on the public and private uses to which the area is suited.

(b) *Effect on wetlands.* (1) Some wetlands are vital areas that constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. For projects to be undertaken by Federal, state, or local agencies, additional guidance on wetlands considerations is stated in Executive Order 11990, dated 24 May 1977.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve significant natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected; and

(vii) Wetlands which through natural water filtration processes serve significant and necessary water purification functions.

(3) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas in consultation with the appropriate Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate state agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) or of this section because of provisions of paragraph (b)(3), of this section, unless the district engineer concludes, on the basis of the analysis required in paragraph (a), of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular alteration is necessary, the district engineer shall consider whether the proposed activity is dependent on being located in, or in close proximity to the aquatic environment and whether practicable alternative sites are available. The applicant must provide sufficient information on the need to locate the proposed activity in the wetland and the availability of practicable alternative sites.

(5) In addition to the policies expressed in this subpart, the Congressional policy expressed in the Estuary Protection Act, Pub. L. 90–454, and state regulatory laws or programs for classification and protection of wetlands will be given great weight.

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (paragraph 320.3(e) of this part) Corps of Engineers officials will consult with the Regional Director, U.S. Fish and Wildlife Seryice, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. They will give great weight to these views on fish and wildlife considerations in evaluating the application.

(d) *Water quality.* Applications for permits for activities which may adversely affect the quality of waters of the United States will be evaluated for compliance with applicable effluent limitations and, water quality standards, during the construction, and subsequent operation of the proposed activity. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of Section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration.

(e) *Historic, cultural, scenic, and recreational values.* Applications for permits covered by this regulation may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on values such as those associated with wild and scenic rivers, registered historic places and natural landmarks, National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, estuarine and marine sanctuaries, archeological resources, including Indian religious or cultural sites, and such other areas as may be established under Federal or state law for similar and related purposes. Recognition of those values is often reflected by state, regional, or local land use classifications, or by similar Federal controls or policies. Action on permit applications should, insofar as possible, be consistent with and avoid significant adverse effects on the values or purposes for which those classifications, controls, or policies were established.

(f) *Effect on limits of the territorial sea.* Structures or work affecting coastal waters may modify the coast line or base line from which the territorial sea

is measured for purposes of the Submerged Lands Act and international law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore (the Submerged Lands Act, 43 U.S.C. 1301(a) and United States v. California, 381 U.S.C. 139 (1965), 382 U.S. 448 (1966)). Applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The district engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, D.C. 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the administrative record of the application. After completion of standard processing procedures, the record will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) *Interference with adjacent properties or water resource projects.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) Because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect public health and safety, adversely impact floodplain or wetland values, or otherwise appear not to be in the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources.

(2) A riparian landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby riparian landowners and to the general public's right of navigation on the water surface. In the case of proposals which create undue interference with access to, or use of, navigable waters, the authorization will generally be denied.

(3) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR Part 329) and may interfere with an authorized Federal project, the applicant should be apprised in writing of the fact and of the possibility that a Federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the River and Harbor Act of 1899 or by Section 404 of the Clean Water Act which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

(4) Proposed activities which are in the area of a Federal project which exists or is under construction will be evaluated to insure that they are compatible with the purpose of the project.

(h) *Activities affecting coastal zones.* Applications for Department of the Army permits for activities affecting the coastal zones of those states having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-Federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate state agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-Federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interests of national security. Federal agency and Indian tribe applicants for Department of the Army permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved State coastal zone management programs.

(i) *Activities in marine sanctuaries.* Applications for Department of the Army authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(j) *Other Federal, state, or local requirements.* (1) Processing of an application for a Department of the Army permit normally will proceed concurrently with the processing of other required Federal, state, and/or local authorizations or certifications. Final action on the Department of the Army permit will normally not be delayed pending action by another Federal, state or local agency (see 33 CFR 325.2(d)(4)). However, where the required Federal, state and/or local certification and/or authorization has been denied for activities which also require a Department of Army permit before final action has been taken on the Army permit, the Army permit will be denied without prejudice to the right of the applicant to reinstate processing of the application if subsequent approval is received from the appropriate Federal, state and/or local agency. Even if official certification and/or authorization is not required by state or Federal law, but a state, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) Where officially adopted Federal, state, regional, local or tribal land-use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest and shall be considered in addition to the other national factors of the public interest identified in § 320.4(a) of this part.

(3) A proposed activity may result in conflicting comments from several agencies within the same state. Where a state has not designated a single responsible coordinating agency, district engineers will ask the Governor to express his views or to designate one

state agency to represent the official state position in the particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the evaluation of the permit application, a permit will generally be issued following receipt of a favorable state determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR Part 320–324, and the applicable statutes have been followed and considered: e.g., the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the Clean Water Act, the Archeological Resources Act, and the American Indian Religious Freedom Act. Similarily, a permit will generally be issued for Federal and federally-authorized activities; another Federal agency's determination to proceed is entitled to substantial consideration in the Corps' public interest review.

(5) The district engineers are encouraged to develop joint procedures with those states and other Federal agencies with ongoing permit programs for activities also regulated by the Department of the Army. In such cases, applications for Department of the Army permits may be processed jointly with the state or other Federal applications to an independent conclusion and decision by the district engineer and appropriate Federal or state agency. (See 33 CFR 325.2(e).)

(6) The district engineer shall develop operating procedures for establishing official communications with Indian Tribes within the district. The procedures shall provide for appointment of a tribal representative who will receive all pertinent public notices, and respond to such notices with the official tribal position on the proposed activity. This procedure shall apply only to those Tribes which accept this option. Any adopted operating procedures shall be distributed by public notice to inform the Tribes of the option.

(k) *Safety of impoundment structures.* To insure that all impoundment structures are designed for safety, non-Federal applicants may be required to demonstrate that the structure complies with established state dam safety criteria or has been designed by qualified persons and, in appropriate cases, that the design has been independently reviewed (and modified as the review would indicate) by similarly qualified persons.

(l) *Floodplain management.*

(1) Floodplains possess significant natural values and carry out numerous functions important to the public interest. These include:

(i) Water resources values (natural moderation of floods, water quality maintenance, and groundwater recharge);

(ii) Living resource value (fish, wildlife, and plant resources);

(iii) Cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation); and

(iv) Cultivated resource values (agriculture, aquaculture, and forestry).

(2) Although a particular alteration to a floodplain may constitute a minor change, the cumulative impact of such changes may result in a significant degradation of floodplain values and functions and in increased potential for harm to upstream and downstream activities. In accordance with the requirements of Executive Order 11988, district engineers, as part of their public interest review, should avoid to the extent practicable long and short term significant adverse impacts associated with the occupancy and modification of floodplains as well as the direct and indirect support of floodplain development whenever there is a practicable alternative. For those activities, which in the public interest, must occur in or impact upon floodplains, the district engineer shall ensure to the maximum extent practicable that the impacts of potential flooding on human health, safety and welfare are minimized, the risks of flood losses are minimized, and, whenever practicable the natural and beneficial values served by floodplains and restored and preserved.

(3) In accordance with Executive Order 11988, the district engineer should avoid authorizing floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no practicable alternatives, the district engineer may consider, as a means of mitigation, alternatives within the floodplain which will lessen any significant adverse impact to the floodplain.

(m) *Water supply and conservation.* Water is an essential resource, basic to human survival, economic growth, and the natural environment. Water conservation requires the efficient use of water resources in all actions which involve the significant use of water or that significantly affect the availability of water for alternative uses. Full consideration will be given to water conservation as a factor in the public interest review including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements. This policy is subject to Congressional policy stated in Sec. 101(g) of the Clean Water Act that the authority of states to allocate water quantities shall not be superseded, abrogated, or otherwise impaired.

(n) *Energy conservation and development.* Energy conservation and development is a major national objective. District engineers will give great weight to energy needs as a factor in the public interest review and will give high priority to permit actions involving energy projects.

(o) *Navigation.* (1) Section 11 of the River and Harbor Act of 1899 authorized establishment of harbor lines shoreward of which no individual permits were required. Because harbor lines were established on the basis of navigation impacts only, the Corps of Engineers published a regulation on May 27, 1970 (33 CFR 209.150) which declared that permits would thereafter be required for activities shoreward of the harbor lines. Review of applications would be based on a full public interest evaluation and harbor lines would serve as guidance for assessing navigation impacts. Accordingly, activities constructed shoreward of harbor lines prior to May 27, 1970 do not require specific authorization.

(2) The policy of considering harbor lines as guidance for assessing impacts on navigation continues.

(3) Navigation in all navigable waters of the United States continues to be a primary concern of the Federal government and will be given great weight in the public interest balancing process.

(4) District engineers should protect navigational and anchorage interests in connection with the NPDES program by recommending to EPA or to the state, if the program has been delegated, that a permit be denied unless appropriate conditions can be included to avoid any substantial impairment of navigation and anchorage.

PART 321—PERMITS FOR DAMS AND DIKES IN NAVIGABLE WATERS OF THE UNITED STATES

Sec.

Authority: 33 U.S.C. 401.

§ 321.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320

and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize the construction of a dike or dam in a navigable water of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401). See 33 CFR 320.2(a). Dams and dikes in navigable waters of the United States also require Department of the Army permits under Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 323 to satisfy the requirements of Section 404.

§ 321.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "dike or dam" means an impoundment structure that completely spans a navigaible water of the United States and that may obstruct interstate waterborne commerce. The term does not include a weir which is regulated pursuant to Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322).

§ 321.3 Special policies and procedures.

The following additional special policies and procedures shall be applicable to the evaluation of pemit applications under this regulation:

(a) The Secretary of the Army will decide whether Department of the Army authorization for a dam or dike in a navigable water of the United States will be issued, since this authority has not been delegated to the Chief of Engineers. The conditions to be imposed in any instrument of authorization will be recommended by the district engineer when forwarding the report to the Secretary of the Army, through the Chief of Engineers.

(b) Processing a Department of the Army application under Section 9 will not be completed until the approval of the United States Congress has been obtained if the navigable water of the United States is an interstate waterbody, or until the approval of the appropriate state legislature has been obtained if the navigable water of the United States is solely within the boundaries of one state. The district engineer, upon receipt of such an application, will notify the applicant that the consent of Congress or the state legislature must be obtained before a permit can be issued.

PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Sec.

Authority: 33 U.S.C. 403.

§ 322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325 those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize certain structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10). See 33 CFR 320.2(b). Certain stuctures or work in or affecting navigable waters of the United States are also regulated under other authorities of the Department of the Army. These include discharges of dredged or fill material into waters of the United States, including the territorial seas, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344; see 33 CFR Part 323) and the transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR Part 324). A Department of the Army permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "structure" shall include, without limitation, any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means a type of individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.2(e).

(e) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR 325 and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR 320.

(f) The term "general permit" means a Department of the Army authorization that is issued on a nationwide ("nationwide permits") or regional ("regional permits") basis for a category or categories of activities when:

(1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) the general permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR Part 330).

§ 322.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required under Section 10 for structures and/or work in or affecting navigable waters of the United States except as otherwise provided in these regulations. Activities that were commenced or completed shoreward of established Federal habor lines before May 27, 1970 (see 33 CFR 320.4(o)) also do not require Section 10 permits; however, if those activities involve the discharge of dredged or fill material into

waters of the United States after October 18, 1972, a Section 404 permit is required (see 33 CFR Part 323).

(1) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work outside these limits are subject to the provisions of law cited in paragraph (a) of this section, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on the navigable capacity of the waterbody. For purposes of a Section 10 permit, a tunnel or other structure or work under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.

(2) Pursuant to Section 154 of the Water Resource Development Act of 1976 (Pub. L. 94–587), Department of the Army permits will not be required under Section 10 to construct wharves and piers in any waterbody, located entirely within one State, that is a navigable water of the United States solely on the basis of its historical use to transport interstate commerce. Section 154 applies only to the construction of a single pier or wharf and not to marinas. Furthermore, Section 154 is not applicable to any pier or wharf that would cause an unacceptable impact on navigation.

(b) *Outer continental shelf.* Department of the Army permits will also be required for the construction of artificial islands, installations, and other devices on the outer continental shelf pursuant to Section 4(e) of the Outer Continental Shelf Lands Act as amended (see 33 CFR 320.2(b)).

(c) *Activities of Federal agencies.* (1) Except as specifically provided in this subparagraph, activities of the type described in paragraphs (a) and (b), of this section, done by or on behalf of any Federal agency, other than any work or structures in or affecting navigable waters of the United States that are part of the civil works activities of the Corps of Engineers, are subject to the authorization procedures of these regulations. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and district engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(2) Congress has delegated to the Secretary of the Army and the Chief of Engineers in Section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States. The general legislation by which Federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of Section 10. If an agency asserts that it has Congressional authorization meeting the test of Section 10 or would otherwise be exempt from the provisions of Section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of Section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(3) The policy provisions set out in 33 CFR 320.4(j) relating to state or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy, e.g., Section 313 and Section 401 of the Clean Water Act.

§ 322.4 [Reserved]

§ 322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 10 permits. The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) *General.* Department of the Army permits are required for structures or work in or affecting navigable waters of the United States. However, certain structures or work specified in 33 CFR Part 330 are permitted by that regulation. If a structure or work is not permitted by that regulation, an individual or regional Section 10 permit will be required.

(b) [Reserved]

(c) *Non-Federal dredging for navigation.* (1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging access channels to docks and berthing facilities or deepening such channels to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested Federal, state, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with these regulations. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will, therefore, be accorded to the fullest extent possible to both Federal and non-Federal operations. Furthermore, permits for non-Federal dredging operations will normally contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation may also authorize the periodic maintenance dredging of the project. Authorization procedures and limitations for maintenance dredging shall be as prescribed in 33 CFR 325.6(e). The permit will require the permittee to give advance notice to the district engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping in the ocean waters, the procedures in 33 CFR Parts 323 and 324 respectively shall also be followed.

(d) *Structures for small boats.* (1) As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District

engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a resource manager are normally subject to permit authorities cited in § 322.3, above, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake resource manager's office.

(e) *Aids to navigation.* The placing of fixed and floating aids to navigation in a navigable water of the United States is within the purview of Section 10 of the River and Harbor Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of their control of marking, lighting and standardization of such navigation aids. A Section 10 nationwide permit has been issued for such aids provided they are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 330). Electrical service cables to such aids are not included in the nationwide permit (an individual or regional Section 10 permit will be required).

(f) *Outer continental shelf.* Artifical islands, installations, and other devices located on the outer continental shelf are subject to the standard permit procedures of this regulation. Where the islands, installations and other devices are to be constructed on lands which are under mineral lease from the Bureau of Land Management, Department of the Interior, that agency, in cooperation with other Federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria.

(g) *Canals and other artifical waterways connected to navigable waters of the United States.* (1) A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, of this part, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, location, condition, or capacity or if at some point in its construction or operation it results in an effect on the course, location, condition, or capacity of navigable waters of the United States. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of these regulations. For all other canals, the exercise of regulatory authority is restricted to those activities which affect the course, location, condition, or capacity of the navigable waters of the United States.

(2) The proponent of canal work should submit the application for a permit, including a proposed plan of the entire development, and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal, to the district engineer before commencing any form of work. If construction of the canal in such a manner as to result in an effect on the course, location, condition, or capacity of the navigable waters of the United States has already taken place without a permit, the district engineer will proceed in accordance with 33 CFR Part 326. Where the construction of the canal would result in an effect on the course, location, condition, or capacity of navigable waters of the United States, an application for a Section 10 permit should be made at the earliest stage of planning. Where the district engineer becomes aware that the canal construction has already begun, he will advise the proponent in writing of the need for a permit to the extent that the construction will result in an effect on the course, location, condition, or capacity of navigable waters of the United States. He will also ask the proponent if he intends to undertake such work and will request the immediate submission of the plans and permit application if it is so intended. The district engineer will also advise the proponent that any work is done at the risk that, if a permit is required, it may not be issued, and that the existence of partially completed excavation work will not be allowed to weigh favorably in evaluation of the permit application.

(h) *Facilities at the borders of the United States.* (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or importation of natural gas to or from a foreign country, must be made to the Secretary of Energy. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717(b), as amended by Executive Order 12038, February 3, 1978, and 18 CFR Parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country. (Executive Order 11423, August 16, 1968).

(5) A Department of the Army permit under Section 10 of the River and Harbor Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the district engineer, in evaluating the general public interest, may consider the basic existence and operation of the facility to have been primarily examined and permitted as provided by the Executive Orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate Department of the Army authorizations under Section 404 of the Clean Water Act or under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as

amended, are also required (see 33 CFR Parts 323, 324).

(i) *Power transmission lines.* (1) Permits under Section 10 of the River and Harbor Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Department of Energy under the Federal Power Act of 1920. If an application is received for a permit for lines which are part of such a water project, the applicant will be instructed to permit the application to the Department of Energy. If the lines are not part of such a water power project, the application will be processed in accordance with the procedures of these regulations.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Nominal system voltage, kV	Minimum additional clearance (feet) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

(j) *Seaplane operations.* (1) Structures in navigable waters of the United States associated with seaplane operations require Department of the Army permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notifed by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, district engineer, and other interested parties as to the effects of the proposal on the use of airspace. The district engineer will therefore refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to its recommendations when evaluating the general public interest.

(3) If the seaplane base would serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects a determination and conditions relating to the installation, operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the district engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(4) For regulations pertaining to seaplane landings at Corps of Engineers projects, see § 327.4 of this part.

(k) *Foreign trade zones.* The Foreign Trade Zones Act (48 Stat. 998–1003, 19 U.S.C. 81a to 81u, as amended) authorizes the establishment of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published at Title 15 of the Code of Federal Regulations, Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the district engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of these regulations. Evaluation by a district engineer of a permit application may give recognition to the consideration by the Board of the general economic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

PART 323–PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

Sec.

Authority: 33 U.S.C. 1344

§ 323.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter referred to as Section 404). See 38 CFR 320.2(g). Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401; see 33 CFR Part 321) and certain structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403; see 33 CFR Part 322). A Department of the Army permit will also be required under these additional authorities if they are applicable to activities involving discharges of dredged or fill material into waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "waters of the United States" means: [1]

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect

[1] The terminology used by the CWA is "navigable waters" which is defined in Section 502(7) of the Act as "waters of the United States including the territorial seas." For purposes of clarity, and to avoid confusion with other Corps of Engineers regulatory programs, the term "waters of the United States" is used throughout this regulation.

interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travels for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition.

(5) Tributaries of waters identified in paragraphs (a)(1)–(4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)–(6) of this section. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

(b) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR Part 329 for a more complete definition of this term.)

(c) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

(d) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(e) The term "lake" means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

(f) The term "ordinary high water mark" means that the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the charactertics of the surrounding areas.

(g) The term "high tide line" is the line used in Sec. 404 determinations and means a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The mark may be determined by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(h) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second.[2] The District engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means.

(i) The term "dredged material" means material that is excavated or dredged from waters of the United States.

(j) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(k) The term "fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of an waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Clean Water Act.

(l) The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The terms does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(m) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this regulation and 33 CFR Part 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR Part 320.

(n) The term "general permit" means a Department of the Army authorization that is issued on a nationwide ("nationwide permits") or regional ("regional permits") basis for a category or categories of activities when:

(1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) the general permit would result in avoiding unnecessary duplication of

[2] For streams that are dry during long periods of the year, district engineers may establish the headwater point as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR Part 330).

§ 323.3 Discharges requiring permits.

(a) *General.* Except as provided in § 323.4 below, Department of the Army permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in 33 CFR Part 330 are permitted by that regulation ("nationwide permits"). Other discharges may be authorized by district or division engineers on a regional basis ("regional permits"). If a discharge of dredged or fill material is not exempted by § 323.4 of this part or permitted by 33 CFR Part 330, an individual or regional Section 404 permit will be required for the discharge of dredged or fill material into waters of the United States.

(b) *Activities of Federal agencies.* Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, other than the Corps of Engineers (see 33 CFR 209.145), are subject to the authorization procedures of these regulations. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulations. Division and district engineers will therefore advise Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in expediting the processing of their applications.

§ 323.4 Discharges not requiring permits.

(a) *General.* Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii)(A) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(*1*) Minor Drainage means:

(*i*) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a Section 404 permit.);

(*ii*) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(*iii*) the discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species.[3]

(*iv*) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption.

(*2*) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any of area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction

[3] The provisions of paragraphs (a)(1)(iii)(C)(*1*)(*ii*) and (*iii*) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.

of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing will never involve a discharge of dredged or fill material.

(E) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with irrigation facilities in the waters of the U.S. are included within the exemption unless the discharges have the effect of bringing these waters into a use to which they were not previously subject and the flow or circulation may be impaired or reach reduced of such waters.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a state has an approved program under section 208(b)(4) of CWA which meets the requirements of sections 208(b)(4)(B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the state's approved program description pursuant to the requirements of 40 CFR 123.4(h)(4), and shall also include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a)(1)–(6) of this section contains any toxic pollutant listed under section 307 of CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a permit.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a)(1)–(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject and the flow for circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.[4]

(d) Federal projects which qualify under the criteria contained in Section 404(r) of CWA (Federal projects authorized by Congress where an EIS has been submitted to Congress prior to authorization or an appropriation) are exempt from Section 404 permit requirements, but may be subject to other state or Federal requirements.

§ 323.5 Program transfer to states.

Section 404(h) of the Clean Water Act allows the Administrator of the Environmental Protection Agency to transfer administration of the Section 404 permit program for discharges into certain waters of the United States to

[4] For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

qualified states. (The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto). See 40 CFR Part 123 for procedural regulations for transferring Section 404 programs to states. Once a state's 404 program is approved, the Corps of Engineers will suspend processing of Section 404 applications in the applicable waters and will transfer pending applications to the state agency responsible for administering the program. District engineers will assist EPA and the states in any way practicable to effect transfer and will develop appropriate procedures to ensure orderly and expeditious transfer.

§ 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. Applications for permits for the discharge of dredged or fill material into waters of the United States will be reviewed in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act. (See 40 CFR Part 230.) If the EPA guidelines alone prohibit the designation of a proposed disposal site, the economic impact on navigation and anchorage of the failure to authorize the use of the proposed disposal site will also be considered in evaluating whether or not the proposed discharge is in the public interest.

(b) The Corps will not issue a permit where the regional administrator of EPA has notified the district engineer and applicant in writing pursuant to 40 CFR 231.3(a)(1) that he intends to issue a public notice of a proposed determination to prohibit or withdraw the specification, or to deny, restrict or withdraw the use for specification, of any defined area as a disposal site in accordance with Section 404(c) of the Clean Water Act. However the Corps will continue to complete the administrative processing of the application while the Section 404(c) procedures are underway including completion of final coordination with EPA under 33 CFR Part 325.

PART 324—PERMITS FOR OCEAN DUMPING OF DREDGED MATERIAL

Sec.

Authority: 33 USC 1413.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the transportation of dredged material by vessel or other vehicle for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC 1413) (hereinafter referred to as Section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require Department of the Army permits under Section 10 of the River and Harbor Act of 1899 (33 USC 403) for the dredging in navigable waters of the United States. Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606: TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States.

(c) The term "transport" or "transportation" refers to the carriage and related handling of dredged material by a vessel or other vehicle.

§ 324.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of disposal in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers are subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under these regulations. Division and district engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for disposal in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to state or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the substantive and procedural state, interstate, and local water quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Clean Water Act and the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and related laws in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 12088, dated October 18, 1978.) They are not required, however, to obtain and provide certification of compliance with effluent limitations and water quality standards from state or interstate water pollution control agencies in connection with activities involving the transport of dredged material for dumping into ocean waters beyond the territorial sea.

§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 103 permits. The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for Section 103 permits, the district engineer will issue a public notice which shall contain the information specified in 33 CFR 325.3.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, critieria established by the Administrator, EPA, pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, shall be applied including an

evaluation of the need for the ocean dumping and including the availability of alternatives to ocean dumping. Where ocean dumping is determined to be necessary, the district engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to Section 102(c) of the Act. See 40 CFR Parts 220 to 229.

(c) *EPA review.* If the Regional Administrator, EPA, advises the district engineer that the proposed dumping will comply with the criteria, the district engineer shall complete his evaluation of the Section 103 application under this regulation and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the district engineer that the proposed dumping will not comply with the criteria, the district engineer will proceed as follows.

(1) The district engineer shall determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer shall evaluate them in accordance with 33 CFR Parts 320, 322, 323, 325 and this regulation, as appropriate.

(2) If the district engineer makes a determination that there is no economically feasible alternative method or site available, and the proposed project is otherwise found to be in the public interest, he shall so advise the Regional Administrator of his intent to issue the permit setting forth his reasons for such determination.

(d) *EPA objection.* If the Regional Administrator advises, within 15 days of the notice of the intent to issue, that he will commence procedures specified by Section 103(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 to prohibit designation of the disposal site, the case will be forwarded to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain, in addition to the analysis required by 33 CFR 325.11, an analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(e) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

Sec.

Authority: 33 U.S.C. 401 et seq.; 33 USC 1344; 33 USC 1413.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this regulation (Part 325) apply to any Department of the Army permit. Special procedures and additional information are contained in 33 CFR Parts 320 through 324 and Part 330. This Part is arranged in the basic timing sequence used by the Corps of Engineers in processing applications for Department of the Army permits.

(b) *Pre-application consultation for major applications.* The district staff element having responsibility for administering, processing, and enforcing Federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information forseeably required for later Federal action. The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential permit applicants to contact the district engineer or the staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, state, or local) and the public. This early process should be brief but thorough so that the applicant may begin to assess the viability of some of the more obvious alternatives in the permit application. The district engineer will endeavor at this stage, to provide the applicant with all helpful information necessary in pursuing the application, including factors which the Corps must consider in its permit decision making process. Whenever the district engineer becomes aware of planning for work which may require a Department of the Army permit and which would involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential permit applicant indicates the intent to submit an application for work which may require the preparation of an environmental document, a single point of contact shall be designated within the district's regulatory staff to effectively coordinate the regulatory process, including the National Environmental Policy Act (NEPA) procedures and all attendant reviews, meetings, hearings, and other actions, including the scoping process if appropriate, leading to a decision by the district engineer. Effort devoted to this process should be commensurate with the likelihood of a permit application actually being submitted to the Corps. The regulatory staff coordinator shall maintain an open relationship with each applicant or his consultants so as to assure that the applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for use in preparing an environmental assessment or an environmental impact statement (EIS). The actual development of the scope of data required in cases requiring an EIS should be the product of the formal "scoping" process discussed in 33 CFR Part 230.

(c) *Application form.* Any person proposing to undertake any activity requiring Department of the Army authorization as specified in 33 CFR Parts 321–324 (except activities already authorized by general permit) must apply for a permit to the district engineer in charge of the district where the proposed activity is to be performed. Applications for permits must be prepared utilizing the prescribed application form (ENG Form 4345, OMB Approval No. OMB 49–R0420). The form may be obtained from the district engineer having jurisdiction over the waters in which the proposed activity will be located. Local variations of the application form for purposes of facilitating coordination with state and local agencies may be used.

(d) *Content of application.* (1) Generally, the application must include a complete description of the proposed activity including necessary drawings, sketches or plans sufficient for public notice (the applicant is not expected to submit detailed engineering plans and specifications); the location, purpose and intended use of the proposed activity; scheduling of the activity; the names and addresses of adjoining

property owners; the location and dimensions of adjacent structures; and a list of authorizations required by other Federal, interstate, state or local agencies for the work, including all approvals received or denials already made. See also Section 325.3 for information required to be in public notices. District and division engineers are not authorized to develop additional information forms and will limit requests for additional information to those cases where the specific information is essential to complete an evaluation of the proposal's impact on the public interest.

(2) All activities which the applicant plans to undertake which are reasonably related to the same project and for which a Department of the Army permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill associated with construction of the marina.

(3) If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(4) If the activity would include the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters, the application must include the source of the material; the purpose of the discharge, a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. Certification under Section 401 of the Clean Water Act is required for such discharges into waters of the United States.

(5) If the activity would include the construction of a filled area or pile or float-supported platform, the project description must include the use of and specific structures to be erected on the fill or platform.

(6) If the activity would involve the construction of an impoundment structure, the applicant may be required to demonstrate that the structure complies with established state dam safety criteria or that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similarly qualified persons. No specific design criteria are to be prescribed nor is an independent detailed engineering review to be made by the district engineer.

(7) *Signatures on application.* The application must be signed by the person who desires to undertake the proposed activity or by a duly authorized agent if accompanied by a statement by that person designating the agent. In either case, the signature of the applicant or the agent will be understood to be an affirmation that he possesses the requisite property interest to undertake the activity proposed in the application, except where the lands are under the control of the Corps of Engineers, in which cases the district engineer will coordinate the transfer of the real estate and the permit action. An application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area and each owner submits a statement designating the same agent.

(e) *Additional information.* In addition to the information indicated in paragraph (d) of this section the applicant will be required to furnish only such additional information as the district engineer deems essential to assist in the evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(f) *Fees.* Fees are required for permits under Section 404 of the Clean Water Act, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and Sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the proposed work is non-commercial in nature and would provide personal benefits that have no connection with a commercial enterprise. The final decision as to the basis for a fee (commercial vs. non-commercial) shall be solely the responsibility of the district engineer. No fee will be charged if the applicant withdraws the application at any time prior to issuance of the permit or if the permit is denied. Collection of the fee will be deferred until the proposed activity has been determined to be in the public interest. At that time, the district engineer will furnish the applicant two copies of the unsigned permit for his signature. He will also notify the applicant of the required fee and will request that any check or money order be made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee and the two signed permit copies. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require publication of a public notice will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions, general permits or letters of permission. Agencies or instrumentalities of Federal, state or local governments will not be required to pay any fee in connection with permits.

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received, the district engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and if the application is incomplete, request from the applicant within 15 days of receipt of the application any additional information necessary for further processing.

(2) Within 15 days of receipt of all information required in accordance with Sec. 325.1(d) of this part, the district engineer will issue a public notice as described in Sec. 325.3 of this part unless specifically exempted by other provisions of this regulation. The district engineer will issue a supplemental, revised, or corrected public notice if in his view there is a change in the application data that would affect the public's review of the proposal.

(3) The district engineer will consider all comments received in response to the public notice in his subsequent actions on the permit application. Receipt of the comments will be acknowledged and they will be made a part of the administrative record of the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the district engineer may seek the advise of that agency. At the earliest practicable time, the applicant must be given the opportunity to furnish the district engineer his proposed resolution or rebuttal to all objections from other Government

agencies and other substantive adverse comments before final decision will be made on the application. The applicant may voluntarily elect to contact objectors in an attempt to resolve objections but will not be required to do so.

(4) The district engineer will follow Appendix B of 33 CFR Part 230 for environmental procedures and documentation required by the National Environmental Policy Act of 1969. A permit application will require either an environmental assessment or an environmental impact statement unless it is included within a categorical exclusion.

(5) The district engineer will also evaluate the application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the district engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a Statement of Findings (SOF) or, where an EIS has been prepared, a Record of Decision (ROD), on all permit decisions. The SOF or ROD shall include the district engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), if applicable, and the conclusions of the district engineer. The SOF or ROD shall be dated, signed, and included in the record prior to final action on the application. Where the district engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the SOF or ROD. If a permit is warranted, the district engineer will determine the special conditions, if any, and duration which should be incorporated into the permit. In accordance with the authorities specified in § 325.8 of this Part, the district engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final EIS or environmental assessment, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in the format prescribed by the Chief of Engineers. District and division engineers will notify the applicant and interested Federal and state agencies that the application has been forwarded to higher headquarters. The district or division engineer may, at his option, disclose his recommendation to the news media and other interested parties, with the caution that it is only a recommendation and not a final decision. Such disclosure is encouraged in permit cases which have become controversial and have been the subject of stories in the media or have generated strong public interest. In those cases where the application is forwarded for decision in the format prescribed by the Chief of Engineers, the report will serve as the SOF or ROD.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason(s) for denial. If the final decision is to issue the permit and a standard individual permit form will be used, the issuing official will forward two copies of the draft permit to the applicant for signature accepting the conditions of the permit. The applicant will return both signed copies to the issuing official who then will sign and date the permit and return one copy to the permittee. The permit is not valid until signed by the issuing official. Letters of permission will be issued in letter form (signed by the issuing official only). Final action on the permit application is the signature on the letter notifying the applicant of the denial of the permit or signature of the issuing official on the authorizing document.

(8) The district engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. It will also note that relevant environmental documents and the SOF's or ROD's are available upon written request and, where applicable, upon the payment of administrative fees. This list will be distributed to all persons who may have an interest in any of the public notices listed.

(9) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of artificial islands, installations or other devices on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390 Attention, Code NS12 and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to Defense Mapping Agency, Hydrographic Center and National Ocean Survey as in paragraph (a)(9)(i) of this section and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iii) If the activity involves the erection of an aerial transmission line across a navigable water of the United States, to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, reference C322.

(iv) If the activity is listed in paragraphs (a)(9)(i), (ii), or (iii) of this section or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(b) *Procedures for particular types of permit situations.* (1) If the district engineer determines that water quality certification for the proposed activity is necessary under the provisions of Section 401 of the Clean Water Act, he shall so notify the applicant and obtain from him or the certifying agency a copy of such certification.

(i) The public notice for such activity, which will contain a statement on certification requirements (see Sec. 325.3(a)(8)), will serve as the notification to the Administrator of the Environmental Protection Agency (EPA) pursuant to Section 401(a)(2) of the Clean Water Act. If EPA determines that the proposed discharge may affect the quality of the waters of any state other than the state in which the discharge will originate, it will so notify such other state, the district engineer, and the applicant. If such notice or a request for supplemental information is not received within 30 days of issuance of the public notice, the district engineer will assume EPA has made a negative determination with respect to Section 401(a)(2). If EPA does determine another state's waters may be affected, such state has 60 days from receipt of EPA's notice to determine if the proposed discharge will affect the quality of its waters so as to violate any water quality requirement in such state, to notify EPA and the district engineer in writing of its objection to permit issuance, and to request a public hearing. If such occurs, the district engineer will hold a public hearing in the objecting state. Except as stated below, the hearing will be conducted in accordance with 33 CFR 327. The issues to be considered at the public hearing will be limited to water quality impacts. EPA will submit its evaluation and recommendations at the hearing with respect to the state's objection to permit issuance. Based upon the recommendations of the objecting state,

EPA, and any additional evidence presented at the hearing, the district engineer will condition the permit, if issued, in such a manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot, in the district engineer's opinion, insure such compliance, he will deny the permit.

(ii) No permit will be granted until required certification has been obtained or has been waived. Waiver may be explicit, or will be deemed to occur if the certifying agency fails or refuses to act on a request for certification within sixty days after receipt of such a request unless the district engineer determines a shorter or longer period is reasonable for the state to act. The request for certification must be made in accordance with the regulations of the certifying agency. In determining whether or not a waiver period has commenced or waiver has occurred, the district engineer will verify that the certifying agency has received a valid request for certification. If, however, special circumstances identified by the district engineer require that action on an application be taken within a more limited period of time, the district engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly if it appears that circumstances may reasonably require a period of time longer than sixty days, the district engineer, based on information provided by the certifying agency, will determine a longer reasonable period of time, not to exceed one year, at which time a waiver will be deemed to occur.

(2) If the proposed activity is to be undertaken in a State operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management Act (see 33 CFR 320.3(b)), the district engineer shall proceed as follows:

(i) If the applicant is a Federal agency, and the application involves a Federal activity in or affecting the coastal zone, the district engineer shall forward a copy of the public notice to the agency of the state responsible for reviewing the consistency of Federal activities. The Federal agency applicant shall be responsible for complying with the Coastal Zone Management Act's directive for ensuring that Federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved Coastal Zone Management Programs. (See 15 CFR Part 930.) If the State coastal zone agency objects to the proposed Federal activity on the basis of its inconsistency with the State's approved Coastal Zone Management Program, the district engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the Coastal Zone Management Act for resolving such disagreements.

(ii) If the applicant is not a Federal agency and the application involves an activity affecting the coastal zone, the district engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. Upon receipt of the certification, the district engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the state coastal zone agency and request its concurrence or objection. If the state agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the district engineer shall not issue the permit until the state concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the Coastal Zone Management Act or is necessary in the interest of national security. If the state agency fails to concur or object to a certification statement within six months of the state agency's receipt of the certification statement, state agency concurrence with the certification statement shall be conclusively presumed. District engineers shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(iii) If the applicant is requesting a permit for work on Indian reservation lands which are in the coastal zone, the district engineer shall treat the application in the same manner as prescribed for a Federal applicant in paragraph (b)(2)(i) of this section. However, if the applicant is requesting a permit on non-trust Indian lands and the state CZM agency has decided to assert jurisdiction over such lands, the district engineer shall treat the application in the same manner as prescribed for a non-Federal applicant in paragraph (b)(2)(ii) of this section.

(3) If the proposed activity would involve any property listed or eligible for listing in the National Register of Historic Places, the district engineer will proceed in accordance with Corps National Historical Preservation Act counterpart implementing regulations.

(4) If the proposed activity would consist of dredging of an access channel and/or berthing facility associated with an authorized Federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the Federal project to the maximum extent feasible. Separate notice, hearing, and environmental documentation will not be required for activities so included and coordinated; and the public notice issued by the district engineer for these Federal and associated non-Federal activities will be the notice of intent to issue permits for those included non-Federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the Federal project unless special considerations applicable to the proposed activity are identified. (See Sec. 322.5(C)).

(5) Applications will be reviewed for the potential impact on threatened or endangered species pursuant to Section 7 of the Endangered Species Act as amended. If the district engineer determines that the proposed activity would not affect listed species or their critical habitat, he will include a statement to this effect in the public notice. If he finds that proposed activity may jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, he will initiate formal consultation procedures with the U.S. Fish and Wildlife Service or National Marine Fisheries Service by including a statement to this effect in the public notice (or will amend any previous notice as appropriate). Public notices forwarded to the U.S. Fish and Wildlife Service or National Marine Fisheries Service will serve as the request for information on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the proposed activity, pursuant to Section 7(c) of the Act. References, definitions, and consultation procedures are found in 33 CFR Part 306 and 50 CFR Part 402.

(c) [Reserved]

(d) *Timing of processing of applications.* The district engineer will be guided by the following time limits for the indicated steps in the evaluation process:

(1) The public notice will be issued within 15 days of receipt of all information required to be submitted by the applicant in accordance with §325.1.(d) of this part.

(2) The comment period of the public notice should not extend beyond 30 days from the date of the notice. However, if circumstances warrant, the district engineer may extend the comment period up to an additional 30 days.

(3) District engineers will decide on all applications not later than 60 days after receipt of a complete application, unless (i) precluded as a matter of law or procedures required by law (see below), (ii) the case must be referred to higher authority (see Sec. 325.8 of this part), (iii) the comment period is extended, (iv) a timely rebuttal or resolution of objections is not received from the applicant, (v) the processing is suspended at the request of the applicant, or (vi) information needed by the district engineer for a decision on the application cannot reasonably be obtained within the 60-day period. Once the cause for preventing the decision from being made within the normal 60-day period has been satisfied or eliminated, the 60-day clock will start running again from where it was suspended. For example, if the comment period is extended by 30 days, the district engineer will, absent other restraints, decide on the application within 90 days of receipt of a complete application. Certain laws (e.g., the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, the National Historic Preservation Act, the Preservation of Historical and Archeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the Marine Protection, Research and Sanctuaries Act) require procedures such as state or other Federal agency certifications, public hearings, environmental impact statements, consultation, special studies and testing which may prevent district engineers from being able to decide certain applications within 60 days.

(4) Once the public comment period has closed (or, at the latest, on the ninetieth day following the public notice) and the district engineer has sufficient information to make his public interest determination, he should decide the permit application even though other agencies which may have regulatory jurisdiction have not yet granted their authorizations, except where such authorizations are, by Federal law, a prerequisite to making a decision on the Army permit application. Permits granted prior to other (non-prerequisite) authorizations by other agencies should, where appropriate, be conditioned in such manner as to give those other authorities an opportunity to undertake their review without the applicant biasing such review by making substantial resource commitments on the basis of the Army permit. In an unusual case, the district engineer may decide that due to the nature or scope of a specific proposal, it would be prudent to defer taking final action until another agency has acted on its authorization. In such cases, he may advise the other agency of his position on the Army permit while deferring his final decision.

(5) If the applicant fails to respond within 45 days to any request or inquiry of the district engineer, the district engineer may advise the applicant by certified letter that his application will be considered as having been withdrawn unless the applicant responds thereto within thirty days of the date of the letter.

(e) *Alternative procedures.* Division and district engineers are authorized to use alternative procedures as follows:

(1) *Letters of permission.* In those cases subject to Section 10 of the River and Harbor Act of 1899 in which, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impact on environmental values, and should encounter no appreciable opposition, the district engineer may omit the publishing of a public notice and authorize the work by a letter of permission. However, he will coordinate the proposal with all concerned fish and wildlife agencies, Federal and state, as required by the Fish and Wildlife Coordination Act. The letter of permission will not used to authorize the discharge of dredged or fill material into waters of the United States nor the transportation of dredged material for purposes of dumping it in ocean waters. The letter of permission form is specified in § 325.5 of this part.

(2) *Regional permits.* Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(n). They may be issued by a division or district engineer after compliance with the other procedures of this regulation. After a regional permit has been issued, individual activities falling within those categories that are authorized by such regional permits do not have to be further authorized by the procedures of this regulation. The issuing authority will determine and add appropriate conditions to protect the public interest. When the issuing authority determines on a case-by-case basis that the concerns for the aquatic environment so indicate, he may exercise discretionary authority to override the regional permit and require an individual application and review. A regional permit may be revoked by the issuing authority if it is determined that it is no longer in the public interest provided the procedures of Sec. 325.7 of this part are followed. Following revocation, applications for future activities in areas covered by the regional permit shall be processed as applications for individual permits. No regional permit shall be issued for a period of more than five years.

(3) *Joint Procedures.* Division and district engineers are authorized and encouraged to develop joint procedures with states and other Federal agencies with ongoing permit programs for activities also regulated by the Department of the Army. Such procedures may be substituted for the procedures in paragraphs (a)(1) through (5) of this section provided that the substantive requirements of those sections are maintained. Division and district engineers are also encouraged to develop management techniques such as joint agency review meetings to expedite the decision-making process. However, in doing so, the applicant's rights to a full public interest review and independent decision by the district or division engineer must be strictly observed.

(4) *Emergency procedures.* Division engineers are authorized to approve special processing procedures in emergency situations. An "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. In emergency situations, the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, state, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published as soon as practicable.

§ 325.3 Public notice.

(a) *General.* The public is the primary method of advising all interested parties of the proposed activity for which a

permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The name or title, address and telephone number of the Corps employee from whom additional information concerning the application may be obtained;

(4) The location of the proposed activity;

(5) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and a description of the type, composition and quantity of materials to be discharged or disposed of in the ocean;

(6) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(7) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(8) A list of other government authorizations obtained or requested by the applicant, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(9) If appropriate, a statement that the activity is a categorical exclusion for purposes of the National Environmental Policy Act (see paragraph 7 of Appendix B to 33 CFR Part 230);

(10) A statement on endangered species (see Sec. 325.2(b)(5);

(11) A statement(s) on evaluation factors (see Sec. 325.3(b));

(12) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest;

(13) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the permit application;

(14) A statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing;

(15) For non-Federal applications in states with an approved Coastal Zone Management Plan, a statement on compliance with the approved Plan; and

(16) In addition, for Section 103 (ocean dumping) activities:

(i) The specific location of the proposed disposal site and its physical boundaries;

(ii) A statement as to whether the proposed disposal site has been designated for use by the Administrator, EPA, pursuant to Section 102(c) of the Act;

(iii) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(iv) A brief description of known dredged material dischages at the proposed disposal site;

(v) Existence and documented effects of other authorized disposals that have been made in the disposal area (e.g., heavy metal background reading and organic carbon content);

(vi) An estimate of the length of time during which disposal would continue at the proposed site; and

(vii) Information on the characteristics and composition of the dredged material.

(b) *Evaluation factors.* A paragraph describing the various evaluation factors on which decisions are based shall be included in every public notice.

(1) Except as provided in paragraph (b)(3) of this section, the following will be included:

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposals must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety production and, in general, the needs and welfare of the people.

(2) If the activity would involve the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters, the public notice shall also indicate that the evaluation of the impact on the activity of the public interest will include application of the guidelines promulgated by the Administrator, EPA under authority of Section 404(b) of the Clean Water Act (40 CFR Part 230) or of the criteria established under authority of Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 229), as appropriate. (See also 33 CFR Parts 323 and 324).

(3) In cases involving construction of artificial islands, installations and other devices on outer continental shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(c) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate state agencies, to appropriate Indian Tribes or tribal represenatives, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, to appropriate state and areawide clearing houses as prescribed by OMB Circular A–95, to local news media and to any other interested party. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the field representative of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the state agency responsible for fish and wildlife resources, the State Historic

Preservation Officer, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addressees in appropriate cases as follows:

(i) If the activity would involve structures or dredging along the shores of the seas or Great Lakes, to the Coastal Engineering Research Center, Washington, D.C. 20016.

(ii) If the activity would involve construction of fixed structures or artificial islands on the outer continental shelf or in the territorial seas, to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics (ASD(MRA&L)), Washington, D.C. 20310; the Director, Defense Mapping Agency (Hydrographic Center) Washington, D.C. 20390, Attention, Code NS12; and the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, and to affected military installations and activities.

(iii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity would be in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, D.C. 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the district engineer may request its comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constitutent or himself, the district engineer will inform the member of Congress of the final decision.

§ 325.4 Conditioning of permits.

(a) *General.* The decision of whether to issue a permit is based on the public interest review described in 33 CFR 320.4. In order to protect the public interest, projects may require modifications or conditions different from what the applicant proposes.

(b) Division and district engineers are authorized to modify or add conditions to proposals when:

(1) they are necessary to meet a legal requirement,

(2) they serve to meet a public interest objective, or

(3) they will avoid or mitigate adverse impacts on fish and wildlife resources.

(c) Division and district engineers may modify or condition proposals to meet one of the objectives of 325.4(b) of this section when:

(1) there are no local, state or other Federal programs or policies to achieve the objective of the desired condition, and

(2) an agreement, enforceable at law, between the applicant and the party(ies) concerned with the resource use is not practicable.

(d) Division and district engineers will ensure that any modifications or conditions imposed on an applicant's proposal are:

(1) directly related to the impacts of the proposal; and

(2) commensurate in scope and degree with the impacts of concern; and

(3) reasonably enforceable.

(e) *Bonds.* If the District Engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.5 Forms of permits.

(a) *General discussion.* (1) Department of the Army permits under this regulation will be in the form of individual permits or general permits. The basic format shall be ENG Form 1721, Department of the Army Permit (Appendix A).

(2) The general conditions included in ENG Form 1721 are normally applicable to all permits; however, some conditions may not apply to certain permits and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest in accordance with § 325.4 of this Part.

(b) *Individual permits.* (1) *Standard permits.* A standard permit is one which has been processed through the public interest review procedures, including public notice and receipt of comments, described throughout this Part. The standard individual permit shall be issued using ENG Form 1721.

(2) *Letters of permission.* A letter of permission will be issued where procedures of Section 325.2(e)(1) have been followed. It will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority, any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the general conditions form ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits.* (1) *Regional permits.* Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(n). They may be issued by a division or district engineer after compliance with the other procedures of this regulation. If the public interest so requires, the issuing authority may condition the regional permit to require a case-by-case reporting and acknowledgement system. However, no separate applications or other authorization documents will be required.

(2) *Nationwide permits.* Nationwide permits are a type of general permit and represent Department of the Army authorizations that have been issued by the regulation (33 CFR Part 330) for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit.

(d) *Section 9 permits.* Permits for structures under Section 9 of the River and Harbor Act of 1899 will be drafted at Department of the Army level.

§ 325.6 Duration of permits.

(a) *General.* Department of the Army permits may authorize both the work and the resulting use. Permits continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures.* Permits for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the permit will be of limited duration with a definite expiration date.

(c) *Works.* Permits for construction work, discharge of dredged or fill material, or other activity and any construction period for a structure with

a permit of indefinite duration under paragraph (b) of this section will specify time limits for completing the work or activity. The time limits may specify a date by which the work must be started, normally one year from the date of issuance, and will specify a date by which the work must be completed. The dates will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. Permits issued for the transport of dredged material for the purpose of disposing of it in ocean waters will specify a completion date for the disposal not to exceed three years from the date of permit issuance.

(d) *Extensions of time.* An authorization or construction period will automatically expire if the permittee fails to request and receive an extension of time. Extensions of time may be granted by the district engineer. The permittee must request the extension and explain the basis of the request, which will be granted only if the district engineer determines that an extension would be in the public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2 of this Part, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued and that the work is proceeding essentially in accordance with the approved plans and conditions.

(e) *Maintenance dredging.* If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 to 325. In such cases, this district engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of this regulation and 33 CFR Parts 320–324. If the permittee desires to continue maintenance dredging beyond the expiration date, he must request a new permit. The permittee should be advised to apply for the new permit six months prior to the time he wishes to do the maintenance work.

§ 325.7 Modification, suspension or revocation of authorizations.

(a) *General.* The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest. In the case of regional permits, this reevaluation may cover individual activities, categories of activities, or geographic areas. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2 of this part, and not as modifications under this paragraph.

(b) *Modification.* Upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit, the district engineer may determine that the public interest requires a modification of the terms or conditions of the permit. In such cases, the district engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the district engineer will give the permittee written notice of the modification, which will then become effective on such date as the district engineer may establish. In the event a mutual agreement cannot be reached by the district engineer and the permittee, the district engineer will proceed in accordance with paragraph (c) of this section if immediate suspension is warranted. In cases where immediate suspension is not warranted by the district engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a meeting with the district engineer and/or a public hearing. The modification will become effective on the date set by the district engineer which shall be at least ten days after receipt of the notice by the permittee unless a hearing or meeting is requested within that period. If the permittee fails or refuses to comply with the modification, the district engineer will proceed in accordance with 33 CFR Part 326.

(c) *Suspension.* The district engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the public interest. The district engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop those activities previously authorized by the suspended permit. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may within 10 days of receipt of notice of the suspension, request a meeting with the district engineer and/or a public hearing to present information in this matter. If a hearing is requested, the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the meeting or hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing or meeting is requested), the district engineer will take action to reinstate, modify or revoke the permit.

(d) *Revocation.* Following completion of the suspension procedures in paragraph (c) of this section if revocation of the permit is found to be in the public interest, the authority who made the decision on the original permit may revoke it. The permittee will be advised in writing of the final decision.

(e) *Regional permits.* The district engineer may, by following the procedures of this section, revoke regional permits for individual activities, categories of activities, or geographic areas. Where groups of permittees are involved, such as for categories of activities or geographic areas, the informal discussions provided in paragraph (b) of this section may be waived and any written notification may be made through the general public notice procedures of this regulation. If a regional permit is revoked, any permittee may then apply for an individual permit which shall be processed in accordance with these regulations.

§ 325.8 Authority to issue or deny permits.

(a) *General.* Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for construction or other work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for the discharge of dredged or fill material in waters of the United States pursuant to Section 404 of the Clean Water Act or for the transportation of dredged material for the purpose of disposing of it into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits pursuant to Section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District Engineers' authority.* District engineers are authorized to issue or deny permits in accordance with these regulations permits pursuant to Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, State, or other Federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision. District engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state or other Federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with § 325.4 of this part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of § 325.7 of this part. District engineers will refer the following applications to the division engineer for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When the recommended decision is contrary to the written position of the Governor of the State in which the work would be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When higher authority requests the application be forwarded for decision; or

(5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g., Section 404(c) of the Clean Water Act, Section 9 of the River and Harbor Act of 1899, or territorial sea baseline changes).

(c) *Division Engineers' authority.* Division engineers will review and evaluate all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with § 325.4 of this Part in all cases not required to be referred to the Chief of Engineers. Division Engineers will refer the following applications to the Chief of Engineers for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(3) When higher authority requests the application be forwarded for decision; or

(4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.

§ 325.9 [Reserved.]

§ 325.10 Publicity.

The district engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the district engineer becomes aware of plans being developed by either private or public entities which might require permits for implementation, he should advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Whenever the district engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

Appendix A—Permit Form

Application No. _____
Name of Applicant _____
Effective Date _____
Expiration Date (If applicable) _____

DEPARTMENT OF THE ARMY

Permit

Referring to written request dated _____ for a permit to:

( ) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

( ) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Clean Water Act (86 Stat. 816, Pub. L. 92–500);

( ) Transport dredged material for the purpose of disposal in ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; Pub. L. 92–532);

_____

_____

(Here insert the full name and address of the permittee.)

is hereby authorized by the Secretary of the Army:

to _____

_____

(Here describe the proposed structure or activity, and its intended use. In the case of an application for a fill permit, describe the structures, if any proposed to be erected on the fill. In the case of an application for the discharge of dredged or fill material into waters of the United States or the transportation for discharge in ocean waters of dredged material, describe the type and quantity of material to be discharged.)

in _____

_____

(Here to be named the ocean, river, harbor, or waterway concerned.)

at _____

(Here to be named the nearest well-known locality-preferably a town or city and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings, give file number or other definite

identification marks). Subject to the following conditions:

I. General conditions: (a) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

(b) That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act of 1972 (Pub. L. 92–500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92–532, 86 Stat. 1052), or pursuant to applicable State and local law.

(c) That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the district engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

(d) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

(e) That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

(f) That the permittee agrees that it will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

(g) That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

(h) That the permittee shall maintain the structure or work authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto.

(i) That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.

(j) That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

(k) That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.

(l) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and or the Government may, in addition, institute appropriate legal proceedings.

(m) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

(n) That the permittee shall notify the District Engineer of the time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

(o) That if the activity authorized herein is not completed on or before ——— day of ———, 19——, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

(p) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

(q) That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition (t) hereof, he must restore the area to a condition satisfactory to the District Engineer.

(r) That if the recording of this permit is possible under applicable state or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

(s) That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

(t) That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

(u) That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

II. Special Conditions: Here list conditions relating specifically to the proposed structure or work authorized by this permit. The following Special Conditions will be applicable when appropriate:

Structures In or Affecting Navigable Waters of the United States

(a) That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

(b) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

(c) That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

(d) That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

(e) Structures for Small Boats: That the permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave

wash and the permittee shall not hold the United States liable for any such damage.

Maintenance Dredging

(a) That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for —— years from the date of issuance of this permit (ten years unless otherwise indicated);

(b) That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

Discharges of Dredged or Fill Material Into Waters of the United States

(a) That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR Part 230;

(b) That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.

(c) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

Disposal of Dredged Material Into Ocean Waters

(a) That the disposal will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR Parts 220–228.

(b) That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or disposal of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

(Permittee) ——————————

(Date) ——————————

By authority of the Secretary of the Army:

(District Engineer) ——————————

(Date) ——————————

Transferee hereby agrees to comply with the terms and conditions of this permit.

(Transferee) ——————————

(Date) ——————————

Appendix B [Reserved]

PART 326—ENFORCEMENT, SUPERVISION AND INSPECTION

Sec.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 326.1 Purpose.

This regulation prescribes the policy, practice, and procedures to be followed by the Corps of Engineers in connection with activities requiring Department of the Army permits that are performed without prior authorization; and supervision and inspection of authorized activities.

§ 326.2 Discovery of unauthorized activity.

(a) When the district engineer becomes aware of any unauthorized activity still in progress, including a violation of the terms and conditions of an authorized activity, he shall immediately issue an order prohibiting further work to all persons responsible for and/or involved in the performance of the activity and may order interim protective work. If the unauthorized activity has been completed, he will advise the responsible party of his discovery.

(b) Where the unauthorized activity involves an American Indian (including Alaskan natives, Eskimos, and Aleuts) or takes place on reservation land, district engineers will coordinate proposed cease and desist order with the Assistant Chief Counsel for Indian Affairs (DAEN–CCI).

§ 326.3 Administrative action.

(a) *Initial investigation.* Immediately upon discovery of an unauthorized activity, the district engineer shall commence an investigation to ascertain the facts surrounding the activity. In making this investigation, the district engineer should, in appropriate cases, depending upon the potential impacts of the completed work solicit the views of the Regional Administrator of the Environmental Protection Agency, the Regional Director of the U.S. Fish and Wildlife Service, and the Regional Director of the National Marine Fisheries Service, and other Federal, state, and/or local agencies. He shall also request the persons involved in the unauthorized activity to provide appropriate information on the activity to assist him in his evaluation and in determining the course of action to be taken.

(b) *Remedial work.* (1) The district engineer shall determine whether as a result of the unauthorized activity, life, property or important public resources are in serious jeopardy and would require expeditious measures for protection. Such measures may range from minor modification of the existing work to complete restoration of the area involved. Important public resources are identified in 33 CFR 320.4. If the district engineer determines that immediate remedial work is required, he shall issue an appropriate order describing the work, conditions and time limits required to provide satisfactory protection of the resource.

(2) Voluntary restoration by the responsible party on the party's own initiative shall be allowed if legal action is not otherwise necessary. However, district engineers will advise the responsible party of the option of an after-the-fact application for a permit to retain the unauthorized work. No permit will be required when complete and satisfactory restoration is accomplished.

(c) *Acceptance of an after-the-fact application.* Upon completion of appropriate remedial work, if any, the district engineer shall accept an application for an after-the-fact permit for all unauthorized activities unless:

(1) Civil action to enforce an order issued pursuant to § 326.2 or § 326.3(b) of this part is required;

(2) Criminal action is appropriate (see § 326.4a(1) of this part);

(3) State local, or other federal authorization or certification has been denied,[1] or a state or local enforcement action is pending. In the above situations, the District Engineer may accept an after-the-fact permit application provided he believes it would be in the public interest and he obtains approval of the next higher authority.

(4) In some cases, a violation of the Clean Water Act may be of such a nature that it is appropriate to seek a civil penalty as provided for in the act. These cases include knowing, flagrant, repeated or substantial impact violations.[2]

(d) If the responsible party fails to submit an application as noted in paragraph (c) of this section within a reasonable time period, the district engineer may proceed on his own initiative with a determination of whether the activity is in the public interest. The determination will be made in accordance with appropriate procedures described in 33 CFR Parts 320 through 325.

§ 326.4 Legal action.

(a) *Criminal or civil action.* District engineers shall be guided by the following policies in recommending appropriate legal action:

[1] This section refers to state or local authorizations required as a matter of Federal law before a Sec. 404 permit may be issued. Examples are Sec. 401 Water Quality Certification and Sec. 307 Coastal Zone Management Consistency Determinations.

[2] In such cases, the District Engineer may, in his discretion, recommend to the United States Attorney that a complaint be filed. An after-the-fact application should not be accepted until the enforcement action is completely resolved. This exception to the general rule of accepting after-the-fact applications should be used on a limited basis, only for those cases which merit special treatment.

(1) *Criminal action.* Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action and/or when deterrence of future unauthorized activities in the area is considered essential to the establishment or maintenance of a viable regulatory program.

(2) *Civil action.* Civil action is considered appropriate when the evalution of the unauthorized activity reveals that (i) enforcement of an order issued pursuant to § 326.2 or § 326.3 (b) of this Part is required; (ii) after the procedures in § 326.3 (c) of this Part have been completed, the unauthorized activity would be in the public interest if altered or modified but attempts to secure voluntary alteration or modification have failed such that a judicial order is necessary, or (iii) after the procedures in § 326.3 (c) of this Part have been completed, a civil penalty under Section 309 of the Clean Water Act is warranted.

(b) *Preparation of case.* If the district engineer determines to recommend legal action he shall prepare a litigation report which shall contain an analysis of the data and information obtained during the investigation and a recommendation of appropriate civil and/or criminal action. In those cases where the analysis of the facts developed during the investigation and/or the after-the-fact application evaluation leads to the preliminary conclusion to recommend that removal of the unauthorized activity is in the public interest, the district engineer shall also recommend restoration of the area to its original or comparable condition.

(c) *Referral to local U.S. Attorney.* Except as provided in paragraph (d) of this section, district engineers are authorized to refer the following cases to the Department of Justice (DOJ) in accordance with procedures established by DOJ. Information copies of all letters of referral which go directly to a U.S. Attorney shall be forwarded to the Chief of Engineers, ATTN: DAEN-CCK, for transmittal to the Chief, Pollution Control Section, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

(1) Unauthorized structures or work in or affecting navigable waters of the United States that fall exclusively within the purview of Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322) for which a criminal fine or penalty under Section 12 of that Act (33 U.S.C. 406) is recommended.

(2) Civil action involving small unauthorized structures, such as piers, which the district engineer determines are either (i) not in the public interest and recommends that they be removed, or (ii) would be in the public interest if altered or modified but attempts to secure voluntary alteration or modification have failed such that the district engineer recommends that a judicial order is necessary.

(3) Violations of Section 301 of the Clean Water Act involving the unauthorized discharge of dredged or fill material into the waters of the United States where the district engineer recommends, with the concurrence of the Regional Administrator, civil and/or criminal action pursuant to Section 309 of the Clean Water Act.

(4) Cases for which a temporary restraining order and/or preliminary injunction is appropriate following noncompliance with a cease and desist order.

(d) *Referral to Office, Chief of Engineers.* District engineers shall prepare and forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN-CCK, for cases not identified in paragraph (c) of this section which civil and/or criminal action is considered appropriate, including cases involving:

(1) Significant questions of law or fact;

(2) Discharges of dredged or fill material into waters of the United States that are not interstate waters or navigable waters of the United States, or part of a surface tributary system to these waters;

(3) Recommendations for substantial or complete restoration;

(4) Violations of Section 9 of the River and Harbor Act of 1899; and

(5) Violations of the Marine Protection, Research and Sanctuaries Act of 1972.

(6) All cases involving American Indians, including unauthorized activities on reservation lands.

§ 326.5 Supervision and enforcement of authorized activities.

(a) *Inspection and monitoring.* District engineers will assure that authorized activities are conducted and executed in conformance with approved plans and other conditions of the permits. Appropriate inspections should be made on timely occasions during performance of the activity and appropriate notices and instructions given permittees to insure that they do not depart from the approved plans. Reevaluation of a permit to assure compliance with its purposes and conditions will be carried out as provided in 33 CFR Part 325.7. If there are approved material departures from the authorized plans, the district engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(b) *Non-compliance.* Where the district engineer determines that there has been non-compliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for compliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the district engineer will issue an immediately effective notice of suspension in accordance with 33 CFR Part 325.7(c) and consider initiation of appropriate legal action (§ 326.4 of this Part).

(c) *Surveillance.* For purposes of inspection of permitted activities and for surveillance of the waters of the United States for enforcement of the permit authorities the district engineer will use all means at his disposal. All Corps of Engineers employees will be instructed to observe and report all unauthorized activities in waters of the United States. The assistance of members of the public and personnel of other interested Federal, state and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance, the district engineer will, in appropriate cases, require a copy of ENG Form 4336 to be posted conspicuously at the site of authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions prescribed in the authorizations. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to Section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(d) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activity in waters of the United States normally will be paid by the Federal Government in accordance with the provisions of Section 6 of the River and Harbor Act of 3 March 1905 (33 U.S.C. 417) unless daily supervision or other unusual expenses are involved. In such unusual cases, the district engineer may require the permittee to bear the expense of inspections in accordance with the conditions of his permit; however, the permittee will not be required or permitted to pay the United States inspector either directly or through the district engineer. The inspector will be paid on regular payrolls or service vouchers. The district engineer will collect the cost from the permittee in accordance with the following:

(1) At the end of each month the amount chargeable for the cost of

inspection pertaining to the permit will be collected from the permittee and will be taken up on the statement of accountability and deposited in a designated depository to the credit of the Treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(2) If the district engineer considers such a procedure necessary to insure the United States against loss through possible failure of the permittee to supply the necessary funds in accordance with paragraph (d)(1) of this section he may require the permittee to keep on deposit with the district engineer at all times an amount equal to the estimated cost of inspection and supervision for the ensuing month, such deposit preferably being in the form of a certified check, payable to the order of Treasurer of the United States. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection.

(3) On completion of work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, and outstanding deposits returned to the permittee. If the account is protested by the permittee, it will be referred to the division engineer for approval before it is closed and before any deposits are returned to the permittee.

(e) Where the unauthorized activity is determined not to be in the public interest, the notification of the denial of the permit will prescribe any corrective actions to be taken in connection with the work already accomplished, including restoration of those areas subject to denial, and establish a reasonable period of time for the applicant to complete such actions. The district engineer, after denial of the permit, will again consider whether to recommend civil and/or criminal action in accordance with § 326.4 of this Part.

(f) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the district engineer recommends legal action after denying the permit, the matter will be referred to the Chief of Engineers, Attn.: DAEN–CCK, with recommendations for appropriate action.

(g) Division and District Engineers are authorized and encouraged to develop joint surveillance and inspection procedures with other Federal, state, and local agencies with similar regulatory responsibilities and with other Federal, state and local agencies having special interest or expertise in the Corps regulatory program. However, any decision to initiate legal action or to require any restoration or other remedial work under Corps of Engineers authority remains the independent responsibility of the Division or district engineer.

PART 327—PUBLIC HEARINGS

Sec.
327.1 Purpose.
327.2 Applicability.
327.3 Definitions.
327.4 General policies.
327.5 Presiding officer.
327.6 Legal adviser.
327.7 Representation.
327.8 Conduct of hearings.
327.9 Filing of transcript of the public hearing.
327.10 Powers of the presiding officer.
327.11 Public notice.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed Department of the Army permit action or Federal project as defined in § 327.3 of this Part below including those held pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all divisions and districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed Department of the Army permit action, or Federal project, and which affords to the public the opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein means the evaluation of and decision on an application for a permit pursuant to Section 9 or 10 of the River and Harbor Act of 1899, Section 404 of the Clean Water Act, or Section 103 of the MPRSA, as amended, or the modification or revocation of any Department of the Army permit (see 33 CFR 325.7).

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to Section 404 of the Clean Water Act, or Section 103 of the MPRSA. See 33 CFR 209.145. (This regulation supersedes all references to public meetings in 33 CFR 209.145).

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a Department of the Army permit application, or a Federal project whenever a public hearing is needed for making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7).

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a Department of the Army permit application or on a Federal project, that a public hearing be held to consider the material matters in issue in the permit application or Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the district engineer may expeditiously attempt to resolve the issues informally. Otherwise, he shall promptly set a time and place for the public hearing and give due notice thereof, as prescribed in § 327.11 of this Part. Requests for a public hearing under this paragraph shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The district engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties.

(c) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(d) In fixing the time and place for a hearing, the convenience and necessity of the interested public will be duly considered.

§ 327.5 Presiding officer.

(a) The district engineer, in whose district a matter arises, shall normally serve as the Presiding Officer. When the district engineer is unable to serve, he

may designate the deputy district engineer or other qualified person as such Presiding Officer. In cases of unusual interest, the Chief of Engineers or the Division Engineer may appoint such person as he deems appropriate to serve as the Presiding Officer.

(b) The Presiding Officer shall include in the administrative record of the permit action the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to or in support of the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The administrative record shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

At each public hearing, the district counsel or his designee may serve as legal advisor to the presiding officer. In appropriate circumstances, the district engineer may waive the requirement for a legal advisor to be present.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, or may be represented by counsel, or by other representatives.

§ 327.8 Conduct of hearings.

(a) The presiding officer shall make an opening statement outlining the purpose of the hearing and prescribing the general procedures to be followed.

(b) Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral or written statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing record prior to the time the hearing record is closed to public submissions, and may present proposed findings and recommendations. The presiding officer shall afford participants a reasonable opportunity for rebuttal.

(c) The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(d) Cross-examination of witnesses shall not be permitted.

(e) All public hearings shall be reported verbatim. Copies of the transcripts of prceedings may be purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate district engineer.

(f) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the presiding officer for reasons of redundancy, be received in evidence and shall constitute a part of the record.

(g) The pesiding officer shall allow a period of not less than 10 days after the close of the public hearing for submission of written comments.

(h) In appropriate cases, the district engineer may participate in joint public hearings with other Federal or state agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or state agency allows a cross-examination in its public hearing, the district engineer may still participate in the joint public hearing but shall not require cross-examination as a part of his participation.

§ 327.9 Filing of transcript of the public hearing.

Where the presiding officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as presiding officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the presiding officer and the transcript of the public hearing and evidence submitted thereat shall in such cases be fully considered by the initial action authority in his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Authority of the presiding officer.

Presiding officers shall have the following authority:

(a) To regulate the course of the hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice should normally provide for a period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to state and local agencies and other parties having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and published in newspapers of general circulation.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

PART 328 [RESERVED]

PART 329—DEFINITION OF NAVIGATION WATERS OF THE UNITED STATES

Sec.

Authority: 33 U.S.C. 401 et seq.

§ 329.1 Purpose.

This regulation defines the term "navigable waters of the United States" as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning "navigible waters of the United States." This definition does not apply to authorities under the Clean Water Act which definitions are described under 33 CFR Part 323.

§ 329.2 Applicability.

This regulation is applicable to all Corps of Engineers districts and divisions having civil works responsibilities.

§ 329.3 General policies.

Precise definitions of "navigable waters of the United States"; or "navigability" are ultimately dependent on judicial interpretation, and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this regulation are in close conformance with the tests used by the Federal courts and determinations made under this regulation are considered binding in regard to the activities of the Corps of Engineers.

§ 329.4 General definition.

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

§ 329.5 General scope of determination.

The several factors which must be examined when making a determination whether a waterbody is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

(a) Past, present, or potential presence of interstate or foreign commerce;

(b) Physical capabilities for use by commerce as in paragraph (a) of this section; and

(c) Defined geographic limits of the waterbody.

§ 329.6 Interstate or foreign commerce.

(a) *Nature of commerce: type, means, and extent of use.* The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterbody's capability of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in § 329.9 of this Part, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by historical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well-recognized commercial use of many navigable waters of the United States. Note, however, that the mere presence of floating logs will not of itself make the river "navigable"; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(b) *Nature of commerce: interstate and intrastate.* Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same state. It is only necessary that goods may be brought from, or eventually be destined to go to, another state. (For purposes of this regulation, the term "interstate commerce" hereinafter includes "foreign commerce" as well.)

§ 329.7 Intrastate or interstate nature of waterway.

A waterbody may be entirely within a state, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one state. Nor is it necessary that there be a physically navigable connection across a state boundary. Where a waterbody extends through one or more states, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the states, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

§ 329.8 Improved or natural conditions of the waterbody.

Determinations are not limited to the natural or original condition of the waterbody. Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation.

(a) *Existing improvements: artificial waterbodies.* (1) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above, that is, whether the waterbody is capable of use to transport interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce. A canal or other artificial waterbody that is subject to ebb and flow of the tide is also a navigable water of the United States.

(2) The artificial waterbody may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning areas. (See § 329.12(b) of this Part.)

(3) Private ownership of the lands underlying the waterbody, or of the lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used to tranport interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private waterbody, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(b) *Non-existing imporvements, past or potential.* A waterbody may also be considered navigable depending on the feasibility of use to transport interstate commerce after the construction of whatever "reasonable" imporvements may potentially be made. The improvements need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a "reasonable" improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement were "reasonable" at a time of past use, the water was therefore navigable in law from that time forward.

The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement; those which may be entirely reasonable in a thickly populated, highly developed industrial region may have been entirely too costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

§ 329.9 Time at which commerce exists or determination is made.

(a) *Past use.* A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this Part retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the waterbody. Once having attained the character of "navigable in law," the Federal authority remains in existence, and connot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a waterbody are non-navigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined, since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

(b) *Future or potential use.* Navigability may also be found in a waterbody's susceptibility for use in its ordinary condition or by reasonable improvement to transport interstate commerce. This may be either in its natural or improved condition, and may thus be existent although there has been no actual use to date. Non-use in the past therefore does not prevent recognition of the potential for future use.

§ 329.10 Existence of obstructions.

A stream may be navigable despite the existence of falls, rapids, sand bars, bridges portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a "channel" or commerce, even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

§ 329.11 Geographic and jurisdictional limits of rivers and lakes.

(a) *Jurisdiction over entire bed.* Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark.

(1) The "ordinary high water mark" on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation;' the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(2) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.

(b) *Upper limit of navigability.* The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet farther upstream.

§ 329.12 Geographic and jurisdictional limits of oceanic and tidal waters.

(a) *Ocean and coastal waters.* The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the coast line. Wider zones of three leagues (nine nautical miles) are recognized off the coast of Texas and the Gulf coast of Florida and for other special regulatory powers such as those exercised over the outer continental shelf.

(1) *Coast line defined.* Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the coast line from which the distance of three geographic miles is measured. The line has significance for both domestic and international law (in which it is termed the "baseline"), and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the line may have to be drawn to seaward of such bodies.

(2) *Shoreward limit of jurisdiction.* Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(b) *Bays and estuaries.* Regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by paragraph (a)(2) of this section of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered "navigable in law," but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

§329.13 Geographic limits: Shifting boundaries.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain "navigable in law," even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable

water of the United States, regardless that they may be dry at a particular point in time.

§ 329.14 Determination of navigability.

(a) *Effect on determinations.* Although conclusive determinations of navigability can be made only by Federal Courts, those made by Federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional questions arise, District personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under guidelines set out above, as the resulting determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(b) *Procedures of determination.* A determination whether a waterbody is a navigable water of the United States will be made by the Division Engineer, and will be based on a report of findings prepared at the District level in accordance with the criteria set out in this regulation. Each report of findings will be prepared by the District Engineer, accompanied by an opinion of the District Counsel, and forwarded to the Division Engineer for final determination. Each report of findings will be based substantially on applicable portions of the format in paragraph (c) of this section.

(c) *Suggested format of report of findings.* (1) Name of waterbody:

(2) Tributary to:

(3) Physical characteristics:

(i) Type: (river, bay, slough, estuary, etc.)

(ii) Length:

(iii) Approximate discharge volumes: Maximum, Minimum, Mean.

(iv) Fall per mile:

(v) Extent of tidal influence:

(vi) Range between ordinary high and ordinary low water:

(vii) Description of improvements to navigation not listed in paragraph (c)(5) of this section:

(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interestate commerce:

(5) Authorized projects:

(i) Nature, condition and location of any improvements made under projects authorized by Congress:

(ii) Description of projects authorized but not constructed:

(iii) List of known survey documents or reports describing the waterbody:

(6) Past or present interstate commerce:

(i) General types, extent, and period in time:

(ii) Documentation if necessary:

(7) Potential use for interstate commerce, if applicable:

(i) If in natural condition:

(ii) If improved:

(8) Nature of jurisdiction known to have been exercised by Federal agencies if any:

(9) State or Federal court decisions relating to navigability of the waterbody, if any:

(10) Remarks:

(11) Finding of navigability (with date) and recommendation for determination:

§ 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the Division Engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the Division Engineer. If a need develops for an emergency determination, District Engineers may act in reliance on a finding prepared as in § 329.14 of this part. The report of findings should then be forwarded to the Division Engineer on an expedited basis.

(b) Where determinations have been made by the Division Engineer, inquiries regarding the *navigability* of specific portions of waterbodies covered by these determinations may be answered as follows:

> This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that ———— (River) (Bay) (Lake, etc.) is a navigable water of the United States from ———— to ————. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the *jurisdiction* of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or (2) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each District office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the Division Engineer; changes are not considered final until a determination has been made by the Division Engineer.

PART 330—NATIONWIDE PERMITS

Sec.

Authority: 33 U.S.C. 403; 33 U.S.C. 1344.

§ 330.1 General.

The purpose of this regulation is to describe the Department of the Army's nationwide permit program and to list all current nationwide permits which have been issued by publication herein. The two types of general permits are referred to as "nationwide permits" and "regional permits." A nationwide permit is a form of general permit which authorizes a category of activities throughout the nation. The authority for general permits to be issued by district engineers on a regional basis is contained in 33 CFR Part 325. Copies of regional permits can be obtained from the appropriate district engineer. Nationwide permits are designed to allow the work to occur with little, if any, delay or paperwork. However, the nationwide permits are valid only if the conditions applicable to the nationwide permits are met. Just because a condition cannot be met does not necessarily mean the activity cannot be authorized but rather that the activity will have to be authorized by an individual or regional permit. Additionally, division engineers have the discretion, under situations and procedures described herein, to override the nationwide permit coverage and require an individual or regional permit. The nationwide permits are issued to satisfy the requirements of both Section 10 of the River and Harbor Act of 1899

and Section 404 of the Clean Water Act unless otherwise stated. These nationwide permits apply only to Department of the Army regulatory programs (other Federal agency, state and local authorizations may be required for the activity).

§ 330.2 Definitions.

(a) The definitions of 33 CFR Parts 321–329 are applicable to the terms used in this part.

(b) Discretionary authority means the authority delegated to division engineers in § 330.7 of this Part to override provisions of nationwide permits to add regional conditions or to require individual permit applications.

§ 330.3 Nationwide permits for activities occurring before certain dates.

The following activities are permitted by a nationwide permit which was issued on 19 July 1977 and need not be further permitted:

(a) Discharges of dredged or fill material in waters of the United States outside the limits of navigable waters of the United States that occurred before the phase-in dates which began July 25, 1975, and extended Section 404 jurisdiction to *all* waters of the United States. These phase-in dates are: after July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands; after September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area; and after July 1, 1977, discharges into all waters of the United States.

(b) Structures or work completed before 18 December 1968 or in waterbodies over which the District Engineer was not asserting jurisdiction at the time the activity occurred provided, in both instances, there is no interference with navigation.

§ 330.4 Nationwide permits for discharges into certain waters.

(a) *Authorized discharges.* Discharges of dredge or fill material into the following waters of the United States are hereby permitted provided the conditions listed in paragraph (b) of this section below are met:

(1) Non-tidal rivers, streams and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.[1]

(2) Other non-tidal waters of the United States (see 33 CFR 323.2(a)(3)) that are not part of a surface tributary system to interstate waters or navigable waters of the United States.[1]

(b) *Conditions.* The following special conditions must be followed in order for the nationwide permits identified in paragraph (a) of this section to be valid:

(1) That the discharge will not be located in the proximity of a public water supply intake;

(2) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or destroy or adversely modify the critical habitat of such species. In the case of Federal agencies, it is the agencies' responsibility to review its activities to determine if the action "may affect" any listed species or critical habitat. If so, the Federal agency must consult with the Fish and Wildlife Service and/or the National Marine Fisheries Service;

(3) That the discharge will consist of suitable material free from toxic pollutants in toxic amounts;

(4) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution;

(5) That the discharge will not occur in a component of the National Wild and Scenic River System.

(6) That the best management practices listed in § 330.6 of this Part should be followed to the maximum extent practicable.

§ 330.5 Nationwide permits for specific activities.

(a) *Authorized activities.* The following activities are hereby permitted provided the conditions specified in this paragraph and listed in paragraph (b) of this section are met:

(1) The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 66, Subchapter C).

(2) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.4(g)).

(3) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill or of any currently serviceable structure or fill constructed prior to the requirement for authorization; provided such repair, rehabilitation, or replacement does not result in a deviation [2] from the plans of the original structure or fill, and further provided that the structure or fill to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction. Maintenance dredging is not authorized by this nationwide permit.

(4) Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, lobster traps, duck blinds, clam and oyster digging.

(5) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures.

(6) Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes.

(7) Outfall structures and associated intake structures [3] where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the individual and cumulative adverse environmental effects of the structure itself are minimal.

(8) Structures for the exploration, production, and transport of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Bureau of Land Management, provided those structures are not placed within the limits of any designated shipping safety fairway or traffic separation scheme (where such limits have not been designated or where changes are anticipated, District Engineers will consider recommending the discretionary authority provided by § 330.7 of this Part), and further subject to the provisions of the fairway regulations in 33 CFR 209.135.

(9) Structures placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established by the US Coast Guard.

(10) Non-commercial, single-boat, mooring buoys.

(11) Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within 30 days after its use has been

[1] The State of Wisconsin has denied water quality certification pursuant to Section 401 of the Clean Water Act for certain waters within these two Nationwide Permit Categories. Discharges of dredged or fill material into those specified waters are not authorized under these two nationwide permits. A list of the specific waters may be obtained from the St. Paul District Engineer, 1135 U.S. Post Office & Customhouse, St. Paul, MN 55101.

[2] Minor deviations due to changes in materials or construction techniques and which are necessary to make repair, rehabilitation, or replacement are permitted.

[3] Intake structures per se are not included—only those directly associated with an outfall structure are covered by this nationwide permit.

discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually.

(12) Discharge of material for backfill or bedding for utility lines including outfall and intake structures provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (The utility line and outfall and intake structures will require a Section 10 permit if in navigable waters of the United States. See 33 CFR Part 322. See also paragraph (a)(7) of this section.)

(13) Bank stabilization activities provided:

(i) The bank stabilization activity is less than 500 feet in length;

(ii) The activity is necessary for erosion prevention;

(iii) The activity is limited to less than an average of one cubic yard per running foot placed along the bank within waters of the United States;

(iv) No material is placed in excess of the minimum needed for erosion protection;

(v) No material is placed in any wetland area;

(vi) No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

(vii) Only clean material free of waste metal products, organic materials, unsightly debris, etc. is used; and

(viii) The activity is a single and complete project.

(14) Minor road crossing fills including all attendant features both temporary and permanent that are part of a single and complete project for crossing of a non-tidal waterbody, provided that the crossing is culverted, bridged or otherwise designed to prevent the restriction of and to withstand expected high flows [4] and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing will require a permit from the US Coast Guard if located in navigable waters of the United States (see 33 U.S.C. 301). Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4).

(15) Fill placed incidental to the construction of bridges across navigable waters of the United States including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such fill has been authorized by the US Coast Guard under Section 9 of the River and Harbor Act of 1899 as part of the bridge permit. Causeways and approach fills are not included in this nationwide permit and will require an individual or regional Section 404 permit.

(16) Return water [5] from a contained dredged material disposal area provided the State has issued a certification under Section 401 of the Clean Water Act (see 33 CFR 325.2(b)(1)). The dredging itself requires a Section 10 permit if located in navigable waters of the United States.

(17) Fills associated with small hydropower projects at existing reservoirs where the project which includes the fill is licensed by the Department of Energy under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the Department of Energy (see 18 CFR 4.61); and the individual and cumulative adverse effects on the environment are minimal.

(18) Discharges of dredged or fill material into waters of the United States that do not exceed ten cubic yards as part of a single and complete project provided no material is placed in wetlands [6] [7].

(19) Dredging of no more than ten cubic yards from navigable waters of the United States as part of a single and complete project.[6]

(20) Structures, work and discharges for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan provided the Regional Response Team which is activated under the Plan concurs with the proposed containment and cleanup action.

(21) Structures, work, and discharges associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate district engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mining or state (as the case may be) documentation prior to any decision on that application; and the district engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal.

(22) Minor work or temporary structures required for the removal of wrecked, abandoned, or disabled vessels or the removal of obstructions to navigation.

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment and the Office of the Chief of Engineers (ATTN: DAEN–CWO–N) has been furnished notice of the agency or department's application for the categorical exclusion and concurs with that determination.[7]

(24) Any activity permitted by a state administering its own permit program for the discharge of dredged or fill material authorized at 33 U.S.C. 1344(g)–(1) shall be permitted pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. Part 403). Those activities which do not involve a Section 404 state permit are not included in this nationwide permit but many will be exempted by Sec. 154 of Pub. L. 94–587. (See 33 CFR 322.2(a)(2)).

(25) Discharge of concrete into tightly

[4] District Engineers are authorized, where regional conditions indicate the need, to define the term "expected high flows" for the purpose of establishing applicability of this nationwide permit.

[5] The return water or runoff from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(j) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. This nationwide permit satisfies the technical requirement for a Section 404 for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures.

[6] These nationwide permits are designed for very minor dredge and fill activities such as the removal of a small shoal in a boat slip; they cannot be used for piecemeal dredge and fill activities.

[7] The State of Wisconsin has denied water quality certifications pursuant to Section 401 of the Clean Water Act for these two nationwide permits. Consequently, the permits do not apply in Wisconsin.

sealed forms or cells where the concrete is used as a structural member which would not otherwise be subject to Clean Water Act jurisdiction.

(b) *Conditions.* The following special conditions must be followed in order for the nationwide permits identified in paragraph (a) of this section to be valid:

(1) That any discharge of dredged or fill material will not occur in the proximity of a public water supply intake;

(2) That any discharge of dredged or fill material will not occur in areas of concentrated shellfish production unless the discharge is directly related to a shellfish harvesting activity authorized by paragraph (a)(4) of this section.

(3) That the activity will not jeopardize a threatened or endangered species as identified under the Endangered Species Act, or destroy or adversely modify the critical habitat of such species. In the case of Federal agencies, it is the agencies' responsibility to review its activities to determine if the action "may affect" any listed species or critical habitat. If so, the Federal agency must consult with the Fish and Wildlife Service and/or National Marine Fisheries Service;

(4) That the activity will not significantly disrupt the movement of those species of aquatic life indigenous to the waterbody (unless the primary purpose of the fill is to impound water);

(5) That any discharge of dredged or fill material will consist of suitable material free from toxic pollutants (See Section 307 of Clean Water Act) in toxic amounts;

(6) That any structure or fill authorized will be properly maintained;

(7) That the activity will not occur in a component of the National Wild and Scenic River System; and

(8) That the activity will not cause an unacceptable interference with navigation.

(9) That the best management practices listed in § 330.6 of this Part should be followed to the maximum extent practicable.

§ 330.6 Management practices.

(a) In addition to the conditions specified in §§ 330.4 and 330.5 of this Part, the following management practices should be followed, to the maximum extent practicable, in the discharge of dredged or fill material under nationwide permits in order to minimize the adverse effects of these discharges on the aquatic environment. Failure to comply with these practices may be cause for the district engineer to recommend or the division engineer to take discretionary authority to regulate the activity on an individual or regional basis pursuant to § 330.7 of this Part.

(1) Discharges of dredged or fill material into waters of the United States shall be avoided or minimized through the use of other practical alternatives.

(2) Discharges in spawning areas during spawning seasons shall be avoided.

(3) Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

(4) If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, shall be minimized.

(5) Discharge in wetlands areas shall be avoided.

(6) Heavy equipment working in wetlands shall be placed on mats.

(7) Discharges into breeding areas for migratory waterfowl shall be avoided.

(8) All temporary fills shall be removed in their entirety.

§ 330.7 Discretionary Authority.

Division engineers on their own initiative or upon recommendation of a district engineer are authorized to modify nationwide permits by adding regional conditions or to override nationwide permits by requiring individual permit applications on a case-by-case basis. Discretionary authority will be based on concerns for the aquatic environment as expressed in the guidelines published by EPA pursuant to § 404(b)(1). (40 CFR Part 230)

(a) *Regional conditions.* Division engineers are authorized to modify nationwide permits by adding conditions applicable to certain activities or specific geographic areas within their divisions. In developing regional conditions, division and district engineers will follow standard permit processing procedures as prescribed in 33 CFR Part 325 applying the evaluation criteria of 33 CFR Part 320 and appropriate parts of 33 CFR Parts 321, 322, 323, and 324. A copy of the Statement of Findings will be forwarded to the Office of the Chief of Engineers, ATTN: DAEN–CWO–N. Division and district engineers will take appropriate measures to inform the public at large of the additional conditions.

(b) *Individual permits.* In nationwide permit cases where additional regional conditioning may not be sufficient or where there is not sufficient time to develop regional conditions under paragraph (a) of this section, the division engineer may require individual permit applications on a case-by-case basis. Where time is of the essence, the district engineer may telephonically recommend that the division engineer assert discretionary authority to require an individual permit application for a specific activity. If the division engineer concurs, he may verbally authorize the district engineer to implement that authority. Both actions will be followed by written confirmation with copy to the Chief of Engineers (DAEN–CWO–N). Additionally, after notice and opportunity for public hearing, division engineers may recommend to the Chief of Engineers that individual permit applications be required for categories of activities, or in a specific geographic area. The division engineer will announce the decision to persons affected by the action. The district engineer will then regulate the activity or activities by processing an application(s) for individual permit(s) pursuant to 33 CFR Part 325.

(c) Discretionary authority which has been exercised under nationwide permits issued on 19 July 1977 expires four months from the effective date of this regulation. Such authority may be extended or reinstated after appropriate procedures of this regulation and 33 CFR Parts 320 through 325 have been followed.

§ 330.8 Expiration of nationwide permits.

The Chief of Engineers will review nationwide permits at least every five years. Based on this review, which will include public notice and opportunity for public hearing through publication in the **Federal Register**, he will either modify, reissue (extend) or revoke the permits. If a nationwide permit is not modified or reissued within five years of publication in the **Federal Register**, it automatically expires and becomes null and void.

[FR Doc. 82-19658 Filed 7-21-82; 8:45 am]

BILLING CODE 3710-92-M

federal register

Thursday
July 22, 1982

Part III

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report two new proposals to rescind $63.6 million in budget authority previously provided to the Congress and one revision to an existing deferral increasing the amount deferred by $61.1 million.

The rescissions include $47.4 million previously deferred for the employment and training assistance program administered by the Department of Labor, and $16.2 million for the exploration of national petroleum reserve in Alaska account in the Department of the Interior. The deferral affects the facilities and equipment account (Airport and Airway Trust Fund) in the Department of Transportation.

The details of the rescission proposals and revised deferral are contained in the attached reports.

Ronald Reagan

THE WHITE HOUSE,
July 16, 1982.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
#(in thousands of dollars)

Rescission #	Item	Budget Authority
	Department of the Interior	
	Geological Survey	
	Exploration of national petroleum	
R82-28	reserve in Alaska.....	16,200
	Department of Labor	
	Employment and Training Administration	
R82-29	Employment and training assistance	47,429
	Subtotal, rescission proposals.	63,629

Deferral #	Item	Budget Authority
	Department of Transportation	
	Federal Aviation Administration	
	Facilities and equipment (airport	
D82-21B	and airway trust fund).....	411,634
	Subtotal, deferral.....	411,634
	Total, rescission proposals and deferral.....	475,263

****

SUMMARY OF SPECIAL MESSAGES
FOR FY 1982
(in thousands of dollars)

	Rescissions	Deferrals
Fifteenth special message		
New items.....	63,629	---
Change to amount previously submitted.....	---	61,121
Effect of fifteenth special message.....	63,629	61,121
Previous special messages.....	7,584,998	8,138,904
Total amount proposed in special messages.....	7,648,627	8,200,025 1/

1/ This amount represents budget authority except for $20,922 thousand in one general revenue sharing deferral of outlays only (D82-23A).

D82-28

Rescission Proposal No:

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of the Interior	New budget authority (P.L. 97-100) $ 2,196,000
Bureau Geological Survey	Other budgetary resources 37,861,797
Appropriation title & symbol	Total budgetary resources 40,057,797
Exploration of National Petroleum Reserve in Alaska 14X0805	Amount proposed for rescission $ 16,200,000
OMB identification code: 14-0805-0-1-271	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Geological Survey conducted a program to explore the oil and gas potential of the National Petroleum Reserve in Alaska. The exploration program ended in 1981, and close-out operations are in progress. The funds proposed for rescission are in excess of those required to complete close-out operations in the Reserve.

Estimated Effects: This proposed rescission will have no programmatic or budgetary effects.

Outlay Effects:

(in millions of dollars)

1982 Outlay Estimate		Outlays Savings			
Without Rescission	With Rescission	1982	1983	1984	1985
75.0	75.0	---	---	---	---

D82-28

Exploration of National Petroleum Reserve in Alaska

Of the unobligated balances for "Exploration of National Petroleum Reserve in Alaska", $16,200,000 are rescinded.

Rescission Proposal No: D82-29

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Labor	New budget authority (P.L. 97-161) $3,023,201,280*
Bureau Employment and Training Administration	Other budgetary resources 848,863,309
Appropriation title & symbol: Employment and Training Assistance 1/ 161/20174 1620174	Total budgetary resources 3,872,064,589*
	Amount proposed for rescission $ 47,429,309
OMB identification code: 16-0174-0-1-504	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☒ Multiple-year September 30, 1982 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:* This appropriation provides for a system of Federal, State, and local programs of training and other services for economically disadvantaged unemployed and underemployed persons intended to lead to permanent gains in employment and increased self-sufficiency. The amount proposed for rescission represents the balance of $88,543,309 in unanticipated, unobligated balances and unanticipated recoveries of prior year obligations previously deferred and that are not proposed for transfer to other Department of Labor agencies to meet operational needs or defray the cost of the October civilian pay increase. These balances were unanticipated, no plans to their use had been developed at the time 1982 program levels were determined, and no compelling program or operational need has developed in this account to justify increasing 1982 and 1983 outlays by utilizing these balances.

Estimated Effects: No programmatic or budgetary effects are anticipated due to this rescission, since program levels were not based on utilization of these resources.

Outlay Effects:

(in millions of dollars)

1982 Outlay Estimate		Outlays Savings			
Without Rescission	With Rescission	1982	1983	1984	1985
4,110.4	4,110.4	---	---	---	---

* Revised from previous report.
1/ This account is the subject of four deferrals in FY 1982 (D82-18, D82-194, D82-229, and D82-229A).

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Assistance

Of the amounts available for obligation in fiscal year 1982 for "Employment and training assistance", $47,429,309 are rescinded.

Supplementary Report

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. 82-21A, transmitted to the Congress on January 22, 1982.

This revision reflects a change in the amount deferred from $350,513,011 to $411,633,611. The major portion of this deferral increase is due to an unavoidable delay in awarding a $45 million contract for terminal radars. This deferral action is consistent with the Congressional intent to provide multi-year funding for the total costs of these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 655) which authorizes the establishment of reserves for contingencies.

Deferral No: D82-21B

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. 97-102): $260,847,000
Bureau: Federal Aviation Administration	Other budgetary resources: 378,266,011*
Appropriation title & symbol: Facilities and Equipment (Airport and Airway Trust Fund), FAA 1/ 69X8107 690/48107 698/28107 691/58107 699/38107 692/68107	Total budgetary resources: 639,113,011* Amount to be deferred: Part of year: $-0- Entire year: 411,633,611*
OMB identification code: 69-8107-0-7-402	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [X] Multiple-year (expiration date) [X] No-year 2/ 698/28107 Sept. 30, 1982 699/38107 Sept. 30, 1983 690/48107 Sept. 30, 1984 691/58107 Sept. 30, 1985 692/68107 Sept. 30, 1986	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: Funds from this account are used to procure specific Congressionally approved facilities and equipment for the expansion and modernization of the National Airspace System. Projects financed from this account include construction of buildings and purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system and expansion and improvement in the navigational and landing aid systems. These funds were appropriated in the Department of Transportation and Related Agencies Appropriation Acts of 1982 and prior years. The estimated total cost for each project is included in the budget submission and appropriation for the year in which it is requested. Because of the lengthy procurement and construction time for interrelated new facilities and complex equipment systems, it is not possible to obligate all funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with the Congressional intent to provide multi-year funding for the total costs of these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 655) which authorizes the establishment of reserves for contingencies.

1/ This account was the subject of a similar deferral in FY 1981 (D81-17B).

2/ None of these funds are deferred.

Estimated Effects: This deferral action is consistent with normal operation for this program. The amount deferred could not be economically used if made available in FY 1982 because of the planned multi-year procurement, construction, and installation cycle.

Outlay Effect: This deferral action has no outlay effect in FY 1982 since the funds could not be used if made available.

* Revised from previous report

[FR Doc. 82-19851 Filed 7-21-82; 8:45 am]

BILLING CODE 3110-01-C

Reader Aids

Federal Register

Vol. 47, No. 141

Thursday, July 22, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

28605-28894.....1
28895-29206.....2
29207-29512.....6
29513-29640.....7
29641-29816.....8
29817-30046.....9
30047-30228.....12
30229-30448.....13
30449-30698.....14
30699-30958.....15
30959-31260.....16
31261-31370.....19
31371-31534.....20
31535-31672.....21
31673-31840.....22

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

302.....30701
305.....30701
310.....30701
Proposed Rules:
456.....30790

3 CFR

Administrative Orders Memorandums:
November 13, 1968 (Revoked by EO 12372).....30959
July 12, 1982.....30699
Proclamations:
4707 (Amended by EO 12371).....30449
4950.....28895
4951.....28897
4952.....29641
4953.....31535
Executive Orders:
6867 (Revoked in part by PLO 6294).....31691
11888 (Amended by EO 12371).....30449
12354 (Amended by EO 12371).....30449
12369.....28899
12370.....30047
12371.....30449
12372.....30959

5 CFR

213.....28901
315.....28905
316.....28905
531.....30229
890.....30961
950.....29496, 29643, 29817
1201.....28906
Proposed Rules:
550.....28962
551.....28962, 30995
1204.....28964
1205.....28964

7 CFR

1.....30451
2.....29817
6.....30049
28.....30963
60.....29643
210.....28909, 31371
220.....31371
301.....28909, 29207
724.....28911
725.....28912
726.....28912
908.....28605, 29817, 30715, 31673
910.....28913, 29818, 30964
911.....29646, 29647
915.....29647
916.....30451
917.....30451
923.....31537
925.....28914
1065.....31673
1427.....28605
1464.....28606
1701.....30965
1942.....29819
1955.....30230
Proposed Rules:
27.....30995
28.....30995
46.....30997
54.....30079
61.....30995
101.....28965
210.....28966, 30997
220.....30997
245.....30997
282.....31000
932.....31696
945.....29683
958.....30257
982.....30258
967.....30792
1011.....30080
1030.....29247, 31003
1046.....30080
1048.....30080
1207.....28680
1701.....31004
1951.....31699

8 CFR

212.....30044
235.....30044
238.....28608
Proposed Rules:
214.....29851

9 CFR

82.....29648
92.....30230
312.....29821
317.....29513
381.....29513, 29821
Proposed Rules:
112.....31004
113.....30259, 31004
114.....30081
201.....29852
203.....29852
307.....28966
327.....29685
381.....28966

10 CFR

19.....30452

30 30452
40 30452
50 ..... 30232, 30452, 30459, 31674
60 30452
70 30452
72 30452
150 30452
317 30716
500 29209
503 29209
508 31538
710 30717

Proposed Rules:
Ch. I 31701
50 29252
430 30793
1605 31286

11 CFR

Proposed Rules:
100 31390
110 31390
9003 31390

12 CFR

2 31376
5 29823
207 30719
217 ..... 30460, 31539
220 30719
221 30719
224 30719
225 30965
615 28608
701 ..... 30460, 30462
745 30464

Proposed Rules:
220 29253
303 29554
304 29554
347 29554
561 29558
563 29558
703 30497

13 CFR

125 29211

14 CFR

39 ..... 28609–28612, 29212, 29649, 30049–30051, 30720, 31675
71 ..... 28613–28614, 29213–29219, 29649–29651, 30052, 31261, 31262, 31677
73 31678
91 ..... 29219, 29814, 30946
97 30721
223 30236
385 29223

Proposed Rules:
Ch. I 29688, 30793
21 ..... 30794, 31286
39 ..... 29253, 29255, 31701
67 30795
71 ..... 28680, 29255–29259, 29689–29692, 31287–31289 31702
121 29782
253 28681
262 28683

15 CFR

30 29828

16 CFR

4 31378
13 ..... 30237, 30238, 30723, 31678–31681
305 30465
460 29830

Proposed Rules:
Ch. I 29462, 31392
13 31392
801 ..... 29182, 30261
802 ..... 29182, 30261
803 ..... 29182, 30261
1017 29562

17 CFR

5 29515
200 30460
210 29832
229 29832
230 ..... 29651, 29832, 30967, 31682
231 29832
239 29832
240 ..... 29651, 29832, 30967, 31682
249 29832
275 29652
279 29652

Proposed Rules:
1 ..... 30261, 30498, 31703
3 30498
4 30498
15 30498
16 30498
18 30498
21 30498
32 30498
33 30498
145 30498
147 30498
155 30498
170 30498
180 30498
210 28684
229 ..... 28684, 31394
230 ..... 28688, 31005
231 28684
239 ..... 28688, 31394
240 ..... 28684, 28688, 29259 31394
241 28684
249 ..... 29259, 31394
270 31005

18 CFR

157 30724
271 31263
281 ..... 30467, 30725
284 30724
375 30724

Proposed Rules:
1 31582
154 28966
157 28966
271 ..... 29265, 29569, 29852, 31405, 31582
274 31582
276 31582
284 31582
375 ..... 28966, 31582
381 ..... 28966, 31582

19 CFR

Proposed Rules:
123 31708

20 CFR

404 ..... 30468, 30731, 31539
416 ..... 30468, 31539
619 30238

21 CFR

172 29946
178 30239–30241
182 ..... 29946, 29952, 29953
184 ..... 29946, 29952
186 29953
193 ..... 29523, 30477
436 30241
440 30241
442 30241
444 30241
446 30241
510 ..... 30241, 31379, 31380
520 ..... 30242, 30967
522 30967
546 29843
556 30242
558 ..... 28914, 28915, 29844, 30241, 30244, 30246, 31379–31381
561 ..... 30478, 30479
606 30968
610 30968
640 30968
868 31130

Proposed Rules:
182 29956–29965
184 29956
299 31008
333 29986
341 30002
344 30012
452 30266
888 ..... 29052, 31405

22 CFR

2 30480

23 CFR

772 29653

24 CFR

200 29523
202a 30750
203 ..... 29524, 30750
204 ..... 29524, 30750
209 30750
211 30750
213 29524
220 29524
221 ..... 29524, 30750
228 30750
234 29524
235 ..... 29524, 30750
570 30053
805 30969
860 30969
861 30969
865 30969
885 30970
888 30971
889 30971
891 31545

Proposed Rules:
201 28967

25 CFR

77 31546
249 30755

26 CFR

1 28915
32 29224

Proposed Rules:
1 ..... 29692, 30796, 31709
31 ..... 28695, 29266

28 CFR

503 31246
524 31246

Proposed Rules:
544 31252

29 CFR

5 ..... 28916, 29845
1952 ..... 28614, 28917
2200 29525
2619 30757

Proposed Rules:
519 31010
570 31254
1404 29569
1910 30420

30 CFR

211 29845
221 29845
231 29845
250 ..... 29845, 30055
270 29845
946 31549

Proposed Rules:
Ch. VII 29693, 30267
75 30025
251 28706
700 ..... 28706, 30266
701 ..... 28706, 30266
715 30266
717 30266
736 ..... 30266, 30797, 31708
740 28706
741 28706
742 28706
743 28706
744 28706
745 28706
746 28706
760 ..... 30266, 30797, 31708
761 ..... 30797, 31708
762 ..... 30266, 30797, 31708
764 ..... 30797, 31708
765 ..... 30797, 31708
769 ..... 30266, 30979, 31708
770 30266
771 30266
772 30266
773 30266
775 30266
776 30266
778 30266
779 30266
780 30266
782 30266
783 30266
784 30266
785 30266
786 30266
787 30266
788 30266
815 30266
816 30266
817 30266
818 30266
819 30266

822.....30266
823.....30266
824.....30266
826.....30266
827.....30266
843.....30266
850.....30266
904.....30267
912.....30214
915.....29570
945.....29571
948.....29852
952.....31709

31 CFR

535.....29528, 31682

32 CFR

706.....30758, 30759

33 CFR

Ch. I.....28615
100.....28615, 28616, 31683
110.....29658
117.....31264, 31684, 31685
127.....29659
128.....29659
165.....29659
204.....30057
320.....31794
321.....31794
322.....31794
323.....31794
324.....31794
325.....31794
326.....31794
327.....31794
328.....31794
329.....31794
330.....31794

Proposed Rules:

110.....31711
117.....30176
206.....31405
207.....31405
209.....31405

34 CFR

74.....31382
632.....31265
633.....31265
635.....31265

Proposed Rules:

5b.....30498

36 CFR

211.....30246
261.....29229

Proposed Rules:

7.....31584
9.....31011

37 CFR

201.....29529

38 CFR

3.....29530
17.....29668
21.....30247
36.....29230

Proposed Rules:

21.....29267, 29269, 30269
36.....29270

39 CFR

10.....30760
233.....28918

Proposed Rules:

111.....29273

40 CFR

33.....29668
52.....28617, 28623, 29231, 29233, 29531–29539, 29668, 30057–30060, 30761, 30762, 30972
60.....28624, 30061–30065, 30480
61.....30061–30065
62.....29234
81.....28626, 29540, 30065, 30762, 30972
85.....30481
120.....29541
123.....29236
180.....28626, 30485–30489, 31550–31553
264.....28627, 30446
265.....28627, 30446
300.....31180
435.....31554
1510.....30981

Proposed Rules:

52.....28967, 29273, 29572, 29573, 30798, 31011, 31586
60.....30799, 31012
81.....28968, 29573, 31586, 31588
85.....31289
122.....29274, 30799
123.....30498, 30799, 31590
124.....30799
180.....29573–29576, 31591
264.....29274
425.....31592
704.....30081, 31290
712.....29853
720.....28969
761.....30082, 30083, 30270

41 CFR

Ch. 101.....30248
5–2.....28627
5–3.....28918
5–16.....28647
5A–2.....28627
5A–3.....28918
5A–16.....28647
5A–71.....28650
5A–72.....28650
5A–74.....28650
5A–76.....28650
5B–2.....28627
5B–3.....28918
5B–4.....28627
5B–16.....28647
9–5.....28924
9–7.....28924
9–23.....28924
9–50.....28924

42 CFR

110.....31666
122.....28650, 30950
405.....31518, 31686
431.....28652
435.....28652, 30764, 31518
436.....28652
440.....31518
442.....31518
447.....31518

Proposed Rules:

433.....29275, 31013

43 CFR

17.....29542
19.....30489

Proposed Rules:

2650.....31368
3100.....30499
3140.....28971

Public Land Orders:

898 (Amended by PLO 6300).....31693
1168 (Revoked in part by PLO 6290).....28656
1344 (Revoked in part by PLO 6290).....28656
1429 (Revoked in part by PLO 6290).....28656
1744 (Revoked in part by PLO 6290).....28656
2165 (Revoked in part by PLO 6290).....28656
2285 (Revoked in part by PLO 6290).....28656
2354 (Revoked by PLO 6293).....29846
2965 (Revoked in part by PLO 6290).....28656
3072 (Revoked in part by PLO 6290).....28656
5592 (Revoked by PLO 6297).....31692
6141 (Corrected by PLO 6296).....31692
6278.....30981
6290.....28656
6291.....28656
6292.....29553
6293.....29846
6294.....31691
6295.....31692
6296.....31692
6297.....31692
6298.....31693
6299.....31693
6300.....31693
6301.....31694

44 CFR

64.....28931–28936, 30249, 30253
65.....28657, 30251, 30490, 30491, 31384
67.....28937–28958, 30493, 30764, 30772
70.....28657–28659

Proposed Rules:

67.....28661–28676, 29854, 30500–30526

45 CFR

16.....29472
74.....29472
96.....29472
1355.....30922
1356.....30922
1357.....30922
1392.....30922

Proposed Rules:

1355.....30932
1356.....30932
1357.....30932
1392.....30932

46 CFR

Ch. I.....28707–28715
1.....28676
10.....28677
12.....28677
151.....31266
187.....28677
528.....30255
536.....29670
537.....30255

Proposed Rules:

30.....31290
35.....31291
502.....29278
503.....29280
522.....29278
531.....29278
536.....29278, 31408
538.....31408
540.....29278
542.....29280
543.....29280
544.....29280

47 CFR

2.....28960, 30066, 31555
15.....31266
21.....29237
61.....31270
73.....29245, 29846–29850, 30066, 30069, 30495, 30981–30992, 31578
74.....30066, 30495, 31578
76.....30495
78.....30495
83.....28960
87.....28960
94.....31555
97.....29673
100.....31555

Proposed Rules:

Ch. I.....29282
2.....31170, 31177
61.....31291
73.....29286–29291, 29854–29859, 30527, 31013–31019
74.....31170, 31177
94.....31020, 31170, 31177

49 CFR

1.....30781, 31281
5.....29678
173.....29678
178.....29678
555.....31694
571.....30077
1033.....29679
1036.....29246
1063.....30077
1137.....31281

Proposed Rules:

Ch. I.....30799
172.....28716
173.....28716
175.....28716, 30800

177.....28716
178.....28716
571.....30083, 30084, 31712
575.....30084
1032.....31410

50 CFR

13.....30782
16.....30782
17.....30440, 30782, 31384, 31670
20.....31282
23.....30787
640.....29202
661.....30078, 30788, 30994
672.....31695

Proposed Rules:

17.....30528, 31024
20.....30162, 31297
410.....31299
661.....28971
681.....30270

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). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

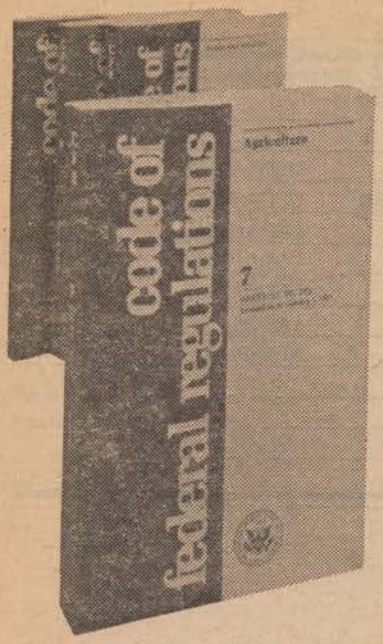
Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Last Listing July 21, 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).

S. 2651 / Pub. L. 97–217 To extend the expiration date of section 252 of the Energy Policy and Conservation Act. (July 19, 1982; 96 Stat. 196) Price: $1.75.



Just Released

Code of Federal Regulations

Revised as of April 1, 1982

Quantity	Volume	Price	Amount
_____	Title 12—Banks and Banking (Parts 200 to 299)	$14.00	$_____

A Cumulative checklist of CFR issuances for 1981 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA®

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		